

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

MEDICAL SUPPLY CHAIN, INC.,)	
(Through assignee Samuel K. Lipari))	
SAMUEL K. LIPARI)	
<i>Plaintiff,</i>)	
v.)	Case No. 05-2299
NOVATION, LLC)	
NEOFORMA, INC.)	
ROBERT J. ZOLLARS)	
VOLUNTEER HOSPITAL ASSOCIATION)	
CURT NONOMAQUE)	
UNIVERSITY HEALTHSYSTEM CONSORTIUM)	
ROBERT J. BAKER)	
US BANCORP, NA)	
US BANK)	
JERRY A. GRUNDHOFER)	
ANDREW CECERE)	
THE PIPER JAFFRAY COMPANIES)	
ANDREW S. DUFF)	
SHUGHART THOMSON & KILROY, P.C.)	
<i>Defendants.</i>)	

**PLAINTIFF’S ANSWER TO THE DEFENDANTS’ JOINT RESPONSE TO PLAINTIFF’S
FED. R. CIV. P. 59(e) MOTION TO ALTER OR AMEND THE JUDGMENT**

Comes now the plaintiff Samuel K. Lipari in his individual capacity and as an assignee of all rights of Medical Supply Chain, Inc. a dissolved Missouri corporation and respectfully submits this answer to the defendants’ joint reply.

MEMORANDUM IN OPPOSITION

The defendants supposedly have argued why this court should not hear the plaintiff’s motions for reconsideration or new trial because of a lack of standing of the plaintiff as assignee of the dissolved Missouri corporation Medical Supply Chain, Inc. However this issue is determined by the Federal Rules of Civil Procedure, specifically F.R.Civ.P. Rule 17 which controls standing. The defendants through Shughart, Thomson & Kilroy, P.C. and Husch, Blackwell, Sanders, LLP have attempted to continue their deception and misrepresentation of the applicable law to this court by not addressing Rule 17.

The controlling law of this circuit follows Rule 17 for determination of substitution of parties to maintain the true party in interest as the replacement plaintiff in an ongoing suit:

“Federal Rule of Civil Procedure 17 governs both the determination of a party's capacity to sue and be sued and his or her status as the real party in interest. The "real party in interest" principle requires that an action "be brought in the name of the party who possesses the substantive right being asserted under the applicable law." 6A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1541 at 321 (2d ed.1990) (hereinafter Federal Practice &

Procedure). Capacity, by contrast, refers to "a party's personal right to litigate in a federal court." *Id.* § 1542, at 327."

Esposito v. U.S., 368 F.3d 1271 at 1273 (10th Cir., 2004).

In all the litigation before this court under all the different case numbers, the plaintiff has clearly been identified as a resident of the State of Missouri. His dissolved corporation Medical Supply Chain, Inc. was always identified as a Missouri corporation. When the corporation was dissolved, the plaintiff attempted to represent himself citing Rule 17 and has repeatedly called the court's attention to Rule 17 and its provision that Missouri Law governs the plaintiff's capacity to represent his interests as an assignee of the rights once held by the dissolved corporation, an argument this court finally adopted in this case or controversy granting the plaintiff standing and capacity to proceed pro se under the style *Lipari v. US Bancorp et al.* Case no. 07-cv-02146-CM-DJW.

It is controlling law for this jurisdiction that the law of the state of residence determines capacity. "Rule 17(b) provides that issues of capacity are determined by the law of the individual's domicile." *Esposito v. U.S.*, 368 F.3d 1271 at 1273 (10th Cir., 2004). A rule consistent with other circuits. See *Neilson v Colgate-Palmolive Co.* (2nd Cir., 1999) and it is the rule of this district *City of Wichita, Ks v. Trustees of Apco Oil Corp.*, 306 F.Supp.2d 1040 (D. Kan., 2003) and *In re Phillips*, Case No. 05-19790 at pg. 3-4 (Bankr. Kan. 7/17/2007) (Bankr. Kan., 2007).

Rule 17(a) also expressly prescribes that this court must permit the individual plaintiff recipient of the assignment of rights once held by Medical Supply Chain, Inc. to be substituted for the now dissolved corporate plaintiff:

"Rule 17(a) of the Federal Rules of Civil Procedure sets forth the requirement that "[e]very action shall be prosecuted in the name of the real party in interest." Fed. R.Civ.P. 17(a). It qualifies that statement by providing that "[a]n executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought." Fed. R.Civ.P. 17(a)."

