

invasive form of deposition, that of a corporate entity by the plaintiff was evidence of Shughart, Thomson & Kilroy, P.c. intentionally participating in 28 U.S.c. §455(a) bias or prejudice. See Exb. 2.

7. The plaintiff sought to contact the defendants' counsel by phone but did not resolve the dispute. See Exb 3.

8. The plaintiff will be prejudiced by the dispositive motion schedule which has not been changed and will allow the defendants evidence in summary judgment motion trials while depriving the plaintiff of evidence to support his summary judgment motion that would allow this action to conclude before going to jury and by depriving the plaintiff of evidence to refute the continued willingness of Shughart, Thomson & Kilroy, P.c. attorneys to make the grossest misrepresentations of fact to defraud the court.

9. The plaintiff is without legal representation at the proposed deposition solely because of the misconduct of the defendants described at length in the complaint and the preceding antitrust action, the plaintiff attempted to substitute with Dennis Hawver with the knowledge that Hawver would be retiring and leaving the country, however Hawver was impaired by this court's unlawful threats to injure the plaintiff and his counsel for being right at law in *Medical Supply Chain, Inc. v Neofarma et al.*

10. The plaintiff attempted to obtain replacement counsel and as documented in the settlement brief, the defendants through Shughart, Thomson & Kilroy, P.c. made *ex parte* misrepresentations to potential counsel solely to prevent the plaintiff from obtaining replacement counsel.

MEMORANDUM IN SUPPORT

The plaintiff is entitled to a protective order preventing the defendants from deposing him until the defendants have consented to jurisdiction under Rule 26 and 30 which applies to both the plaintiff and the defendants equally. The defendants have constructively withdrawn from participation in Rule 26's provisions for pretrial discovery with frivolous *per se* blanket protective order requests suspending the plaintiff's discovery while the defendants counsel Shughart, Thomson & Kilroy, P.c. is seeking to compel the plaintiff to produce information like addresses of witnesses in the possession of the defendants and their agents but not possessed by the plaintiff. Shughart, Thomson & Kilroy, P.c. is also seeking to obtain sanctions for the plaintiff's *production* of relevant evidence supporting the paragraphs of the plaintiff's complaint. This is even in light of the plaintiff serving the documents to the defendants in indexed form on a conveniently searchable disc, with an informative description of each.

A party cannot approach its obligation to make good faith discovery however it chooses as to certain matters, and at the same time expect to have the case proceed in a normal fashion as to other issues. *Haney v Woodward & Lothrop, Inc.*, 330 F.2d 940, 945 (4th Cir. 1964), The discovery rules in federal court are applicable to both parties equally. Rule 26(b)(1) specifies that:

"Parties may obtain discovery regarding any matter not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter." [01P11k: is <lded]

The defendants frivolously seek that the plaintiff identify all internal US Bancorp documents or otherwise the deposition of US Bancorp is to be protected against:

"It makes no sense whatsoever to say that the cartel is not relevant, and therefore cartel information will not be produced, because the plaintiff who seeks such discovery has failed to produce, from what has been withheld from it, evidence to conclusively establish its case. As the court said *Beier v. Savarona Ship Corporation*, 26 F.Supp. 599 (E.D.N.Y.1939):

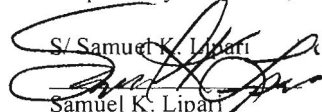
The requirement of materiality does not ... compel the person seeking discovery definitely to prove materiality before being entitled to a discovery. Such an interpretation of the rule would place upon it a narrow construction which would severely limit the bounds of the discovery procedure. It might compel a party to know what was in the documents before he had seen them. One of the basic purposes of the new Rules is to enable a full disclosure of the facts so that justice might not move blindly,

Radio Corporation of America v. Rauland Corporation, 18 F.R.D. 440,444-45 (N.D.Ill.1955)."

United Nuclear Corp. v. General Atomic Co., 96 N.M. 155 at 254-255,629 P.2d 231 (N.M., 1980) A case which also concerned breach of fiduciary duty, fraud and contract disputes.

The deposition of the plaintiff will prejudice the plaintiff's case by providing the defendants material for summary judgment defense while they have deprived the plaintiff of discovery under Rule 26 and Rule 30.

