

**IN THE UNITED STATES COURT  
DISTRICT OF KANSAS**

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Case No. 2:07-cv-02146-CM-DJW

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SAMUEL K. LIPARI,

(Assignee of Dissolved Medical Supply Chain, Inc.)

*Plaintiff,*

v.

U.S. BANCORP and  
U.S. BANK NATIONAL ASSOCIATION,

*Defendants.*

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**Settlement Brief of Plaintiff  
EVIDENCE EXHIBITS APPENDIX Vol. III**

---

Prepared by

Samuel K. Lipari  
Plaintiff  
297 NE Bayview  
Lee's Summit, MO 64064  
816-365-1306  
saml@medicalsupplychain.com  
*Pro se*

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**From:** Samuel Lipari MSL [<mailto:Saml@MedicalSupplyLine.com>]  
**Sent:** Tuesday, November 20, 2007 4:06 PM  
**To:** Siegel, Norm  
**Subject:** \$450,000,000 Contract Damages x 2

Norm, I am Pro se and I need urgent help with contract, Rico, anti-trust, fraud etc. I have made it past dismissal against GE and US Bank on \$450,000,000 each in contract damages. You will find all of my cases at the following: <http://www.medicalsupplychain.com/news.htm> or you can google Samuel Lipari. Thank you!

Samuel Lipari  
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297 NE Bayview  
Lee's Summit, MO 64064  
Phone: 816.365.1306  
[Saml@MedicalSupplyChain.com](mailto:Saml@MedicalSupplyChain.com)  
[www.MedicalSupplyChain.com](http://www.MedicalSupplyChain.com) <<http://www.MedicalSupplyChain.com>>

**From:** Siegel, Norm <<mailto:siegel@stuevesiegel.com>>  
**To:** Samuel Lipari MSL <<mailto:Saml@MedicalSupplyLine.com>>  
**Sent:** Tuesday, November 20, 2007 4:38 PM  
**Subject:** RE: \$450,000,000 Contract Damages x 2

Samuel -- I will review these materials over the weekend and be back to you early next week. Also, Mr. Hawver shows up as your lawyer in this case -- please tell me the situation there.

Thanks.

Norman E. Siegel  
Stueve Siegel Hanson LLP  
460 Nichols Road, Suite 200  
Kansas City, MO 64112  
816-714-7112 tel  
816-714-7101 fax  
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<http://www.medicalsupplychain.com/news.htm> or you can google Samuel Lipari. Thank you!

Samuel Lipari  
Medical Supply Chain  
297 NE Bayview  
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[Saml@MedicalSupplyLine.com](mailto:Saml@MedicalSupplyLine.com)  
[www.MedicalSupplyLine.com](http://www.MedicalSupplyLine.com) <<http://www.MedicalSupplyLine.com>>

**From:** Siegel, Norm <<mailto:siegel@stuevesiegel.com>>  
**To:** Samuel Lipari MSL <<mailto:Saml@MedicalSupplyLine.com>>  
**Sent:** Wednesday, November 21, 2007 11:52 AM  
**Subject:** RE: Follow up:

Samuel:

We will be unable to assist you in this litigation. We typically do not get involved in ongoing litigation and this dispute has obviously been festering for some time.

Best of luck.

Norman E. Siegel  
Stueve Siegel Hanson LLP  
460 Nichols Road, Suite 200  
Kansas City, MO 64112  
816-714-7112 tel  
816-714-7101 fax  
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-----Original Message-----

**From:** Samuel Lipari MSL [<mailto:Saml@MedicalSupplyLine.com>]

**Sent:** Wednesday, November 21, 2007 11:33 AM

**To:** Siegel, Norm

**Subject:** Follow up:

Norm, I will be working through the week end if you have any questions or need comment. cell: 816-365-1306

Samuel Lipari  
Medical Supply Chain  
297 NE Bayview  
Lee's Summit, MO 64064  
Phone: 816.365.1306  
[Saml@MedicalSupplyChain.com](mailto:Saml@MedicalSupplyChain.com)  
[www.MedicalSupplyChain.com](http://www.MedicalSupplyChain.com)  
<<http://www.MedicalSupplyChain.com>>

**From:** Siegel, Norm <<mailto:siegel@stuevesiegel.com>>  
**To:** [Saml@MedicalSupplyChain.com](mailto:Saml@MedicalSupplyChain.com) ; Siegel, Norm  
<<mailto:siegel@stuevesiegel.com>>  
**Sent:** Wednesday, November 28, 2007 1:56 PM  
**Subject:** Re: Up Date:

Tell me your availability over the next 2 weeks and I will set up a meeting in my office.

