

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

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

**PLAINTIFF’S SUGGESTION IN OPPOSITION
TO DEFENDANTS’ MOTION TO SERVE PAPERS ON COUNSEL
IN ACCORDANCE WITH MISSOURI RULE OF CIVIL PROCEDURE 43.01(B)**

Comes now the plaintiff Samuel K. Lipari appearing *pro se* and respectfully makes the following suggestion opposing the defendants’ Motion To Serve Papers On Counsel In Accordance With Missouri Rule Of Civil Procedure 43.01(B). The plaintiff respectfully submits that he has complied with serving motions, pleadings and copies of all communication on the defendants’ counsel. The Novation LLC defendants’ counsel Husch Blackwell Sanders LLP (which is itself a defendant and representing itself *pro se* in a conflict of interest with the parties Husch Blackwell Sanders LLP purports to represent in this action) is requesting that this court restrain the plaintiff’s right to Freedom of Speech and Right to Seek Redress protected under the Constitution of the State of Missouri and expressly permitted under Missouri Supreme Court Rule 4-4.2: Communication With Person Represented By Counsel.

STATEMENT OF FACTS

1. The plaintiff is the prevailing party in this action as an acting private attorney general under the catalyst test described in *Ellis v. University of Kansas MedicalCenter* 10thCir. Case No. 96-3343a 12/21/1998 when the Husch Blackwell Sanders LLP represented defendant hospital CoxHealth opened its procurement of hospital supplies to suppliers outside of the Novation LLC cartel.
2. On February 25th, 2009, the defendant Husch Blackwell Sanders LLP committed an act in furtherance of the hospital supply cartel’s group boycott of Missouri in the form of a late suggestion opposing amendment that incorporated legal arguments contrary to controlling Missouri and federal law on claim and issue preclusion known to be false and misleading in violation of Missouri Professional Conduct Rule 3.3 Candor Toward the Tribunal that was a violation of Chapter 416 of RSMo

of the Missouri Antitrust Act and not protected by *Noerr-Pennington* immunity¹ as a sham defensive pleading *In re Burlington N., Inc.*, 822 F.2d 518, 532-33 (5th Cir.1987).

3. It is not reasonably or in good faith disputable that the defendant antitrust cartel co-conspirator Lathrop & Gage LLP had similarly attempted to mislead Hon. Judge Michael W. Manners by filing a false misrepresentation of Missouri controlling law as it applies to dismissal of an action with an unserved defendant on November 12, 2008 and November 24, 2008 to corruptly obtain a judgment of dismissal from Hon. Judge Michael W. Manners on December 29 2008 and therefore avoid discovery that would expose Lathrop & Gage LLP's misrepresentations to the court in the answer to the original petition.

4. Lathrop & Gage LLP admitted knowledge of the falseness of their arguments to this court when in the Western District of Missouri Court of Appeals on January 28th, 2009 by citing as authority the controlling law of this jurisdiction that contradicted Lathrop & Gage LLP's November 24th, 2008 representations to Hon. Judge Michael W. Manners on December 29 2008 that were also a violation of Missouri Professional Conduct Rule 3.3 Candor Toward the Tribunal that was a violation of Chapter 416 of RSMo of the Missouri Antitrust Act and not protected by *Noerr-Pennington* immunity as a sham defensive pleading *In re Burlington N., Inc.*, 822 F.2d 518, 532-33 (5th Cir.1987).

5. Lathrop & Gage LLP is properly an antitrust cartel co-conspirator with Husch Blackwell Sanders LLP because under the original petition (and current proposed amended petition) Lathrop & Gage LLP obstructed the federal criminal investigation of CoxHealth and its executives including Robert H. Bezanson over systemic Medicare Fraud by participating in causing the unlawful firing of US Attorney Todd Graves to prevent criminal indictments for Medicare Fraud through extrinsic fraud.

6. The discovery request against Robert H. Bezanson was to give Robert H. Bezanson notice and opportunity to assert rights in a separate matter- the discovery dispute between the plaintiff and Lathrop & Gage LLP even though doing so was against the plaintiff's interest in obtaining the documents.