Williams v. Northwest Airlines, Inc., 163 F.Supp.2d 628 (W.D.N.C., 2001).

When individuals succeed in interest to rights once held by a corporation the court is obliged to permit the substitution of parties:

"Thus, if Harrington and Loney, rather than Cheswell, were considered the real parties in interest, the court would have little choice but to allow a reasonable time for their substitution. See *Green v. Horton*, 326 Mass. 503, 95 N.E.2d 537, 539 (1950). *Agri-Mark, Inc. v. Niro, Inc.*, 190 F.R.D. 293, 295 (D.Mass.2000) ("The requirement in Rule 17(a) that an action be prosecuted in the name of a

'real party in interest' is based on the principle that the pleadings in a case 'should be made to reveal and assert the actual interest of the plaintiff, and to indicate the interests of any others in the claim.'" (quoting *United States v. Aetna Cas. & Sur. Co.*, 338 U.S. 366, 382, 70 S.Ct. 207, 94 L.Ed. 171 (1949)). That would, of course, bring us to the very point we are now."

Cheswell, Inc. v. Premier Homes and Land Corp., 326 F.Supp.2d 201 at 203 (D. Mass., 2004).

The substitution rule serves an important public interest:

"The purpose of the real party in interest requirement is to protect the defendant from a multiplicity of suits for the same cause of action. See *O'Donnell v. Fletcher*, 9 Kan. App. 2d 491, 681 P.2d 1074 (1984)."

In re Phillips, Case No. 05-19790 at fn 7 (Bankr. Kan. 7/17/2007) (Bankr. Kan., 2007).

The controlling law of this circuit and Rule 17 require this court to substitute parties when the real party in interest changes as it did when Medical Supply Chain, Inc. ceased to exist after assigning all of its rights to the plaintiff:

"Rule 17(a) requires the district court to provide the party bringing an action with a reasonable time after objection to substitute the real party in interest. "

Esposito v. U.S., 368 F.3d 1271 at 1272 (10th Cir., 2004).

The defendants are seeking the forfeiture and injustice Rule 17 is designed to prevent:

"We do, however, find support in the federal rules for permitting substitution notwithstanding Mr. Esposito's lack of capacity at the time the suit was filed. As the district court pointed out, nothing in Rule 17(a) requires that the original plaintiff have capacity to sue. The fact is, Rule 17(a) does more than merely provide a relation back principle. It provides that substitution "shall have the same effect as if the action had been commenced in the name of the real party in interest." Fed.R.Civ.P. 17(a) (emphasis added).³ Rule 17(a) is designed to prevent forfeitures, and as such must be given broad application. See Fed.R.Civ.P. 17 advisory committee's notes (1966 Amendment) (stating Rule 17(a) is "intended to insure against forfeiture and injustice" by codifying "in broad terms" prior law permitting substitution notwithstanding running of limitations statute)."

Esposito v. U.S., 368 F.3d 1271 at 1277-78 (10th Cir., 2004)

The defendants' argument at page 3 of their response to the show cause order is legally erroneous and intentionally misleading:

"The fact that Mr. Lipari voluntarily dissolved his corporation (after his prior lawyer was disbarred) does not automatically entitle him the right to prosecute these claims or file pleadings in his personal capacity. See *Reben v. Wilson*, 861 S.W.2d 171, 176 (Mo. App. E.D. 1993) (holding that dissolution of a corporation does not abate or suspend pending proceedings by the corporation); *Nato Indian Nation v. State of Utah*, 76 Fed. Appx. 854, 856 (10th Cir. 2003) (prohibiting corporations from appearing pro se and holding that a corporation must appear through a licensed attorney)."

The plaintiff dissolved his corporation after the chargeable conduct of the defendants described in the complaint took its intended effect and resulted in the disbarment of his counsel. The defendants misrepresent their counsel Shughart, Thomson & Kilroy, P.C.'s predicate act of extortion depriving the plaintiff of his property in the representation by Bret D. Landrith under color of official right (described at length in the complaint for this action). This conduct is a violation of 18 U.S.C. § 1961(1) Hobbs Act Extortion a predicate act enumerated as a private cause of action under 18 § 1961(1) and the conduct of the defendants through their law firms in causing the plaintiff's counsel to be disbarred or in causing other attorneys like Dennis Hawver to think they will be harmed or sanctioned in representing the plaintiff meets the requirements for prevailing on a color of official right extortion claim under *U.S. v. Kelley*, 461 F.3d 817 at 826 (6th Cir., 2006).