--- Original Message ---

From: "Samuel Lipari" <[Saml@MedicalSupplyChain.com](mailto:Saml@MedicalSupplyChain.com)>  
Sent: Wed 11/28/07 1:45 pm  
To: "Siegel, Norm" <[siegel@stuevesiegel.com](mailto:siegel@stuevesiegel.com)>  
Cc:  
Subj: Up Date:

Hi Norm, paragraph 6 of the attached document lays out my new and clean state claims I will be pursuing soon. If your interested give me a call. I could still use your help with mediation or settlement efforts on my other cases. Best regards, S~

Samuel Lipari  
Medical Supply Chain  
297 NE Bayview  
Lee's Summit, MO 64064  
Phone: 816.365.1306  
[Saml@MedicalSupplyChain.com](mailto:Saml@MedicalSupplyChain.com)  
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**From:** Siegel, Norm <<mailto:siegel@stuevesiegel.com>>  
**To:** Samuel Lipari MSL <<mailto:Saml@MedicalSupplyLine.com>>  
**Sent:** Monday, December 03, 2007 1:42 PM  
**Subject:** RE: Meeting:

Friday at 10 a.m. is best. Understand that we have not agreed to represent you, so if you are against some deadline you should proceed with your current counsel.

Let me know if Friday works.

Norm.

-----Original Message-----

**From:** Samuel Lipari MSL [<mailto:Saml@MedicalSupplyLine.com>]  
**Sent:** Monday, December 03, 2007 11:25 AM  
**To:** Siegel, Norm  
**Subject:** Meeting:

Hi Norm, will a Thursday meeting this week work for you? I am wanting my state antitrust claims filed in Independence as quickly as possible. Thanks, S~

Samuel Lipari  
Medical Supply Chain  
297 NE Bayview  
Lee's Summit, MO 64064  
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**From:** Siegel, Norm <<mailto:siegel@stuevesiegel.com>>  
**To:** Samuel Lipari <<mailto:Saml@MedicalSupplyChain.com>>  
**Sent:** Saturday, December 08, 2007 12:53 PM  
**Subject:** RE: Up Date:

Sam --

Thank you for taking the time to meet with me yesterday. As we discussed, we will not be able to assist you in this matter. I understand you are either seeking alternative counsel or are planning to litigate pro se.

Best of luck.

Norman E. Siegel  
Stueve Siegel Hanson LLP  
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Kansas City, MO 64112  
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**Sent:** Wednesday, November 28, 2007 1:44 PM

**To:** Siegel, Norm

**Subject:** Up Date:

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**Norman E. Siegel****Firm:** [Stueve Siegel Hanson, LLP](#)**Address:** 460 Nichols Rd., Suite 200  
Kansas City, MO 64112-2003**Phone:** (816) 298-9847  
(866) 668-9241**Fax:** (816) 714-7101**E-mail:** [Contact Us](#)**Web site:** <http://www.sshwlaw.com>  
<http://www.stuevesiegel.com>[Position](#)[Education](#)**Lawyer Profile:**

Norman E. Siegel was born in Baltimore, Maryland. He received a degree in political science from Tufts University, and his J.D. from Washington University in St. Louis. At Washington University he served as Articles Editor of the Washington University Journal of Urban Contemporary Law. Norm has been featured as a Kansas City Newsmaker, has been elected a Missouri Super Lawyer, and has been named "Best of the Bar" by the Kansas City Business Journal for four consecutive years. Norm was also recently named to Lawdragon Magazine's 500 Leading Plaintiffs' Lawyers in America. Norm is rated AV -- the highest designation a lawyer can achieve from publisher Martindale-Hubbell.

Norm Siegel named Kansas City Newsmaker.

[Read the article.](#)

Norm Siegel named Best of the Bar.

