

IN THE CIRCUIT COURT OF JACKSON COUNTY
AT INDEPENDENCE, MISSOURI

SAMUEL K. LIPARI)
(Assignee of Dissolved)
Medical Supply Chain, Inc.,)
)
Plaintiff,)
)
v.) Case No. OS16-CV-04217
)
NOVATION, LLC, et al.,)
)
Defendants.)

SUGGESTIONS IN SUPPORT OF
DEFENDANT GHX LLC'S MOTION TO DISMISS PLAINTIFF'S
PETITION FOR FAILURE TO STATE A CLAIM

Pursuant to Mo. R. Civ. P. Rule 55.27(a)(6), Defendant GHX, LLC ("GHX") has moved this Court for an Order dismissing Plaintiffs Petition for Failure to State a Claim. Although Plaintiffs Petition is lengthy, consisting of 119 pages and approximately 600 paragraphs, it is by no means clear, concise or well plead. In fact, a great many of the 600 plus paragraphs appear to have nothing to do with any of the claims raised by Plaintiff For that reason alone, the Court should dismiss Plaintiffs Petition for failure to comply with Mo. R. Civ. P. Rule 55.05. In addition to the Rule 55.05 problem, however, Plaintiffs Petition is deficient in a number of other respects, any one of which would make dismissal appropriate.

Unfortunately, this is not the first experience that this Court or these defendants have had with this plaintiff or his "company." As the defendants in the Novation Motion to Dismiss point out, either this plaintiff or his now dissolved corporation have made multiple attempts to sue multiple parties for essentially the same fact pattern. Here, Plaintiff is attempting his fourth antitrust case alleging essentially the same facts as his first three antitrust cases. The Court

should treat these claims in the same manner that the previous courts have entertained these claims; by dismissing them.

I. PLEADING STANDARDS

Plaintiffs' capacity as a pro se litigant does not alter or change the minimum pleading standards that all litigants must meet as set forth in the Missouri Rules of Civil Procedure. *Scher v. Sindel*, 837 S.W.2d 353, 351 (Mo. App. 1992). Although Plaintiffs' allegations are to be treated as true and construed favorably to the plaintiff, the conclusions or opinions of the pleader are not. More importantly, if the pleaded facts do not establish the presence of all elements of a valid claim, the Petition must be dismissed. *Id.* See also *Klemme v. Best*, 941 S.W.2d 943, 495 (Mo. Bane 1997). Of the facts alleged in the Petition, no cognizable claim is stated against GHX and, the Petition should be dismissed.

II. PLAINTIFF'S MISSOURI ANTITRUST CLAIMS FAIL AS A MATTER OF LAW

Counts I, II and III of Plaintiffs' Petition seeks money damages and injunctive relief for violation of Sections 1 and 2 of the Missouri Antitrust Statute and conspiracy to violate Section 2 of Missouri Antitrust Statute. Missouri's Antitrust Statute is construed as being consistent with and equal to the federal Antitrust Statute. Mo. Rev. Stat. § 416.14 (2001). In other words, the Missouri Antitrust Statute and the Sherman Act are analogous. *Zipper v. Health Midwest*, 978 S.W.2d 398, 418 (Mo. App. 1998). Accordingly, it is appropriate for this Court to rely upon federal decisions when interpreting the Missouri Antitrust Statute. *Id.*

1. Lipari's Antitrust Claims are Time Barred.

A plaintiff has four years to bring a Missouri Antitrust claim. Mo. Rev. Stat. § 416.131.2. Here, Lipari alleges that Medical Supply Chain ("MSC") attempted to enter the health care supply market sometime in 2002 but that the attempts to enter the market failed

because of the antitrust conspiracy entered into by the defendants. *See* Plaintiffs Petition at ~ 100. More specifically, Plaintiffs allegations regarding GHX focus on events between November 2001 and April 2003. *See* Plaintiffs Petition at paragraphs 465-470. According to Plaintiffs admissions in his Petition, more than four years have passed since any alleged event or injury accrued. Because of this gap in time, Plaintiff is precluded from bringing claims relating to MSC's alleged attempt to enter the market, including claims that MSC was denied initial capitalization because of an alleged conspiracy among the defendants. Because all allegations regarding GHX occurred or accrued more than four years ago, all antitrust claims against GHX should be dismissed. *See* Plaintiffs Petition at ~465-470.

