

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

SAMUEL K. LIPARI,	)	
<i>Plaintiff,</i>	)	
v.	)	Civil No. 07-0849-CV-W-FJG
GENERAL ELECTRIC COMPANY, <i>et al.</i> ,	)	
<i>Defendants.</i>	)	

**REPLY SUGGESTION TO DEFENDANT SEYFARTH SHAW LLP'S  
OPPOSITION SUGGESTION OPPOSING RULE 59 RELIEF**

Comes now the plaintiff Samuel K. Lipari and replies to Seyfarth Shaw LLP's suggestion.

**I. Seyfarth's Authority Inapplicable to Plaintiff's Rule 59 Motion**

The plaintiff's Rule 59 Motion was timely. A motion to alter or amend the judgment must be served no later than ten days after the entry of "the judgment," Fed. R. Civ. P. 59(e), and, if timely filed, tolls the time in which to file a notice of appeal until the district court disposes of the motion, Fed. R. App. P. 4(a)(4)(A)(iv). *Auto Services Company, Inc. v. KPMG, LLP*, No. 07-3164 at pg. 3 (8th Cir. 8/8/2008). A Rule 59(e) motion to challenge such an order may only be filed after the district court enters the final judgment. *Maristuen v. Nat'l States Ins. Co.*, 57 F.3d 673, 679 (8th Cir. 1995) "'Litigants have a right . . . to file such motions.' *Dubose v. Kelly*, 187 F.3d 999, 1002 n.1 (8th Cir. 1999)." *Auto Services Company, Inc. v. KPMG* No. 07-3164 at pg. 5.

**A. Rule 59(e) is appropriate for clear error**

In *Capitol Indemnity v. Russellville Steel*, 367 F.3d 831 (8th Cir., 2004), the Eighth Circuit reversed a district court on an issue raised for the first time in a Rule 59(e) motion, when the reviewing court determined the trial court's memorandum and order was in clear error, despite new issue concerns under *Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 414 (8th Cir.1988).

This circuit states in "*Innovative Home Health Care, Inc. v. P.T.-O.T. Assocs. of the Black Hills*, 141 F.3d 1284, 1286 (8th Cir.1998) ("Rule 59(e) motions serve a limited function of correcting" manifest errors of law or fact or to present newly discovered evidence.) (citations omitted)." *Capitol Indemnity v. Russellville Steel*, 367 F.3d 831 at (8th Cir., 2004).

Rule 59 permits courts to correct "...manifest error of law." *Cosgrove v. Bartolotta*, 150 F.3d 729, 1998 WL 407709, at \*2 (7th Cir. July 22, 1998) "The rule essentially enables a district court to correct its own errors, sparing the parties and the appellate courts the burden of unnecessary appellate proceedings."

*Russell v. Delco Remy Div. of Gen. Motors Corp.*, 51 F.3d 746, 749 (7th Cir.1995). A court should correct a manifest error of law under Rule 59(e). Rule 59(e)'s strict time limit permits the correction of such a mistake at a relatively early, and consequently less expensive, stage in the process of the review of judgments. *Western Industries, Inc. v. Newcor Canada Limited*, 709 F.2d 16, 17 (7th Cir.1983); *Charles v. Daley*, 799 F.2d 343, 348 (7th Cir.1986). Or to correct findings of fact predicated on misunderstandings of governing law *Thompson v. Glades County Bd. of County Com'Rs*, 493 F.3d 1253 at 1261-1262 (11th Cir., 2007).

**B. Seyfarth's use of *Hagerman v. Yukon Energy Corp.*'s new argument rule is frivolous**

In falsely asserting the plaintiff has raised a new argument, J. Nick Badgerow MO Lic # 35885 shamelessly commits the same straw man fraud harshly condemned in *Limone v. Condon*, 372 F.3d 39 at 46 (1st Cir., 2004) and which the defendants have used repeatedly to procure facially erroneous decisions despite notice of the unlawfulness. USA John Wood incorporated by reference the arguments from the defendants' earlier motions and replies in support of dismissal into Bradley J. Schlozman's motion for dismissal:

"Like Seyfarth Shaw's misleading arguments Schlozman has incorporated by reference according to footnote 4 at page 4 of Schlozman's motion including co-conspirators must be in privity (improperly citing state law<sup>2</sup> not, the far higher federal standard excluding privity this court is required to follow and ignoring Seyfarth's conduct is after the cited Kansas District Court decisions) USA John Wood misrepresents the current state of civil RICO law."

Plaintiff's Suggestion Opposing Schlozman's Dismissal (**exb. 1**) at pg. 9.

**C. Plaintiff's opposition to dismissals argued *Bridge v. Phoenix Bond & Indemnity Co.***

The plaintiff raised *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07-210 (U.S. 6/9/2008)'s finding on standing in his response suggestion opposing to the defendant Schlozman's tardy motion to dismiss three times at pages 8, 11 and 14 (see table of cases), alerting Hon. Judge Feranado J. Gaitan to the defendants' attempt to deceive the trial court and require an impermissible heightened RICO standing requirement:

"When courts have attempted to hold RICO complaints to a now discredited heightened standard of pleading<sup>1</sup> it has been to avoid the temptation "to dress a garden-variety fraud and deceit case in RICO clothing." *Condict v. Condict*, 826 F.2d 923, 929 (10th Cir. 1987). The problem the USA John Wood has with invoking a non law based bias against RICO claims and subjecting the plaintiff to a heightened standard is that the claims against the GE defendants had been paired down (albeit through extrinsic fraud in getting the federal antitrust claims dismissed) to state law contract related misconduct. Then the defendants in concert committed numerous racketeering acts to interfere with even the resolution of the plaintiff's state claims. The US Supreme Court has rejected

the argument judges should intercede to prevent RICO from being used to prevent “over-federalization” of state law prohibited conduct: “Whatever the merits of petitioners' arguments as a policy matter, we are not at liberty to rewrite RICO to reflect their—or our—views of good policy” *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07-210 (U.S. 6/9/2008) (2008).”

Plaintiff’s Suggestion Opposing Schlozman’s Dismissal (**exb. 1**) at pg. 8

“US Attorney John Wood is attempting to deceive this court into overruling *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07-210 (U.S. 6/9/2008) (2008) and defying the US Supreme Court by imposing a heightened civil RICO pleading standard to throw out the plaintiff’s complaint on failure to plead a “pattern” despite having fourteen ! predicate acts by members of Schlozman’s enterprise and conspiracy along with continuing criminal activity by the conspirators in the Novation LLC enterprise to defraud Medicare and Medicaid. The US Attorney John Wood is attempting to defraud the court by expressly using the “garden-variety” misconduct argument at page 8 of his motion to dismiss that was specifically rejected by our nation’s highest court.”

Plaintiff’s Suggestion Opposing Schlozman’s Dismissal (**exb. 1**) at pg. 11

“Congress has determined what the requirements are for seeking redress in RICO. The latest Supreme Court ruling, (post dating USA John Wood’s authorities) *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07- 210 (U.S. 6/9/2008) has cautioned judges not to impose requirements that are not in the RICO statutes.”

Plaintiff’s Suggestion Opposing Schlozman’s Dismissal (**exb. 1**) at pg. 14

#### **D. Plaintiff argued petition alleged tangible and concrete property injury**

The plaintiff’s consolidated suggestion in opposition to the defendants’ motions for dismissal (**exb. 2**) directed Hon. Judge Fernando J. Gaitan to the parts of the plaintiff’s complaint that clearly pled the loss of business property as a result of the defendants’ RICO § 1962(c) prohibited conduct. The plaintiff’s suggestion table of contents clearly directs the reader to those specific averments related to property:

Petitions’ Averments Related To Discovery of Christopher McDaniel’ Extortion pg. 5; 1. Christopher McDaniel’ purchased 1600 N.E. Coronado after petitioner filed *Medical Supply Chain, Inc. v. General Electric Company, et al.*, case no. 03-2324-CM pg. 6; 2. Christopher McDaniel’ participated in extortion conduct after filing of *Lipari v. General Electric et al*, 16th Circuit Missouri case no. 0616- CV07421 pg. 6; 3. Christopher McDaniel’ Extortion Discovered before Injury pg. 7; Facts related to pleading of elements for each Hobbs Act Extortion Predicate count. (1) induced [the victim], with [the victim's] consent, to part with property pg. 24, (2) Property Extorted From Threatened Force, Violence, or Fear (including Fear of Economic loss) or Through Color of Official Right pg. 26, (3) in such a way as to adversely effect interstate commerce pg. 31; Extortion property requirement pg. 54; Retention of Extorted Property Under *Scheidler II* pg. 56.

Ownership of the concrete and tangible business office building at 1600 N.E. Coronado was clearly property the plaintiff's complaint alleged was taken, injuring the plaintiff in his business and the plaintiff's consolidated suggestion in opposition to the defendants including Seyfarth Shaw LLC's motions for dismissal clearly put Hon. Judge Feranado J. Gaitan on notice that the plaintiff's complaint met the RICO standing tangible business property injury requirement over title to an office building:

"126. The defendant Christopher M. McDaniel is the chief officer of Heartland Financial Group, Inc. and **knew of the *lis pendens* against the building but decided to participate in transferring the building to Heartland**, utilizing financing provided by GE's co-conspirator in keeping the petitioner out of the hospital supply market, US Bank." Petition at ¶ 126 on pg. 22." [Emphasis added]

Plaintiff's Cons. Suggestion in Opposition to Defendants' Motions to Dismiss (**exb. 2**) at pg. 6.

"163. The buyer Christopher M. McDaniel and Heartland Financial Group, Inc. **took the property with knowledge of the petitioner's claims against it and conspired with GE Transportation, General Electric and GE Capital to commit fraud on the court with City of Blue Springs, Missouri** officials under a mistaken legal theory that the petitioner still needed to obtain the city's approval (a term the petitioner had included in the contract without assigning himself a duty to secure the permission and could waive) and under a mistake over the clearly established contract principle that once GE started repudiating the contract, the petitioner was relieved of further duties." Petition at ¶ 137 on pg. 23." [Emphasis added]

Plaintiff's Cons. Suggestion in Opposition to Defendants' Motions to Dismiss (**exb. 2**) at pg. 6-7.

"The petition alleges that the defendant Christopher M. McDaniel was discovered by the petitioner after the proposed RICO amendment to have been participating in an attempt to extort the building at 1600 NE Coronado from the plaintiff with falsely procured testimony of Blue Springs City officials that Christopher M. McDaniel had prejudiced about the business and financial assets of the petitioner on behalf of the General Electric defendants."

Plaintiff's Cons. Suggestion in Opposition to Defendants' Motions to Dismiss (**exb. 2**) at pg. 7

Hon. Judge Feranado J. Gaitan was on notice that the plaintiff's complaint described other forms of concrete loss recognized by federal courts:

"The foreseeable results of Seyfarth Shaw LLP's role in the RICO conspiracy and RICO enterprise was to interfere with the petitioner's state court resolution of this controversy increasing the costs and delays of litigation, an injury squarely recognizable even in the context of bankruptcy litigation. See *First Capital Asset Management v. Brickellbush*, 218 F.Supp.2d 369 at 383, and at fn 44,45,46 (S.D.N.Y., 2002).

"There is no real question that **plaintiffs would not have incurred the expense of the adversary proceeding but for Sohrab's fraudulent transfers and acts of concealment.** Thus, the Court addresses only the related concepts of causal link and proximate cause (which often are conflated into one standard) in the body of this opinion." *First Capital Asset Management, id.* 218 F.Supp.2d at fn 44. See also *In re Motel 6 Securities Litigation*, 161 F.Supp.2d 227 at 235 (S.D.N.Y., 2001). **The petition demonstrate "the 'concrete loss' required of a RICO plaintiff.** See *Isaak v. Trumbull S & L*, 169 F.3d 390, 396 (6th Cir. 1999) (finding that plaintiff's RICO injury was ascertainable and definable by the time bankruptcy was filed)" *In re Jamuna Real Estate LLC*, 365 B.R. 540 at 556 (Bankr. E.D. Pa., 2007). [Emphasis added]

Plaintiff's Cons. Suggestion in Opposition to Defendants' Motions to Dismiss (**exb. 2**) at pg. 61.

Hon. Judge Feranado J. Gaitan was on notice that the plaintiff's complaint met the RICO standing tangible business property injury requirement in proceeds from the sale of the lease for \$350,000.00 to GE Transportation:

"167. Christopher M. McDaniel described the contacts with the city officials made by him and GE's agent attorneys to the petitioner where **he and GE's attorney misrepresented to the Blue Springs officials that the petitioner did not have "any money" when the petitioner had the property rights including the \$350,000.00 in cash for the lease buyout as a benefit from his bargain with GE.** The following day, the petitioner filed his corrected amended complaint in state court changing the Heartland entity to the correct corporation and identifying this plan to commit fraud at the jury trial." Petition at ¶ 167 on pg. 28. [Emphasis added]

Plaintiff's Cons. Suggestion in Opposition to Defendants' Motions to Dismiss (**exb. 2**) at pg. 7.