The defendants also omit from their show cause answer to the court their continuing efforts to deprive the plaintiff of replacement counsel documented in pages 43-45 of the plaintiff's settlement brief with evidentiary attachments and served on Magistrate Waxse and the defendants. See Exb 1.

The complaint in the state law antitrust portion of this case or controversy, currently in the State of Missouri 16th Circuit Court at Independence Missouri and filed as an attachment to the plaintiff's "Notice Of Concurrent Missouri State Antitrust Action" on February 26, 2008 in this case describes in detail the repeated efforts of the defendants through Shughart, Thomson & Kilroy, P.C. and John K. Power of Husch Blackwell Sanders, LLP to deprive the plaintiff of replacement counsel including the Missouri products liability lawyer David Sperry and the Wirken Law Group.

To the degree if any that that the defendants can describe the dissolution of Medical Supply Chain, Inc. as voluntary without having committed an additional predicate act of fraud, the issue is irrelevant because the plaintiff assigned the rights of the corporation to himself. Therefore, the plaintiff as the individual owner of the assigned rights is prosecuting his personal claims in his personal capacity as the current true party in interest. Had the plaintiff in his capacity as CEO of Medical Supply Chain, Inc. not assigned the claims to himself, the defendants' argument would not be fraudulent. But it clearly is.

The assignment is determined by Missouri State law, a body of writing seemingly unfamiliar to Shughart, Thomson & Kilroy P.C. despite Missouri being its home state. The people in Missouri are dying from the monopoly's artificial inflation of hospital supply costs coupled with the defendants' attempted

monopolization scheme to secure a replacement monopoly free from federal Medicare and Medicaid oversight in Governor Blunt's Insure Missouri plan. The defendants meanwhile commit subsequent acts injuring Missouri citizens and consumers in the national market for hospital supplies because Shughart, Thomson & Kilroy P.C. without researching its own home state law has repeatedly asserted that the plaintiff does not have capacity as an assignee and that if an assignment was made, it is somehow defective.

All those lives are lost in vain because under the Missouri state law that this court is required to refer to for determining capacity under Rule 17, even when no assignment took place, the shareholder is entitled to proceed in his own name in recognition of the equitable interest created upon dissolution:

“Undoubtedly, Summit Falls holds the legal rights to the option because Mr. Carolan did not assign the assignment to himself. Nor did the legal rights revert to him upon Summit Falls's administrative dissolution. See § 351.476.2 ("Dissolution of a corporation does not . . . [t]ransfer title to the corporation's property"). Nevertheless, Mr. Carolan holds equitable rights to the option agreement. "[E]quitable title is the right in the party to whom such title belongs to have the legal title transferred to him upon the performance of a specified condition." *Reinhold v. Fee Fee Trunk Sewer, Inc.*, 664 S.W.2d 599, 603 (Mo.App. E.D.1984). A dissolved corporation must distribute its property to its shareholders as an act of winding up. See § 351.476.1(4). As the sole shareholder, Mr. Carolan will receive the property when Summit Falls winds up. Thus, Mr. Carolan has equitable claim in the option agreement and is entitled to maintain the action in his own name. To the extent the trial court decided against him for not being the real party in interest, it erred.”

Carolan v. Nelson, 226 S.W.3d 923 at 925-926 (Mo. App., 2007).

Similarly the plaintiff is deprived of his contract property from US Bancorp and US Bank because the defense firm Shughart, Thomson & Kilroy P.C. mistakes the unsigned escrow contract sent to MSC's prospective representatives with the written agreement to provide escrow accounts to MSC for that purpose an executed written email contract by Brian Kabbes under Missouri law. Law they never researched despite being repeatedly provided reference to it over six years. Similarly the clearly established principal that the contract need not be enforceable for the plaintiff to never the less prevail under tortious interference with a business expectancy or to have been actionably deprived of an input by the cartel under Missouri antitrust law is lost on Shughart, Thomson & Kilroy P.C., no doubt leading to the needless deaths of more Missourians.

Presumably the interests of the citizens of other states regarding enforcement of the federal laws against monopolization of hospital supplies were determined by the outcomes in this court and the Tenth Circuit. The State of Missouri will be a mecca to those needing healthcare and will be the only state in the union not to go bankrupt over the healthcare costs of its socially disadvantaged citizens by 2016.