[See the Announcement.](#)**Professional History**[skip to Recent Litigation Highlights >](#)

After graduation from law school, Norm began his legal career at the Missouri Attorney General's Office where he represented State officials and agencies in state and federal tribunals. Within two years of joining the office, Norm had argued before the Missouri Court of Appeals, the Missouri Supreme Court and the Eighth Circuit Court of Appeals, and successfully tried three federal jury trials - all resulting in defense verdicts. He also actively participated in Missouri v. Jenkins, the Kansas City desegregation case, and wrote large portions of the United States Supreme Court brief that were later adopted by the Supreme Court in its opinion. For his efforts in Jenkins, Norm was awarded the Best Brief Award by the

## National Association of Attorneys General.

As an Assistant Attorney General, Norm also served as a special prosecutor for the State, investigating and prosecuting cases involving gambling and election fraud. He also was instrumental in the investigation and civil prosecution of those accused of bilking the State's Second Injury Fund, which resulted in settlements totaling nearly \$1 million. Since leaving the office, he has served as a Special Assistant Attorney General.

In 1995, Norm began private practice at Blackwell Sanders where he continued to develop his litigation practice, successfully representing a broad spectrum of clients including the Kansas City Royals, Haas Baking Company, KFC International, and the United States Postal Service.

In 1997, Norm joined the Kansas City office of Sonnenschein Nath & Rosenthal, a national law firm with over 500 lawyers. There, he continued his commercial litigation practice representing individuals, small companies and several Fortune 100 companies in matters ranging from antitrust and environmental disputes to insurance coverage and securities litigation. He also expanded his practice in the areas of technology and intellectual property, having represented several companies in trademark, copyright and other intellectual property disputes. Norm has also developed a white-collar criminal defense practice, representing clients under indictment for price fixing and racketeering.

Just two years after joining Sonnenschein, Norm was elected partner, and at the time he left Sonnenschein to form Stueve Siegel, he was the youngest to hold that distinction.

In each year since 2004, Norm has been elected by his peers as Best of the Bar for commercial and business litigation. Norm has also been named a Super Lawyer in Missouri, and has an AV rating the highest designation assigned by legal publisher Martindale-Hubbe.

## Recent Litigation Highlights

*Heartland v. HCA Midwest Division, et al.* (Antitrust Litigation) Norm is currently prosecuting Sherman Act I and state law tort claims on behalf of Heartland Surgical Specialty Hospital, a physician owned specialty acute care hospital. Heartland claims that the dominant hospital systems in the Kansas City have conspired among themselves and with the dominant managed care organizations in the region to prevent Heartland from obtaining in-network provider contracts. Heartland also alleges the defendants tortiously interfered with Heartland's ability to obtain provider contracts. The case is set for trial in April 2008.

Update: As of May 1, 2007, Heartland has settled with 5 of the 11 defendants in the case.

*In re: H&R Block Express IRA Litigation*, (Consumer Class Action) Norm is on the leadership team prosecuting consumer and securities claims against H&R Block over allegedly improper sales of H&R Block's Express IRA product. The Complaint alleges that H&R Block made misrepresentations regarding the fees associated with the Express IRA product, and that the Express IRA constitutes a security. Several dozen cases were filed around the country alleging similar improper conduct, which were eventually consolidated by the Judicial Panel on Multidistrict Litigation in the United States District Court for the Western District of Missouri. Norm was appointed to a leadership position after the case was consolidated in late 2006.

*Parkinson v. Hyundai Motor America, Inc.* (Consumer Class Action) Norman was appointed lead counsel in a consumer class action against Hyundai Motor America alleging that Hyundai marketed and sold vehicles with defective flywheel systems. The case is proceeding in the United States District Court for the Central District of California. Update: As of May 1, 2007, the Defendant's Motion to Dismiss and Motion to Bifurcate Discovery were denied.