#### **E. Plaintiff suggestions and petition stated St. Luke Healthsystem's interest in the matter**

Hon. Judge Feranado J. Gaitan was on notice that the plaintiff's complaint described the dimensions of St. Luke's interest in the criminal Medicare fraud scheme and the reward of Cancer Research funding to replace the funds the defendants could no longer launder through Neoforma, Inc.:

"174. Kansas state officials overlooked the misconduct of the Kansas Attorney Discipline Office officials and their agents including Stanton Hazlett, Gene E. Schroer, John J. Ambrosio, Isaac L. Diel, Rex A. Sharp and Gayle B. Larkin and the misconduct of Kansas Highway Patrol officers in targeting the petitioner's trucks **for the purpose of depriving the petitioner of the means to seek redress because of the belief that Kansas would benefit from \$2 Billion dollars a year in health science research grants the Novation LLC hospital St. Luke's at 4401 Wornall in Kansas City, Missouri** would start receiving in a cancer research program headed currently by Thomas Jeffery Wieman, M.D. that would include the University of Kansas Medical School which the Novation LLC hospital St. Luke's needed to give the appearance it could qualify as a major research center." Petition at ¶ 174 pg. 30." [Emphasis added]

Plaintiff's Cons. Suggestion in Opposition to Defendants' Motions to Dismiss (**exb. 2**) at pg. 19.

#### **II. Seyfarth's Recusal Arguments**

The plaintiff has made a timely § 455 motion for recusal in this matter or controversy and Hon. Judge Feranado J. Gaitan did not answer or disclose his 28 U.S.C. § 455(b)(5)(i) directorship of St. Luke's Healthcare System, a party in interest. The plaintiff hereby incorporates his reply suggestion to the separate defendant Bradley J. Schlozman briefing this issue starting at pg. 4. See Reply Suggestion (**exb. 3**). Pgs. 4-8.

When Hon. Judge Feranado J. Gaitan discloses his interest as is permitted and appropriate under § 455(e), the plaintiff will if warranted file an affidavit for recusal pursuant to 28 U.S.C. § 144. The plaintiff

has not yet learned if Hon. Judge Feranado J. Gaitan remained a director of St. Luke's Healthsystem, Inc. after learning of its ownership of Novation LLC in *Lipari v. General Electric et al* 06-0573-CV-W-FJG. See (exb. 4 and 5). The plaintiff has not yet learned if Hon. Judge Feranado J. Gaitan was still a director of St. Luke's Healthsystem, Inc. when the matter was again assigned to him on the second removal. Also the plaintiff has not been informed yet by Hon. Judge Feranado J. Gaitan if the court compromised its independence by being in communication with the 16<sup>th</sup> Circuit State of Missouri court hearing the plaintiff's state law antitrust action against Novation LLC or the Kansas District Court hearing the plaintiff's claims against Novation LLC and its co-conspirator US Bancorp, Inc. or whether Hon. Judge Feranado J. Gaitan was a director of St. Luke's Healthsystem, Inc. when he dismissed the plaintiff's federal racketeering claims over standing when such a dismissal is a clear error under both the alleged petition facts and law brought to the attention of the court during the plaintiff's opposition to dismissal. Such circumstances would require recusal or the resignation of Hon. Judge Feranado J. Gaitan under *Martinez v. Winner*, 771 F.2d 424 at 435 (C.A.10 (Colo.), 1985)<sup>1</sup>.

### **III. Seyfarth Shaw's Kansas Show Cause Argument**

The Kansas District Court has not made a final judgment in the plaintiff's action *Medical Supply Chain, Inc. v. Neoforma (Novation LLC) et al*. On August 11, 2008 the Tenth Circuit denied the defendant/appellee's motion to dismiss the appeal of the plaintiff's Rule 59 Motion. See (exb 6) A timely Rule 59(e) motion "deprives the judgment of finality." *Derrington-Bey v. D.C. Dep't of Corrections*, 39 F.3d 1224 at 1225 (D.C.Cir.1994). Under Eighth Circuit controlling authority *MSCI v Neoforma (Novation LLC)* and *MSCI v GE* are not final judgments for claim or issue preclusion. See *Interstate Power Co. v. Kansas City Power & Light Co.*, 992 F.2d 804, 807 (8th Cir. 1993) ("Under the last clause of Rule 54(b), a non-final order `is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.'").

The Western District of Missouri is not free to use much of the decisions cited by Hon. Judge Feranado J. Gaitan because their interim nature bars any *res judicata* effect via claim and issue preclusion.

---

<sup>1</sup> (vacated and remanded on other grounds in *Tyus v. Martinez*, 475 U.S. 1138, 106 S.Ct. 1787, 90 L.Ed.2d 333 (1986) and reversed in part by *Martinez v. Winner*, 778 F.2d 553 (10th Cir.1985)).

*Liberty Mut. Ins. Co. v. FAG Bearings Corp.*, 335 F.3d 752 (8th Cir., 2003) reaffirms the controlling law of this jurisdiction that there must be a final judgment on the merits.

A federal criminal complaint was filed in the Kansas City, Missouri office of the FBI by the plaintiff in 2005 over conduct involving extrinsic fraud in *Medical Supply Chain, Inc. v. Neoforma [Novation LLC], et al*, W.D. MO case no. 05-0210 USA John Wood as successor to Bradley J. Schlozman has yet to responded to the complaint. This is the unfairness addressed in the Restatement (Second) of Judgments that prevents collateral *estoppel* after a final judgment on the merits.

A similarly situated party to a W.D. of Missouri private or civil litigation matter or controversy has also been deprived of counsel and also “starved out” to allow the defendants’ law firms Husch Blackwell Sanders LLP, Shughart Thomson & Kilroy PC, and Lathrop & Gage LC along with Shughart Thomson & Kilroy PC’s successor in interest Polsinelli Shalton Flanigan Suelthaus PC to obtain his farm land property through extrinsic fraud:

“Apparently lost in the shuffle of activity when Mr. Sherwood was arrested and detained, is the fact that Judge Venters had expressly stated that, if Mr. Sherwood retained bankruptcy counsel and posted a bond prior to the sale, Judge Venters would grant Mr. Sherwood’s request to stay the sale. Just prior to his arrest, Mr. Sherwood had retained Craig Collins to represent him in the bankruptcy and Mr. Sherwood’s father had agreed to post bond and had the financial ability to do so. Had Mr. Sherwood not been detained, there is good likelihood that the sale would have been stayed by Judge Venters based upon Mr. Sherwood’s retention of counsel and posting of bond.”

Defendant Sherwood’s August 8, 2008 Defendant’s Motion For Reconsideration Of Detention Order (**exb 7**) at pg. 5.

USA John Wood through AUSA Jane Pansing Brown opposed the release of Dustin Sherwood. (**exb 8**), even though Dustin Sherwood had been hired by the US Department of Agriculture Crop Insurance and needed to report to his new job. The Western District of Missouri Court denied release. See Order (**exb 9**).

## CONCLUSION

The plaintiff personally witnessed Joel Pelofsky a senior partner of Spencer Fane Britt & Browne, LLP representing Seyfarth Shaw LLP and a US Trustee decry the widespread use of extrinsic fraud that is crippling our government. On that occasion (on or about September 14, 2006) Mr. Joel Pelofsky called for the impeachment of Vice President Dick Cheney. Seyfarth Shaw LLP committed felonies that are also

RICO predicate acts to destroy Michael Lynch's ability to help the plaintiff obtain capital to enter the market for hospital supplies where the plaintiff would have been in competition with General Electric, Jeffrey Immelt's GHX LLC and Novation LLC's Medicare fraud scheme.

Seyfarth Shaw LLP argues for a legal dystopia where even in the Western District of Missouri that once the plaintiff is permitted by the cartel to enter and compete in the market for hospital supplies, reaping the fruits of his technological innovations, the defendants will be able to engineer the taking of his intellectual property like Seyfarth Shaw LLP facilitated the taking of McCook Metal's aluminum patents and the taking of his real property in open broad daylight by RICO extortion through color of official right via threats of economic harm described in *U.S. v. Kelley*, 461 F.3d 817 at 826 (6th Cir., 2006) and through the coercive nature of official office described in *U.S. v. Antico*, 275 F.3d 245 at 256 (3rd Cir., 2001).

Whereas for the above reasons, the defendant Seyfarth Shaw LLP's objection to the Rule 59(e) Motion is frivolous. The plaintiff respectfully requests the court withdraw its memorandum and order dismissing the plaintiff's federal claims.

Respectfully submitted,

S/ Samuel K. Lipari  
Samuel K. Lipari

Exhibits

- exb. 1. Plaintiff's Suggestion Opposing Schlozman's Dismissal
- exb. 2. Plaintiff's Consolidated Suggestion in Opposition to Defendants' Motions to Dismiss
- exb. 3. Plaintiff's Reply Suggestion Opposing Schlozman's Rule 59 Objection
- exb. 4. Plaintiff's Motion for Recusal of Hon. Judge Fernando J. Gaitan
- exb. 5. Plaintiffs Answer Suggestion Supporting Recusal
- exb. 6. Tenth Circuit Order Regarding Appeal of Rule 59 Motion
- exb. 7. Sherwood Defendant's Motion For Reconsideration Of Detention Order
- exb. 8. USA John Wood's Opposition to Sherwood's Release
- exb. 9. Western District of Missouri Order

**CERTIFICATE OF SERVICE**

I certify I have sent a copy via email to the undersigned and opposing counsel via email on 8/13/08.

John K. Power  
Leonard L. Wagner  
Michael S. Hargens

Husch Blackwell Sanders, LLP  
1200 Main Street  
Suite 2300  
Kansas City, MO 64105  
(816)283-4651  
Fax: (816)421-0596  
john.power@husch.com  
lwagner@kcsouthern.com  
michael.hargens@husch.com  
via email  
Attorneys for the GE Defendants

J. Nick Badgerow  
Spencer Fane Britt & Browne, LLP  
9401 Indian Creek Parkway  
Suite 700  
Overland Park, KS 66210  
(913)327-5134  
Fax: (913)345-0736  
Email: nbadgerow@spencerfane.com  
Attorney for Seyfarth Shaw LLP

Jeffrey P. Ray  
Office of the United States Attorney  
400 E. 9th St.  
Room 5510  
Kansas City, MO 64106  
(816) 426-3130  
Fax: (816) 426-3165  
Jeffrey.Ray@usdoj.gov  
Attorney for Bradley J. Schlozman

S/ Samuel K. Lipari

---

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

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
KANSAS CITY, MISSOURI**

SAMUEL K. LIPARI	)
(Assignee of Dissolved	)
Medical Supply Chain, Inc.)	)
<i>Plaintiff</i>	) <b>Case No. 07-0849-CV-W-FJG</b>
	)
vs.	)
	)
GENERAL ELECTRIC COMPANY,	)
GENERAL ELECTRIC CAPITAL	)
BUSINESS ASSET FUNDING CORPORATION,	)
GE TRANSPORTATION SYSTEMS	)
GLOBAL SIGNALING, L.L.C.	) <b><u>Jury Requested</u></b>
JEFFREY R. IMMELT	)
SEYFARTH SHAW LLP	)
STEWART FOSTER	)
HEARTLAND FINANCIAL GROUP, Inc.	)
CHRISTOPHER M. McDANIEL	)
BRADLEY J. SCHLOZMAN	)
<i>Defendants</i>	)

**MOTION UNDER FED. R. CIV. P. 59(e), TO ALTER OR AMEND JUDGMENT**

Comes now the plaintiff Samuel K. Lipari appearing *pro se* and makes the following timely motion under Federal Rule of Civil Procedure Rule 59(e) to reconsider the court’s memorandum and order on July 30<sup>th</sup> contrary to the recent US Supreme Court decision in *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07-210 (U.S. 6/9/2008) dismissing the plaintiff’s complaint over an impermissible heightened injury pleading standard and dismissing the proposed amended complaint to add Sprint and AT&T as defendants.

**STATEMENT OF FACTS**

1. Hon. Judge Feranado J. Gaitan’s is or was during the subject time period of the plaintiff’s complaint a Director of St. Luke’s Health System, Inc.
2. This case was in this court previously and styled *Lipari v. General Electric et al*, Case No. 06-0573-CV-W-FJG.
3. The plaintiff’s original complaint prior to amendment at ¶¶ 78-80 identified Neoforma, Inc. a direct competitor of the plaintiff’s and at ¶¶ 34-43 owned by VHA and Novation LLC and therefore St. Luke’s Health System, Inc.

4. The plaintiff's complaint alleges that the defendants' overarching scheme is to defraud Medicare and Medicaid through Novation LLC the entity owned by Hon. Judge Fernando J. Gaitan's St. Luke's Health System, Inc.