Lipari is apparently aware that his claims are time barred because he attempts to resurrect them by invoking Missouri's Saving Statute. *See* Mo. Rev. Stat. 516.230. This attempt is inappropriate. Under the Missouri Saving Statute, if a claim is timely asserted in one suit and then dismissed without prejudice or by a designation of a non-suit, the plaintiff has one year from that dismissal or non-suit to refile his claims. If timely done, those re-filed claims are not considered to be time barred. Lipari's attempt to invoke the statute is incorrect, however, because the Missouri Saving Statute does not apply to claims under the Missouri Antitrust Statute, which carries its own statutory limitations. *See Boggs v. Farmers State Bank*, 846 S.W.2d 233 (Mo. App. 1993). Even if the Missouri Saving Statute did apply to Lipari's antitrust claims, the claims are still time barred. Here, Lipari inappropriately alleges that his claims are not barred because he has brought this case within one year of the dismissal of the claims in *Medical Supply Chain, Inc. v. Neoforma, Inc.*, 419 F. Supp. 2d 1316 (D. Kan 2006). Although Lipari claims that the dismissal occurred on March 7, 2007, the dismissal actually occurred one

year earlier, on March 7, 2006. Thus, Lipari's current lawsuit was not filed within the one year time period of the Saving Statute and the claims are time barred.

2. Lipari Does Not Have Standing to Assert Antitrust Claims.

According to Plaintiffs Petition, the defendants conspired to create an alleged hospital supply cartel to overcharge hospitals for medical supplies. Importantly, Plaintiff does not allege that either he or MSC (which is now defunct) is a hospital. Accordingly, Lipari is not and cannot be directly injured by the alleged conspiracy to charge high prices. Given Lipari's Petition, he actually benefits by an agreement to charge high prices because he could either undercut the monopoly price to win business or profit from the purported cartel's pricing umbrella. *See* Petition at ~ 385. Thus Plaintiffs allegations establish that he lacks standing because he cannot claim a direct injury by the alleged conspiracy to charge high prices. Simply put, if competitors agree to fix prices, then a third competitor cannot be said to have suffered antitrust injury. *See Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 339-40 (1990); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,482-83 (1986); *Anesthesia Advantage, Inc. v. Metz Group*, 759 F. Supp. 638, 645-46 (D. Colo. 1991) (Plaintiffs do not have standing to assert against their competitors a price fixing claim, even if the defendants were price fixing).

Lipari's other allegations of antitrust schemes or conspiracies also fail because in none of these schemes does Lipari claim that either he or MSC was harmed. To the extent Plaintiff has alleged that there are inflated care prices or harm to patients or harm to Medicare and Medicaid, or a change in health insurance in Missouri (as well as any alleged efforts to keep these schemes from being revealed), Plaintiff has failed to allege an antitrust injury because he has not suffered any harm from the conduct. As a result, Plaintiff cannot recover for that alleged conduct.

3. **Lipari's Allegations Regarding GHX's Purported Defense is in Prior MSC Lawsuits and Does Not State a Cognizable Antitrust Claim.**

Although it is difficult to discern because of Plaintiff's practice to monolithically refer to the "defendants" rather than to an actual defendant, it appears that Plaintiff is asserting that he, in his individual capacity, has a "property interest" in MSC's antitrust claims. Plaintiff further alleges that he was wrongfully deprived of this property interest by defendants' conduct in defending the prior lawsuits brought by MSC. See Plaintiff's Petition at ~ 103 and 501.

To the extent that Lipari is claiming that his "property interests" in federal antitrust claims were wrongfully taken from him by the defendants, the claim is nonsensical. Here, Lipari's antitrust claims are really the same claims that he raised, and lost, in federal court, only in slightly different clothing. To the extent that Lipari is arguing that defendants' legal defenses and arguments in the previous cases (which resulted in dismissal and sanctions of Lipari's federal claims) are, in and of themselves, antitrust violations, such a claim is without any basis. Defending oneself, especially when properly done as here, is not wrongful and is not an antitrust violation.