*Kelly, et al. v. State Farm.* (Business Litigation) In August 2005, Norm (along with partner George Hanson) won a \$26.5 million jury verdict for five State Farm agents who had accused State Farm of violating their agents' agreements. The verdict came after a three-week trial in Independence Missouri. The agents argued that they were improperly terminated after publicly criticizing management's policies as to policyholders. The agents, who collectively had over 115 years service with State Farm, spoke out following a series of substantial verdicts and settlements against State Farm that revealed improper

claims handling, fraudulent use of medical utilization reviews, specification of non-OEM replacement parts, and other practices considered harmful to policyholders. Norm delivered the closing argument at trial, and the jury returned a verdict in the amount sought by the agents. The [Kansas City Star reported in January 2006](#) that the verdict was the largest in the area for 2005. [Read the Missouri Lawyers Weekly Feature on Kelly v. State Farm.](#)

*In re: Hyundai Horsepower Litigation.* (Class Action Litigation) Norm was co-lead counsel in the Hyundai Horsepower Litigation, which netted class relief totaling between \$75-\$125 million. The case was aggressively litigated over nearly two years and was fought on numerous fronts. The nationwide litigation began in September 2002 when Hyundai announced it had overstated horsepower ratings in more than 1 million vehicles sold in the United States over a 10 year period. SSHW was one of several firms around the country that filed class actions against Hyundai, but in early 2003, Hyundai announced it had settled the case on a nationwide basis with two lawyers in Beaumont, Texas. SSHW was part of a leadership group of intervenors in Beaumont who were provided 90 days to conduct discovery and challenge the settlement. Norm took the lead in discovery; processing more than 80,000 pages of Hyundai documents and taking the depositions of top Hyundai management, including the CEO of Hyundai Motor America, and a corporate representative of HMA's parent in Seoul, South Korea. This discovery led to lengthy briefing and ultimately a ruling by the Beaumont Court that the proposed settlement was unfair to class members. Following that ruling, Hyundai entered talks with Norm's group, resulting in the settlement valued at \$75-\$125 million.

*Weld Racing Inc. v. Gragg's Paint Co.* (Business Litigation) In 2003, Norm continued his successful streak in jury trials, winning a \$1.5 million jury verdict on behalf of SSHW client Weld Racing against Gragg's Paint Company. Weld Racing is a high-end manufacturer of forged chrome wheels, run by a former Indy 500 racer Greg Weld. Weld historically forged all its wheels and outsourced its chrome plating, but in 1999 began to construct an in-house plating facility. Gragg's Paint Co., the defendant, recommended a lining for the metal tanks in the chrome plating line. The lining failed, resulting in significant delays in the chrome line and substantial expenses related to scrapped wheels. Weld made breach of warranty and negligent misrepresentation claims against Gragg's and the case proceeded to trial. After a week long trial, the jury awarded exactly what Weld claimed in damages - \$1,589,426.13. Norm tried the case with SSHW associate Todd Hilton.

*Robert Half of Kansas City v. Robert Half International.* (Franchise Litigation) This arbitration pitted a long-time franchisee against its franchisor, Robert Half International - a \$4 billion company that bills itself as the worldwide leader in specialized employment placement. RHI began buying back franchisees in the mid 1980s and by the late 1990s, only a few of the original 100+ franchisees remained. Our client, who had been a RHI franchisee since 1971 and was the last holdout - came to SSHW seeking to enforce his rights under the RHI franchise agreement. A contentious arbitration ensued, resulting in a confidential settlement. Along the way, Norm took the lead in prosecuting the case, including deposing RHI's second in command.

*United States of America v. Supreme Insulation.* (White Collar Criminal Defense) In late 2001, Norm obtained an acquittal in a federal price-fixing case after a seven week federal jury trial in Houston, Texas. The case followed several convictions of individuals in the same industry, and one witness who pled guilty and testified against Norm's client. Norm was responsible for several key direct and cross examinations in the case, including the cross examination of an ex-employee, and the direct examination of the defendant's expert witness. The Government had sought jail sentences of 4 years or more.

*Multi-Media International, LLC v. PROMAG Retail Services, LLC.* (RICO) Norm, along with Todd McGuire, defended a RICO and business tort action brought in the United States District Court for the District of Kansas. Of particular significance, Norm and Todd briefed a motion to dismiss the Complaint in which the Court was persuaded to overrule its own prior decision on an important issue of statutory interpretation concerning RICO's national service of process provision, 18 U.S.C. 1965(b). Norm and Todd also successfully persuaded the Court to dismiss the corporate defendant for failure state a RICO claim under 18 U.S.C. 1962(c) because of plaintiff's failure to allege a RICO enterprise distinct from the defendant persons. The Court's decision is reported at 343 F. Supp. 2d 1024 (D. Kan. 2004). Shortly after these decisions, the case was dismissed by stipulation of the parties.