"109. The Western District of Missouri US Attorney office under Todd P. Graves had been active in prosecuting Medicare fraud. Medical Supply Chain, Inc.'s civil antitrust suit against Texas based Novation LLC, Volunteer Hospital Association (VHA), University Health System Consortium (UHC) and Neoforma, Inc. alleges the companies formed a cartel and were involved in a scheme to monopolize hospital supplies with General Electric and Jeffrey R. Immelt's former corporation GE Medical and Jeffrey R. Immelt's GHX, LLC to defraud Medicare through payments to administrators and kickbacks. The scheme resulted in almost all of Kansas City, Missouri St. Luke hospital's one hundred million dollar supply budget being purchased through Novation LLC. St. Luke's merged with University of Kansas School of Medicine after Irene Cumming, CEO of the University of Kansas Hospital was given a job by University Health System Consortium (UHC) on March 19, 2007."

Plaintiff's complaint at pg. 19 ¶ 109

5. The plaintiff sought recusal of Hon. Judge Fernando J. Gaitan in the Motion For Recusal Under 28 U.S.C. § 455(a) and (b)(4). See exb 1 and exhibit attachments 1 and 2.

6. The Hon. Judge Fernando J. Gaitan did not rule on the Motion For Recusal Under 28 U.S.C. § 455(a) and (b)(4).

7. When the action was again removed to federal court the Hon. Judge Fernando J. Gaitan was now Chief Judge of the District of Western Missouri and the action was again assigned to him despite his being on the board of directors of a defendant.

8. The complaint describes in depth with detail the repeated fraudulent and extortionate conduct of Husch Blackwell Sanders LLP, Shughart Thomson & Kilroy PC, and Lathrop & Gage LC. Law firms regularly practicing before the Western District of Missouri in facts readily discernable from the official record of the action and related cases.

9. The misconduct of these firms resulted in extrinsic fraud injuring the plaintiff and the firms' own clients along with the honor of the Western District Court by resulting in the non law based outcomes in *Medical Supply Chain, Inc. v. Novation LLC, et al.*, Case No. 05-0210-CV-W-ODS and *Lipari v. US Bank NA and US Bancorp* Case No. 06-1012-CV-W-FJG a 16<sup>th</sup> Circuit of Missouri case 0616-CV32307 fraudulently removed on diversity by Shughart, Thomson & Kilroy, P.C. even though it was the concurrent state case of a federal action already in Kansas District Court and on appeal with federal jurisdiction exclusively before the US Court of Appeals for the Tenth Circuit.

10. This court had unrefuted evidence of the extrinsic fraud by Husch Blackwell Sanders LLP used to procure an interim order of dismissal and sanctions against the plaintiff in *Medical Supply Chain, Inc. v. Novation LLC, et al.*, Case No. 05-0210-CV-W-ODS after it was transferred to Kansas District Court as *Medical Supply Chain, Inc. v. Neoforma, et al.*, case number 05-2299:

“33. The defendants use the dismissal of *Medical Supply Chain, Inc. v. Neoforma, et al.*, case no. 05- 2299 that was obtained through the extrinsic fraud filing of Novation, LLC, VHA Inc., University Healthsystem Consortium Robert Baker And Curt Nonomaque’s Motion To Set Oral Hearing On Motion To Dismiss , (Doc 76-1) filed on 02/21/2006 in *Medical Supply Chain, Inc. v. Neoforma, et al* by John K. Power, # 70448 of Jeffrey Immelt and the GE defendants’ law firm Husch Blackwell Sanders LLP.

34. The defendants repeatedly cite to *Medical Supply Chain, Inc. v. Neoforma, et al.*, case no. 05-2299 as authority advocating the ruling should control the present action in another district and another circuit.

35. The GE Defendants obtained the ruling in *Medical Supply Chain, Inc. v. Neoforma, et al.*, case no. 05-2299 where their cartel co-conspirators Novation LLC and Neoforma, Inc were at risk by filing a fraudulent pleading by John K. Power of Husch Blackwell Sanders LLP (Exb. 12 ) Motion for Hearing while knowing the Kansas District Court had been persuaded through *ex parte* communication to not even read the petitioner’s filing in response.

36. The fraud is readily discernable on its face the petitioner’s complaint stated all the requisite elements for each federal count. See Exb 13. Plaintiff’s Response to Motion for Oral hearing

37. The elements for the antitrust and RICO claims are referenced by element and paragraph number in the complaint in the plaintiff’s appeal brief statement of facts at pgs. 19-32. See Exb 14 Lipari Neoforma Appeal Brief Statement of Facts.”

Plaintiff’s Response to Consolidate Motions to Dismiss at pg. 7

11. As Chief Judge of the Western District of Missouri, the Hon. Judge Fernando J. Gaitan is responsible for attorney discipline over law firms and the US Attorney’s office and the enforcement of attorney ethics before his court.

12. The complaint describes in detail Husch Blackwell Sanders LLP extrinsic fraud that defeated the public policy of the US Congress being vindicated in the Western District of Missouri case *Huffman v. ADP, Fidelity et al*, Case No. 05-CV-01205 and similar extrinsic fraud by the US Attorney for the Western District of Missouri in *United States ex rel Michael W. Lynch v Seyfarth Shaw et al*. Case no. 06-0316-CV-W- SOW over conduct in former Chief Bankruptcy Judge of the Northern District of Illinois’ court obstructing justice before Hon. Judge Eugene R. Wedoff.

13. The plaintiff’s response to defendant Bradley J. Schlozman’s Motion to Dismiss provided the court with substantial material evidence that the current US Attorney John Wood was still engaged in extrinsic fraud to obstruct justice in cases before the Western District of Missouri including the criminal

case *U.S. v. Lester E. Cox Medical Centers* (the Novation LLC hospital CoxHealth identified by Wood as “Lester” ) See exb. 2 JULY 22, 2008 Press Release of John Wood.

14. On July 22, 2008 the plaintiff’s companion case state court defendants, the Novation LLC hospital CoxHealth and Robert H. Bezanson announced a \$60 Million Dollar Settlement with the US Department of Justice over the conduct of obtaining higher rates of reimbursement from Medicare described in the plaintiff’s present complaint. See exb 3 CoxHealth Press Release.

15. The announcement was made the same day that the plaintiff responded to the former US Attorney for the Western District of Missouri Bradley J. Schlozman’s motion to dismiss federal RICO charges arguing the current US Attorney John Wood could not serve as defense counsel to Schlozman because Wood participated with Schlozman in obstructing the criminal prosecution of the Novation LLC CoxHealth and other Novation LLC hospital officials including Robert H. Bezanson that had been initiated by Todd Graves on the basis of Grand Jury findings.

16. The plaintiff had discovered US Attorney Todd Graves had been unlawfully fired like US Attorney Carol Lam for investigating Medicare fraud See exb 4. Graves was Ninth US Attorney press release. The revelation that former US Attorney General Alberto Gonzales had lied to the US Senate Judiciary Committee by stating a month before the plaintiff’s press release that there were only eight fired US Attorneys and that Attorney General Alberto Gonzales had been sandbagging the False Claims Act prosecution of the defendant Novation LLC led to Gonzales’ resignation. See exb 5 Gonzales Sandbagging press release.

17. The Kansas District Court of Hon. Judge Carlos Murguia that now has the former Western District of Missouri case *Medical Supply Chain, Inc. v. Novation LLC, et al.*, Case No. 05-0210-CV-W-ODS indicated that it was giving consideration to reopening the plaintiff’s federal antitrust and racketeering claims by making a show cause order against the defendants. See exb. 6 Judge Murguia’s Show Cause Order.

18. The current complaint describes the conduct of what is now Husch Blackwell Sanders, LLP in concert with Seyfarth Shaw and the USDOJ committing RICO predicate acts to prevent the plaintiff from obtaining redress for the General Electric defendants’ breach of contract depriving the plaintiff of the CONCRETE and tangible office building at 1600 N.E. Coronado in Blue Springs, Missouri. See exb. 7

1600 N.E. Coronado

19. The plaintiff witnessed the law firms Husch Blackwell Sanders LLP, Shughart Thomson & Kilroy PC, and Lathrop & Gage LC along with Shughart Thomson & Kilroy PC's successor in interest Polsinelli Shalton Flanigan Suelthaus PC continuing to obstruct justice through extrinsic fraud in concert with the Western District US Attorney John Wood in the Western District of Missouri Bankruptcy case of *In re Dustin R. Sherwood and Jennifer J. Sherwood*, Case No. BK 07-50584-jwv before Hon. Judge Jerry W. Venters after attending a hearing on July 16, 2008. exb 8 July 16 Sherwood Hearing Transcript

20. The plaintiff who had helped the Sherwoods find an attorney experienced the growing use by the Kansas city area law firms Husch Blackwell Sanders LLP, Shughart Thomson & Kilroy PC, and Lathrop & Gage LC along with Shughart Thomson & Kilroy PC's successor in interest Polsinelli Shalton Flanigan Suelthaus PC of extortion through color of official right via threats of economic harm described in *U.S. v. Kelley*, 461 F.3d 817 at 826 (6th Cir., 2006) and through the coercive nature of official office described in *U.S. v. Antico*, 275 F.3d 245 at 256 (3rd Cir., 2001) to deprive parties of counsel for the purpose of obtaining judgments through extrinsic fraud in Western District of Missouri Court cases.

21. The law firms Husch Blackwell Sanders LLP, Shughart Thomson & Kilroy PC, and Lathrop & Gage LC along with Shughart Thomson & Kilroy PC's successor in interest Polsinelli Shalton Flanigan Suelthaus PC are acting contrary to the interests and without the knowledge of John Deere and Metropolitan Life to carry out the more than two year old scheme of the real party in interest Platte City, Missouri to take the land owned and farmed by the Sherwoods for a "RentUrbia" high density resort living development that the city has already laid extraordinary 24" water piping for and had planned to take by lawfully by eminent domain.

22. When Platte City, Missouri Mayor Frank Offut and others discovered the price per acre the Sherwoods would have to be compensated in a lawful eminent domain taking exceeded \$5000, the scheme to take the land through abuse of process and extrinsic fraud was hatched.

23. After Hon. Judge Jerry W. Venters's July 16<sup>th</sup>, 2008 hearing witnessed by the plaintiff where US Trustee Janice Stanton testified she had withheld funds available for the Sherwoods to obtain counsel and was instead trying to extort Mrs. Sherwood out of the land without counsel and US Trustee Janice Stanton made misrepresentations on the record about her conduct as trustee and her representations to potential

buyers, Husch Blackwell Sanders LLP, Shughart Thomson & Kilroy PC, and Lathrop & Gage LC along with Shughart Thomson & Kilroy PC's successor in interest Polsinelli Shalton Flanigan Suelthaus PC through US Trustee Janice Stanton had Dustin Sherwood jailed to prevent him from raising the \$150,000.00 bond Hon. Judge Jerry W. Venters had required to delay the sale until he could obtain the financial reports and other required disclosures withheld from him by the creditors receiver and trustee.

24. The resident F.B.I. Agent testified that the F.B.I. had entered and searched the Sherwood's home while the Sherwoods were gone and that no evidence or firearms were found indicating that Dustin Sherwood was a threat and that the warrant to arrest Sherwood appeared to be overblown, never the less Dustin Sherwood was arrested on Tuesday and the creditors caused Mrs. Sherwood to be interrogated on Wednesday.

25. The plaintiff had experienced the warrantless searches and wiretapping at the order of the defendant Bradley J. Schlozman in his capacity as an agent of the Republican National Committee and can plainly see how the bankruptcy proceeding is being used to accomplish an unlawful act through the Kansas City Bar Mob the Chief Judge of the Western District of Missouri is responsible for policing.

19. This court's order dismissing the plaintiff's claims does not address the proposed amendment to include two RICO co-conspirators, Sprint Inc. and AT&T and their predicate acts in furtherance of the conspiracy as part of an unlawful enterprise with the defendant Bradley J. Schlozman.

12. The proposed amendment including the RICO co-conspirators, Sprint Inc. and AT&T describes injuries that are from the services contracted and paid for by the plaintiff that were not the services expressly or impliedly provided telecommunications customers, creating an Eight Circuit recognized tangible interest and standing for claims against the RICO conspiracy under *Bennett v. Berg*, 685 F.2d 1053 (8th Cir.1982).

#### **SUGGESTION IN SUPPORT OF ALTERING OR AMENDING JUDGMENT**

The plaintiff has filed a timely motion to alter or amend judgment within ten days of this court's memorandum and order dismissing in entirety the plaintiff's federal claims.

"Federal Rule of Civil Procedure Rule 59(e) allows the district court to alter or amend a judgment so that the district court can "rectify its own mistakes in the period immediately following the entry of judgment." *White v. New Hampshire Dep't of Employment Sec.*, 455 U.S. 445, 450, 102 S.Ct. 1162, 71 L.Ed.2d 325 (1982) (internal quotations omitted)."

*Hite v. Vermeer Mfg. Co.*, 446 F.3d 858 at 869 (8th Cir., 2006).