The *Noerr-Pennington* doctrine further mandates dismissal of Lipari's claims to the extent they involve allegations relating to defendants' defense of the prior lawsuits. Even if the outcome of a given litigation adversely affects or eliminates competition, the conducting of the litigation, if done in a "genuine effort to seek redress through the judicial process," does not constitute an antitrust violation. See *Central Telecommunications, Inc. v. TCI Cable Vision, Inc.*, 610 F.Supp. 891, 896 (W.D.Mo. 1985), *Aff'd*, 800 F.2d 711 (8th Cir. 1986). The onus is on the plaintiff to demonstrate the inapplicability of the *Noerr-Pennington* doctrine. If the plaintiff fails to carry this burden, it has failed to state a claim. See *Befino v. Civic Center Corp.*, 780 S.W.2d 655, 668 (Mo. App. 1989). Lipari has failed to carry this burden. The failure is fatal to his case.

Lipari also seems to allege that he suffered an antitrust injury because the defendants (again undifferentiated) conspired to have Plaintiff's former counsel, Bret Landrith, disbarred for incompetence and the defendants prevented MSC from obtaining new counsel to represent it because of the sanctions the Court had imposed against MSC in previous proceedings. *See Plaintiff's Petition* at ~ 103. Plaintiff does not explain how these conspiracies implicate the antitrust laws. Of course, Plaintiff does not, in any way, identify or set out what role GHX played in any of these alleged conspiracies. In fact, Plaintiff does not allege anything that GHX did with regard to previous litigation or any alleged act it took toward Plaintiff or toward any of MSC's counsel or former counsel. For this failure alone, these claims should be dismissed against GHX.

4. Lipari's Claims are Barred by Collateral Estoppel.

Lipari's antitrust claims in this action should be barred by the doctrine of collateral estoppel because he or someone he is in privity with, has raised these same issues in previous litigation. Under Missouri law, the Court considers four elements to determine whether collateral estoppel applies:

- (1) Whether the issue decided in the prior adjudication is identical with the issue presented in the present action;
- (2) Whether the prior adjudication resulted in a judgment upon the merits;
- (3) Whether the party against whom collateral estoppel is asserted is in privity with the party to the prior adjudication;
- (4) Whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue.

City of Ste. Genevieve v. Ste. Genevieve Ready Mix, Inc., 765 S.W.2d 361, 364 (Mo. App. 1989).

These factors are met in this case. The first factor is met because Lipari's claims in this case are the same as the issues previously decided by the federal courts involving MSC's antitrust claims. The second element is met because the prior adjudication resulted in a dismissal with prejudice

and therefore constitutes a judgment on the merits with regard to the antitrust claims. The third element is met because Lipari claims he is the assignee of MSC's claims. As its assignee, Lipari is in privity with MSC. The fourth and final element of collateral estoppel has been met because MSC had a full and fair opportunity to litigate the legal adequacy of the prior claims.

Lipari's Missouri State Antitrust Law claims have already been decided by the previous federal cases. Under Missouri law, the state antitrust claims are to be interpreted in harmony with the federal antitrust laws. *See* Mo. Rev. Stat. § 416.141. Because Lipari's claims appear to mirror the claims MSC made under the Sherman Act in the prior cases, and because those claims were found to be legally deficient, Lipari is collaterally estopped from asserting those claims in this case. *Defino v. Civic Center Corp.*, 718 S.W.2d 505, 510 (Mo. App. 1986).

5. Count I of the Petition Must be Dismissed Because it Fails to Adequately Plead Concerted Action.

Count I of Lipari's Petition asserts a violation of 416.031 (1) of the Missouri Antitrust Statute. If Plaintiff is to establish a violation of 416.031 (1), he must demonstrate "(1) that there was a contract, combination or conspiracy; (2) that the agreement unreasonably restrained trade under either a per se rule of illegality or a rule of reason analysis; and (3) that the restraint affected interstate commerce." *See Minnesota Ass'n of Nurse Anesthesiasts v. University Hosp.*, 5 F. Supp. 2d 694, 703 (D. Minn. 1998), *Aff'd*, 208 F.3d 655 (8th Cir. 2000). Moreover, the "contract, combination or conspiracy" aspect of this claim "requires that defendants had a conscious commitment to a common scheme designed to achieve an unlawful objective." *Id.*

Although Plaintiff repeatedly states that the defendants acted in concert, he fails to allege any facts concerning GHX's actions or with whom it acted in concert. Plaintiff also fails to allege any facts concerning a common scheme relating to any action against the plaintiff or some other unlawful objective. Plaintiff's conclusory statements (as opposed to factual allegations)

are insufficient under Missouri law. *See Love v. St. Louis City Bd. Of Educ.*, 963 S.W.2d, 364, 365 (Mo. App. 1998) ("Mere conclusions of a pleador not supported by factual allegations cannot be taken as true, and therefore, must be disregarded in determining whether the Petition states a claim upon which relief can be granted."). Plaintiffs Petition simply does not even bother to allege facts sufficient to plead an agreement or concerted action relating to group boycotts or allocations of customers.

