

58. The claim that hospital group purchasing organizations save hospitals money or have ever saved money has been shown to be without a rational basis. See Defining and Measuring Product-Based Cost Savings in the Health Care Supply Chain by Lynn James Everard, (February, 2005): "An overwhelming 94 percent of respondents believe that their GPO saves them money," Everard reports. "Yet only 29% said they actually knew how much money their GPO had saved them – and 80 percent of those said they knew how much, because their GPO told them."

**a. The Harm To Buyers In The Market**

**i. The Harm to Hospitals, Nursing Homes and Home Healthcare Services:**

59. The combinations and or conspiracies of the defendants' Group Purchasing Enterprise produced adverse, anti-competitive effects by preventing the efficiency of competitive electronic commerce in the relevant United States hospital supply market resulting in excess charges from artificially inflated costs averaging 20% to 40% and in some goods excess charges of 50%, reducing the bottom line profit and loss statements of U.S. hospitals by an average of 5% and forcing over 2000 North American hospitals to operate at an unsustainable loss, endangering the nation's access to healthcare, increasing the cost of care and health insurance and forcing the closing and merging of treatment centers, resulting in needless suffering and death.

**The Monopoly's artificial inflation of Hospital Supply Costs (Excluding Prescription Drugs):**

60. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused hospitals to be overcharged \$30,000,000,000.00 (thirty billion dollars) in 2002.

61. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused hospitals to be overcharged \$32,200,000,000.00 (thirty two billion, two hundred million dollars) in 2003.

62. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused hospitals to be overcharged \$34,500,000,000.00 (thirty four billion, five hundred million dollars) in 2004.

**The Monopoly's artificial inflation of Nursing Home and Home Health Costs (Excluding Prescription Drugs):**

63. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused nursing home and home health services to be overcharged \$8,200,000,000.00 (eight billion, two hundred million dollars) in 2002.

64. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused nursing home and home health services to be overcharged \$9,400,000,000.00 (nine billion, four hundred million dollars) in 2003.

65. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused nursing home and home health services to be overcharged \$10,000,000,000.00 (ten billion dollars) in 2004.

**The Monopoly's artificial inflation of Prescription Drugs:**

66. The defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused hospital supply consumers to be overcharged \$40,000,000,000.00 (forty billion dollars) in 2002.

67. The defendants in combinations or conspiracies with hospital suppliers, distributors and manufacturers caused hospital supply consumers to be overcharged \$45,000,000,000.00 (forty five billion dollars) in 2003.

68. The defendants in combinations or conspiracies with hospital suppliers, distributors and manufacturers caused hospital supply consumers to be overcharged \$50,100,000,000.00 (fifty billion, one hundred million dollars) in 2004.

**ii. The Harm To Healthcare Services Consumers**

69. A study released February 2, 2005 stated about half of bankruptcies filed in 2001 were because of medical bills, according to a study published Wednesday on the Health Affairs Web site, the Chicago Tribune reports (Rubin, Chicago Tribune, 2/2). For the study, researchers from Harvard Medical School and Harvard Law School surveyed 1,771 U.S. residents who filed for bankruptcy in 2001 and interviewed 931 of them (Abelson, New York Times, 2/2).

70. People interviewed had cases involving injury or illness, unpaid medical bills of more than \$1,000 in the two years prior to filing for bankruptcy, loss of two weeks of work because of illness or injury or

mortgaging of a home to pay medical bills, the Los Angeles Times reports (Dickerson, Los Angeles Times, 2/2).

71. According to the study, 46.2% of people reporting bankruptcy in 2001 cited illness and medical bills as the cause the rate rose to 54.5% when births, deaths and gambling addictions were considered as factors, the AP/San Jose Mercury News reports (Jewell, AP/San Jose Mercury News, 2/2). The number of bankruptcies filed in the United States tripled between 1980 and 2001, to nearly 1.5 million couples and individuals. The number of medical-related bankruptcies increased twenty-threefold during that period, the study says (Los Angeles Times, 2/2).

