

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

SAMUEL K. LIPARI)	
)	
<i>Plaintiff,</i>)	
v.)	Case No. 06-0573-CV-W-FJG
)	
GENERAL ELECTRIC COMPANY)	
GENERAL ELECTRIC CAPITAL BUSINESS)	
ASSET FUNDING CORPORATION,)	
GE TRANSPORTATION SYSTEMS GLOBAL)	
SIGNALLING, LLC.)	
)	
<i>Defendants.</i>)	

**PLAINTIFF’S HEARING BRIEF AND
REPLY SUGGESTION FOR RECUSAL UNDER 28 U.S.C. § 455(a) and (b)(4)**

Comes Now the plaintiff Samuel K. Lipari appearing *pro se* and respectfully offers a suggestion supporting mandatory recusal of the trial judge in this matter and provides a brief of issues for any hearing.

SUMMARY OF ARGUMENT

The plaintiff is surprised and concerned that this issue has been submitted to the parties for briefing. 28 U.S.C. § 455(b) requires automatic recusal where being on the board of a related party creates fiduciary interest. Judicial Canon 5(C)(2) proscribes the judge’s participation on the board of St. Luke’s. Canon 3(C)(1)(c) requires recusal because the court’s fiduciary property interest as a past or present director of St. Luke’s will be substantially effected by the outcome of this case and the discovery of the judge’s role as a director of St. Luke’s undisclosed by him in this action is operatively the same factual scenario as *Liljeberg v. Health Services Acquisition Corp*, 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1987) where the court found the judge who was a director of a related nonparty entity had a prohibited fiduciary property interest in St. Jude Hospital affected by the action and therefore committed four violations of § 455.

FACTUAL HISTORY

The plaintiff just discovered the conflict of interest raised by Hon. Judge Feranado J. Gaitan’s 28 U.S.C. § 455(b)(4) prohibited fiduciary interest in the present litigation as a member of the board of director’s of St. Luke’s hospital, a business which is the entity controlling Volunteer Hospital Association of America (VHA) and Novation LLC and participating as a health system in the Novation monopolization of hospital supplies in a cartel with General Electric Company by purchasing almost all of its hospital supplies in illegal long term anticompetitive contracts with Novation, totaling more than 97 million dollars

a year in Hon. Judge Feranado J. Gaitan's hospital alone. St. Luke's hospital also receives substantial payments from Novation in the form of rebates that the plaintiff has alleged violate Medicare anti-kickback statutes.

The complaint in the present breach of contract litigation specifically identifies General Electric Capital Business Asset Funding Corporation's financing the partial purchase of the plaintiff's direct web based competitor electronic marketplace for hospital supplies, Neoforma, Inc. by GHX, Inc. an electronic marketplace created by General Electric and alleges the General Electric defendants breached their contract when they realized their performance would permit the plaintiff to enter the market for hospital supplies as a competitor to their cartel.

The plaintiff is currently litigating antitrust and racketeering claims against VHA and Novation and has described in its Kansas District court pleadings later accruing antitrust claims based on the combining of Neoforma with GHX, LLC and later racketeering conduct of Novation and General Electric in furtherance of the cartel's continuing monopolization of the hospital supply business. As a director of a VHA member hospital, Hon. Judge Feranado J. Gaitan and St. Luke's other officers are witnesses to the conduct of VHA and Novation including the monopolization of hospital supplies giving rise to the claims being brought by the plaintiff.

It is problematic for any Judge to be on or have been on the board of a member of VHA and therefore a controlling officer over Novation LLC and to also have the conflicting responsibility of oversight of St. Luke which has its own institutional interests harmed by Sherman Act prohibited contracts with Novation LLC. Novation is the subject of a criminal investigation. See "Wide U.S. Inquiry Into Purchasing for Health Care" by Mary Williams Walsh, New York Times, August 21, 2004. The British newspaper the Daily Mail exposed Novation LLC's practice of bribing officials to monopolize American hospital supply sales in an article entitled "US firm given £4bn NHS deal by Labour faces 'bribes' probe" by Sharon Churcher and Glen Owen, Daily Mail, Sunday 30th July 2006. The paper of record the Times of London also reported that Novation LLC was under investigation by the US justice Department for its anticompetitive practices; "Firm handed £4bn NHS contract was investigated for overcharging" by Nigel Hawkes, Times July31, 2006.