¹ "The Noerr- Pennington doctrine originated in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 81 S.Ct. 523, 5 L.Ed.2d 464 (1961) and *United Mine Workers v. Pennington*, 381 U.S. 657, 85 S.Ct. 1585, 14 L.Ed.2d 626 (1965). As part of that doctrine, concerted attempts to induce the passage or enforcement of laws are immunized from anti-trust liability, regardless of the anticompetitive purpose or effect of those laws. *Noerr*, 365 U.S. at 138-140, 81 S.Ct. at 530-531."

Defino v. Civic Center Corp., 780 S.W.2d 665 at 667 (Mo. App. E.D., 1989)

SUGGESTION IN OPPOSITION TO DEFENDANTS' MOTION

The public interest is in upholding the plaintiff's protected speech to stop continuing wrongdoing. The Novation LLC hospital supply antitrust conspiracy Sherman Act violations are punished as criminal felonies. The Department of Justice is empowered to bring criminal prosecutions under the Sherman Act. Individual violators can be fined up to \$350,000 and sentenced to up to 3 years in federal prison for each offense; corporations can be fined up to \$10 million for each offense. The level of participation in a *per se* Sherman I conspiracy like Lathrop & Gage LLP and Husch Blackwell Sanders LLP's continuing participation in criminal acts with the Novation LLC to exclude the plaintiff/appellant from the participation in a *per se* Sherman I conspiracy like Lathrop & Gage LLP and Husch Blackwell Sanders LLP's continuing participation with Novation LLC to exclude the plaintiff from the Missouri hospital supply market is presumed as a known foreseeable consequence of the unlawful acts. See generally *U.S. v. Continental Group, Inc.*, 603 F.2d 444 (C.A.3 (Pa.), 1979).

There is naturally a tendency of Husch Blackwell Sanders LLP's co chairmen Joseph P. Conran and David A. Fenley to want to fraudulently use Missouri Rule Of Civil Procedure 43.01(B) to corruptly mislead this court into participating in further unlawful acts against the plaintiff for the purpose of preventing Husch Blackwell Sanders LLP's crimes from being exposed. However this is against the legislated public policy of the State of Missouri and the Supreme Court of Missouri.

Missouri has adopted ABA model Rule 4.2. The Western District has observed that Missouri's Rule 4-4.2 is identical to the ABA model rule 4.2. See *Smith v. Kansas City Southern Ry. Co.*, 87 S.W.3d 266 at pg. 271 (Mo. App., 2002)The Missouri rule states:

“RULE 4-4.2: COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”

Rule 4-4.2: Communication With Person Represented By Counsel.

In Comment 4 to Rule 4-4.2: Communication With Person Represented By Counsel, the Missouri Supreme Court has expressly stated the following in order not to be an unconstitutional violation of protected speech against misconduct and violations of law: “Parties to a matter may communicate directly with each other”

A judge in the concurrent federal proceeding between the petitioner and the Novation LLC defendants ruled that: “Rule 4.2 generally does not prohibit a party from communicating directly with an opposing party. *Holdren v. General Motors Corp.*, 13 F.Supp.2d 1192, 1195-96 (D.Kan.1998)” *Hammond v. City of Junction City, Kansas*, 167 F.Supp.2d 1271 at 1293 (D. Kan., 2001)

A Texas court has observed that the rule does not effect the principal in his communications to a represented party: “Nor does the rule “impose a duty on a lawyer to affirmatively discourage communications between the lawyer's client and other represented persons, organizations, or entities of government.”” *News America Pub., Inc., In re*, 974 S.W.2d 97 at 101 (Tex.App.-San Antonio, 1998).

Missouri courts have adopted similar positions:

“*State ex rel. Atchison, Topeka & Santa Fe R.R. v. O'Malley*, 888 S.W.2d 760 (Mo. App.1994), supports the trial court's order excluding any testimony from House. That case involved an order from the circuit court permitting contact with any railroad employee upon the theory that 45 U.S.C. § 60 (applicable only to FELA cases) superseded Rule 4-4.2 in such type of cases.”