### **iii. Loss of Healthcare Insurance**

72. Approximately 81.8 million Americans -- one out of three people under 65 years of age -- were uninsured at some point of time during 2002-2003, according to a report released June 16, 2004 by the Health Consumer Organization Families USA.

73. The report, based mainly on Census Bureau data, showed that most of these uninsured individuals lacked coverage for lengthy periods of time: Almost two-thirds (65.3 percent) were uninsured for six months or more; and over half (50.6 percent) were uninsured for at least nine months.

74. Four out of five of the uninsured were in working families, according to the report. Of those working families, the report found that significant portions of the middle class were uninsured. For example, among people with incomes between 300 and 400 percent of the federal poverty level (between \$55,980 and \$74,640 in annual income for a family of four in 2003), more than one out of four were uninsured over the past two years.

75. Governor Sebelius indicated the stakes involved in being uninsured: "Tens of millions of Americans -- and hundreds of thousands of Kansans -- are regularly risking their health and financial security because the cost of health insurance is too often out of their reach," she said.

### **iv. The Injury To Healthcare Insurance Plans**

#### **Medicare**

76. In 2002, the defendants in combination and or conspiracies with hospital suppliers, distributors and manufacturers caused Medicare to be overcharged for hospital care \$13,920,000,000.00 (thirteen billion, nine hundred twenty million dollars), caused Medicare to be overcharged for nursing home and

home health care \$3,845,000,000.00 (three billion, eight hundred forty five million dollars) and caused Medicare to be overcharged for prescription drugs \$5,663,000,000.00 (five billion, six hundred sixty three million dollars).

77. In 2003, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused Medicare to be overcharged for hospital care \$14,832,000,000.00 (fourteen billion, eight hundred thirty two million dollars), caused Medicare to be overcharged for nursing home and home health care \$4,052,000,000.00 (four billion fifty two million) and caused Medicare to be overcharged for prescription drugs \$6,272,000,000.00 (six billion, two hundred seventy two million dollars).

78. In 2004, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused Medicare to be overcharged for hospital care \$15,864,000,000.00 (fifteen billion, eight hundred sixty four million dollars), caused Medicare to be overcharged for nursing home and home health care \$4,316,000,000.00 (four billion, three hundred sixteen million dollars) and caused Medicaid to be overcharged for prescription drugs \$7,000,000,000.00 (seven billion dollars).

#### **Private Insurance**

79. In 2002, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused Private Insurers to be overcharged for hospital care \$12,710,000,000.00 (twelve billion seven hundred ten million dollars), caused Private Insurers to be overcharged for nursing home and home health care \$3,488,000,000.00 (three billion, four hundred eighty eight million dollars) and caused Private Insurers to be overcharged for prescription drugs \$30,742,000,000.00 (thirty billion seven hundred forty two million dollars).

80. In 2003, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused private insurers to be overcharged for hospital care \$13,542,000,000.00 (thirteen billion, five hundred forty two million dollars), caused private insurers to be overcharged for nursing home and home health care \$3,675,000,000.00 (three billion, six hundred seventy five million dollars) and caused private insurers to be overcharged for prescription drugs \$34,048,000,000.00 (thirty four billion, forty eight million dollars)

81. In 2004, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused private insurers to be overcharged for hospital care \$13,539,000,000.00 (thirteen

billion five hundred thirty nine million dollars), caused private insurers to be overcharged for nursing home and home health care \$3,914,000,000.00 (three billion, nine hundred fourteen million dollars) and caused private insurers to be overcharged for prescription drugs \$38,095,000,000.00 (thirty eight billion ninety five million dollars).