The latest Supreme Court ruling on RICO pleading standards, *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07-210 (U.S. 6/9/2008) has cautioned judges not to impose requirements that are not in the RICO statutes. The plaintiff has met the pleading requirements.

The district court has committed error by imposing a heightened standard of pleading that is correctly subject to only Rule 8(a) in violation of this circuit's standard in *Schaaf v. Residential Funding Corp.*:

“At this stage of the litigation, we accept as true all of the factual allegations contained in the complaint, and review the complaint to determine whether its allegations show that the pleader is entitled to relief. *Bell Atlantic Corp. v. Twombly*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d 929 (2007); Fed.R.Civ.P. 8(a)(2). The plaintiffs need not provide specific facts in support of their allegations, *Erickson v. Pardus*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007) (per curiam), but they must include sufficient factual information to provide the "grounds" on which the claim rests, and to raise a right to relief above a speculative level. *Twombly*, 127 S.Ct. at 1964-65 & n. 3.”

*Schaaf v. Residential Funding Corp.*, 517 F.3d 544 at 549 (8th Cir., 2008).

The court is in error by failing to accept or credit the averments of the plaintiff's complaint: The Court must accept all factual allegations in a complaint as true and take them in the light most favorable to plaintiff. *Erickson v. Pardus*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); *Christopher v. Harbury*, 536 U.S. 403, 406, 122 S.Ct. 2179, 153 L.Ed.2d 413 (2002).

The court reveals its error or bias in failing to credit the plaintiff's averments and instead citing to mere *interim* decisions in other courts that are still being litigated. As non-final judgments this court is prevented from using the same to determine at the pleading stage that the plaintiff is not entitled to put on evidence for his claims and obtain summary judgment. The litigation and orders described by this court on pages 2 to 4 of its memorandum and order are still non-final judgments. Hon. Judge Carlos Murguia's order prevents the issues in the Kansas District Court case from being final: “**The fact that the court expresses an intent to further consider the judgment prevents its finality.**” *Suggs v. Mutual Ben. Health & Accident Ass'n*, 10 Cir., 115 F.2d 80.” [Emphasis added] *Director of Revenue, State of Colorado v. United States*, 392 F.2d 307 at 308-309 (10th Cir., 1968).

By dismissing Medical Supply's state claims without prejudice, a determination not opposed or appealed at the time by the defendants, the Kansas District trial court elected not to make a preclusive final

judgment: “A final judgment embodying the dismissal would eventually have been entered if the state claims had been later resolved by the court.” *Avx Corp. v. Cabot Corp.*, 424 F.3d 28 at pg 32 (Fed. 1st Cir., 2005). As a non- final judgment, the Memorandum & Orders granting dismissal or sanctions were mere interim orders. *Id.*

The progression with the plaintiff’s state antitrust claims, like the present action’s state law real estate contract claims would have the potential to require the reversal of the dismissal of the federal claims if the dismissal were a final judgment instead of a mere interim order:

“There being manifest a genuine issue of fact material, indeed, crucial, to ITCO's state law claim, it follows that the district court incorrectly granted summary judgment for Michelin on that claim and that the judgment must be reversed.”

*ITCO Corp. v. Michelin Tire Corp., Commercial Div.*, 722 F.2d 42 at 49 (C.A.4 (N.C.), 1983).

This court became responsible for knowledge that some of those orders were obtained by fraud when unrefuted evidence of the fraud was presented to the court by the plaintiff when the defendants frivolously attempted to use the orders for *res judicata* preclusion of the plaintiff’s present claims on *SUBSEQUENT* misconduct.

The former chief judge of the US District Court for the Western District of Missouri was overturned by the Eighth Circuit Court of Appeals for denying an injunction against the State of Missouri for attempting to limit the provision of hospital supplies specifically durable medical equipment including wheelchairs, wheelchair batteries and repairs, orthotics, orthopedic devices, parenteral nutrition, augmentative communication devices, hospital beds, bed rails, lifts, and other prosthetics as the State Legislature attempted to respond to the present defendants artificial inflation of hospital supply costs as described in the plaintiff’s complaint. The Eighth Circuit in *Lankford v. Sherman*, 451 F.3d 496 (8th Cir., 2006) ruled that the district court failed to consider three of the four factors that would have entitled the Lankford plaintiffs to enjoin the state’s limitation on providing hospital supplies on the grounds that Missouri’s exclusion of medical supplies to some groups was unreasonable.

## **Hobbs Act Extortion**

This court has not made a judgment on whether a private right of action exists under the Hobbs Act. The complaint clearly and expressly charges the defendants with extortion the enumerated civil RICO predicate act based on the Hobbs Act:

**“d. Defendants’ F.R.Civ.P. Rule 8 predicate acts**

180. The defendants committed the following F.R.Civ.P. Rule 8 pleading standard predicate acts

described in 18 U.S.C. § 1961(1):

**i. Violations of the The Hobbs Act, 18 U.S.C. § 1951**

181. The defendants committed violations of the The Hobbs Act, 18 U.S.C. § 1951

**Racketeering Act Number One**

**(Attempted Extortion to Prevent the Petitioner from Bringing His Antitrust Claims)**

182. When in June of 2003 Medical Supply Chain, Inc. prepared to seek redress in court for its injury, Mr. Jeffrey R. Immelt through his agents Jonathan I. Glecken and Ryan Z. Watts of Arnold & Porter, LLP caused Medical Supply Chain, Inc., a victim of GE’s deliberate actions to be threatened and intimidated with the intent of preventing Medical Supply Chain, Inc. and its counsel from bringing antitrust and Missouri state law contract based charges and to cause them to be withdrawn...”

Plaintiff’s complaint at pg. 19 ¶¶180 to 182

Just like the plaintiff has not charged the defendants with felony murder of patients deprived of access to medical supplies by the defendants participation in the Novation LLC artificial inflation of hospital supplies scheme, only continuing obstruction from entering the market for hospital supplies, the classic extortion addressed by the Hobbs Act and incorporated into civil RICO to vindicate the policy of the US Congress. The plaintiff always agreed and recognized there was no private right of action under the Hobbs Act only under civil RICO. “Having erected this straw man, the appellants then shred it...” *Limone v. Condon*, 372 F.3d 39 at 46 (1st Cir., 2004) “Courts must be equally careful, however, not to permit a defendant to hijack the plaintiff’s complaint and recharacterize its allegations so as to minimize his or her liability” *id.*

The court never had before it two parties that disagreed on whether there is a private right of action under the Hobbs Act and therefore has not made a finding of law to resolve a controversy. "Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies. It is of no consequence that the controversy was live at earlier stages in this case; it must be live when we decide the issues." *Doe v. LaFleur*, 179 F.3d 613, 615 (8th Cir.1999) (internal quotations omitted). Both the plaintiff and the defendants consistently refuted any such private right. The court is merely participating in

the desperate “straw man fraud” used by the defendants’ counsel when they discovered their lack of diligence and that some enumerated predicate civil racketeering acts are not fraud based and can not be defeated under a heightened Rule 9 pleading standard.

### **RICO Standing**

The court is in error in finding the plaintiff’s injuries indefinite or speculative. This error is expressly recognized in the controlling case law cited by the court itself and the correcting the court’s clear error in response to the plaintiff’s Rule 59 motion would conserve judicial resources of the trial and appellate courts.

“In the civil RICO extortion case a temporal relationship sufficed to subject the defendants to racketeering jurisdiction: “ Plaintiff has also demonstrated at least some temporal relationship between Lucent's donations to the Seattle hospital and various changes made to the RET/WSF subcontract that were detrimental to NGC.” *National Group for Communications v. Lucent Techs.*, 420 F.Supp.2d 253 at 263 (S.D.N.Y., 2006)

Temporal relationships have sufficed to state counts as part of a related racketeering extortion scheme and to join defendants to the proceeding: “In this case, there is a logical and temporal relationship between the RICO/Hobbs Act counts and the tax counts. In the indictment, the defendant is charged with soliciting and accepting bribes and then concealing his wrongdoing by underreporting his income (some of which was presumably received from the bribes) and obstructing the investigation which ensued.”

*U.S. v. McDonnell*, 699 F.Supp. 1348 at 1351 (N.D. Ill., 1988)

This court’s ruling erroneously discredits the accrual rule also shared by the Eighth and Tenth Circuits for RICO cases “where multiple injuries occur over an extended period of time. Under this rule, "a new claim accrues, triggering a new four-year limitations period, each time plaintiff discovers, or should have discovered a new injury caused by the predicate RICO violations." *Bingham v. Zolt*, 66 F.3d 553, 560 (2d Cir.1995). *Bankers Trust Co. v. Rhoades*, 859 F.2d 1096 (2d Cir.1988).” *National Group for Communications v. Lucent Techs.*, 420 F.Supp.2d 253 at 265-266 (S.D.N.Y., 2006).

The trial court’s judgment has erroneously adopted excessively narrow views of causation and injury contradicting the controlling law of this Circuit: “Were we to limit RICO's application in this fashion, we not only would undermine RICO as a means of rooting out public corruption, but we would provide a formula to those who seek to achieve private gain through corruption of our democratic processes.” *Bieter Co. v. Blomquist*, 987 F.2d 1319 at 1320 (C.A.8 (Minn.), 1993).

Here the General Electric defendants have been alleged to be participating in a scheme to deprive the plaintiff of real tangible property-the ownership of the Coronado Road office building a property right

obtained by the plaintiff. The complaint specifically avers the Homeland defendants were put up to lying to the City of Blue Springs officials and to testify in the state court breach of contract case by the GE law firm Hush Blackwell to prevent the plaintiff from occupying and taking title to the building. These are materially the same facts as *Bieter Co. v. Blomquist*:

“Pearson has testified by deposition that he was coached to lie to authorities in connection with a 1987 criminal investigation and to lie in depositions taken in this lawsuit, and that he was promised payment for his "cooperation" in the form of lucrative real estate listings (Pearson is a real estate agent and estimates the commissions to have been worth approximately one hundred thousand dollars) and forgiveness of rent. The Hoffmans also provided Pearson with counsel at his depositions, free of charge.”

*Bieter Co. v. Blomquist*, 987 F.2d 1319 at 1320 at 1324 (C.A.8 (Minn.), 1993).

The *Bieter* case cited by the court as supporting dismissal for lack of standing is in fact a Bay Horse case supporting the plaintiff’s tangible damages and RICO standing arising from freakishly parallel conduct by the defendants GE, Stewart Foster, Christopher M. McDaniel and Heartland Financial Group, Inc. :

“162. GE Transportation, General Electric and GE Capital obtained the services of Stewart Foster with knowledge of the petitioner’s *lis pendens* filing against the property to sell the property at a deep discount and on favorable terms to another buyer. GE even would provide the buyer with a business jet flight to speed up selling the property and depriving the petitioner of the chance to lease or otherwise occupy the building to launch Medical Supply Chain’s entry into the hospital supply market.

163. The buyer Christopher M. McDaniel and Heartland Financial Group, Inc. took the property with knowledge of the petitioner’s claims against it and conspired with GE Transportation, General Electric and GE Capital to commit fraud on the court with City of Blue Springs, Missouri officials under a mistaken legal theory that the petitioner still needed to obtain the city’s approval (a term the petitioner had included in the contract without assigning himself a duty to secure the permission and could waive) and under a mistake over the clearly established contract principle that once GE started repudiating the contract, the petitioner was relieved of further duties.

164. The plan was to find out who had approved Medical Supply for occupancy of the building, then rely on statutory law to show the only entity with the capacity to grant the approval was the city council.”

Plaintiff’s complaint at pg. 27 ¶¶ 162-164.

The *Bieter Co. v. Blomquist* case further prevents this court’s injury ruling:

“Based on the foregoing, Bieter argues that it was injured by the defendants’ conspiracy to prevent it from developing its proposed shopping center in Eagan and that its injury was proximately caused by the conspiracy. The district court treated the February 1987 denial of rezoning of Bieter’s property and the December 1987 approval of the Cliff Lake development as separate events, and found that any injury Bieter suffered from the denial of rezoning was not proximately caused by the defendants and that Bieter suffered no cognizable injury from the approval of the Cliff Lake development. *Bieter*, 784 F.Supp. at 1411. Bieter argues that a jury could reasonably view the two events as part of a single course of conduct that was the proximate cause of Bieter’s injury, and we agree.”

*Bieter Co. v. Blomquist*, 987 F.2d 1319 at 1320 (C.A.8 (Minn.), 1993).