*Sheldon v. Vermonty*, 269 F.3d 1202 (Appellate/Arbitration Defense) With an assist from SSHW associate Amy Bauman, Norm won a victory in the Tenth Circuit Court of Appeals, making new law on the power of arbitrators to dismiss claims with prejudice based solely on the pleadings. The case was on appeal from the District Court of Kansas, where the trial judge endorsed SSHW's technique of obtaining results through a motion to dismiss before the arbitration panel. On appeal, the Tenth Circuit indicated that the issue was a "matter of first impression at the Circuit level." The Court ruled in favor of SSHW and its clients, holding that an "arbitration panel has full authority to grant a pre-hearing motion to dismiss with prejudice based solely on the parties' pleadings so long as the dismissal does not deny a party fundamental fairness." Norm's work in the case won national praise, was a featured case in many journals covering securities arbitration, and has been cited in over 40 cases decided since.

*Formula1.com v. FIA* (Antitrust/Domain Name Litigation) Norm played a significant role in the Firm's representation of Formula1.com, handling the expert depositions and pre-trial expert evidentiary issues. The Formula1.com case raised timely and complex issues of trademark and antitrust law which were litigated to a settlement in January 2002. This marks a continuation of Norm's work in Trademark litigation, which is discussed in more detail below.

*Shlomovitch v. Aquila* (Corporate Governance Litigation) Norm represented Aquila Inc. in defense of numerous class action lawsuits stemming from Utilicorp's tender offer for Aquila stock. The class plaintiffs generally alleged that Aquila's board failed to take appropriate steps in response to the tender offer, and sought to block the tender offer and subsequent short-form merger of the companies. In early 2002, a Delaware Chancery Judge denied plaintiffs' claims for immediate injunctive relief, paving the way for the successful tender offer and merger of the two companies.

### **Other Significant Cases (listed by area of practice)**

#### **Trademark and Intellectual Property**

Since starting in private practice, Norm has successfully litigated several cases involving trademark rights, claims of product disparagement and domain disputes.

In *IGA v. Home Town Grocers* Norm represented Home Town Grocers against allegations that Home Town Grocers had violated IGA's "Home Town Proud" trademark. After winning at the preliminary injunction stage, Norm was able to procure a successful settlement, allowing Home Town Grocers to maintain its name.

Norm acted as plaintiff's counsel in *Hoechst v. Schering Plough*, a Lahnman Act case in which Hoechst alleged that Schering Plough disparaged Hoechst's Allegra brand of non-sedating antihistamine in an effort to promote its own brand, Claritin. Norm handled several witnesses at the preliminary injunction hearing and helped force Schering Plough to change the way it promoted its drugs as part of a favorable settlement.

In *Primedia Intertec Corp. v. TMC*, 35 F. Supp. 2d 809 (D. Kan. 1998), Norm successfully defended Technology Marketing Corporation in a dispute with Primedia. Primedia had alleged that TMC infringed on its "Telephony" trademark by producing a publication entitled "Internet Telephony." Norm handled all aspects of trial preparation and obtained a favorable settlement when he was successful in excluding Primedia's experts on Daubert grounds.

In *Chemidex v. Chemdex*, Norm acted as lead counsel for Chemidex, a small Internet start-up at the time, in its trademark infringement suit against Chemdex, a leading business-to-business Internet site serving the life sciences industry. Norm handled all witnesses and argument at the preliminary injunction hearing, and his performance there forced a favorable settlement. Chemdex has since changed its name to Ventro.

#### **Racketeering Influenced and Corrupt Organizations Act**

Norm has the rare distinction of prosecuting and defending two of the largest cases brought in Missouri under the federal racketeering law known as RICO. While at the State of Missouri, Norm was part of a

team assigned to unravel the Second Injury Fund scandal that resulted in convictions of lawyers, doctors and an administrative law judge in the Eastern District of Missouri. The subsequent civil case, *Missouri v. Roussin*, resulted in nearly \$1 million in settlements with the criminal defendants - money that was returned to the citizens of Missouri. Norm also defended the largest criminal indictment ever brought in the Western District of Missouri, a RICO case brought against a former officer of the J.C. Nichols Company.

