

**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>)	

**MOTION TO REQUIRE DEFENDANT LATHROP & GAGE, L.C. TO MAKE A MORE
DEFINITE ANSWER UNDER RULE 55.27(d)**

Comes now, the plaintiff Samuel K. Lipari appearing *pro se* and respectfully requests that the court require defendant Lathrop & Gage, L.C. to make a more definite answer under Rule 55.27(d).

STATEMENT OF FACTS

1. In their initial but late first responsive pleading, the defendant Lathrop & Gage, L.C. repeatedly denies each material fact related to the chargeable conduct averred by the plaintiff that Lathrop & Gage, L.C. and Lathrop & Gage, L.C.'s clients participated in.
2. The defendant Lathrop & Gage, L.C.'s answer does not distinguish between facts known to Lathrop & Gage, L.C.'s attorneys in service to Governor Blunt and the firm's other clients and therefore are imputed to be the knowledge of Lathrop & Gage, L.C. and are denied as unknown in the answer and facts not known to Lathrop & Gage, L.C. and its employees and agents.
3. Lathrop & Gage, L.C.'s responses lack the requisite detail to adjudicate the claims of the plaintiff without invasive discovery that would otherwise be spared Lathrop & Gage, L.C., its attorneys and clients.

SUGGESTION IN SUPPORT

Rule 55.27(d) motion for more definite statement provides a tool to efficiently resolve claims and to lessen the burden of discovery on the parties and the court:

"The Missouri rules of civil procedure require fact pleading. Rule 55.08 provides: "A pleading that sets forth an affirmative defense or avoidance shall contain a short and plain statement of the facts showing that the pleader is entitled to the defense or avoidance." The goal of fact pleading is the quick, efficient, and fair resolution of disputes. Fact pleading identifies, narrows and defines the issues so that the trial court and the parties know what issues are to be tried, what discovery is necessary, and what evidence may be admitted at trial. *Luethans v. Washington University*, 894 S.W.2d 169, 171-172 (Mo. banc 1995); *ITT Commercial Finance v. Mid-Am. Marine*, 854 S.W.2d

371, 377 (Mo. banc 1993); *Walker v. Kansas City Star Co.*, 406 S.W.2d 44, 54 (Mo.1966) (quoting *Johnson v. Flex-O-Lite Mfg. Corp.*, 314 S.W.2d 75, 79 (Mo.1958)).

The proper remedy when a party fails to sufficiently plead the facts is a motion for more definite statement pursuant to Rule 55.27(d). Rule 55.27(d) provides:

" A party may move for a more definite statement of any matter contained in a pleading that is not averred with sufficient definiteness or particularity to enable the party properly to prepare responsive pleadings or to prepare generally for trial when a responsive pleading is not required. If the motion is granted and the order of the court is not obeyed within ten days after notice of the order, or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just."

State ex rel. Harvey v. Wells, 955 S.W.2d 546 at pg.546 (Mo., 1997).

The lack of details in the defendant's answer strongly suggests that Lathrop & Gage, L.C., does not understand the gravamen of its answer or the repercussions. There is no reason more Missouri law firms must fall to this controversy like Fortune 100 companies:

"15. *See generally* LAW GOVERNING LAWYERS § 120(1)(b) ("A lawyer may not knowingly make a false statement of fact to the tribunal."); *id.* cmt. c ("*A lawyer's knowledge.* . . . A lawyer's knowledge may be inferred from the circumstances. Actual knowledge does not include unknown information, even if a reasonable lawyer would have discovered it through inquiry. However, a lawyer may not ignore what is plainly apparent, for example, by refusing to read a document . . . A lawyer should not conclude that testimony is or will be false unless there is a firm factual basis for doing so. Such a basis exists when facts known to the lawyer or the client's own statements indicate to the lawyer that the testimony or other evidence is false."). The Reporter's Note to cmt. c recognizes that some courts have applied a "conscious ignorance" test for knowledge, citing *Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 590 (9th Cir. 1983) (in view of other facts known to the law firm, it could not accept at face value client's denial of known fact)."

In re Food Management Group, LLC, Case No. 04-22880 at fn 15 (ASH) (Bankr. S.D.N.Y. 1/23/2008) (Bankr. S.D.N.Y., 2008)

The court has a nondiscretionary duty to order Lathrop & Gage, L.C. to amend its answer and provide more definite responses.

Rule 55.27(d) clearly requires entry of an order that the offending pleading be amended within a period of time. While the trial court is allowed discretion regarding the amount of time within which the pleading must be amended, and the appropriate sanction in the event the pleading is not amended, the trial court is not allowed the discretion to ignore the fact pleading requirement of Rule 55.08."

State ex rel. Harvey v. Wells, 955 S.W.2d 546 at pg.546 (Mo., 1997)

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 13th day of May, 2008, by first class mail postage prepaid to:

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S/Samuel K. Lipari

Samuel K. Lipari