The plaintiff cannot demand rulings on the plaintiff's motion to dismiss defendants' affirmative

defenses, seek to dismiss the additional affirmative defenses untimely raised in the defendants' answer, amend his complaint, enforce discovery or even enforce this court's mediation order without forfeiting his right to remand this action to state court.

MEMORANDUM OF LAW

The plaintiff makes the following detailed explanations of the law applicable to the Judge's current or previous position as a member of the Board of Directors of St. Luke's Healthcare System, a entity related to defendants in ongoing litigation by the plaintiff which are also members of a hospital supply cartel openly organized by the current General Electric defendants and openly participating in an agreement to restrain trade memorialized as GHX, LLC.

The Plaintiff's Motion is Procedurally Correct

The plaintiff's motion identified the basis for Hon. Judge Feranado J. Gaitan's automatic recusal with the judge's own affidavit of financial interests attached, instead of a utilizing a plaintiff's affidavit under a 28 U.S.C. § 144 motion:

"The Independent Counsel does not seek review of Judge Woods's failure to disqualify himself under 28 U.S.C. § 144 (1994), which requires the party seeking recusal to timely file an affidavit alleging facts showing bias with the district judge that he wishes to be disqualified. Unlike § 144, § 455 sets forth no procedure for seeking recusal in the district court. See *Liteky*, --- U.S. at ----, 114 S.Ct. at 1153 (as distinguished from § 144, § 455 "place[s] the obligation to identify the existence of those grounds upon the judge himself, rather than requiring recusal only in response to a party affidavit")."

Chase Manhattan Bank v. Affiliated Fm Ins. Co., 343 F.3d 128 at 131 (2nd Cir., 2003). The plaintiff cannot know all the sources of conflict for Hon. Judge Feranado J. Gaitan in the present case and the judge has made no disclosure to the parties. Even if Hon. Judge Feranado J. Gaitan is no longer a director of St. Luke's or a director in some limited or special capacity, he must recuse himself:

"Even if we accept all of the objective facts set out in the answer, however, we are not constrained to accept the legal conclusion that Mr. Harper's status with the Bank is not that of a "director," as contemplated by the use of that term in Canon 3 C(1)(d)(i). That he was thought of in the community as a "director of the Bank" is evidenced by the judge's reference in his order to "his brother's association with said Bank as a Director."

Moreover, without deciding Mr. Harper's true legal relationship with the Bank, we find that the Bank's common, albeit unofficial, description of Mr. Harper as a "director" is sufficient of itself to give rise to an appearance of impropriety for Judge Harper to sit as judge in this case."

Ex parte Jackson, 508 So.2d 235 at 235 (Ala., 1987). The appearance of bias objectively exists regardless of whether Hon. Judge Feranado J. Gaitan knew of the dimensions of conflict raised by his equitable interest in VHA and Novation as St. Luke's fiduciary and continued to sit on this case:

"In *Liljeberg*, the Supreme Court held that a judge's "forgetfulness" was not deemed "the sort of objectively ascertainable fact that can avoid the appearance of partiality." 486 U.S. at 860, 108 S.Ct. 2194 (quoting *Health Servs. Acquisition Corp. v. Liljeberg*, 796 F.2d 796, 802 (5th Cir. 1986)). We hold that under the present facts the district judge's stated ignorance of the merger cannot overcome the objective appearance of a conflict of interest requiring disqualification under Section 455(a)."

Chase Manhattan Bank v. Affiliated Fm Ins. Co., 343 F.3d 128 at 131 (2nd Cir., 2003).

"Prior to its amendment in 1974, 28 U.S.C. § 455 had been construed to leave to the "conscience of the particular judge" whether he would try a person accused of robbing a bank in which the judge held stock. *United States v. Ravich*, 421 F.2d 1196, 1205 (2d Cir. 1970). Ravich held the interest of the judge in the case was "nonexistent." The 1974 revision was designed to eliminate a subjective test, and removed "in his opinion" from the statute. The statute now provides that a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455. This is described as an objective standard in the House Report mentioned just below. The legislative history indicates that the new objective test was intended to end the "duty to sit" construction the former statute had received. H.R. Rep. No. 93-1453, 93d Cong., 2d Sess., reprinted in U.S.Code Cong. & Admin.News, 93d Cong., 2d Session, pp. 6351, 6354-55. Thus, we are now required to assess "all the facts and circumstances in order to determine whether the failure to disqualify was an abuse of sound judicial discretion." H.R. Rep. No. 93-1453, supra, reprinted at 6355. *Davis v. Board of School Comm'rs.*, 517 F.2d 1044, 1052 (5th Cir. 1975).