The individual plaintiff received his interest not from an equitable claim resulting automatically from dissolution, he received by express assignment from himself as chief executive of the corporation. So the defendants citation to *Reben v. Wilson*, 861 S.W.2d 171, 176 (Mo. App. E.D. 1993) (holding that dissolution of a corporation does not abate or suspend pending proceedings by the corporation) is misinformed because it is irrelevant where the corporation has assigned its claims to someone else and is no longer pursuing them or calculated to deceive this court and complete the extrinsic fraud of depriving the plaintiff of his property consisting of the chose in action for federal antitrust and racketeering claims (like the defendants are still trying to do to the plaintiff's state law based claims).

Similarly the defendants' citation to the case *Nato Indian Nation v. State of Utah*, 76 Fed. Appx. 854, 856 (10th Cir. 2003) (prohibiting corporations from appearing pro se and holding that a corporation must appear through a licensed attorney) is misinformed. *Nato Indian Nation* was originally used by the court in sustaining the defendants' dismissal of Medical Supply Chain, Inc.'s antitrust and federal racketeering claims before the court reversed itself in this same case or controversy and determined the individual plaintiff has standing and capacity to proceed *pro se* under the style *Lipari v. US Bancorp et al.* Case no. 07-cv-02146-CM-DJW.

In *National Independent Theater Distributors, Inc. v. Buena Vista Distribution Co.*, 748 F.2d 602 (11th Cir.1984), the court rejected an argument by a corporate shareholder seeking to represent his corporation *pro se*. There, the plaintiff dissolved the corporation, and moved to substitute himself as the party plaintiff in place of the corporation. In upholding the district court's denial of the motion, the court relied on the rule requiring corporate representation by counsel, and recognized the disruptive effect that lay representation can have on the litigation process. *Id.* at 609-10.

In *Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20 (2d Cir.1983), a corporation had assigned its legal claims to its chief executive officer and sole shareholder. In rejecting the officer's attempt to proceed pro se on the corporate claims, the court stressed that the federal courts have disapproved "any circumvention of the rule [of corporate representation by counsel] by the procedural device of an assignment of the corporation's claims to the lay individual." *Id.* at 23, citing *Heiskell v. Mozie*, 82 F.2d 861 (D.C.Cir.1936) and *Mercu-Ray Industries, Inc. v. Bristol-Myers Co.*, 392 F.Supp. 16 (S.D.N.Y.1974), *aff'd.* mem., 508 F.2d 837 (2d Cir.1974).

If Shughart, Thomson & Kilroy P.C.; Hush, Blackwell, Sanders LLP; and Vinson & Elkins, LLP did not negligently omit these authorities in support of their assertion that the individual plaintiff should not be substituted then the law firms intentionally omitted this line of federal cases because of the circumstances of this action where the federal antitrust complaint against the defendants' monopoly cartel at ¶¶ 399-424 on pgs. 79-84 avers incontrovertible facts that the defendants were engaged in depriving MSC of counsel to complete their monopolization of the national market for hospital supplies delivered electronically. See Exb. 2 MSC complaint pgs. 79-84.

At paragraph 406 the complaint expressly states;

“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 4, 2004 to February 3rd, 2005, all originating from the cartel’s agents Shughart Thomson and Kilroy’s past and current share holders.”

MSC v. Neoforma et al complaint at ¶ 406 on pg. 81.

The public interest cited by *National Independent Theater Distributors, Inc. v. Buena Vista Distribution Co.*, 748 F.2d 602 (11th Cir.1984) is inapposite to the considerable public interest against the artificial inflation of hospital supplies averred against the defendants and certainly the concern that the pro se plaintiff will make mistakes on the applicable law is belied by the wholesale negligence and intentional misrepresentation of applicable case law, the Federal Rules of Civil Procedure (in the present instance even failing to brief the determinative rules) and the deliberate misrepresentation of the express language of federal statutes (absurdly stating there is no private right of action under the USA PATRIOT Act despite even the Tenth Circuit’s determination in its sanction order in *Medical Supply I* that there are) and the fraudulent misrepresentation of the contents of the plaintiff’s complaint repeatedly practiced by the defendants’ law firms. *National Independent Theater Distributors* even if cited to misuse its public policy analysis for the perversion of justice is mere persuasive authority in this jurisdiction (The corporation in *Tal v. Hogan*, 453 F.3d 1244 (10th Cir., 2006) was not dissolved) and expressly states that the choice to permit an individual assignee to continue through substitution is up to the discretion of the court:

