

397. Only counsel for Neoforma, Inc., responded to Medical Supply's demand letter and the response merely a plea to delay action until the attorney could reach everyone after the Christmas holidays. The follow up response never came.

398. No Defendant repudiated its participation in the monopoly or made any overt declaration of withdraw from the conspiracy except for the announced divestitures stated above.

14. Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma's Utilization of Ongoing Sham Petitioning By Shughart, Thomson & Kilroy, Piper Jaffray, US Bancorp, US Bank, Andrew Cesere And Jerry Grundhoffer To Deprive Medical Supply of Counsel

399. On November 20, 2003, The former managing partner and Shughart Thomson & Kilroy shareholder acting as magistrate in Kansas District Court action *Bolden v. City of Topeka, et al*, Case No. 02-CV-2635, where the African American plaintiff was being represented by Medical Supply's counsel repeatedly told the plaintiff that he should sue his attorney for malpractice. The magistrate also stated Bolden would be better off representing himself. Bolden testified he was thankful to have his counsel, three previous ones had abandoned him after being intimidated and retaliated against by the City. Bolden's previous counsel still has not been located. Affidavits were furnished that many witnesses and process servers had been retaliated against, threatened with criminal prosecution if they testified in federal court and harassed. The magistrate also denied Bolden discovery in the action.

400. The transcript of the hearing which was also taped reveals that the magistrate was obsessed with legal malpractice insurance as a result of his firm's mishandling of Medical Supply's action against the US Bancorp defendants and Unknown Healthcare Supplier, amply documented in the record, and the aborted disclosures of the firm's malpractice liability insurance as the party in interest and guarantor of US Bancorp's certain antitrust losses.

401. During the *Bolden v. City of Topeka, et al* pretrial conference the former Shughart Thomson & Kilroy managing partner and shareholder acting as magistrate expressed his disturbance over "stealth lawsuits" where parties don't even know they are subject to them. While wholly inapplicable to Bolden's case where the City was liable for the officials regardless of whether they remained in the case, the subject of the deliberate pretext used to attack Medical Supply's counsel for his representation of Bolden, the magistrate is clearly troubled over the failure of his firm to consider its responsibilities to the identified coconspirators in *Medical Supply v. US Bancorp, et al*.

402. The attack on Medical Supply's counsel was overtly pretextual. The civil rights liability of the city for the conduct of its officers in their official capacity is based on law the magistrate well knew and in an unrelated pretrial order conference the following day accepted the voluntary stipulation of parties that all officials be voluntarily dismissed. The magistrate also stated that there was unlikely any difference in damages in a footnote to his report and recommendation.

403. The magistrate reiterated his criticism of Medical Supply's counsel in the Bolden v. City of Topeka, et al pretrial order conference report and recommendation, stating Bolden should consider representing himself if Medical Supply's counsel is the only attorney he can get. On December 3, 2003, the magistrate's report and recommendation was submitted as an attachment and the basis for an ethics complaint filed by the assistant city attorney Sherri Price against Medical Supply's counsel for his representation of Bolden. The Kansas Office of the Disciplinary Administrator investigated the complaint by having dinner with the magistrate. The magistrate used to be work for the office prior to starting at Shughart Thomson & Kilroy and continued to serve on various Kansas state ethics committees while a managing partner for at Shughart Thomson & Kilroy. Bolden was never contacted during the investigation and during the prosecution appeared only as a witness for Medical Supply's counsel.

404. The defendants US Bancorp, US Bank, Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff coordinated their defense of Medical Supply's action for injunctive and declaratory relief with the coconspirators Jeffrey R. Immelt, GE, GHX, GE Healthcare, GE Capital and GE Transportation who inconceivably attached the Medical Supply complaint and order to their 12(b)6 motion to dismiss in Medical Supply's separate action against Jeffrey R. Immelt, GE, GHX, GE Capital and GE Transportation. The former eighteen year Shughart Thomson & Kilroy shareholder acting as magistrate on the GE case denied Medical Supply discovery and the court did not even permit discovery when the dismissal attachments necessitated conversion of the GE motion to one for summary judgment.