At best, Plaintiffs Petition does nothing more than recite antitrust language. However, the mere reciting of statutory or case law does not satisfy the pleading requirements. *See TV Communications Network, Inc. v. Turner Network Television, Inc.*, 964 F.2d 1022, 1027 (10th CiT. 1992) ("a plaintiff must do more than cite relevant antitrust language to state a claim for relief."). The United States Supreme Court requires an antitrust plaintiff to support a claim with "enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement." *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1959 (2007). This "plausibility" requirement prevents a plaintiff with "a largely groundless claim from taking up the time of a number of people " *Id.* at 1966. Thus, Plaintiffs antitrust claims must be dismissed unless the court believes that the Petition contains "enough fact to raise the reasonable expectation that discovery will reveal evidence of a legal agreement." *Id.*

Plaintiffs claim cannot survive this test. He does not, nor could he, allege that Defendant agreed with anyone to do anything to Plaintiff, including harm him. Plaintiff fails to substantiate the alleged conspiracy other than to state that a conspiracy exists. Plaintiffs failure to allege any of the required particulars should result in a dismissal because "bare bones allegations of antitrust conspiracy without any supporting facts" is appropriate for dismissal. *Estate Constr. Co. v. Miller and Smith Holding Co.*, 14 F.3d 213 at 221 (4th Cir. 1994).

This defect is not new for Plaintiff. In *Medical Supply III*, the court held that "[a]lthough plaintiff asserts many conspiracy theories, it does not allege any facts that support its allegations." *Medical Supply Chain III*, 419 F. Supp. 2d at 1327. The Court further noted that MSC's prior complaints had also been deficient in that regard. *Id.* Lipari has repeated the same error that MSC committed in its previous lawsuits, by alleging theories without any facts to support those theories. Lipari's claim fails for its pleading defects and his claim of concerted action is barred by collateral estoppel.

6. Counts II and III of the Petition Must be Dismissed Because Plaintiff has Failed to Adequately Plead a Relevant Market or Market Domination.

A plaintiff is required to establish a relevant market to prevail on a monopolization or attempted monopolization claim. See *Walker Process Equip., Inc. v. Food Mach. & Chem. Corp.*, 382 U.S. 172, 177 (1965). The reason for this requirement is simple, without a market definition, there is no way to determine to what extent a defendant has the ability to harm competition. *Id.* Here, Lipari appears to have alleged that there are multiple relevant markets in his antitrust claim: the Missouri hospital supply market, the Missouri e-commerce hospital supply market, and the upstream healthcare technology company capitalization market. Plaintiffs proposed markets are legally deficient and cannot provide a basis for a claim under the Missouri Antitrust Act. A proper relevant market consists of all products or services that are reasonably interchangeable. *United States v. E.I. duPont de Nemours & Co.*, 351 U.S. 377, 395 (1956); *Adidas Am., Inc. v. NCAA*, 64 F. Supp. 2d 1097, 1102 (D. Kan. 1999) (In order to survive a motion to dismiss, the plaintiff "must allege a relevant market that includes all [products and services] that are reasonably inter-changeable"). Not only must a market definition consist of all interchangeable products, it also must be plausible. If the definition is not plausible, it cannot survive a motion to dismiss. See *TV Communications Network*, 964 F.2d at 1028.

Here, Lipari attempts to limit the market to "hospital supplies through e-commerce" because that is the only way that MSC planned to sell hospital supplies. However, an antitrust plaintiff may not define a market so as to encompass only the practice complained of, this would be circular or at least results oriented reasoning. *Adidas AM*. 64 F. Supp. 2d at 1102. Under the antitrust laws, the proper method for defining the market must be justified through application of the relevant legal principles for the market definition.

Where [an antitrust] plaintiff fails to define its proposed relevant market with reference to the rule of reasonable interchangeability and cross elasticity of demand, or alleges a proposed relevant market that clearly does not encompass all interchangeable substitute products even when all factual references are granted in plaintiffs favor, the relevant market is legally insufficient and a motion to dismiss may be granted.

Id. at 1102.