“Fed.R.Civ.P. 25(c) speaks to this question; it governs the substitution of parties during pending litigation due to a transfer of interest through corporate dissolution. *Froning’s, Inc. v. Johnston Feed Service, Inc.*, 568 F.2d at 110; *Panther Pumps & Equipment Co. v. Hydrocraft, Inc.*, 566 F.2d 8, 23 (7th Cir.1977), cert. denied, 435 U.S. 1013, 98 S.Ct. 1887, 56 L.Ed.2d 395 (1978). The rule states, in pertinent part,

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

The decision whether to allow substitution is discretionary. *Collateral Control Corp. v. Deal (In re Covington Grain Co.)*, 638 F.2d 1357, 1360 (5th Cir. Unit B 1981); *Prop-Jets, Inc. v. Chandler*, 575 F.2d 1322, 1324 (10th Cir.1978); *Fontana v. United Bonding Insurance Co.*, 468 F.2d 168, 170 (3d Cir.1972). In this case, the district court refused substitution because Patterson's participation had been and would continue to be highly disruptive of the orderly administration of the litigation.”

National Independent Theatre Exhibitors, Inc. v. Buena Vista Distribution Co., 748 F.2d 602 at 610 (C.A.11 (Ga.), 1984).

The court in *Jones v. Niagara Frontier Transp. Authority*, 722 F.2d 20 upheld denial of the plaintiff assignee’s capacity or standing to represent claims that were formerly those of a corporation out of the public interest in protecting the court against the incompetence of a *pro se* litigant:

“We see no compelling argument for allowing Jones to circumvent the general rule. The district court, based on its years of dealing with Jones, was "unable to find with any quantum of confidence that Jones possesses the level of legal sophistication necessary to present this case." Opinion at 5. Jones's performance in this Court supports this view. He has demonstrated neither any particular legal skills, nor comprehension of pertinent legal concepts such as jurisdiction, venue, and standing. For example, he contends that the district court should have upheld his claim of standing to sue in his individual capacity because of a "preponderance of allegations." (Jones Brief on Appeal at 48.) He also asks that we transfer venue of the action to the District of Columbia because the influence of certain defendants in the Buffalo area is too great and because he wishes to subpoena witnesses from the United States Congress who participated in fashioning minority business enterprise legislation. (Id. at 59.) Plainly the district court's refusal to relax the general rule to allow Jones to prosecute Development's claim was proper.”

Jones v. Niagara Frontier Transp. Authority, 722 F.2d 20 at pg. 23 (C.A.2 (N.Y.), 1983).

In the present circumstances, the court has repeatedly relied on the pleadings of the defendants’ law firms which were seemingly unfamiliar with even the applicable Missouri state law, quoted case law from before the change in the Missouri corporation chapter regarding dissolution, failed to exercise any diligence before signing pleadings and otherwise deceived the court into overturning the US Supreme Court on issues like the right of a plaintiff to name some parties to an antitrust conspiracy as defendants and to bring a separate action against the General Electric co-conspirators (the clear error in the dismissal obtained in Medical Supply I and the plaintiff’s antitrust claims against the General Electric defendants¹). The defendants’ law firms fraudulently or mistakenly caused the pendant state law contract claims against US Bancorp and US Bank to be removed to federal

¹ *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955)

court and transferred to this jurisdiction even though this federal court was deprived of their jurisdiction while the appeal was pending.

The purpose the present case was transferred from the Western District of Missouri despite the monumental Missouri State public interest in the enforcement of federal antitrust laws against a scheme that was cutting its socially disadvantaged citizens off of Medicaid was merely to continue to obtain non law based outcomes in this forum. The outcomes were so irrational and against public policy and the express codification of that policy in federal law that the outcomes killed the defendants Neoforma, Inc and the interests of its thousands of shareholders in what its underwriter US Bancorp Piper Jaffray represented would have been competition to Novation LLC saving consumers 20 billion dollars in the national hospital supply market. The erroneous outcomes procured by the defendants and which they now are trying to protect from the Rule of Law killed Piper Jaffray, cause the defendant CEO of US Bancorp to lose his job and will likely cause his replacement Richard K. Davis to be indicted.