Respectfully Submitted,



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

Pro se

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via email, on this 15th day of

May, 2008 to:

MARK A. OLTHOFF KS Fed. #70339
SHUGHART THOMSON & KILROY, P.c.
1700 Twelve Wyandotte Plaza
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(816) 374-0509 (FAX)

ANDREW M. DeMAREA KS #16141
JAY E. HEIDRICK KS #20770
SHUGHART THOMSON & KILROY, P.C
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9225 Indian Creek Parkway
Overland Park, Kansas 66210
ademarea@stklaw.com
jheidrick@stklaw.com
(913) 451-3355
(913) 451-3361 (FAX)

ATTORNEYS FOR DEFENDANTS

S/ Samuel K. Lipari

Samuel K. Lipari



A Professional Corporation

Jay E. Heidrick
jheidrick@stkLaw.com
Direct Dial (816) 691-3743
Direct Fax (816) 222-0519
Fax (913) 451-3361

May 8, 2008

VIA EMAIL

Mr. Samuel Lipari
297 NE Bayview
Lee's Summit, MO 64064

Re: *Lipari vs. U.S. Bancorp, et al.*

Dear Sam:

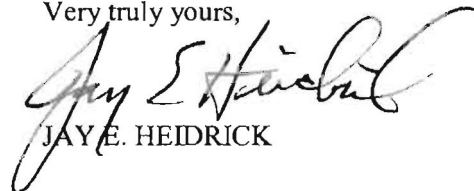
We received your Notice of Deposition *Duces Tecum* for a corporate designee from US Bancorp on June 2, 2008 at 9:00 a.m. in Minneapolis, Minnesota. We do not believe your Notice of Deposition complies with Rule 30(b)(6) of the Federal Rules of Civil Procedure. Pursuant to Rule 30(b)(6), a party seeking a corporate designee deposition shall "describe with reasonable particularity the matters on which the examination is requested." You seek a designee to discuss (1) "the conduct of US Bancorp's current or former employees, the employees of its subsidiaries, and the conduct of its agents described with detail in ~ 1-263 of the plaintiffs complaint," and (2) "all documents in [defendants] possession or control or the possession of its agents related to the conduct of its agents described in detail in ~ 1-263 of plaintiffs complaint." Such a notice does not describe with reasonable particularity the matters of examination and therefore does not comply with Rule 30(b)(6).

Likewise, your *duces tecum* request seeks the defendants to provide "all documents in its possession or control or the possession of its agents related to the conduct of its agents described in detail in ~ 1-263 of the plaintiffs complaint." Federal Rule of Civil Procedure 30(b)(5) states that all *duces tecum* requests shall be governed by Rule 34 of the Federal Rules of Civil Procedure. As we have previously briefed in our pending Motion for Protective Order, broad generic phrases such as "all documents related to" are facially overly broad and unduly burdensome. Therefore, your *duces tecum* request also does not comply with the Rules of Civil Procedure.

Please accept this as a good faith attempt to resolve this dispute. If we do not hear from you by May 15, we will file a Motion for a Protective Order. As always, I am available for a call to discuss this issue should you feel it would be beneficial.

Thank you for your attention to this matter. I look forward to hearing from you.

Very truly yours,



JAY E. HEIDRICK

JEH:amo

Twelve Wyandotte Plaza, 120 W. 12th Street, Kansas City, MO 64105. (816) 421-3355. www.stklaw.com
KANSAS CITY, MO. OVERLAND PARK, KS. SPRINGFIELD, MO. DENVER, CO. PHOENIX, AZ. ST. JOSEPH, MO

2281572.01

Exb 1

Mr. Samuel Lipari
May 8, 2008
Page 2

Enclosure
cc: Mark A. Olthoff, Esq.

Medical Supply Chain

Empowering Health
OpLilll7;t); S1l/rJ1yChitin N.t'uu«!

