

November 7, 2003

Chief Judge John W. Lungstrum
500 State Ave., Suite 517
Kansas City, Kansas 66101
ksd_lungstrum_chambers@ksd.uscourts.gov

Dear Chief Judge John W. Lungstrum,

I am counsel for Medical Supply Chain, Inc., a party in two antitrust actions in the District of Kansas, at Kansas City Kansas . The first action was brought seeking an emergency preliminary injunction and other relief against US Bancorp Piper Jaffray and affiliate defendants. Very little time was available for the court to give consideration to any of our attempts to obtain relief or to understanding our causes of action. The denial of the preliminary relief resulted in an interlocutory appeal where very little of the case had been developed at trial court level. The court later, in its first written decision , dismissed the action for reasons that are a mistake of law and fact, failing even to take notice of an independent defendant conspirator and in error finding an absence of two or more conspirators. We have sought a retrial on this dismissal but no ruling has been forthcoming.

While Medical Supply has suffered irreparable injury it sought to avoid under statutes expressly granting protection from this injury, another partner, in a an extensively self publicized open combination with the first defendants repeated the same felonies against Medical Supply and threatened us if we persevered and took them to court.

We have had the utmost faith in the impartiality of the court to this point, but are concerned over whether The District of Kansas has the required resources to administer justice. A recent ruling, staying discovery in the second case and the continued absence of a ruling on the motion for retrial in the first. It appears that the court is unwilling to devote the time to research a relatively rare form but very serious form of antitrust violation "The Collaborative Refusal to Deal" and appears to lack the time and resources address the issues raised in our complaints and instead is constrained to the very simple and conclusory defenses that ignore Tenth circuit and US Supreme Court precedent, even where the facts related to the conduct are not in dispute.

During the period these cases have been delayed US Bancorp Piper Jaffray has settled with the SEC, NASD and The Office of The New York Attorney General setting the market prices of technology company capitalization and excluding market entrants in the two markets our complaint alleged, a result of this much publicized settlement is the disclosure of many documents that are evidence of this conduct.

A defendant in the second case, The General Electric Company has accepted a consent decree, as a parent company and the sole defendant in a US Justice Department complaint for monopolization of the sale of medical devices and related software, in the market our complaint charges them with antitrust conduct. See *U.S. v. General Electric Co.*, D.D.C., No. 1:03CV01923, 9/16/03.

The results of antitrust related conduct creating high prices in the healthcare market have been the subject of much public, legislative and media concern. The injuries to patients and hospitals described in our complaints have resulted in deaths and the closing of hospitals in our community and throughout the American market we allege. An affiant supporting our complaint was called to testify before the U.S. Senate Judiciary subcommittee on antitrust to explain how the control of electronic healthcare product marketplaces including Medical Supply Chain, Inc. is used to keep hospital supply prices artificially high.

I am concerned that The District of Kansas does not have the time to give consideration to an important controversy that affects so many people. I do not believe any of the parties are served by leaving so much of the resolution of issues in a complex case to wholesale review in the Tenth Circuit. I think this has contributed to the extraordinary time the interlocutory appeal in the first case has been submitted to hearing on the briefs. I have written this letter in the hopes that these concerns will cause an inquiry into what resources the court would need to adequately administer

justice in an antitrust case and should those resources not be available, it would give the parties in these two cases the opportunity to consider other forums.

Sincerely,

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Bret D. Landrith, Esq.
Kansas Supreme Court # 20380
Law Office
12820 SW Hwy. 4
Topeka, KS 66614
785-256-6508
eposone@mobill.net

cc: Hon. Judge Carlos Murguia
Magistrate David J. Waxse
Magistrate James P. O'Hara
Jonathan L. Glecken, Arnold and Porter
Ryan Z. Watts, Arnold and Porter
John K. Power,
Steven D. Ruse, Shugart, Thompson and Kilroy
Andrew M. Demarea,
Mark A. Olthoff
Samuel Lipari