U.S. v. Sellers, 566 F.2d 884 at 887 (C.A.4 (S.C.), 1977).

Significant Judicial Time Has Not Been Expended on the Case

The plaintiff just discovered the conflict and made motion for recusal the following day. The plaintiff's motion is therefore timely:

"Generally, a motion for recusal should be brought at the first opportunity after discovery of the facts requiring disqualification. See 28 U.S.C. Sec. 144; *Smith v. Danyo*, 585 F.2d 83, 86 (3d Cir.1978)."

Lephart v. Franklin County Sheriff's Dept., 14 F.3d 601 (C.A.6 (Ohio), 1993).

If the court had devoted substantial judicial time to this matter and the conflict was merely an appearance of being on the board of directors of a related nondefendant party covered by § 455(a) instead of actually having been on the board mandating automatic recusal under § 455(b)(4), the amount of time the trial judge spent on the matter might be a factor. However, in the present case, the substantial calendar time is not counted, and the trial court has not ruled on any of the substantive motions before it.

"We turn then to the issue of whether the district court "devoted substantial judicial time." The statute does not define "substantial judicial time." The district court discussed § 455(f) in support of

its argument that it could prospectively divest of conflicting stocks before substantial judicial time was invested. *In re Initial Pub. Secs. Offering Litig.*, 174 F.Supp.2d at 86-87. We think the district court failed to appreciate the application of § 455(f) to the recusal motion. We hold **measuring "substantial judicial time" means examining the time and effort a district court invests in a matter, rather than simply counting off days on the calendar to see if "substantial" time passed. The inquiry is thus properly focused on the amount of work a case requires, not on calendar time. In some matters, months may pass with little or no involvement by the district court, requiring a finding that substantial judicial time has not been devoted.** Other cases will, in a matter of weeks, demand a great deal of the court's time and attention. For example, little judicial time would probably be expended on a typical employment discrimination action within the first few months of assignment. In contrast, the Securities Actions required a herculean organizational effort upon assignment, with the docket reflecting the entry of more than 2,000 items. Organizational work may be the grunt work of the judicial system, but it is as necessary and vital to its success as motion and trial practice. We recognize that this case is unusual in requiring the devotion of significant judicial resources early on, and suspect that in most cases the passage of calendar time will closely track the devotion of judicial time. Compare *Tramonte v. Chrysler Corp.*, 136 F.3d 1025, 1031-32 (5th Cir.1998) (**substantial judicial time exception not available where the docket reflects little time devoted to the matter**), and *Gordon v. Reliant Energy Inc.*, 141 F.Supp.2d 1041, 1045 (S.D.Cal.2001) (same), with *Baldwin Hardware Corp. v. Franksu Enter. Corp.*, 78 F.3d 550, 555-56 (Fed.Cir.1996) (substantial judicial time expended when discovery of conflicting interest came during trial), and *Kidder, Peabody*, 925 F.2d at 561 (substantial judicial time expended when discovery of conflicting interest came three years into the litigation)." [emphasis added]

In re Certain Underwriter, 294 F.3d 297 at 304-305 (Fed. 2nd Cir., 2002). However, the trial judge's recusal due to his position as a Director of St. Luke's during the events and conduct complained of by the plaintiff is mandatory under § 455(b):

"Subsection 455(b) spells out the circumstances in which a judge must disqualify himself because of his relation to participants in a case. The specific provisions at issue here are § 455(b)(1), which requires a United States judge to disqualify himself from a case if "he has a personal bias or prejudice concerning a party," and § 455(b)(5)(iii), which requires recusal if the judge "or a person within the third degree of relationship to [him] ... [i]s known by the judge to have an interest that could be substantially affected by the outcome of the proceeding." 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 court in *Chase Manhattan Bank* described how a fiduciary duty mandates recusal:

"Section 455(b) provides in relevant part that a judge

shall also disqualify himself in the following circumstances:

.....