May 15,2008

Jay Heidrick
Attorney for US Bank and US Bancorp
Shughart Thomson & Kilroy
32 Corporate Woods, Suite 1100
9225 Indian Creek Parkway
Overland Park, KS 66210
jheidrick@stklaw.com

RE: Defendant's Objection to Deposition

Dear Jay,

Your objection to the deposition of US Bancorp with relative documents is frivolous. The request for deposition specifies the particular paragraphs and documents US Bancorp will be deposed over. Your objection to discovery when coupled with your blanket objection to the production of discoverable documents while at the same time aggressively and abusively seeking repetitive productions and a deposition from me is evidence of a belief held by you and your clients that the controlling law of this jurisdiction will not be used in determining the responsibilities of the defendants in discovery. As such it exhibits a conscious participation with the court in 28 U.s.c. §455(a) bias or prejudice and a willingness to exploit a predisposition of the court that is wrongful or inappropriate,

Sincerely,
Samuel Lipari
Medical Supply Chain
297 NE Bayview
Lee's Summit, MO 64064
Phone: 816.365. 1306
[sailil@M~ilica{ _Suppl_v\(hai_ r1 COHL](mailto:sailil@M~ilica{ _Suppl_v(hai_ r1 COHL)
www.MedicalSupplyChain.uLLT1

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www -H.d('o'r/ ~llpph-(/ulll mm

----- Original Message -----
From: [Jay Heidrick](#)
To: [Samuel Lipari](#)
Cc: [Mark Olthoff](#) ; [Andy DeMarea](#) ; [Jay Heidrick](#)
Sent: Thursday, May 15, 2008 11:50 AM
Subject: RE: Deposition

Sam-

Thanks for your letter setting forth your position although I respectfully disagree with you. Based on the contents of your letter it does not appear that a phone conference would be beneficial to resolve this dispute. If you disagree, please let me know so we can confer. Otherwise, I will proceed with filing a Motion for Protective Order on your Notice of Deposition. Please contact me if you have any questions. Thanks

Jay

Jay Heidrick
Attorney At Law
Shughart Thomson & Kilroy
32 Corporate Woods, Suite 1100
9225 Indian Creek Parkway
Overland Park, KS 66210
tel: 816.691.3743
fax: 816.222.0519

<http://www.stklaw.com>

jheidrick@stklaw.com

From: Samuel Lipari [mailto:SamL@MedicalSupplyChain.com]
Sent: Thursday, May 15, 2008 11:38 AM
To: Jay Heidrick
Cc: Mark Olthoff; Andy DeMarea
Subject: Deposition

Medical Supply Chain

*Ellipawentlig HealJ-s),st.ms1
OprimizilJ,- SUPP(!' Chml &suhs!*

May 15, 2008

Jay Heidrick
Attorney for US Bank and US Baneorp
Shughart Thomson & Kilroy
32 Corporate Woods, Suite 1100
9225 Indian Creek Parkway
Overland Park, KS 66210
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Samuel Lipari
Medical Supply Chain
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Lee's Summit, MO 64064
Phone: 816.365. 1306

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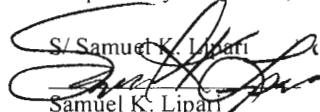
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Respectfully Submitted,

S/ Samuel K. Lipari


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297 NE Bayview
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816-365-1306
saml@medicalsupplychain.com
Pro se

CERTIFICATE OF SERVICE

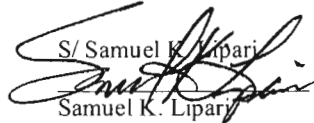
I hereby certify that a copy of the above and foregoing was served via email, on this 15th day of

May, 2008 to:

MARK A. OLTHOFF KS Fed. #70339
SHUGHART THOMSON & KILROY, P.C.
1700 Twelve Wyandotte Plaza
120 W 12th Street
Kansas City, Missouri 64105
molthoff@stklaw.com
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ANDREW M. DeMAREA KS #16141
JAY E. HEIDRICK KS #20770
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9225 Indian Creek Parkway
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ademarea@stklaw.com
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(913) 451-3355
(913) 451-3361 (FAX)

ATTORNEYS FOR DEFENDANTS

S/ Samuel K. Lipari

Samuel K. Lipari



Jay E. Heidrick
jheidrick@stklaw.com
Direct Dial (816) 691-3743
Direct Fax (816) 222-0519
Fax (913) 451-3361

May 8, 2008

VIA EMAIL

Mr. Samuel Lipari
297 NE Bayview
Lee's Summit, MO 64064

Re: Lipari vs. U.S. Bancorp, et al.