### **Medicaid**

82. In 2002, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused Medicaid to be overcharged for hospital care \$3,631,000,000.00 (three billion, six hundred thirty one million dollars), caused Medicaid to be overcharged for nursing home and home health care \$1,699,000,000.00 (one billion, six hundred ninety nine million dollars) and caused Medicaid to be overcharged for prescription drugs \$4,045,000,000.00 (four billion forty five million dollars).

83. In 2003, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused private Medicaid to be overcharged for hospital care \$3,869,000,000.00 (three billion, eight hundred sixty nine million dollars), caused Medicaid to be overcharged for nursing home and home health care \$1,790,000,000.00 (one billion, seven hundred ninety million dollars) and caused Medicaid to be overcharged for prescription drugs \$4,480,000,000.00 (four billion, four hundred eighty million dollars).

84. In 2004, the defendants in combinations and or conspiracies with hospital suppliers, distributors and manufacturers caused Medicaid to be overcharged for hospital care \$4,138,000,000.00 (four billion, one hundred thirty eight million dollars), caused Medicaid to be overcharged for nursing home and home health care \$1,907,000,000.00 (one billion, nine hundred seven million dollars) and caused Medicaid to be overcharged for prescription drugs \$5,000,000,000.00 (five billion dollars).

85. On January 26, 2005, Governor Blunt of Missouri was forced to propose removing thousands of people from Medicaid insurance. The state-federal program provides health care for the disabled, the blind, some elderly people and low-income families with children. Also cut would be adults who are considered medically unemployable but haven't yet qualified as disabled. Medically unemployable persons often rely on the special coverage while they await federal decisions on whether they are disabled. The governor would eliminate podiatry, dental care and rehabilitation services for adults. Also, some services would be subject to small co-payments and deductibles. In all, the state's need to make Medicaid cuts would save

\$626 million in state and federal funds. But even with the cuts, Blunt said, the \$5.3 billion program would consume 26 percent of the total state budget.

**v. The Loss Of Life From Decreased Access To Healthcare**

86. The rise in healthcare costs of which hospital supply inflation is a significant contributing factor led to a reported 18,000 deaths a year in the USA resulting from 40 million Americans being uninsured in 2001. See “Study Blames 18,000 deaths in USA on Lack of Insurance”, USA Today, May 23, 2002.

87. In 2002, the number of uninsured increased to 43.6 million Americans and without decreases in the mortality rates of untreated illnesses or observed improvements in public health systems, the number of deaths resulting from the lack of affordable health insurance was 19,962.

88. The following year, 2003, the number of uninsured Americans increased to 45 million, resulting in an expected 20,603 deaths resulting from the lack of affordable health insurance.

89. During the period of time in which Medical Supply has been foreclosed from competing in the market for healthcare supplies as a result of the actions of the defendants, at least 41,206 Americans have died as a result of the increasing cost of hospitalization and medical care of which artificially inflated hospital supply costs are a significant contributing factor.

**vi. The Harm to Medical Supply**

90. The actions taken by the Defendants have resulted in dramatic losses to Medical Supply its stakeholders, associates, suppliers and customers. Under traditional Clayton Antitrust Act damages calculations, the Defendants have caused substantial short and long-term losses that are not recoverable due to Medical Supply’s injury and delay in obtaining banking services. Medical Supply has directly suffered \$2,901,600 in damages the 1st year, \$27,366,576 in damages the 2nd year, \$74,798,940 in damages the 3rd year plus forward financial damages in the fourth year of \$140,443,980 and \$223,488,060 in the fifth year as a combined total of \$468,099,156 and trebled are \$1,404,297,468.

91. As a direct result of Medical Supply’s injury, its associates also are damaged due to the actions of the Defendants. Losses include an average of 40-60 hours per week participation in Medical Supply’s evaluation and hiring practices; in addition to due diligence and market evaluation activities. Losses of revenue for associates are \$93,085,831 trebled are \$279,257,493.