RICO provides that "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee." 18 U.S.C. § 1964(c) (1988). The Supreme Court has construed the "by reason of" language to incorporate the traditional requirements of proximate or legal causation, as opposed to mere factual or "but for" causation. *Holmes v. Securities Investor Protection Corp.*, --- U.S. ---, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992). The primary consideration in determining whether a plaintiff's injuries have been proximately caused by a defendant's violations of section 1962 is the directness of the relationship "between the injury asserted and the injurious conduct alleged." *Id.*, at ---, 112 S.Ct. at 1318, 117 L.Ed.2d at 544. The Supreme Court discussed three reasons for the directness requirement. "First, the less direct an injury is, the more difficult it becomes to ascertain the amount of a plaintiff's damages attributable to the violation, as distinct from other, independent factors." *Id.* at ---, 112 S.Ct. at 1318, 117 L.Ed.2d at 545. "Second, ... recognizing claims of the indirectly injured would force courts to adopt complicated rules apportioning damages among plaintiffs removed at different levels of injury from the violative acts, to obviate the risk of multiple recoveries." *Id.* Third, "directly injured victims can generally be counted on to vindicate the law as private attorneys general, without any of the problems attendant upon suits by plaintiffs injured more remotely." *Id.*

The *Bieter Co. v. Blomquist* court stated:

"The second and third reasons present no significant problem in this case. There is no risk of multiple recovery and, short of the Egan citizens' loss of good government (not a particularly concrete injury), there are no other directly injured parties who might bring suit. We are left, then, with the initial difficulty of determining to what degree Bieter's injuries were caused by the defendants' actions, and to what degree any injury may be attributable to other causes...

\*\*\*

A jury could reasonably find that Bieter's injuries were caused by the defendants' bribery of Blomquist, Smith, and Wachter. Such a finding need not be predicated on any vote-counting done by the fact-finder. The jury could instead find that given the extent of Blomquist's alleged role in the proceedings--not simply her efforts on behalf of Federal and the Hoffman defendants involving the Cliff Lake project, but her lobbying of the APC and other city administrators to oppose the project, her attempts to persuade Target to consider another site, and her seeming control over the conduct of city business--the defendants' bribery of her caused Bieter's injuries. A finding that bribery of a councilmember proximately caused a plaintiff's injury can therefore rest on evidence of that individual's influence over the proceedings. A contrary finding would simply encourage potential wrongdoers to place the most efficient bribe possible: one that will reach the desired result without the expense of bribing a majority (or supermajority) of councilmembers."

*Bieter Co. v. Blomquist*, 987 F.2d 1319 at 1320 at 1325-7 (C.A.8 (Minn.), 1993). The color of official right extortion exemplified by the plaintiff's extortion counts is consistent with the public policy

behind RICO and is supported by the Eighth Circuit's controlling precedent:

"Were we to accept the district court's analogy to Williamson, the application of civil RICO in cases of public corruption would appear to be restricted to those cases in which a plaintiff suffers a taking because of bribery or the like. We find no support for restricting RICO's application in that manner. Such a holding would not be consistent with the purposes of RICO, one of which is to root out public corruption, *United States v. Angelilli*, 660 F.2d 23, 32-33 (2d Cir.1981) (discussing legislative history), cert. denied, 455 U.S. 910, 102 S.Ct. 1258, 71 L.Ed.2d 449 (1982), and would remove the threat of heavy civil sanctions from those who choose to corrupt public officials for their own gain but do so prior to having lost to their competitors -- the very time when such villainy can have the most effect."

*Bieter Co. v. Blomquist*, 987 F.2d 1319 at 1320 at 1329-30 (C.A.8 (Minn.), 1993).

### **The Plaintiff's Complaint Alleges Both Concrete And Tangible Loss**

The loss of the building during the resolution of the plaintiff's contract claims is a concrete loss under *Bieter Co. v. Blomquist* meeting the standard for this circuit for the showing of injury requirement:

"Further, 'a showing of injury requires proof of concrete financial loss, and not mere injury to a valuable intangible property interest.' *Steele v. Hosp. Corp. of Am.*, 36 F.3d 69, 70 (9th Cir.1994) (internal citations and quotation marks omitted); *Price v. Pinnacle Brands, Inc.*, 138 F.3d 602, 607 (5th Cir.1998) ('Injury to mere expectancy interests or to an 'intangible property interest' is not sufficient to confer RICO standing.") (quoting *Anderson v. Kutak (In re Taxable Mun. Bond Sec. Litig.)*, 51 F.3d 518, 523 (5th Cir.1995))."

*Regions Bank v. J.R. Oil Co., LLC*, 387 F.3d 721 at 728-729 (8th Cir., 2004).

The plaintiff's complaint avers the loss of \$350,000.00 and the deprivation of 1600 N.E. Coronado by the direct conduct of the defendants:

"86. As the June 15th, 2003 closing date approached, Medical Supply had not received any definitive closing date so Medical Supply's corporate counsel called and sent George Frickie an email stating that a delay in closing would not effect the lease buyout of \$350,000.

87. Medical Supply's counsel later again called George Frickie when he received no response and George Frickie became extremely angry and hung up the phone.

88. Medical Supply then proceeded to speak with GE's counsel Mrs. Kate O'Leary to determine if the contract had been repudiated.

89. Supporting statutes and the antitrust basis including damage implications were explained to Kate O'Leary.

90. Medical Supply gave GE a deadline of June 10th, 2003 to clarify whether there had been contract repudiation. Kate O'Leary later faxed a letter on June 10th, requesting that Medical Supply not speak to anyone at GE or its affiliates and that any correspondence relating to this matter be directed to her.

91. Medical Supply then emailed a letter stating that if no earnest money were deposited to indicate the contract was not being repudiated, Medical Supply would file its claims on June 16th, 2003 for antitrust and breach of contract.

92. GE repudiated its contract, sacrificing \$15 million dollars on June 15th, 2003 to keep Medical Supply from being able to compete against GHX, L.L.C. and Neoforma in the market for hospital supplies.

93. Samuel K. Lipari filed a *lis pendens* in the Jackson County Register of Deeds office based on his state law claims in the US District Court.

94. The defendant Carpet n' More Inc. Stewart Foster placed the building up for sale with actual or imputed knowledge of Medical Supply's claims.

95. The defendants have occupied the building at 1600 NE Coronado preventing plaintiff from receiving the value of his bargain and with actual or imputed knowledge of Medical Supply's claims."

Plaintiff's Complaint at pages 14, 15 ¶¶ 86-95

The plaintiff's complaint alleges a relationship between the predicate acts of the defendants and their official co-conspirators and the injuries suffered by the plaintiff: "Once such a relationship is established, **our cases allow a range of damages, subject to the limitations which typically apply in ordinary tort cases.** See *Bieter*, 987 F.2d at 1329." [Emphasis added] *United HealthCare Corp. v. American Trade Ins. Co., Ltd.*, 88 F.3d 563 (C.A.8 (Minn.), 1996)

In fact, the plaintiff's contract with General Electric was an attempt to cover (known by General Electric) to replace the \$300,00.00 the plaintiff had lost from US Bancorp's breach of the escrow account services contract to underwrite Medical Supply Chain, Inc.'s entry into the hospital supply market. As such, the plaintiff's damages including the loss of the market entry capital from the plaintiff's loss of the sale of General Electric Transportation's lease is precisely the concrete property injury giving the plaintiff RICO standing under the controlling precedent of our circuit:

"Due to the fraudulent acts of Benton, these premiums did not reach Victoria and Diversified, and therefore risks were never properly underwritten. Comtell's subsequent mailing of insurance certificates confirming the purported insurance coverage did not alter the fact that coverage was nonexistent. Thus, UHC failed to receive the benefit of its bargain, and has, as a result, sustained substantial financial damage. *Bennett v. Berg*, 685 F.2d 1053 (8th Cir.1982)"

*United HealthCare Corp. v. American Trade Ins. Co., Ltd.*, 88 F.3d 563 at pg. 572 (C.A.8 (Minn.), 1996).

The trial court has been repeatedly ill served by the corporate defendants' legal counsel's lack of diligence or professional service in failure to research the applicable authorities for the court or their continuing predicate act committing clients. This professional failure has included the repeated documented fraudulent misrepresentations their law firms have made to the plaintiff, the Independence, Missouri court and to the Clerk of the Western District of Missouri Court. However the most singular and glaring whopper is the mischaracterization of the property rights in the plaintiff's building in Blue Springs occupied under fraud against the will of the plaintiff by the defendants Heartland Financial and McDaniel. It is a *CONCRETE* office building! The whole basis for the court's pro-defendant dismissal is a clear error of fact. The plaintiff has RICO standing having been deprived of physical and tangible business property.

The conduct of Lathrop & Gage, Hush Blackwell to extrinsically influence outcomes in the Western District of Missouri District in similar or identical means entitles the plaintiff to survive even summary judgment let alone dismissal. "...evidence of a similarly situated individual who was retaliated against "might also be sufficient to show the existence of an unconstitutional municipal policy giving rise to section 1983 liability." *Id.* at 725 n.26" *Melton v. City of Oklahoma City*, 879 F.2d 706, 725 n.26 (10th Cir. 1989).

The trial court's findings justifying dismissal of the plaintiff's federal claims by citation to ongoing litigation where the plaintiff has been subject to interim orders of sanctions for failing to plead an element or name a co-conspirator as a defendant despite having identified the co-conspirator in the complaint and thoroughly described the agreement and conspiracy's actions in the complaint and defended the decision not to name the co-conspirator with controlling US Supreme Court law in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955) that the plaintiff is not required to sue all conspirators in the same action indicate manifest injustice and clear error where the records of the present action evidence repeated intentional fraud on the court to deny the plaintiff his property rights.

The manifest injustice or perversion of justice supports a determination that the trial court is not unbiased or without prejudice toward the plaintiff and his cause. The trial court has had a fiduciary and material economic interest in the defendants' Novation LLC scheme as a director of St. Luke's Health System, Inc. during the period described in the plaintiff's complaint. This interest which has not been disclosed to the parties from the bench is in violation of 28 U.S.C. § 455:

"The interest described in § 455(b)(5)(iii) includes noneconomic as well as economic interests. *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1113 (5th Cir.), cert. denied, 449 U.S. 820, 101 S.Ct. 78, 66 L.Ed.2d 22 (1980). Subsection 455(e) provides that a § 455(b) conflict cannot be waived."

*Kansas Public Employees Retirement System, In re*, 85 F.3d 1353 at 1359 (C.A.8 (Mo.), 1996).

The trial court has not recused himself:

"A judge must recuse if "his impartiality might reasonably be questioned" because of bias or prejudice. 28 U.S.C. § 455. Bias and prejudice can result from knowledge that the judge should not possess. *Litky v. United States*, 510 U.S. 540, 550, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994), "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* at 555, 114 S.Ct. 1147. "Rules against 'bias' and 'partiality' can never mean to require the total absence of preconception, predispositions and other mental habits." *See United*

*States v. Bernstein*, 533 F.2d 775, 785 (2nd Cir.1976), cited with approval in, *United States v. Thirion*, 813 F.2d 146, 155 (8th Cir.1987).”

*United States v. Burnette*, 518 F.3d 942 at 945 (8th Cir., 2008). The court’s memorandum and order over a Rule 12(b)(6) in the present action should not have been made, Recusal was mandated:

“Under 28 U.S.C. § 455(a), a judge "shall disqualify h[er]self in any proceeding in which h[er] impartiality might reasonably be questioned." Section 455(a) provides an objective standard of reasonableness. *United States v. Poludniak*, 657 F.2d 948, 954 (8th Cir.1981). The issue is "whether the judge's impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case." *Moran*, 296 F.3d at 648 (quoting *In re Kan. Pub. Employees Retirement Sys.*, 85 F.3d 1353, 1358 (8th Cir.1996)); *Fletcher v. Conoco Pipe Line Co.*, 323 F.3d 661, 664 (8th Cir.2003) (stating that "disqualification is required if a reasonable person who knew the circumstances would question the judge's impartiality, even though no actual bias or prejudice has been shown" (quoting *United States v. Tucker*, 78 F.3d 1313, 1324 (8th Cir.1996))).”

*U.S. v. Martinez*, 446 F.3d 878 at 883 (8th Cir., 2006).“Bias and prejudice can result from knowledge that the judge should not possess. *Liteky v. United States*, 510 U.S. 540, 550, 114 S.Ct. 1147, 127 L.Ed.2d 474 (1994)” *United States v. Burnette*, 518 F.3d 942 at 945 (8th Cir., 2008). This knowledge or perspective can easily come as a fiduciary of one of the defendants by being a member of the board of directors of St. Luke’s Hospital, the racketeering conspiracy’s planned recipient of the laundered funds from the Novation LLC member hospitals and the replacement entity for Neoforma, Inc. The trial judge, like many of the doctors and other care givers devoting their life to the work of St. Luke’s Hospital more likely than naught have friendships, first hand experiences and beliefs that contradict the evidence of what Novation LLC was doing or that the artificial inflation of hospital supplies is killing more Kansans and Missourians than St. Luke’s Hospital ever had the capacity to treat in their market. The victims of course are at Truman Medical Center and other institutions across the nation that treat the uninsured and underinsured or they are in their homes without care.

## CONCLUSION

Whereas for the above stated reasons the petitioner respectfully requests that the court alter or amend its erroneous Rule 12(b)(6) dismissals. In the alternative, the petitioner respectfully requests the court allow leave to amend to cure any deficiencies identified in the petition.