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

28 U.S.C. § 455(b).

Section 455(c) imposes a duty upon a federal judge to

inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

28 U.S.C. § 455(c). For these purposes, Section 455(d)(4) defines "financial interest" to mean "ownership of a legal or equitable interest, however small." 28 U.S.C. § 455(d)(4).

Unlike Section 455(a), therefore, Section 455(b)(4) embodies an actual knowledge test regarding disqualifying circumstances and provides a bright line as to disqualification based on a known financial interest in a party — i.e., an equity financial interest of any size is disqualifying. See *Liljeberg*, 486 U.S. at 859-60 n. 8, 108 S.Ct. 2194. Moreover, the parties may, if fully informed, waive grounds for disqualification under Section 455(a) but not under Section 455(b). See 28 U.S.C. § 455(e).”

Chase Manhattan Bank v. Affiliated Fm Ins. Co., 343 F.3d 120 at 127 (2nd Cir., 2003).

Judicial Canons Require Hon. Judge Fernando J. Gaitan’s Recusal

The trial judge has notice of the conflict at a stage of the litigation where the Canons of Judicial Conduct should guide his decision and clearly require his recusal. The canons are a basis on which judges can look to disqualify themselves before a trial had begun. *Smith v. Sikorski Aircraft*, 420 F.Supp. 661 (C.D.Cal. 1976); *Spires v. Hearst Corp.*, 420 F.Supp. 304 (C.D.Cal.1976).

Even a charitable nonprofit organization not competing in commerce as a provider of services for compensation (as St. Luke’s does) has been a historical concern to drafter’s of Judicial Ethics Canons for the potential of actual and perceived conflicts of interest:

“Canon 25 of the Canons of Judicial Ethics, as adopted by the then members of this court on January 27, 1954 (160 Ohio St.), differs from Canon 25 as adopted by the American Bar Association. Canon 25 provides that:

'A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, (n)or use the power of his office (or the influence of his name) to promote the business interests of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interest into conflict with the impartial performance of his official duties.'

The foregoing quoted language, in brackets, is included in Canon 25 as adopted by the American Bar Association but is not included in Canon 25 as adopted by this court in 1954. That court, by omitting the language in brackets from American Bar Canon 25, seemingly intended to give judges greater latitude in their business relationships than would be permitted by the American Bar Canon. In view thereof, it would appear that a judge does not necessarily violate Canon 25, as adopted in Ohio, merely by serving as a member of the board of directors of a loan company or a savings and loan association, where he in good faith discharges his duties as a director and nothing more is involved.

If the fact of a judge's membership on the board of directors is used by the corporation to persuade others to patronize it or is used by the corporation to promote its business interests, the judge, by accepting membership on the board of directors, has given ground for 'reasonable suspicion' that the judge is using 'the power or prestige of his office' for that purpose. This is

especially true if the judge does not regularly attend meetings of the board of directors, but is a member of the board in name only.”

Cincinnati Bar Ass'n v. Heitzler, 291 N.E.2d 477, 32 Ohio St.2d 214 at 224-225 (Ohio, 1972). The Ohio court recognized the rule for conduct of judges depends upon its consideration of the new Code of Judicial Conduct adopted by the American Bar Association, Canon 4 of which expressly prohibits a judge from serving as an officer, director, employee or advisor of any business organization.” *Cincinnati Bar Ass'n v. Heitzler* 291 N.E.2d 477 at fn (Ohio, 1972).

The State of Louisiana adopted a version of Canon 5(C) expressly barring serving as a directing officer of a nonprofit corporation that is “affected with the public interest”:

“The Code of Judicial Conduct was adopted by the Court pursuant to its constitutional supervisory jurisdiction over all other courts, see La.Const. art. V, § 5(A)(1974), and after lengthy deliberation on the need for greater specificity in some areas of ethical standards. For detailed historical development of the canon, see *Babineaux*, supra, at 399. This Code, like the Canons of Judicial Ethics which it replaced, is binding upon members of the judiciary. *In re Haggerty*, 257 La. 1, 241 So.2d 469 (1970). Canon 5(C)(2) of the Code provides in pertinent part that:
"a judge may hold and manage investments, including real estate, and engage in other remunerative activity but should not serve as an officer, director, manager, or employee of any bank, lending institution, homestead or savings and loan association, insurance company, public utility, and other businesses affected with a public interest."