Additionally, the manner in which Plaintiff defines hospital supplies does not constitute reasonably interchangeable products. *See Community Publishers, Inc. v. Donray Corp.*, 892 F. Supp. 1146, 1153 (W.D.R. 1985), *Aff'd*, *Community Publishers, Inc. v. DR Partners*, 139 F.3d 1180 (8th CiT. 1998) ("products belong in the same market when they are reasonably interchangeable for the same uses and thus exhibit a high cross elasticity of demand."). Lipari cannot explain how the reasonably interchanged test is met when his market definition includes such different items as major medical supplies all the way to bandages.

Any plaintiff claiming monopolization must allege that the defendant possesses "monopoly power in the relevant market." A plaintiff claiming attempted monopolization must allege the defendant has a "dangerous probability of success of monopolizing the relevant market." *Full Draw Productions v. Easton Sports, Inc.*, 182 F.3d 745, 756 nO" CiT. 1999). Here, Plaintiff alleges, without any factual basis, that GHX has 100% of the market for hospital

supplies distributed through electronic marketplaces in the relevant market. Plaintiff also alleges, however, that all defendants have acquired 100% of the market for hospital supplies distributed through electronic marketplaces in the relevant market. *See* Petition at p. 99. He further alleges that all of the defendants have acquired 80% of the market for hospital supplies in the relevant market. *Id.* Based on these allegations, Plaintiff is aggregating the market shares of multiple defendants. This is impermissible. *See H.L. Hayden Co. of New York, Inc. v. Siemens Med. Sys., Inc.*, 879 F.2d 1005, 1018 (2d CiT. 1989) (the court rejected plaintiffs attempt to show dangerous probability of success by aggregating shares of two defendants).

To the extent Lipari is contending that GHX has market share, his claim still fails because he does not allege how its market share constitutes an antitrust violation. Monopolization requires proof of monopoly power and anticompetitive or exclusionary conduct. *Deauville Corp. v. Federated Department Stores, Inc.*, 756 F.2d 1183 (5th CiT. 1985).

In any event, Lipari's Section 2 claim is barred by the doctrine of collateral estoppel. His allegations that the relevant market consists of the hospital supply market, the ecommerce hospital supply market, the health care capitalization market, have been repeatedly rejected in prior cases. *See Medical Supply III*, 419 F. Supp. 2d at 1327. Accordingly, this Court should dismiss Lipari's Section 2 claim.

III. PLAINTIFF FAILS TO ALLEGE THE REQUIREMENTS FOR A LEGALLY VIABLE FRAUD CLAIM

Plaintiff fraud claim should be dismissed because he has failed to allege the elements of fraud and he fails to allege them with the proper specificity.

Count IV of Plaintiffs Petition purports to state a claim for "fraud and deceit." Although the Petition sets out the legal elements of a fraud claim, it makes no attempt to apply any facts to the legal elements. Plaintiff fails to set out what any specific defendant said or did as it relates to

any of the fraud claims. Missouri Rules of Civil Procedure 55.15 requires that with "all averments or fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." Here, there is no particularity of anything with regard to GHX.

Even if Plaintiff stated any of his fraud allegations with particularity, his claim should still be dismissed because he cannot demonstrate the necessary elements. Under Missouri law, a plaintiff must allege and prove the following elements to maintain a claim of fraudulent misrepresentation: (1) false, material representation; (2) the speaker's knowledge of its falsity or his ignorance of its truth; (3) the speaker's intent that it should be acted upon by the hearer and the manner reasonably contemplated; (4) the hearer's ignorance of the falsity of the statement; (5) the hearer's reliance on its truth, and the right to rely thereon; and (6) proximate injury. *Premium Financing Specialists, Inc. v. Hul/in*, 90 S.W.3d 110, 115 (Mo. App. 2002).

Plaintiffs Petition fails to set forth any facts to support any of these six elements. The plaintiff fails to allege, anywhere in his Petition, that GHX made any representation to him. Moreover, a fair reading of Plaintiffs Petition would indicate that he was never ignorant of the falsity of any statement but rather he was the only one who knew that the alleged statements by any of the defendants (to whomever they were uttered) were not true. Because Lipari alleges that he was aware at all times that the various alleged misrepresentations were not true, he could not have relied on any of them. Plaintiffs fraud claim fails to comply with Rule 55.15 or to plead the necessary elements of fraud, Count V should be dismissed.