Respectfully Submitted,

S/ Samuel K. Lipari  
Samuel K. Lipari  
297 NE Bayview  
Lee’s Summit, MO 64064

816-365-1306  
saml@medicalsupplychain.com  
*Pro se*

**CERTIFICATE OF SERVICE**

I certify I have sent a copy via email to the undersigned and opposing counsel via email on 8/14/08.

And served the following counsel for Jeffrey R. Immelt, General Electric Capital Business Asset Funding Corporation, GE Transportation Systems Global Signaling LLC, General Electric Company, and Bradley J. Schlozman via email at the following addresses:

John K. Power  
Leonard L. Wagner  
Michael S. Hargens  
Husch Blackwell Sanders, LLP  
1200 Main Street  
Suite 2300  
Kansas City, MO 64105  
(816)283-4651  
Fax: (816)421-0596  
john.power@husch.com  
lwagner@kcsouthern.com  
michael.hargens@husch.com  
via email

Attorneys for the GE Defendants

J. Nick Badgerow  
Spencer Fane Britt & Browne, LLP  
9401 Indian Creek Parkway  
Suite 700  
Overland Park, KS 66210  
(913)327-5134  
Fax: (913)345-0736  
Email: nbadgerow@spencerfane.com

Attorney for Seyfarth Shaw LLP

Jeffrey P. Ray  
Office of the United States Attorney  
400 E. 9th St.  
Room 5510  
Kansas City, MO 64106  
(816) 426-3130  
Fax: (816) 426-3165  
Jeffrey.Ray@usdoj.gov

Attorney for Bradley J. Schlozman

S/ Samuel K. Lipari

Exhibit List

- exb. 1 Recusal and exhibit attachments 1 and 2
- exb. 2 JULY 22, 2008 Press Release of John Wood
- exb. 3 Cox Press Release
- exb. 4. Graves was Ninth US Attorney press release
- exb. 5 Gonzales Sandbagging press release
- exb. 6 Judge Murguia's Show Cause Order
- exb. 7 1600 N.E. Coronado
- exb. 8 July 16 Sherwood Hearing Transcript

DJW/bh

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

**SAMUEL K. LIPARI,**

**Plaintiff,**

**CIVIL ACTION**

**v.**

**No. 07-2146-CM-DJW**

**U.S. BANCORP, N.A., et al.,**

**Defendants.**

**NOTICE AND ORDER TO SHOW CAUSE**

TO THE PLAINTIFF SAMUEL K. LIPARI:

On July 22, 2008, the Court issued a Memorandum and Order (doc. 103) granting in part Defendants' Motion to Compel Compliance with Rule 26(a)(1) (doc. 68). In that Order, the Court directed Plaintiff to serve on Defendants an amended Rule 26(a)(1)(A)(i) witness disclosure statement on or before July 30, 2008. In addition, the Court directed Plaintiff to serve a supplemental Rule 26(a)(1)(A)(ii) document disclosure statement or amended Rule 26(a)(1)(A)(ii) document disclosures by that same date. Defendants have informed the Court through a pleading filed on August 18, 2008 (doc. 111) that Plaintiff has not served any such disclosures or disclosure statements on Defendants.

**IT IS HEREBY ORDERED** that Plaintiff Samuel K. Lipari is required to show cause to United States District Judge Carlos Murguia in a pleading filed by **August 27, 2008**, why this case should not be dismissed with prejudice pursuant to Federal Rule of Civile Procedure 37(b)(2)(A) for failing to comply with the Court's July 22, 2008 Order (doc. 103).

**IT IS SO ORDERED.**

**Atch 4 Order to Show Cause**

**A copy of this Order shall be sent to Plaintiff Samuel K. Lipari by regular mail and certified mail, return receipt requested.**

Dated in Kansas City, Kansas on this 18th day of August 2008.

s/ David J. Waxse

David J. Waxse

U.S. Magistrate Judge

cc: All counsel and pro se parties

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

SAMUEL K. LIPARI	)	
(Assignee of Dissolved	)	
Medical Supply Chain, Inc.)	)	
<i>Plaintiff</i>	)	
	)	
vs.	)	
	)	
NOVATION, LLC	)	<b>Case No. 0816-CV04217</b>
NEOFORMA, INC.	)	<b>Div. 2</b>
GHX, LLC	)	
ROBERT J. ZOLLARS	)	
VOLUNTEER HOSPITAL ASSOCIATION	)	
VHA MID-AMERICA, LLC	)	
CURT NONOMAQUE	)	
THOMAS F. SPINDLER	)	<b>Missouri Antitrust,</b>
ROBERT H. BEZANSON	)	<b>Fraud,</b>
GARY DUNCAN	)	<b>Tortious Interference,</b>
MAYNARD OLIVERIUS	)	<b>Prima Facie Tort</b>
SANDRA VAN TREASE	)	
CHARLES V. ROBB	)	
MICHEAL TERRY	)	
UNIVERSITY HEALTHSYSTEM CONSORTIUM	)	
ROBERT J. BAKER	)	<b><u>Jury Trial Demanded</u></b>
JERRY A. GRUNDHOFER	)	
RICHARD K. DAVIS	)	
ANDREW CECERE	)	
THE PIPER JAFFRAY COMPANIES	)	
ANDREW S. DUFF	)	
COX HEALTH CARE SERVICES OF THE OZARKS, INC.	)	
SAINT LUKE'S HEALTH SYSTEM, INC.	)	
STORMONT-VAIL HEALTHCARE, INC.	)	
SHUGHART THOMSON & KILROY, P.C.	)	
HUSCH BLACKWELL SANDERS LLP	)	
LATHROP & GAGE L.C.	)	
<i>Defendants.</i>	)	

**RULE 81.04 NOTICE OF APPEAL**

Comes now, the plaintiff Samuel K. Lipari appearing *pro se* and respectfully gives notice of his appeal of this court's decision of August 8, 2008 dismissing with prejudice most, but not all of the parties and claims in this action. The plaintiff also attaches the Order dated August 11, 2008 by the Tenth Circuit US Court of Appeals overruling the dismissal of the plaintiff's appeal in the concurrent Federal action for this matter in controversy.

### **Statement of Facts**

1. The court's order granting dismissals to the moving parties did not dispose of all claims against all parties.
2. The court granted all motions dismissing the plaintiff's claims against the moving parties with prejudice.
3. The plaintiff had provided official court records and a factual affidavit in opposition to the individual defendants objecting to the exercise of long arm jurisdiction, therefore no party was successful in their challenge to this court's in personam jurisdiction and the court consequently made no dismissals without prejudice.
4. The court granted the defendants' motions to dismiss on a new legal theory regarding the application of claim and issue preclusion from non final judgments in federal court inconsistent with controlling State of Missouri and Federal precedent.
5. The court granted the defendants' motions to dismiss on a new legal theory expanding *Noerr-Pennington* doctrine from *E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 136, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961) to immunize unlawful acts to influence government for the purpose of monopolization, an issue not previously addressed by Missouri courts.

### **Suggestion of Law**

The trial court's designation of parties dismissed with prejudice fulfills the finality of judgment regarding those named parties under Rule 74.01 (b):

#### **"RULE 74.01 JUDGMENT**

(a) Included Matters. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment is rendered when entered. A judgment is entered when a writing signed by the judge and denominated "judgment" is filed. The judgment may be a separate document or included on the docket sheet of the case.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may enter a judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. In the absence of such determination, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(Adopted May 22, 1987, effective Jan. 1, 1988. Amended Feb. 22, 1994, effective Jan. 1, 1995.)

The plaintiff respectfully believes this appeal will advance justice in the State of Missouri by meritoriously raising the two issues, the expansion of claim and issue preclusion and the expansion of the *Noerr-Pennington* doctrine raised by Hon. Judge Michael W. Manners in the significant state interest of the State of Missouri over this momentous hospital supply monopolization litigation.

Respectively submitted,

S/Samuel K. Lipari

---

Samuel K. Lipari  
*Pro se*

Attachment

Exb 1. Aug. 11, 2008 Order of Tenth Circuit declining to dismiss Plaintiff's Appeal

#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 13th day of August, 2008, by first class mail postage prepaid to:

John K. Power, Esq. Husch Blackwell Sanders LLP, 1200 Main Street, Suite 2300  
Kansas City, MO 64105

Jay E. Heidrick, Shughart Thomson & Kilroy, P.C. 32 Corporate Woods, Suite 1100  
9225 Indian Creek Parkway Overland Park, Kansas 66210

William G. Beck, Peter F. Daniel, J. Alison Auxter, Lathrop & Gage LC, 2345 Grand Boulevard, Suite  
2800, Kansas City, MO 64108

S/Samuel K. Lipari

---

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

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

SAMUEL K. LIPARI, )  
    *Plaintiff,* )  
    v. ) Civil No. 07-0849-CV-W-FJG  
GENERAL ELECTRIC COMPANY, et al., )  
    *Defendants.* )

**REPLY SUGGESTION TO DEFENDANT SCHLOZMAN’S  
OPPOSITION SUGGESTION OPPOSING RULE 59 RELIEF**

Comes now the plaintiff Samuel K. Lipari and replies to Bradley J. Schlozman through US Attorney (“USA”) John Wood. USA John Wood failed to address this court’s inconsistency with the US Supreme Court ruling determining pleading standards for RICO standing in *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07-210 (U.S. 6/9/2008) also raised in answer to Schlozman’s Motion to Dismiss that necessitates altering or amending Hon. Judge Feranado J. Gaitan’s judgment made in clear error.

The court has jurisdiction under the plaintiff’s Rule 59(e) Motion to correct the court’s manifest errors on standing and the facts of the plaintiff’s complaint. "Rule 59(e) motions serve a limited function of correcting` manifest errors of law or fact.." *Capitol Indemnity v. Russellville Steel*, 367 F.3d 831 at 834 (8th Cir., 2004) (citing *Innovative Home Health Care, Inc. v. P.T.-O.T. Assocs. of the Black Hills*, 141 F.3d 1284, 1286 (8th Cir.1998)). The plaintiff raised the change in standing argument in the wake of *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07-210 (U.S. 6/9/2008) in his response suggestion opposing the defendant Schlozman’s motion to dismiss.

USA John Wood also failed to address controlling law of this circuit that makes this action the same matter or controversy where the plaintiff filed a timely § 455 for recusal and which the Hon. Judge Feranado J. Gaitan did not answer or disclose his 28 U.S.C. § 455(b)(5)(i) directorship of St. Luke’s Healthcare System, a party in interest. USA John Wood has failed to counsel this court regarding the Eighth Circuit’s policy of remanding appeals requiring § 455 motions to be answered.

USA John Wood is mistaken over the application of documentary exhibits. The plaintiff has not provided evidence in support of the validity of his claims but to inform the court how its memorandum and order erroneously violates Hon. Judge Feranado J. Gaitan’s duty to the Western District of Missouri in insuring that law firms don’t engage in RICO extortion to extrinsically influence outcomes in this district.

## **1. The Court's Judgment Violates The Most Recent US Supreme Court RICO Standing Ruling**

The court is in clear error for failing to follow the controlling law or precedent of the Supreme Court in *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07-210 (U.S. 6/9/2008) and the Eighth Circuit. The recent decision by the US Supreme Court may overturn the precedential value of the Eighth Circuit cases holding RICO plaintiffs to a heightened pleading standard. The reasoning of the Eighth Circuit in *Craig Outdoor Advertising, Inc. v. Viacom Outdoor, Inc.*, No. 06-3341 (8th Cir. 6/4/2008) referencing its own earlier precedent is illustrative:

“We have in the past rejected attempts to convert ordinary civil disputes into RICO cases. See, e.g., *Terry A. Lambert Plumbing, Inc. v. W. Sec. Bank*, 934 F.2d 976, 981 (8th Cir. 1991) (noting that RICO was not intended to apply to "ordinary commercial fraud" (citation to quoted case omitted)). Although Plaintiffs have presented evidence sufficient to establish violations of state law, they have not presented sufficient evidence to satisfy the more onerous requirements of RICO.”

*Craig Outdoor Advertising, Inc. v. Viacom Outdoor, Inc.*, No. 06-3341 at 38 (8th Cir. 6/4/2008) sounds like the function of protecting against “garden variety” misconduct being pled as RICO that was rejected by the unanimous Supreme Court a mere seven days later. But this is the Eighth Circuit’s review after a jury trial where discovery and findings of fact require the heightened standard. The plaintiff has never had discovery, not even in the other cases the plaintiff is litigating referenced by the court. Even when the court issues a case management order, no state or federal court to date has enforced a requirement of any hospital supply cartel member including GE and US Bank to produce any discoverable documents.

While this Circuit’s decisions that tend to prohibit dismissal of RICO claims at the pleading stage are sound, the Eighth Circuit has previously recognized its RICO injury standing pleading requirements have been overruled by the Supreme Court for being in excess of that required under statute: “...our error was in requiring that Grant allege more than the Supreme Court has now said a plaintiff must allege in order to state a civil RICO claim...”*Alexander Grant and Co. v. Tiffany Industries, Inc.*, 770 F.2d 717 at 718 (C.A.8 (Mo.), 1985). The trial court is required to follow Eighth Circuit precedent or guidance on standing pleading requirements even in the face of doubts. See *Bowman v. Western Auto Supply Co.*, 773 F.Supp. 174 at 177 (W.D. Mo., 1991).