## **Insurance**

While at Blackwell Sanders, Norm cut his teeth in the insurance industry by representing dozens of insureds in cases ranging from personal injury and medical malpractice, to trade disparagement and civil rights. When he joined Sonnenschein, he acted as lead counsel on several cases where the insurance company itself was a defendant. These cases typically involved allegations of bad faith and unfair claims practices. Several recent cases illustrate Norm's depth and successes in this area.

In *Bishop v. Empire Fire & Marine, 47 F. Supp. 2d 1300 (D. Kan. 1999)*, Norm made new law in the State of Kansas regarding the standard for waiving underinsured motorist coverage. The insured had alleged that the coverage had not been waived, but Norm convinced the court otherwise, and was successful on summary judgment.

In *Tran v. Allstate*, Norm successfully defended Allstate Insurance Company against claims that company had improperly accused its insureds of violating the Kansas fraudulent insurance act. In the underlying case (where Norm was not involved), the Trans had alleged that Allstate failed to pay on their homeowner's claim following a purported robbery. Allstate counterclaimed, alleging that the Trans had falsified claim information. The Trans were successful on their claim and Allstate lost its counterclaim. Norm was retained to represent Allstate on the Trans' subsequent suit for malicious prosecution, and was able to successfully argue that Allstate should be entitled to summary judgment.

Norm is currently defending several other individual and class action cases around the United States.

## **Community**

In 2003, Missouri Attorney General Jay Nixon appointed Norm to serve on the Community Advisory Committee of the Health Care Foundation of Greater Kansas City, and Norm was reappointed to the CAC by Kansas City Mayor Kay Barnes in 2007. The Health Care Foundation was formed with the proceeds generated by the \$400 million sale of Health Midwest to HCA, and now stands as a \$550 million foundation dedicated to serving the needs of the medically indigent. Norm was elected Chairperson of the CAC in 2005.

## **Current Employment Position(s):**

Partner

## **Education:**

Washington University School of Law, St. Louis, Missouri  
J.D.

Law Journal: Washington University Journal of Urban Contemporary Law, Articles Editor

Tufts University  
Major: Political Science

## **Past Employment Positions:**

State of Missouri, Assistant Attorney General

Blackwell Sanders

Sonnenschein, Partner

**West Practice Categories:**

White Collar Crimes, Litigation & Appeals, Class Actions -- Plaintiff, Complex Litigation, Federal Trial Practice

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Testimony of  
**Ms. Elizabeth A. Weatherman**  
Managing Director  
Warburg Pincus, LLC

April 30, 2002

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Good Morning. My name is Bess Weatherman and I am Vice Chair of the Medical Group of the National Venture Capital Association. I am here today on behalf of the more than 475 professional venture capital and private equity firms dedicated to stimulating the flow of equity capital to emerging growth and developing companies. Our members currently invest more than \$36 billion per year in such companies and have invested nearly \$210 billion in aggregate over the past 20 years, funding nearly all of the most important technological breakthroughs of that period. A substantial number of these firms invest heavily in the life sciences field that includes biotechnology, drug development, medical devices and therapeutics and health care services. In 2001, the venture capital community invested more than \$4.2 billion, or more than 10% of all venture investing last year, in these medical industries.

Venture investment in the life sciences has given new hope to people who suffer maladies across virtually the entire spectrum of diseases and afflictions. In fact, without patient investment from venture capitalists, the biotechnology and medical technology industry, for example, would be virtually nonexistent. Almost every biotechnology product that has been approved for sale by the Food and Drug Administration has been financed by the venture capital community. The venture community also provided financing for many of the medical devices and therapeutics we take for granted today, including the entire interventional cardiology or stent industry. These now standard medical treatments allow patients to lead longer and healthier lives. The venture community's dedication to the medical technology industry exists despite heavy government regulation and the longer-term investing strategy required for successful development of new medical technology, even when compared to other emerging market investments.