IV. PLAINTIFF'S TORTIOUS INTERFERENCE CLAIMS ARE BOTH LEGALLY DEFECTIVE AND TIME BARRED

In Count IV of his Petition, Plaintiff asserts a claim for tortious interference with business relations. Plaintiff alleges two business relations which he claims were interfered with by the defendants. The plaintiff claims to have had a relationship with US Bank and he claims to have

had a sales contract with GE and General Electric Transportation Co. *See* Count N at page 103. Missouri law requires the following elements to be properly alleged in order to maintain a tortious interference claim: (1) a contract or valid business expectancy; (2) defendant's knowledge of the contract or relationship; (3) an intentional interference by the defendant including or causing the breach of the contract or relationship; (4) absence of justification; and (5) *Acetylene Gas Co. v. Oliver*, 939 S.W.2d 404, 408 (Mo. App. 1996). Nowhere in Plaintiffs Petition is there an allegation that GHX knew about any contract or expectancy between Plaintiff and US Bank or Plaintiff and GE and General Electric Transportation Co. Nor is there any allegation that GHX acted intentionally and without justification so as to interfere in the relationship between Plaintiff and the other entities. The Court should take judicial notice that Lipari and MSC has filed lawsuits with other courts (as well as with this court) claiming that US Bank and GE and General Electric Transportation Co. on their own and without any participation of a third party, breached their agreements with Lipari or MSC.

Under Mo. Rev. Stat. 516.120(4), a party has up to five years after the cause's accrual to assert a tortious interference claim. Lipari's claims regarding US Bank and GE occurred in October of 2002, more than five years ago. *See* Plaintiffs Petition at ~ 100. As stated above, Lipari cannot save this cause of action by relying upon the Missouri Saving Statute because of his failure to sue within a year of the claim's dismissal of *Medical Supply III*. Accordingly, Count IV should be dismissed.

V. PLAINTIFF'S PETITION DOES NOT AND CANNOT SET OUT A CLAIM FOR PRIMA FACIE TORT

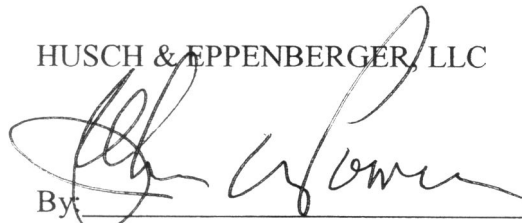
In order to successfully plead a prima facie tort claim, Plaintiff must plead that the defendants' acts intended to injure the plaintiff, they were intentional and they were without justification or sufficient justification. *See Bradley v. Ray*, 904 S.W.2d 302 (Mo. App. 1995). A

prima facie tort occurs when a defendant intentionally undertakes an otherwise lawful act but does so with the intent to cause injury to the plaintiff and is without any recognized justification.

Wilt v. Kansas City Area Transp. Authority, 629 S.W.2d 669 (Mo. App. 1982). Here, the plaintiff pleads the opposite. Lipari alleges in his Petition that the "acts and activities of defendants are still unlawful and fraudulent." Petition at p. 107. An unlawful and fraudulent act cannot also be an intentional lawful act that is required to assert a prima facie tort. This failure is fatal. *Bradley*, 904 S.W.2d 302. As a result, Count VI should be dismissed.

WHEREFORE, for the reasons stated above, GHX requests that the Court enter an Order dismissing Plaintiffs Petition in its entirety and for all relief to which it is entitled.

HUSCH & EPPENBERGER, LLC



By: _____

John K. Power #35312

Michael S. Hargens #51077

1200 Main Street, Suite 2300

Kansas City, MO 64105

Telephone: (816) 421-4800

Facsimile: (816) 421-0596

john.power@husch.com

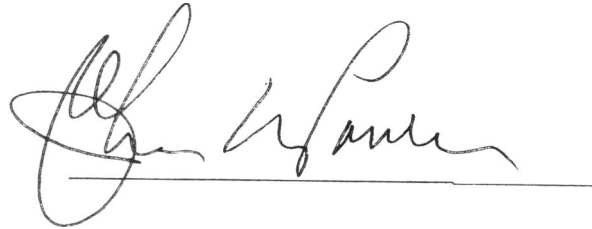
Michael.hargens@husch.com

ATTORNEYS FOR DEFENDANT GHX, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was forwarded this 11th day of June, 2008, by first class mail, postage prepaid to:

Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064



A handwritten signature in cursive script, appearing to read "Samuel K. Lipari", is written over a horizontal line.