Babineaux, In re, 346 So.2d 676 at 678-679 (La., 1977). Florida Judicial Ethics Advisory Committee OPINION 95-45 (January 2, 1996) stated unanimously that a judge cannot serve on the Board of a Credit Union under Canon 5D(3):

“You ask whether you may continue to serve as a director of the MacDill Federal Credit Union (MFCU), a not-for-profit financial institution. **The MFCU is clearly a business entity, regardless of its not-for-profit nature. It engages in savings, loans, and other financial activities. Canon 5D(3) specifically prohibits a judge from serving as a director on the board of such an entity.** Ten of the ten responding committee members believe that you should resign your board position.” [emphasis added]

In re: Committee on Standards of Conduct Governing Judges OPINION 95-45

St. Luke’s is a very big business and is most certainly affected with the public interest. The Louisiana court ruled the subject judges were to be suspended without pay:

“Even without the publicity attendant to this litigation, respondents' service on boards of directors of financial institutions (banks, homesteads, etc.) was and is open and cognizable to those members of the public, and the bar, with sufficient interest or inclination to want to know. In our view it is also prejudicial to the administration of justice bringing the judicial office, and the judiciary in general, into disrepute, to have judges who are constitutionally subject to the supervision of this Court deliberately, continuously and openly refusing to comply with a valid canon of ethics.”

Babineaux, In re, 346 So.2d 676 at 681 (La., 1977).

The State of Massachusetts has also issued opinions on the Canon's application to a judge on the board of directors of a corporation and has specifically addressed the definition of business as it applies to nonprofit institutions:

"Canon 5(B) of the Code of Judicial Conduct permits, with qualifications not here relevant, judges to serve as an officer or director of an "educational, religious, charitable, fraternal, or civic organization not conducted for the economic . . . advantage of its members." Making explicit Canon 5(B)'s implicit prohibition, Canon 5(C)(2) prohibits judges from serving "as an officer, director, manager, advisor, or employee of any business."

The question thus becomes whether the Bank is a "business." The description of the Bank's affairs set out at the beginning of this letter leaves little doubt that it is. Moreover, the Committee, like similar Committees elsewhere, has construed the word "business" as appearing in Canon 5(C)(2) quite broadly. In CJE Opinion 98-7, for example, the Committee stated that the Canon did not permit a judge to serve as an officer and director of a 600 member golf club because, although the golf club was a non-profit corporation, it had many of the indicia of a "business." In reaching that result, the Committee placed substantial weight on the fact that, in addition to its 600 members, the golf club had 18 to 20 employees, a budget in excess of \$1 million and was in the midst of a major capital improvement project. See also CJE Opinions 93-1 (dealing with participation in a family business), 95-2 (dealing with participation in an investment club), 2001-5 (discussing various issues likely to arise out of service on a hospital's board of directors, including whether the hospital might be a "business" for purposes of the Canons), 2001-6 (dealing with service on the board of a condominium association) and 2001-11 (stating that Canon 5[C][2] prohibits service on the Board of Directors of a non-profit weekly town newspaper).

In the Committee's view, Canon 5(C)(2) prohibits your service on the Bank's Board of Trustees now that you have been sworn in as a Justice of the District Court."

Supreme Judicial Court of Massachusetts *CJE Opinion* No. 2001-14 (October 24, 2001). In CJE Opinion No. 2001-5 The Massachusetts committee cautioned that the health system described (which is equal to the Judge's St. Luke' Health System) could be a business a "business" from which judicial service as an officer or director is barred by Canon 5(C)(2). The committee suggested the criteria over whether the unidentified health system would escape being a business under the Canons depended on its revenue from providing services being less than its teaching revenue, a criteria St. Luke's could not possibly meet. The committee also found that when the judge is on the board of directors of a health system related to a party in the litigation, recusal is required under Canon 3(C)(1)(c) :

"When the organization is not a party but is closely involved in the proceeding or stands to benefit financially or otherwise from the proceeding's outcome, slightly different considerations arise. The Committee is of the opinion that in such situations, your status as a director means that you "as a fiduciary . . . [have] a . . . property interest . . . in the subject matter in controversy" within the meaning of Canon 3(C)(1)(c). If that "property interest" "could be substantially affected by the outcome of the proceeding," then Canon 3(C)(1)(c) requires your recusal."