Dear Sam:

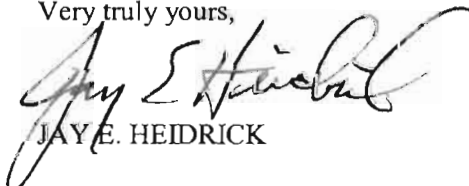
We received your Notice of Deposition *Duces Tecum* for a corporate designee from US Bancorp on June 2, 2008 at 9:00 a.m. in Minneapolis, Minnesota. We do not believe your Notice of Deposition complies with Rule 30(b)(6) of the Federal Rules of Civil Procedure. Pursuant to Rule 30(b)(6), a party seeking a corporate designee deposition shall "describe with reasonable particularity the matters on which the examination is requested." You seek a designee to discuss (1) "the conduct of US Bancorp's current or former employees, the employees of its subsidiaries, and the conduct of its agents described with detail in ¶¶ 1-263 of the plaintiff's complaint," and (2) "all documents in [defendants] possession or control or the possession of its agents related to the conduct of its agents described in detail in ¶¶ 1-263 of plaintiff's complaint." Such a notice does not describe with reasonable particularity the matters of examination and therefore does not comply with Rule 30(b)(6).

Likewise, your *duces tecum* request seeks the defendants to provide "all documents in its possession or control or the possession of its agents related to the conduct of its agents described in detail in ¶¶ 1-263 of the plaintiff's complaint." Federal Rule of Civil Procedure 30(b)(5) states that all *duces tecum* requests shall be governed by Rule 34 of the Federal Rules of Civil Procedure. As we have previously briefed in our pending Motion for Protective Order, broad generic phrases such as "all documents related to" are facially overly broad and unduly burdensome. Therefore, your *duces tecum* request also does not comply with the Rules of Civil Procedure.

Please accept this as a good faith attempt to resolve this dispute. If we do not hear from you by May 15, we will file a Motion for a Protective Order. As always, I am available for a call to discuss this issue should you feel it would be beneficial.

Thank you for your attention to this matter. I look forward to hearing from you.

Very truly yours,



JAY E. HEIDRICK

JEH:amo

Mr. Samuel Lipari
May 8, 2008
Page 2

Enclosure
cc: Mark A. Olthoff, Esq.



Medical Supply Chain

*Empowering Health Systems,
Optimizing Supply Chain Results!*

May 15, 2008

Jay Heidrick
Attorney for US Bank and US Bancorp
Shughart Thomson & Kilroy
32 Corporate Woods, Suite 1100
9225 Indian Creek Parkway
Overland Park, KS 66210
jheidrick@stklaw.com

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Dear Jay,

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Sincerely,
Samuel Lipari
Medical Supply Chain
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Lee's Summit, MO 64064
Phone: 816.365.1306
SamL@MedicalSupplyChain.com
www.MedicalSupplyChain.com

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Exb 2

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

From: Jay Heidrick
To: Samuel Lipari
Cc: Mark Olthoff ; Andy DeMarea ; Jay Heidrick
Sent: Thursday, May 15, 2008 11:50 AM
Subject: RE: Deposition

Sam-

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Jay

Jay Heidrick <i>Attorney At Law</i>
Shughart Thomson & Kilroy 32 Corporate Woods, Suite 1100 9225 Indian Creek Parkway Overland Park, KS 66210 tel: 816-691-3743 fax: 816-222-0519 http://www.stklaw.com
jheidrick@stklaw.com

From: Samuel Lipari [mailto:Sam@MedicalSupplyChain.com]
Sent: Thursday, May 15, 2008 11:38 AM
To: Jay Heidrick
Cc: Mark Olthoff; Andy DeMarea
Subject: Deposition



Medical Supply Chain

*Empowering Health Systems,
Optimizing Supply Chain Results!*

May 15, 2008

Jay Heidrick
Attorney for US Bank and US Bancorp
Shughart Thomson & Kilroy
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Sincerely,

Samuel Lipari
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Lcc's Summit, MO 64064
Phone: 816.365.1306

SamI@MedicalSupplyChain.com
www.MedicalSupplyChain.com

*****PRIVATE AND CONFIDENTIAL*****

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