The plaintiff’s complaint however met the pleading stage showing of RICO standing required under Eighth Circuit controlling precedent:

“Taking the facts in a light most favorable to Regions Bank, we must assume that Steven Jones, perhaps with the assistance of his accountant, Edward Bonner, committed fraud in the procurement of the \$400,000 loan from Regions Bank. Regions Bank's own failure to adequately research the status of prior liens against J.R. Oil's assets, coupled with this presumed fraud, clearly caused injury to Regions Bank, both factually and proximately. Further, the \$400,000 that Regions Bank actually gave to J.R. Oil under the loan cannot be viewed as an "intangible property interest."

*Regions Bank v. J.R. Oil Co., LLC*, 387 F.3d 721 at 729 (8th Cir., 2004)

The loss of value from the contract to purchase the building at 1600 Coronado and the loss of the \$350,00.00 averred in the plaintiff's complaint meets the property standing requirement maintained by the Eighth Circuit. However this district court's memorandum and order overturns this circuit's *stare decisis* precedent in *Bennett v. Berg*, 685 F.2d 1053 (C.A.8 (Mo.), 1981) upheld by the en banc court in *Bennett v. Berg*, 710 F.2d 1361 (C.A.8 (Mo.), 1983) regarding the loss of value in the occupancy of the office building as another benefit of the bargain made with General Electric and GE Transportation clearly pled by the plaintiff in the complaint:

“Appellants' complaints alleged several forms of monetary loss. Appellants' entrance endowment payments are alleged to be worth 10% of what appellants bargained for, due to appellees' alleged conversion to their own use of funds which were deposited in trust for "life care." Monthly service charges are also alleged to be higher than expected due to appellees' unlawful conduct.

Appellees respond that the complaints do not allege a RICO injury for two reasons. First, the complaints are said to assert no breach of contract. Thus they allegedly do not state any injury whatsoever. Alternatively, any injury stated in the complaints allegedly is not an "injury to property" recognizable under the RICO Act. RICO is said to require competitive injury.

We are not convinced. **Even if breach of contract is not directly and clearly stated in the complaints, this is irrelevant. Appellants' basic contention is that the value of their occupancy agreements was misrepresented ab initio, and that appellees' conduct has further lessened the value of their contracts.** The essence of this alleged injury is not so much that contractual terms have been breached, but that the value of the contracts is different than appellants were led to expect through extracontractual statements and promises. The allegation sounds as one of injury flowing from fraud rather than breach of contract. Appellants claim essentially to have been deprived of the benefit of their bargain.

Appellees' second argument is somewhat more troublesome. They contend that even if appellants have alleged an injury, they have not alleged an "injury to property" within the meaning of Section 1964(c).” [Emphasis added]

*Bennett v. Berg*, 685 F.2d 1053 at 1058 (C.A.8 (Mo.), 1981) in which the Eighth Circuit expressly discredits the failure of an “injury to property” argument under identical circumstances where Hon. Judge Feranado J. Gaitan has adopted the same as a basis for his order dismissing the plaintiff's claims.

This circuit's controlling precedent *Handeen v. Lemaire*, 112 F.3d 1339 at 1354 (C.A.8 (Minn.), 1997) recognizes standing as pled by the plaintiff's complaint over the loss of value from a professional services contract for legal representation resulting from the bad faith litigation of RICO defendants:

“Handeen poses many diverse theories to expose how he was injured by the RICO enterprise. As an example, he cites the attorneys' fees he incurred in objecting to the Lemaire's supposedly fraudulent claims. We think that this asserted liability, if proven at trial, qualifies as an injury to business or property that was proximately caused by a predicate act of racketeering. *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268, 112 S.Ct. 1311, 1317-18, 117 L.Ed.2d 532 (1992)(deciding that RICO violation must be proximate cause of injury to business or property); *Bowman v. Western Auto Supply Co.*, 985 F.2d 383, 385-86 (8th Cir.) (explaining that a § 1962(c) plaintiff must allege injury traceable to a predicate act of racketeering), cert. denied, 508 U.S. 957, 113 S.Ct. 2459, 124 L.Ed.2d 674 (1993). Because this ground for recovery is, in itself, sufficient to convey standing, we need not consider the soundness of the other alternatives advanced by Handeen.”

*Handeen v. Lemaire*, 112 F.3d 1339 at 1354 (C.A.8 (Minn.), 1997).

This circuit's controlling precedent in *Terre Du Lac Ass'n, Inc. v. Terre Du Lac, Inc.*, 772 F.2d 467 (C.A.8 (Mo.), 1985) recognizes the plaintiff's standing from injury by conduct similar to the defendants' alleged conduct as part of a cartel to artificially inflate hospital supply costs defrauding Medicare for member hospitals the cartel's exclusionary contracts kept from doing business with the plaintiff:

“...defendants' acts of mail fraud injured the Association by causing the cost of maintaining the roads in the Terre Du Lac Subdivision, which roads the Association is legally obligated to maintain, to increase. The cost allegedly increased because: 1) the defendants invested the money which they obtained from the mail fraud (i.e., proceeds from the sale of lots in the subdivision) in their own operations rather than using the money to improve (i.e., pave with asphalt) the subdivision roads, and 2) the mail fraud scheme caused more lots to be sold, resulting in more roads and greater usage of the roads which are required to be maintained.”

*Terre Du Lac Ass'n, Inc. v. Terre Du Lac, Inc.*, 772 F.2d 467 at 472 (C.A.8 (Mo.), 1985). The memorandum and order of Hon. Judge Fernando J. Gaitan violates controlling Eighth Circuit and US Supreme Court precedent on standing for RICO claims on the plaintiff's charges of 18 USC § 1961 (1)(B) predicate acts of Hobbs Act Extortion and Fraud.

## **2. The same matter or controversy where a § 455 has yet to be answered**

In *Little Rock School District v. Armstrong*, No. 02-3867EA (8th Cir., 2004) the Eighth Circuit was required to determine if a “mandamus proceeding in 1987 involved the same ‘matter in controversy’ as the present questions before us for purposes of 28 U.S.C. § 455(b)(2)” *Id* at 4-6. The Circuit's analysis would find that because the state law claims are consistent and unchanged (and as yet never ruled on), the present action is the same “matter in controversy” as *Lipari v. General Electric et al* 06-0573-CV-W-FJG where Hon. Judge Fernando J. Gaitan did not rule on the plaintiff's timely motion for recusal (**exb. 1**) and the same “matter in controversy” as *MSCI v General Electric et al* KS Dist. Court # 03-2324-CM brought

by the plaintiff's attorney that appears to have been reciprocally disbarred without a hearing by Hon. Judge Feranado J. Gaitan despite grounds and a request for a hearing (**exb. 2**).<sup>1</sup>

Impermissible bias can be inferred by"... the trial court's avoidance of ruling on the motions to recuse..." *McPherson v. U.S. Physicians Mut.*, 99 S.W.3d 462 at pg. 490 (Mo. App., 2003). When the case was removed from Independence for the second time, Hon. Judge Feranado J. Gaitan in his new role as Chief Judge responsible for assignments again presided over the plaintiff's "matter in controversy" now styled 07-0849-CV-W-FJG despite being given notice of his 28 U.S.C. § 455(b)(5)(i) prohibited directorship of a party with a very substantial and material interest in the outcome. The circumstances of Hon. Judge Feranado J. Gaitan's fiduciary interest is equivalent to the judge in *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 859-60, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988):

"Judge Collins found for Liljeberg and, over a strong dissent, the Court of Appeals affirmed. Approximately 10 months later, respondent learned that Judge Collins had been a member of the Board of Trustees of Loyola University while Liljeberg was negotiating with Loyola to purchase a parcel of land on which to construct a hospital. The success and benefit to Loyola of these negotiations turned, in large part, on Liljeberg prevailing in the litigation before Judge Collins."

*Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 at 850.

The Chief Judge is responsible for knowing that in this Circuit under 28 U.S.C. § 455(b)(5), recusal is mandatory. See *U.S. v. Tucker*, 82 F.3d 1423 (C.A.8 (Ark.), 1996).

The plaintiff unlike the defendants' counsel was mindful of the special responsibilities of a Chief Judge. One of which is to protect his district against the felonious law firm misconduct documented at length in the plaintiff's complaint and largely uncontrovertibly demonstrated in the record of this matter and that of the related action *Medical Supply Chain, Inc. v. Novation, et al*, W.D. MO case no. 05-0210. However 28 U.S.C. § 137 vests the district courts with broad discretion in the assignment of cases to particular judges and makes the Chief Judge responsible for assignments. *United States v. Diaz*, 189 F.3d 1239, 1243-45 (10th Cir. 1999).

---

<sup>1</sup> The reciprocal disbarment is a W. D. of Missouri mystery. The similarly situated Dustin Sherwood a victim of Husch Blackwell Sanders LLP, Shughart Thomson & Kilroy PC, and Lathrop & Gage LC along with Shughart Thomson & Kilroy PC's concerted RICO extortion under color of official right along and fraud was never permitted to inspect the disciplinary records (**exb. 5**) and interviewed former Chief Judge Hon. Dean Whipple with the affiant Sydney J. Perceful, the witness to the \$39,000,000.00 bribery fund described in the WD of MO case *United States ex rel Michael W. Lynch v Seyfarth Shaw et al.* Case no. 06-0316-CV-W- SOW. Hon. Judge Dean Whipple stated he was not aware of any WD of MO reciprocal disbarment of Bret D. Landrith and commented that it is unusual he does not recall it since there are so few.

Hon. Judge Feranado J. Gaitan acted consistent with the duties of a Chief Judge in the wake of shocking misconduct in the District like that described in *United States v. Martinez*, 667 F.2d 886, 887-88 (10th Cir.1981) where USDOJ attorneys met *ex parte* with a district judge and witnesses to unlawfully influence the outcome of a proceeding. In what is for practical purposes an Eighth Circuit decision by a panel of this circuit's judges hearing a Tenth Circuit case, the court determined that "A judge is not only entitled but also has a duty to take all lawful measures reasonably necessary to prevent the occurrence of a crime in his courtroom." *Martinez v. Winner*, 771 F.2d 424 at 435 (C.A.10 (Colo.), 1985)<sup>2</sup>. The duty to ensure fundamental fairness gives Hon. Judge Feranado J. Gaitan the responsibility for enforcing attorney discipline:

"Above all else, the mission of a federal judge is to "administer justice without respect to persons, and... faithfully and impartially discharge and perform all the duties incumbent upon [him]... under the Constitution and laws of the United States." 28 U.S.C. § 453 (judicial oath of office)."

*U.S. v. Whitman*, 209 F.3d 619 at 625 (6th Cir., 2000).

Hon. Judge Feranado J. Gaitan simultaneously ordered alternative dispute resolution before another judge of the district. The defendants had unsuccessfully sought to have the RICO amendments dismissed for failure to state a claim and lack of standing (**exb 3** and Hon. Judge Manners Order **exb 4**) in state court prior to seeking their second removal. The plaintiff updated his claims including subsequent RICO prohibited conduct for the federal court. Having clearly met the Eighth Circuit controlling standards on a twice tested complaint, the plaintiff could have no reasonable expectation except that Hon. Judge Gaitan would disclose his interests and remedy the misconduct in the district court.

The inquiry over whether recusal is warranted is whether a reasonable person, knowing all the relevant facts, would discern potential impropriety certainly warrants consideration of a judge's course or pattern of rulings, and also of the judge's course of conduct. See *Moran v. Clarke*, 2002 C08 802 at 57-58 (USCA8, 2002). Hon. Judge Feranado J. Gaitan has still not disclosed information related to his 28 U.S.C. § 455(b)(5)(i) directorship in St. Luke's or his participation in the reciprocal disbarment of the plaintiff's counsel or whether Hon. Judge Feranado J. Gaitan has made criminal and disciplinary referrals against the

---

<sup>2</sup> (vacated and remanded on other grounds in *Tyus v. Martinez*, 475 U.S. 1138, 106 S.Ct. 1787, 90 L.Ed.2d 333 (1986) and reversed in part by *Martinez v. Winner*, 778 F.2d 553 (10th Cir.1985)).

present counsel, disclosures he is permitted under section 455(e) and expected to make by the Eighth Circuit. *Id.* at 57-58.

The plaintiff made his § 455(b) motion as soon as he became aware of Hon. Judge Feranado J. Gaitan directorship in St. Luke's meeting the timeliness requirement of *Tri-State Financial, LLC v. Lovald*, No. 07-2430 (8th Cir., 2008). The plaintiff only discovered the information related to the Hon. Judge Feranado J. Gaitan after learning of the information Hon. Judge Eugene Wedoff of the Northern District of Illinois shared with senior justice department officials over the ways and forms of interests sitting judges could have in cases before their court.