The sheer misconduct in this litigation by the defendants ultimately resulted in the administration's efforts to obstruct justice in the investigation of Novation LLC to be exposed. The delays obtained by the defendants' law firms merely caused VHA and UHC to insert themselves in the position of their subsidiary Novation LLC in subsequent antitrust violations, now against the individual plaintiff and after the dissolution of Medical Supply Chain, Inc. This is the greatest problem the defendants would have had in arguing *National Independent Theater Distributors, Inc. v. Buena Vista Distribution Co.*, 748 F.2d 602 (11th Cir.1984) and *Jones v. Niagara Frontier Transp. Auth.*, 722 F.2d 20 (2d Cir.1983) should prevent the individual plaintiff from proceeding as an assignee. The defendants' law firms failed to advise their clients to stop the wholesale violation of the nation's and Missouri's antitrust laws. In continuing to commit subsequent antitrust acts (and in the case of John K. Power's General Electric co-conspirators racketeering acts targeting the individual plaintiff) all against the plaintiff as a sole proprietor of an unincorporated electronic hospital supply business called Medical Supply Chain and this subsequent conduct has rendered all the defendants' capacity and standing arguments moot under the continuing antitrust conspiracy rule of *Zenith Radio Corp. v. Hazeltine Research*, 401 U.S. 321 (1971):

“In these instances, the cause of action for future damages, if they ever occur, will accrue only on the date they are suffered; thereafter the plaintiff may sue to recover them at any time within four years from the date they were inflicted. Cf. *Schenley Industries v. N.J. Wine & Spirit Wholesalers Assn.*, 272 F.Supp. 872, 887—888 (NJ 1967)” [emphases added]

Zenith Radio Corp v. Hazeltine Research, Inc, 401 U.S. 321 at 340, 91 S.Ct. 795, 28 L.Ed.2d 77 (1971). The defendants citing the outcomes procured in this court of course are arguing res judicata in Missouri State court despite its complete frivolity where this court expressly dismissed the pendant state claims without prejudice and the defendants subsequent acts cause new claims to accrue:

“Each time the arrangement precluded Cellar Door from competitively bidding for an event, a cause of action may have accrued to Cellar Door. Therefore, as in *Lawlor* and *Cream Top*, those causes of action that arose subsequent to the 1983 dismissal are not barred by res judicata. Accordingly, we must reverse the District Court's order granting summary judgment in favor of appellees.”

Cellar Door Productions, Inc. of Michigan v. Kay, 897 F.2d 1375 (C.A.6 (Mich.), 1990).

These subsequent Missouri antitrust claims are along with the pendant state antitrust claims from this action being tried in the 16th Circuit State of Missouri court where the outcome will conform to Missouri antitrust law, destroying VHA and UHC which has already lost its CEO over relying on the outcomes procured by the defendant's law firms in this court.

The plaintiff cannot even begin to list the injury to the State of Kansas and stakeholders in the provision of healthcare services in Kansas and Missouri as they attempted to plan for the development of long term research and medical education projects who were relying on the outcomes of this court to their detriment.

When the defendants procure repeated clearly erroneous sanctions against the plaintiff and the disbarment of the plaintiff's lawyer, they are defeating the relevance of a civil resolution to this controversy.

This court has repeatedly sanctioned the plaintiff, his property and associates for researching and correctly utilizing the applicable law while rewarding the defendants and their counsel for the clearest error and misrepresentation. The practice of this court has had the foreseeable effect of destroying Husch, Eppenberger, LLC an entity no longer in existence yet attributed in the signature block of its former attorney John K. Power as the law firm representing the Novation defendants. Certainly David A. Fenley made a similar oversight in acquiring Husch, Eppenberger, LLC and its not yet ripe liabilities for Husch, Blackwell, Sanders, LLP.

The court's practice of sanctioning those that research the law and rewarding those that don't or that deliberately misrepresent the applicable law has also deprived the defendants of the professional

service of their legal representatives who appear to have negligently omitted the case law from other federal jurisdictions regarding the doctrine of courts preventing dissolution of a corporation by its shareholder for the express purpose of initiating a law suit pro se. The plaintiff will never the less call the court's attention to the absence of this argument in the defendants' show cause response and since this litigation continually ends up in the Tenth Circuit, the plaintiff will differentiate the public policy behind the doctrine from the present circumstances where the complaint was authored and filed by an attorney and where the defendants have repeatedly engaged in extrinsic fraud to deprive the plaintiff of his counsel.

CONCLUSION

Whereas for the above reasons, the plaintiff respectfully requests that the court grant the plaintiff relief from the order striking the plaintiff's Motion to reopen its Memorandum and Order dismissing the plaintiff's claims, and from the Order to Show Cause recognizing the plaintiff had standing and properly filed a motion for New Trial.

Respectfully Submitted,

S/ Samuel K. Lipari

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CERTIFICATE OF SERVICE

I certify I have caused a copy to be sent via electronic case filing to the undersigned opposing counsel on 5/30/08.

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