

**IN THE STATE OF MISSOURI
JACKSON COUNTY DISTRICT COURT
AT INDEPENDENCE, MISSOURI**

SAMUEL K. LIPARI)
(Assignee of Dissolved)
Medical Supply Chain, Inc.))
<i>Plaintiff</i>)
) Case No. 0816-cv-04217
vs.)
)
Novation,LLC <i>et al.</i> ,)
<i>Defendants</i>)

PLAINTIFF’S MOTION FOR EXTENSION OR RECONSIDERATION

Comes now, the plaintiff Samuel K. Lipari appearing pro se and respectfully seeks extension or reconsideration of the court’s June 30th order requiring the plaintiff to answer the defendants’ motions to dismiss by July 3rd. 2008. The plaintiff respectfully requests consideration of the following:

1. During the case management hearing the court took up the plaintiff’s request for an extension to make a consolidated reply to the defendants’ dismissals thirty days from the last defendants’ answer or dismissal filing, the court consulted the defendants’ counsel who unanimously agreed then the court instructed the plaintiff to file a motion for the same.

2. John K. Power, counsel for Neoforma was present and agreed to the extension but has not yet filed an answer or dismissal on behalf of Neoforma, Inc. and his motion for dismissal on behalf of GHX, LLC, the entity that purchased Neoforma, Inc. for the purpose of concealing the prohibited antitrust misconduct of the cartel has not included Neoforma, Inc. in their motion to dismiss.

3. When service was returned un-established, the petitioner interrupted his vacation to obtain and alias summons to the address of Neoforma, Inc.’s successor in interest GHX, Inc.

4. The court ruled that the plaintiff would have only 4 days to answer the motions to dismiss and caused the ruling to be sent by mail where first the envelope was post marked in North Kansas City on July 1, 2008 and could not have been deposited in the plaintiff’s mailbox till the afternoon of July 2nd leaving just 24 hours to respond to all the motions for dismissal except Neoforma’s.

4. The court and the parties are not aided by a researched answer consolidating all the defendants' motions for dismissal and the court has overruled its case management hearing decision agreed to by the parties.

5. The defendants that have so far filed seeking dismissal for jurisdiction or failure to state a claim have:

a). The VHA and UHC executive defendants sought to have this court invalidate the legislature's amendment to Missouri's long arm statute and prior controlling precedent in *State ex rel. Metal Service Center of Georgia, Inc. v. Gaertner*, 677 S.W.2d 325 (Mo., 1984) and contrary to the Eastern District Appellate ruling in *Aldein v. Asfoor*, 213 S.W.3d 213 (Mo. App., 2007), the same defendants have filed sworn affidavits that create a factual controversy with previous court filings over the voluntary invocation of Missouri jurisdiction;

b). All of the defendants except Lathrop have sought to have this court impose claim preclusion in violation of this jurisdiction's controlling precedent barring res judicata where the element of identity fails. Res judicata does not exist where there is no identity of the things sued over in facts similar to this jurisdiction's controlling precedent in *Williams v. Finance Plaza*, 78 S.W.3d 175 (Mo. Ct. App., 2002) and the established authority of *Finley v. St. John's Mercy Medical Center*, 958 S.W.2d 593 at 596 (Mo. App. E.D., 1998) finding res judicata does not bar claims against subsequent conduct, consistent with the US Supreme Court decision on subsequent antitrust conduct being actionable in *Zenith Radio Corp v. Hazeltine Research, Inc*, 401 U.S. 321 at 340, 91 S.Ct. 795, 28 L.Ed.2d 77 (1971).

c). All of the defendants except Lathrop have sought to have this court violate the controlling precedent barring collateral estoppel or issue preclusion in *State ex rel. J.E. Dunn Const. Co. v. Fairness in Const. Bd. of City of Kansas City*, 960 S.W.2d 507 at 513 (Mo. App.W.D., 1997). Where there is a question of whether a decision was made on the merits as is the circumstance of the Kansas District litigation which has dismissed over the judge's disbelief, preventing evidence being heard on the fact driven issue of relevant market and not the merits is now raised in a motion for new trial under Rule 60b then a Motion for reconsideration under Rule 59 where the Kansas District Court made a show cause order against the

defendants (See exb 1), no preclusive effect on issues is given to the earlier decisions on relevant market definition under the controlling law of this jurisdiction. *State ex rel. J.E. Dunn Const. Co. v. Fairness in Const. Bd. of City of Kansas City*, 960 S.W.2d 507 at 512-514 (Mo. App.W.D., 1997).

d.) The Shughart Thompson & Kilroy represented defendants have stated that required elements for antitrust claims under state law are not present in the plaintiff's complaint (as they did to obtain the interim orders in Kansas District court through similar extrinsic fraud, repeatedly cited by the defendants) even though those same elements are pled with averments of fact to the Missouri state standard exactly where they are identified in the petition's table of contents and an outcome of dismissal would give rise to new actionable claims against the defendants for keeping the plaintiff out of the Missouri market for hospital supplies.

e) The GHX defendants have sought this court to expand the *Noerr-Pennington* doctrine of immunity for what the plaintiff has averred is unlawful conduct in litigation by the defendants that renders the immunity based on the right to petition government inapplicable. Most of the averred litigation misconduct took place in Kansas District Court where the Tenth Circuit has rendered private litigation outside of *Noerr-Pennington* following the majority of jurisdictions to consider the issue in finding the protection only applies to direct petitioning of government entities, not civil litigation misconduct. *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 208 F.3d 885 (10th Cir. 2000) ("*Cardtoons V*"). The en banc court held that *Noerr-Pennington* did not apply and that prelitigation communications between private parties were not immunized by the right to petition the government guaranteed by the First Amendment because there was no petition addressed to the government. State Court is the appropriate forum for claims based on extrinsic fraud committed in federal court. See *Chewning v. Ford Motor Company*, 2003 SC 109 (SC, 2003).

6. The plaintiff spoke to the attorney Peter Safirstein of Millberg Weiss at 212-946-9458 who represented that the Millberg securities class had settled with Neoforma obtaining the causes of action Neoforma, Inc. possessed against its underwriters including the US Bancorp and Piper Jaffray defendants on two different telephone conferences in June. The plaintiff has no reason to believe that Neoforma, Inc. will not enter and attempt to obtain a dismissal in this action.

7. The complexity of antitrust litigation and its controlling precedents requires the full input of the parties to assist the court in fashioning a durable decision.

Whereas for the above reasons the plaintiff respectfully requests that the court grant an extension or otherwise reconsider its June 30th order requiring the dismissals to be answered on July 3rd, 2008 and instead order the dismissals answered 30 days after Neoforma's response.

Respectively submitted,

S/Samuel K. Lipari

Samuel K. Lipari

Pro se

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 7th day of July, 2008, by email to:

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Pro se