The timeliness rule of *Kansas Public Employees Retirement System, In re*, 85 F.3d 1353 at 1359 (C.A.8 (Mo.), 1996) isn't implicated until after the court's disclosure: "455(a) objections can be waived after a court gives full disclosure of the grounds for disqualification. 28 U.S.C. § 455(e)." *Kansas Public Employees Retirement System, In re*, 85 F.3d 1353 at 1359. Hon. Judge Eugene Wedoff has not yet disclosed his interests in this matter or controversy to the parties. Under *Liljeberg*, § 455 relief is timely "... even though the judgment had become final." *Scott v. U.S.*, 559 A.2d 745 at 751-752 (DC, 1989).

The plaintiff also has the burden of showing he was actually prejudiced by the second assignment of his action to Hon. Judge Feranado J. Gaitan under *United States v. Gallo*, 763 F.2d 1504, 1532 (6th Cir. 1985), a showing he could not make until the Memorandum and Order was issued controverting the controlling and clearly established precedents of the Eighth Circuit and Supreme Court, and barring the plaintiff's right to amend under F.R. Civ. P. Rule 15(a), "a party may amend its pleading once as a matter of course . . . before being served with a responsive pleading." A motion to dismiss is not a responsive pleading within the meaning of Rule 15(a). See, e.g., *Rhoades v. Avon Prods., Inc.*, 504 F.3d 1151, 1158 n.5 (9th Cir. 2007).

Hon. Judge Feranado J. Gaitan's memorandum and order also cites mere interim orders in other jurisdictions that the court was barred from taking into consideration, demonstrating the judge's lack of independence and impartiality. As a counterpoint, the judge's memorandum avoids describing the procedural history of this matter or controversy including the fraudulent removal to federal court by the General Electric defendants' counsel and the plaintiff's need to file a mandamus and a rehearing on the mandamus to get the matter or controversy returned to state court. This demonstrates for the first time Hon.

Judge Fernando J. Gaitan's impermissible bias providing the moment when the plaintiff was actually biased under *Gallo*, 763 F.2d at 1532 and the moment when § 455(b)'s requirement of "actual bias or prejudice is proved by compelling evidence" *Brokaw v Mercer County, Brokaw et al* (7th Cir., 2000).

A further concern over a lack of impartiality or independence is revealed by the temporal relationships of negative rulings (all contrary to controlling precedent) in the W.D. of Missouri, the 16<sup>th</sup> Circuit Court of the State of Missouri, and the Kansas District court, where the plaintiff has matters before the respective courts.

The precedent of the Eighth Circuit is that the plaintiff's appeal will trigger the remand of the present action for the trial judge to rule on any outstanding motion for recusal. "Accordingly, rather than remand to a different judge, we remand this question to the district court with the suggestion that it revisit and more thoroughly consider and respond to Moran's recusal request." *Moran v. Clarke*, 2002 C08 802 at 57-58 (USCA8, 2002).

### **3. The application of documentary exhibits**

Since the court dismissed the plaintiff's claims before discovery and the plaintiff has received no production of documents from any of the defendants, the plaintiff is not utilizing newly discovered evidence relative to proving his claims as a basis for his Rule 59(e) motion to seek the altering or amendment of the judgment dismissing the plaintiff's federal claims. The plaintiff has not converted the Motions to dismiss into motions for summary judgment and would request discovery.

The plaintiff has furnished documentary evidence to alert the new Chief Judge Fernando J. Gaitan to the now rampant use of racketeering extortion prohibited under RICO by attorney practitioner's before the Western District Court. The dismissal of all the plaintiff's federal claims last week is strikingly similar (in controverting the express enforcement policies created in statute by the US Congress) to the USA John Wood's dismissal of all criminal charges against the Novation LLC hospital CoxHealth and its officials including Robert H. Bezanson "without litigation" in *U.S. v. Lester E. Cox Medical Centers* a W.D. of Missouri criminal case that does not appear to have a case number in exchange for a \$60 million dollar settlement. See **exb. 6** JULY 22, 2008 Press Release of John Wood.

There cannot be a valid agreement for witness or other immunity applicable to the Novation LLC hospital CoxHealth or its officials and the US Attorney to disregard the US Grand Jury findings of

Medicare fraud. The “settlement” was procured by unlawfully firing USA Todd Graves and replacing him with the defendant Bradley J. Schlozman and when that was determined to be unlawful, installing USA John Wood to protect the RNC interest in Karl Rove’s key Republican supporters not getting prosecuted. “In his sworn grand jury testimony, Beitling denied ever having told clients, including Mustari and Stimack, that the best way to take care of criminal charges was through a fix, rather than fighting the charges legally.” *U.S. v. Beitling*, 545 F.2d 1106 (C.A.8 (Mo.), 1976).

Interference with the government prosecution that surpasses mere advocacy in the firing of USA Todd Graves, like firing USA Carol Lam to save Tenet Healthcare Corporation from Medicare fraud prosecution is extrinsic fraud and appears to be being investigated by USDOJ Inspector General Glenn A. Fine and the Congressional Judiciary committees, with the defendant Bradley J. Schlozman’s aids being subpoenaed one business day after USA John Wood frivolously objected to the plaintiff’s Rule 59(e) Motion (Schlozman had tried to hire RNC attorneys for WD of MO AUSA positions). See **exb. 7** and **8**

The investigation of the unauthorized wiretapping complained by the plaintiff is being conducted by H. Marshall Jarrett, the head of Justice's Office of Professional Responsibility. See **exb. 9**

Dustin Sherwood, the similarly situated party to the plaintiff in experiencing extrinsic fraud in the form of RICO extortion through color of official right via threats of economic harm described in *U.S. v. Kelley*, 461 F.3d 817 at 826 (6th Cir., 2006) and through the coercive nature of official office described in *U.S. v. Antico*, 275 F.3d 245 at 256 (3rd Cir., 2001) by Husch Blackwell Sanders LLP, Shughart Thomson & Kilroy PC, and Lathrop & Gage LC along with Shughart Thomson & Kilroy PC’s successor in interest Polsinelli Shalton Flanigan Suelthaus PC was sent away to jail during the days required to raise the \$150,000.00 bond in order to stop the sale of his farm. See **exb. 10**.

Whereas for the above reasons, the defendant Bradley J. Schlozman’s objection to the Rule 59(e) Motion is frivolous. The plaintiff respectfully requests the court withdraw its memorandum and order dismissing the plaintiff’s federal claims.

Respectfully submitted,

S/ Samuel K. Lipari  
Samuel K. Lipari

**CERTIFICATE OF SERVICE**

I certify I have sent a copy via email to the undersigned and opposing counsel via email on 8/11/08.

John K. Power  
Leonard L. Wagner  
Michael S. Hargens  
Husch Blackwell Sanders, LLP  
1200 Main Street  
Suite 2300  
Kansas City, MO 64105  
(816)283-4651  
Fax: (816)421-0596  
john.power@husch.com  
lwagner@kcsouthern.com  
michael.hargens@husch.com  
via email  
Attorneys for the GE Defendants

J. Nick Badgerow  
Spencer Fane Britt & Browne, LLP  
9401 Indian Creek Parkway  
Suite 700  
Overland Park, KS 66210  
(913)327-5134  
Fax: (913)345-0736  
Email: nbadgerow@spencerfane.com  
Attorney for Seyfarth Shaw LLP

Jeffrey P. Ray  
Office of the United States Attorney  
400 E. 9th St.  
Room 5510  
Kansas City, MO 64106  
(816) 426-3130  
Fax: (816) 426-3165  
Jeffrey.Ray@usdoj.gov  
Attorney for Bradley J. Schlozman

S/ Samuel K. Lipari

---

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

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

SAMUEL K. LIPARI,	)	
	)	
	)	Plaintiff,
	)	
v.	)	Case No. 07-CV-02146-CM-DJW
	)	
U.S. BANCORP, and	)	
	)	
U.S. BANK NATIONAL ASSOCIATION,	)	
	)	
Defendants.	)	

**MOTION FOR ORDER TO SHOW CAUSE**

Defendants, by and through counsel Shughart Thomson & Kilroy, P.C., move this Court for an Order requiring the plaintiff to show cause why this action should not be dismissed (or other sanctions levied) under Rule 37(b)(2)(A) for his failure to comply with the Court’s July 8, 2008 discovery Order. In support of this Motion, defendants state as follows:

1. On July 8, 2008, the Court ordered plaintiff, within 14 days of the Order, to serve supplemental responses to defendants’ First Interrogatories Nos. 1, 3, 5-14, 16, 17 and 21; and to produce all documents responsive to defendants’ First Request for Production. The Court also ordered the plaintiff, within 21 days of the Order, to show cause why he should not be required to pay the reasonable fees and expenses the defendants incurred for their Motion to Compel. *See*, Memorandum and Order, Doc. # 96.

2. On July 10, 2008, plaintiff filed an Objection to Magistrate’s Order, asking for District Court review of the July 8, 2008 Order. *See*, Doc. # 97. But the plaintiff did not seek to stay the Order under D. Kan. Rule 72.1.4(d).

3. Simply filing an Objection to Magistrate’s Order does not relieve a party’s obligation to comply with the order, absent an Order to Stay under D. Kan. Rule 72. *See, Kelly*

*v. Market USA*, 2003 WL 21089075, \*2 (D. Kan. 2003) (holding that *pro se* plaintiff's refusal to comply with the magistrate's order to produce discovery was unexcused even though the plaintiff had filed an objection to the order). A copy of the *Kelly* decision is attached as **Exhibit A**.

4. The plaintiff has not produced any documents or supplemental responses in accordance with the Court's Order, and has also failed to respond to the Court's Show Cause Order.

5. Rule 37(b)(2)(A) states that if a party fails to comply with a court's discovery order, the court may levy sanctions on the party, including dismissal of the action. Because the plaintiff has failed to comply with the July 8, 2008 Order, the defendants request the Court order the plaintiff to show cause why this matter should not be dismissed or other sanctions issued pursuant to Rule 37(b)(2)(A).

WHEREFORE, the above stated reasons, the defendants request the Court issue an Order requiring the plaintiff to show cause as to why this matter should not be dismissed or other sanctions issued against the plaintiff for his failure to comply with the Court's July 8, 2008 Order. Defendants also request all other relief to which they are justly entitled.

Respectfully submitted,

/s/ Jay E. Heidrick

ANDREW M. DeMAREA KS #16141

JAY E. HEIDRICK KS #20770

SHUGHART THOMSON & KILROY, P.C.

32 Corporate Woods, Suite 1100

9225 Indian Creek Parkway

Overland Park, Kansas 66210

(913) 451-3355

(913) 451-3361 (FAX)

MARK A. OLTHOFF KS # 70339  
SHUGHART THOMSON & KILROY, P.C.  
1700 Twelve Wyandotte Plaza  
120 W 12th Street  
Kansas City, Missouri 64105-1929  
(816) 421-3355  
(816) 374-0509 (FAX)

ATTORNEYS FOR DEFENDANTS  
U.S. BANCORP and U.S. BANK NATIONAL  
ASSOCIATION

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing document was filed electronically with the above-captioned court, with notice of case activity to be generated and sent electronically by the Clerk of said court (with a copy to be e-mailed to any individuals who do not receive electronic notice from the Clerk) this 20th day of August, 2008, to:

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

/s/ Jay E. Heidrick  
Attorney for Defendants

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

SAMUEL K. LIPARI,	)	
	)	
	)	Plaintiff,
	)	
v.	)	Case No. 07-CV-02146-CM-DJW
	)	
U.S. BANCORP, and	)	
	)	
U.S. BANK NATIONAL ASSOCIATION,	)	
	)	
	)	
Defendants.	)	

**DEFENDANTS' RESPONSE TO THE COURT'S SHOW CAUSE ORDER TO  
PLAINTIFF REGARDING PLAINTIFF'S RULE 26 DISCLOSURES**

Defendants, by and through counsel, file this Response to the Court's Show Cause Order to Plaintiff Regarding his insufficient Rule 26(a)(1)(A) disclosures. On July 22, 2008, the Court granted defendants' Motion to Compel Plaintiff's Compliance with Rule 26 and ordered the plaintiff to supplement his Rule 26(a)(1)(A) disclosures by July 30, 2008. *See*, Doc. No. 103. The Court also ordered the plaintiff to file a pleading on or before August 13, 2008 to show cause as to why he should not be required to pay for a portion of the defendants' reasonable fees and expenses incurred with filing the motion to compel. *Id.* The Order stated that defendants would then have until August 24, 2008 to file a response.

The plaintiff has not supplemented his Rule 26 disclosures in accordance with the Court's Order and failed to file any response to the Court's show cause order. Any decision to award costs and fees related to this motion lies within the sound discretion of the Court. Despite the plaintiff's refusal to comply with the Court's mandate, the defendants take no position on the issue and leave the matter to the Court's discretion.