Smith v. Kansas City Southern Ry. Co., 87 S.W.3d 266 at 275 (Mo. App., 2002).

Missouri courts have observed a lack of prohibitions of communications under 4.2 between parties:

“Upon review of the rules of professional conduct, the Court concludes that there is nothing that prohibits one party to a litigation from making direct contact with another party to the same litigation. See e.g., Missouri Supreme Court Rules of Professional Conduct Rule 4.2 cmt. (“... parties to a matter may communicate directly with each other....”). These rules are designed to regulate the conduct of lawyers, and simply do not apply to the conduct of nonlawyers. *Massiah v. United States*, 377 U.S. 201, 210-11, 84 S.Ct. 1199, 1205-06, 12 L.Ed.2d 246 (1964) (White, J., dissenting). Therefore, since the only evidence before the Court indicates that the direct communications were initiated by the Defendant, and not by its attorneys, the Court concludes that these communications are permissible under the rules of professional conduct.”

E.E.O.C. v. McDonnell Douglas Corp., 948 F.Supp. 54 at 55 (E.D. Mo., 1996).

In order not to be an unconstitutional violation of protected speech against misconduct and violations of law, Missouri rules comment 4 specifically states:

“[4] Rule 4-4.2 does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter.”

Rule 4-4.2: Communication With Person Represented By Counsel, Comment 4.

Serving a courtesy copy of the discovery against Lathrop & Gage LLP to parties not represented by Lathrop & Gage including Robert H. Bezanson was to give them notice that they may wish to contact

Lathrop & Gage LLP or their own counsel to assert rights to prevent Lathrop & Gage LLP from failing to assert protections or privileges that may exist at law. This motive cannot be harassment or improper but instead advances the public policy interest even against the interest of the plaintiff in obtaining discovery of those same documents.

The plaintiff's direct communications to parties serves an important public interest in facilitating the resolution of this matter:

“[I]n *Siguel v. Trustees of Tufts College*, No. 88-0626-Y, 1990 WL 29199, 1990 U.S. Dist. LEXIS 2775 (D.Mass. Mar. 12, 1990), **Judge Young commented that "such contact among parties is generally encouraged as a means of facilitating settlement and of avoiding protracted litigation."** *Id.* at 1990 WL 29199, at *2, 1990 U.S. Dist. LEXIS 2775” [Emphasis added]

Northwest Bypass v. U.S. Army Corps of Engineers, 488 F.Supp.2d 22 (D.N.H., 2007).

The sanctioning of the plaintiff to restrain his communications is actually obstruction of justice and against the public policy interest:

“, the court of appeals concluded that 18 U.S.C. § 1513(b)(1), retaliation against witnesses, applies in both civil and criminal cases. The court recounted the facts as follows:

While in state prison, Jackie McLeod filed an action, pursuant to 42 U.S.C. § 1983, alleging that Houston County Deputy Sheriff Joe Watson and others had violated his civil rights. Watson testified at the ensuing trial. At the conclusion of the presentation of the evidence, the district judge granted a directed verdict in favor of Watson and the other defendants. Following the verdict, McLeod told Watson that as soon as he was released from prison, he was going to kill him. Watson reported this threat to the district judge and the Federal Bureau of Investigation. McLeod was charged with retaliating against a witness in violation of 18 U.S.C. § 1513(a)(1).
Id. at 323.”

Northwest Bypass v. U.S. Army Corps of Engineers, 488 F.Supp.2d 22 at 30-31 (D.N.H., 2007).

Sanctions such as the order now sought against the plaintiff by Husch Blackwell Sanders LLP's co chairmen Joseph P. Conran and David A. Fenley are inappropriate and in violation of the court's authority under the controlling law of the Western District. See *Smith v. Kansas City Southern Ry. Co.*, 87 S.W.3d 266 at fn 8 (Mo. App., 2002).

Respectfully submitted

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 17th day of March , 2009, via email to:

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S/Samuel K. Lipari

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