405. On January 29, 2004, March 4, 2004, April 2, 2004 US Bancorp's counsel, Nicholas A.J. Vlietstra and Piper Jaffray's counsel Reed coordinated their appeal (10th C.C.A. 03-3342) with the GE defense. The GE defendants included the action against the US Bancorp defendants and Unknown Healthcare Provider as a related appellate case in (10th C.C.A. 04-3075) and used the US Bancorp order as a basis for a cross

appeal (10th C.C.A. 04-3102) challenging the failure of the trial court to grant sanctions against Medical Supply.

406. The coconspirators UHC, Robert J. Baker, VHA, Inc., Curt Nonomaque, Novation LLC, Neoforma, Inc. and Robert J. Zollars did however renew their conscious commitment to a common scheme designed to achieve an unlawful objective of keeping Medical Supply out of the market for hospital supplies by reviewing the case against US Bancorp and consulting with representatives for US Bancorp, US Bank, Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff. The cartel decided to rely on the continuing efforts to illegally influence the Kansas District Court and Tenth Circuit Court of Appeals to uphold the trial court's erroneous ruling. The cartel also renewed their efforts to have Medical Supply's sole counsel disbarred, knowing that an extensive search for counsel by Medical Supply had resulted in 100% of the contacted firms being conflicted out of opposing US Bancorp and actually effected a frenzy of disbarment attempts against Medical Supply's counsel in the period from December 14, 2004 to February 3rd, 2005, all originating from the cartel's agents Shughart Thomson and Kilroy's past and current share holders.

407. The Shughart Thomson & Kilroy counsel, Andrew DeMarea failed to file a reply brief in the interlocutory appeal for the US Bancorp appellees. The Tenth Circuit court clerk called him two days later to remind him and urged him to file for an extension one day beyond the date the brief was due and seven days beyond the deadline for a motion for extension of time under 10th Cir. R. 27.4(F).

408. Andrew DeMarea also refused to turn in a parties case management conference report on the form required by local rule in the Kansas District Court. He repeatedly assured the magistrate during the first case management conference that the Medical Supply case would be dismissed.

409. Mark Olthoff, an attorney for Shughart Thomson & Kilroy in their Kansas City, MO office appeared to write all pleadings and briefs for the defendants until the second appeal where he appears to have been replaced by Susan C. Hascall of the Kansas City, MO office who was a Tenth Circuit Court of Appeals law clerk through 2000.

410. Mark Olthoff's trial pleadings repeatedly misstated and misrepresented Medical Supply's Amended Complaint and pleadings to the court, even after it had been repeatedly drawn to the court's attention that Mr. Olthoff was exploiting the court's reliance on the experience of Shughart Thomson &

Kilroy and was neglecting to read or consider Medical Supply's pleadings. In its order, the court even admonished Medical Supply's for failing to research law and facts that the record evidences had been researched. The negligence was entirely that of Mr. Olthoff and the court's or a result of the court's misplaced reliance on Mr. Olthoff.

411. The Medical Supply action against US Bancorp was dismissed but not on arguments or authorities presented by Shughart Thomson & Kilroy's dismissal memorandum. The first findings of law and fact made by the court in the case were *sua sponte* and both were clearly erroneous.

412. The court did not respond to Medical Supply's arguments for reconsideration or correct its factual errors. It is believed that the Shughart Thomson & Kilroy former managing partner obtained the magistrate assignment to Medical Supply's case against General Electric because of his relationship to Shughart Thomson & Kilroy and it provided an opportunity to address the same fact pattern as the earlier case because GE breached its contract with Medical Supply once the electronic marketplace GHX created by GE and its hospital supplier competitors discovered Medical Supply was attempting again to enter the market for hospital supplies.

413. On January 14th, 2005, Andrew DeMarea was directed to file an ethics complaint against Medical Supply. Like the "complaint" filed by Sherri Price, no allegations of misconduct appear in DeMarea's complaint, it merely incorporates by reference attached Medical Supply filings in the District Court and the Tenth Circuit and the appellate panel's sanction of Medical Supply's counsel for a "frivolous appeal." The "complaint" also contained Medical Supply's motion for en banc review of the sanctions. The sanction order itself admitted the trial court and the hearing panels were mistaken in stating there was no private right of action contained in the USA PATRIOT Act.

414. The former Shughart Thomson & Kilroy managing partner used his position as magistrate assigned to the Medical Supply action against General Electric to deny Medical Supply discovery. A decision he also made in the Bolden case. On January 20, 2005 the magistrate testified under oath in the disciplinary prosecution of Medical Supply's counsel that he had only denied discovery in a few cases. He stated he was unaware of any other case he was assigned where the respondent was an attorney. He visibly winced when he was then questioned if he was a magistrate in Medical Supply v. General Electric et al. where the respondent was the sole counsel for the plaintiff.