Few can argue that what these companies do is critically important to the well being of the American public and the world at large. However, the results of the debate we are holding today on reforming group purchasing organizations to ensure a competitive and open market for all medical industry producers will directly affect the future of emerging life science companies and in turn impact the availability of the important medical products these companies are

developing.

Let me be clear, companies subject to, or potentially subject to, anti-competitive practices by GPOs will not be funded by venture capital. As a result, many of these companies and their innovations will die, even if they offer a dramatic improvement over an existing solution. Permitting this innovation stifling practice is unnecessary and counter to what we believe should be a fundamental role of the government: enhancing health by making new or improved products widely available as quickly and efficiently as possible.

## THE ROLE OF VENTURE CAPITAL IN IMPROVING AMERICA'S HEALTH

Venture capital plays an integral, often-unsung role in the development of medical technology. In fact, venture capital is the single most important source of early stage financing to new and emerging health-focused companies. During the past 30 years, the venture community financed 1,324 innovative medical companies with more than \$20 billion in start up capital. These companies now have sales of tens of billions of dollars, employ more than 2 million people and most importantly, have revolutionized medical care for nearly all Americans. It is fair to say that virtually every U.S. citizen born during the last thirty years has benefited or will benefit, in his or her lifetime, personally and significantly from one or more of the drugs or medical devices developed with U.S. venture capital. These include MR imaging, ultrasound, angioplasty / stents, implantable defibrillators, spinal implants, pulse oximetry and drugs for cancer, heart attacks, and anemia, to name a very few. It is also important to note that the real medical impact of venture investments is also significantly greater than even these numbers would suggest, since our investments are normally focused only on ground breaking or revolutionary technology by the very nature of our investment selection process. Many of these companies' names are now synonymous with progressive medical technology including Guidant, Amgen, and Genentech.

## WHY MEDICAL DEVICE AND BIOTECHNOLOGY COMPANIES NEED VENTURE CAPITAL

Medical device and biotechnology companies need venture capital because their capital needs are so large, their time to market so long – due in large part to regulatory compliance—and their risks so high. There are enormous entrepreneurial risks in bringing medical products to market—risks that include proving product safety and efficacy, securing patent protection, securing a good distribution channel, facing entrenched competition, and possibly running out of money before the product can reach a significant portion of the market – to name just a few. Such characteristics make these young companies ineligible for bank financing or other sources of private capital.

It is important to note that venture capitalists will accept these legitimate risks

that traditional financial institutions and government supported programs cannot — it's part of our function. But, VCs do not, cannot, and will not accept unnecessary and unfair risks. We need to provide our investors with justification that substantial capital investment can result in successful product development and financial gain. Thus, we have no interest in products that can be blocked from fairly competing for a share of a market, even after a long, expensive and risky product development cycle. Simply put, venture capitalists will increasingly stay away from many investments in long-term, high-risk medical breakthroughs if the government continues to allow anticompetitive business practices to artificially limit access to medical market.

#### STANDARD BUSINESS PRACTICES BY GROUP PURCHASING ORGANIZATIONS AFFECT VENTURE CAPITAL INVESTMENT EMERGING MEDICAL COMPANIES, AND PATIENT CARE

GPO roadblocks have greatly diminished the attractiveness of medical device and biotechnology investments because they reduce the confidence of venture capitalists that they will have fair access to medical markets and thereby will achieve a return on very risky investments. To put this in perspective, between 1990 and 1994 at least 22% of all companies financed by venture capitalists were medical device or biotechnology companies, with medical device companies accounting for approximately 9% and biotechnology companies accounting for 13% of the 22%. By comparison, during the period 1999 to 2001 these companies made up only 8.9% of all companies receiving venture capital financing. Of this 8.9%, device companies received 5.0% and biotechnology companies receive 3.9%.

These numbers dropped dramatically from 1999 – 2001 when 9.8%, 7.1% and 11% respectively of the companies funded were medical device or biotechnology companies. For these years, medical device companies dropped more, making up only 5.5%, 3.9% and 6.2% of the combined totals.

One of the reasons for this relative decline new investment is a lack of market access brought about by the business practices and the increasing power of GPOs. GPO practices such as contract exclusivity, substantial fee structures, and product bundling, if allowed to continue, will so constrict potential markets that product segments where these practices are widely adopted will simply not be considered for venture capital backing. This investment drain will result in a stagnation of product innovation and stymie improved patient care across these product sectors.