CJE Opinion No. 2001-5

Recusal Mandated by Cannon 3 C is Nearly Identical to That Required By § 455

Canon 3 C of the American Bar Association's Code of Judicial Conduct as adopted and amended by the United States Judicial Conference is almost identical to section 455 except that, since 1975, the canon has eliminated the provision for waiving disqualification, so that even if the judge's impartiality is merely questionable, as contemplated by section 455(a), he is to step down in all cases. See Code of Judicial Conduct, Canon 3 C(1), 69 F.R.D. 273, 277 (1975). In addition, the canons state that they prevail over any less restrictive statutes. *Id.* at 273.

“We note also that the American Bar Association Code of Judicial Conduct, consistent with Sec. 455, prescribes that a judge "should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where ... (c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest." A.B.A. Code of Judicial Conduct, Canon 3C(1)(c) (1986) (emphasis added).”

Moody v. Simmons, 858 F.2d 137 at fn 6 (C.A.3, 1988). Canon 3 (C) is consistent with and defined by federal court decisions over 28 U.S.C. § 455:

“To obtain the public trust in the judiciary Judges are required to adhere to high standards of conduct. See generally CODE OF JUDICIAL CONDUCT. According to the chairman of the ABA committee which drafted the Code of Judicial Conduct, the Code was designed to protect public confidence in the integrity of Judges since "an independent and honorable judiciary is an indispensable condition of Justice in our society." Judicial Disqualification: Hearings on S. 1064 Before the Subcomm. on Improvements in Judicial Machinery of the Senate Comm. on the Judiciary, 93d Cong., 1st Sess. 80 (1973).

Canon 3 (C) (1) of the Code of Judicial Conduct provides in relevant part: "A Judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned" CODE OF JUDICIAL CONDUCT Canon 3 (C) (1) (emphasis added). *fn6 The necessity for recusal in a case is premised on an objective standard. *fn7 Because Canon 3 (C) is incorporated into the federal judicial qualification statute, 28 U.S.C. § 455, see Appendix II, federal decisions interpreting the statute are instructive. *fn8 Thus, even before the recent decision of the Supreme Court in *Liljeberg*, supra, 100 L. Ed. 2d 855, it was clear from the federal circuit court opinions that a Judge must recuse from any case in which there is "an appearance of bias or prejudice sufficient to permit the average citizen reasonably to question Judge's impartiality." *United States v. Heldt*, 215 U.S. App. D.C. 206, 239, 668 F.2d 1238, 1271 (1981), cert. denied, 456 U.S. 926, 102 S. Ct. 1971, 72 L. Ed. 2d 440 (1982) (footnote and citations omitted). The objective standard is required in the interests of ensuring Justice in the individual case and maintaining public confidence in the integrity of the judicial process which "depends on a belief in the impersonality of judicial decision making." *United States v. Nobel*, 696 F.2d 231, 235 (3d Cir. 1982), cert. denied, 462 U.S. 1118, 77 L. Ed. 2d 1348, 103 S. Ct. 3086 (1983). See generally, Note, Disqualification of Judges and Justices in the Federal Courts, 86 HARV. L. REV. 736, 746 (1973). Neither bias in fact nor actual impropriety is required to violate the Canon. *Hall v. Small Business Admin.*, 695 F.2d 175, 178-79 (5th Cir. 1983) (federal disqualification statute "focuses on what is revealed to the parties and the public, as opposed to the existence in fact of any bias or prejudice cannot . . . extend to . . . the Judge's actual virtue").”

Monroe W. Scott, Jr., Appellant v. United States, Appellee, 1989 DC 1, 559 A.2d 745 at ¶¶ 21-22 (DC, 1989).

Hon. Judge Fernando J. Gaitan Has Repeated The *Liljeberg* Violations

The factual scenario in *Liljeberg*, excepting its scale seems to duplicate the present conflict of interest.