415. On January 19th, 2005, the state disciplinary tribunal heard arguments that the magistrate was the complaining witness in fact for the complaint made by the assistant city attorney against Medical Supply's counsel. Sherri Price made no independent allegations or observations of misconduct against the respondent and merely incorporated by reference Magistrate O'Hara's report and recommendation from Bolden's pretrial conference. The disciplinary tribunal ordered the magistrate to drive to Topeka and testify under oath.

416. The former Shughart Thomson & Kilroy managing partner acting as magistrate added to his attacks against Medical Supply's counsel with further statements impugning the respondent's competence. . The magistrate testified that Bolden's counsel was the worst attorney he had seen in 20 years. The magistrate alleged that Medical Supply's counsel did not have the skill or knowledge of the law a first year law student would possess.

417. The former Shughart Thomson & Kilroy managing partner acting as magistrate made a point of addressing facts that weakened the Kansas Disciplinary Administrator's case from the previous two days and made these assertions unsolicited from the questioning of the Disciplinary Administrator and demonstrated a pre appearance coaching or consultation with the Disciplinary Administrator, especially on the point about Medical Supply's competence being less than that of a first year law student. The magistrate could not have known that Medical Supply's counsel had testified the previous day that many states permit law students to represent clients in civil rights actions because of the shortage of counsel willing to undertake this difficult and un lucrative work.

418. The former Shughart Thomson & Milroy managing partner acting as magistrate impugned the professional ability of Medical Supply's counsel in an order where he was neither a party or attorney, The magistrate stated unequivocally that Medical Supply's counsel was incompetent. During testimony under oath on January 20th, 2005, the magistrate stated he could not recall ever stating in an order where the respondent was not an attorney that the respondent was incompetent.

15. The Impending Threat Of Monopolization of the Market For Hospital Supplies In E-Commerce

419. Industry insiders and investment message boards are communicating that it is likely Neoforma, Inc, with its 1,500 hospitals \$4.1 billion in gross transaction volume and \$6.8 billion in supply chain data will be acquired by GHX, LLC this year.

420. The purpose of the merger is to restrain trade in the e-commerce market for hospital supplies and increase the market power of both companies, which is 80% to the entire control of the single company GHX. A second purpose of the merger is to conceal the loss of funds belonging to Novation's member hospitals in the Neoforma venture.

421. Neoforma, Inc. and GHX, LLC have already integrated their electronic marketplaces, sharing data to control prices by preserving the Novation and Premier imposed fees and contracts on manufacturers for internet sales of hospital supplies and pooling electronic marketplace infrastructures to eliminate competition between the two marketplaces and have done so since 2001.

422. GHX connects over 2,200 hospitals to more than 140 suppliers, creating the largest trading exchange in healthcare. The company proclaims; "GHX is the leader in the healthcare trading exchange segment. "On average, GHX processed more than 12,000 purchase orders and \$23 million in volume daily at the end of 2004.

SUMMARY OF CLAIMS

423. Medical Supply Chain, Inc., in its antitrust litigation opposing trade restraint in the electronic market for hospital supplies. Medical Supply has experienced substantial antitrust injury from the actions of Novation, a joint venture created by UHC and VHA, Inc. in support of the electronic marketplace entity Neoforma, Inc. which is believed to be an instrumentality of UHC and VHA, Inc. which were both in an alliance to eliminate competition among member competitors in a scheme to inflate prices similar to the alliance of Shell and Texaco to create two joint ventures, Equilon Enterprises LLC and Motiva Enterprises condemned for per se Sherman I prohibited conduct in *Dagher v Saudi Refining Inc.*, 369 F.3d 1108, 1114 (9th Cir. 2004).

424. Medical Supply Chain, Inc. has been excluded from the hospital supply market with agreements between UHA and VHA's Novation in combination with their electronic marketplace Neoforma, Inc. US Bancorp NA, and The Piper Jaffray Companies exchanged directors with Novation and participated in exclusive agreements with Novation and Neoforma to keep hospitals using technology products from companies US Bancorp NA and Piper Jaffray had an interest in. The purpose of these agreements was to injure the hospital supply consumers with artificially inflated prices.