The arguments made by GPOs about the "administrative" savings they provide to members could be applied to every single sector of the economy and are virtually identical to the arguments made by the anticompetitive "trusts" of the early 1900s, which led to the landmark Sherman Antitrust laws. The idea that the GPOs "save" money for hospitals by extracting larger price discounts from producers than they could achieve by themselves, is unprovable and most likely wrong – unprovable because no one knows what the "real" market price would

be in a truly competitive market among producers (in the absence of GPO gatekeeping). In fact, in product areas where GPOs collude with producers who already have virtual monopolies, the "discounted" price that the GPOs claim to achieve is almost certainly well above what the market price would be in an open and competitive marketplace. The impact of the GPOs in healthcare is equally anticompetitive and stifling of innovation, and there is no special reason why the healthcare system should be the only sector of the economy where such practices are tolerated.

The venture capital industry exists, in part, because the antitrust philosophy of the United States prevents entrenched, unmoveable competitors from abusing their market power to unfairly restrain competition. By their very nature, virtually every company we finance is a "revolutionary" and a threat to the established order. The technological innovations they develop, whether in computers, electronics, software, telecommunications or medicine, are inevitably threats to some existing larger competitor who will use all means at its disposal to defend itself. It is hard enough to overcome that kind of power in an open and competitive market place. It is nearly impossible when monopolistic producers collude with monopsonistic buyers such as GPO to suppress competition. This is precisely what is now happening in healthcare.

As the GPOs become more powerful and add more technologically sophisticated products to their portfolios (instead of the more commodity-like products such as rubber gloves, syringes and cotton swabs that they originally focused on) the adverse impact on innovation will increase. There will be fewer and fewer areas in which venture capital will invest. The current trend is not encouraging.

The venture capital community believes that collusion between GPOs and providers of medical products to limit market access to competitors is extremely anticompetitive and not justified by any peculiarities of the medical sector. On the contrary, while the government would not tolerate such practices in any other sector of the economy, for it to tolerate (and even encourage) this situation in medicine is disturbing, because one of the clear effects of these practices is to impede innovation. In medicine, in contrast to any other sector, reduced innovation ultimately affects patients' lives and health. There is no doubt that patients' lives have been lost and other harm done as a result of GPO's activities. In light of this, the special exemptions from the normal operation of the antitrust laws granted to the GPOs should be viewed with even greater, not less skepticism.

## Conclusion

The venture capital community believes that there are enormous opportunities to continue to improve the health of the American public through the development and application of new technology. These efforts are already very time consuming, expensive and risky, particularly given recent increases and uncertainties in the U.S. regulatory environment. Despite this, the venture

capital community is committed to further investment in U.S. healthcare technology. We welcome open and competitive marketplaces, and we believe that competition has served the American public well by stimulating fair prices and vast technological innovation. The increasing power of GPOs, and their collusive and anticompetitive activities with larger medical companies, threatens to undermine the open and competitive markets that have produced such obvious benefits for the American public, not only in healthcare, but also across the entire economy. We would strongly encourage the committee to consider legislation to correct these abuses and again open these markets to fair and vigorous competition. Thank you.

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May 1, 2003

**VIA E-MAIL AND U.S. MAIL**

Bret D. Landrith, Esq.  
Law Offices of Bret D. Landrith  
605 W. Kansas  
Pittsburgh, KS 66117-0137

Re: *Medical Supply Chain v. US Bancorp, NA, et al.*  
(Our File: USB001/103134)

Dear Mr. Landrith:

Thank you for your telephone inquiry on April 30 regarding the status of your settlement proposal made in your letter of January 24, 2003, to the effect that your client would agree to a settlement if our clients sold the Piper Jaffray entity to your client. Our clients do not accept your settlement offer. Our suggested resolution of this case would be for your client to dismiss its claims.

Please call if you have any questions.

Sincerely,

s/ Steven D. Ruse

STEVEN D. RUSE

SDR:jaa

cc: Mark A. Olthoff, Esq.  
Andrew M. DeMarea, Esq.