92. As a direct result of Medical Supply's injury, its consultants and suppliers have been harmed by Medical Supply's inability to fulfill success agreements and service contracts due to the actions of the Defendants. Medical Supply consultants and suppliers have performed several thousand hours in services that are contractually due and Medical Supply is unable to perform as a result of the actions of the Defendants. These consultants and suppliers depend on Medical Supply to meet its obligations and the actions of the Defendants are preventing Medical Supply from doing so.

93. The direct result of Medical Supply injury and inability to perform its services to customers are the lost savings and additional revenue Medical Supply generates for its customers through its services. Losses to Medical Supply customers are directly due to the actions of the Defendants and are 20% of the total supplies spend health systems currently pay out annually or \$4,425,655,560 trebled are \$13,276,966,680.

94. Medical Supply's customers are healthcare systems consisting of hospital groups. The actions of the Defendants to preserve an anticompetitive marketplace in healthcare supplies keep in jeopardy over 2000 of the nation's 5,700 hospitals. The resulting closings of some or most of these hospitals due to unsustainable supply costs will significantly harm public access to healthcare, increasing loss of life and unnecessary injury.

**b. The Need For Private Antitrust Enforcement**

95. At the close of the US Senate Judiciary Committee's Antitrust Subcommittee's hearing entitled "Hospital Group Purchasing: How to Maintain Innovation and Cost Savings" on Tuesday, September 14, 2004, the subcommittee's chair suggested that the 1.8 trillion dollar market's anti-competitive behavior might be better corrected with private antitrust litigation than with new legislation.

**i. The Limited Resources Of The US Department Of Justice**

96. Two US Attorneys that appeared connected to the criminal investigation of Novation, LLC have died and three more in the Ft Worth office of the US Department of Justice with antitrust expertise have been dismissed.

97. The Ft. Worth US Attorney's office has been at the epicenter of where civil antitrust actions by manufacturers foreclosed from group purchasing organization distribution systems have been litigated

and is believed to have been the center of effort behind the government's criminal investigation of hospital supply relationships.

98. On October 18, 2004 Leonard Senerote, A former U.S. Army Special Forces officer who was an expert in complex securities cases and an antitrust trial attorney, Michael Uhl and Michael Snipes, veteran prosecutors with expertise in white collar fraud and corruption were announced as separating from the Ft. Worth Office of the US Attorney.

**ii. The Deaths of The FCA Attorneys**

99. The Dallas Morning News described the office as already reeling from the unexpected deaths of criminal chief Shannon Ross [the source of the widespread criminal inquiry into medical supplies and False Claims Act violations against Medicare] and civil and False Claims Act litigator Thelma Louise Quince Colbert. Ms. Ross, who had been feeling ill, was found September in her home. Ms. Colbert accidentally drowned a month earlier in July.

100. Medical Supply does not believe there is currently an active criminal investigation of the supplier side of hospital Medicare false claims.

**4. BACKGROUND**

**a. Procedural History**

Medical Supply filed its first action for injunctive and declaratory relief in the U.S. District Court for the District of Kansas, *Medical Supply Chain, Inc. v. US Bancorp, NA et al* KS. Dist. Case No.: 02-2539

101. Medical Supply sought relief based on a complaint for an urgent Temporary Restraining Order filed 10/22/02 and amended 11/02/02 because the defendants were repudiating a contract (misusing the USA PATRIOT Act shown to be a false pretext) on 10/15/02 to provide escrow accounts required for the deposit of \$350,000.00 raised from manufacturer rep candidates by Medical Supply. The denial of the TRO caused all funds to be lost on 12/1/02, including the company's last resources used to recruit the candidates and all funds invested in preparation of training.

102. Medical Supply's cause was controversial because it was an action to seek an injunction against breaking a contract to provide escrow accounts in furtherance of a boycott by US Bancorp and Piper Jaffray's coconspirator identified in the complaint as Novation, a healthcare group purchasing organization ("GPO") competitor of Medical Supply's in the hospital supply market. Also identified in the complaint