In *Liljeberg* the judge was a director of the university which was not a party:

“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, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1987). The US Supreme Court did not find lack of the judge’s knowledge of the conflict to prevent the recusal requirement:

“On remand, the District Court found that based on his attendance at Board meetings Judge Collins had actual knowledge of Loyola’s interest in St. Jude in 1980 and 1981. The court further concluded, however, that Judge Collins had forgotten about Loyola’s interest by the time the declaratory judgment suit came to trial in January 1982. On March 24, 1982, Judge Collins reviewed materials sent to him by the Board to prepare for an upcoming meeting. At that time—just a few days after he had filed his opinion finding for Liljeberg and still within the 10-day period allowed for filing a motion for a new trial—Judge Collins once again obtained actual knowledge of Loyola’s interest in St. Jude.”

Liljeberg v. Health Services Acquisition Corp, 486 U.S. 847 at 851, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1987) The impermissible interest of the judge in *Liljeberg* is actually far smaller than that held by Hon. Judge Fernando J. Gaitan as a fiduciary of St. Luke’s:

“The importance of the project to the University is indicated by the fact that the 80-acre parcel, which represented only about 40% of the entire tract owned by the University, was sold for \$6,694,000 and that the rezoning would substantially increase the value of the remaining 60%. The "negotiations with the developers of the St. Jude Hospital" were the subject of discussion and formal action by the trustees at a meeting attended by Judge Collins only a few days before the lawsuit was filed. App. 35.

Second, it is an unfortunate coincidence that although the judge regularly attended the meetings of the Board of Trustees, he was not present at the January 28, 1982, meeting, a week after the 2-day trial and while the case was still under advisement. The minutes of that meeting record that representatives of the University monitored the progress of the trial, but did not see fit to call to the judge’s attention the obvious conflict of interest that resulted from having a University trustee preside over that trial. These minutes were mailed to Judge Collins on March 12, 1982. If the judge had opened that envelope when he received it on March 14 or 15, he would have been under a duty to recuse himself before he entered judgment on March 16.

Third, it is remarkable—and quite inexcusable—that Judge Collins failed to recuse himself on March 24, 1982. A full disclosure at that time would have completely removed any basis for questioning the judge’s impartiality and would have made it possible for a different judge to decide whether the interests—and appearance—of justice would have been served by a retrial. Another 2-day evidentiary hearing would surely have been less burdensome and less embarrassing than the protracted proceedings that resulted from Judge Collins’ nonrecusal and nondisclosure. Moreover, as the Court of Appeals correctly noted, Judge Collins’ failure to disqualify himself on March 24, 1982, also constituted a violation of § 455(b)(4), which disqualifies a judge if he "knows that he, individually or as a fiduciary, . . . has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." This separate violation of § 455 further compels the conclusion that vacatur was an

appropriate remedy; by his silence, Judge Collins deprived respondent of a basis for making a timely motion for a new trial and also deprived it of an issue on direct appeal.

Fourth, when respondent filed its motion to vacate, Judge Collins gave three reasons for denying the motion,¹⁵ but still did not acknowledge that he had known about the University's interest both shortly before and shortly after the trial. Nor did he indicate any awareness of a duty to recuse himself in March 1982.

These facts create precisely the kind of appearance of impropriety that § 455(a) was intended to prevent. The violation is neither insubstantial nor excusable. Although Judge Collins did not know of his fiduciary interest in the litigation, he certainly should have known. In fact, his failure to stay informed of this fiduciary interest may well constitute a separate violation of § 455. See § 455(c).”

Liljeberg v. Health Services Acquisition Corp, 486 U.S. 847 at 865-868, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1987).

Kansas Public Employees Retirement System, In re, 85 F.3d 1353 (C.A.8 (Mo.), 1996) distinguishes a judge's ownership of stock and the employment of his daughter from the directorship in *Liljeberg* effectively ruling these two interests are less than the position on the board described in *Liljeberg*. Also the plaintiff has never delayed or used the conflict for strategic advantage. John K. Power MO Lic # 70448 fraudulently removed this action into this court and has not complied with discovery or the mediation order, exhibiting only a motive to delay. *Kansas Public Employees Retirement System, In re*, 85 F.3d 1353 (C.A.8 (Mo.), 1996) is inapplicable to this action.

Hon. Judge Fernando J. Gaitan Risks Aiding the Novation's Enterprise

Defendants' counsel John K. Power MO Lic # 70448 fraudulently induced the Kansas District court to dismiss the plaintiff's complaint in *Medical Supply Chain, Inc. v. Novation LLC et al* KS Dist. Court Case No.: 05-2299 and rule contradicting *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955) on identical operative facts and even to sanction the plaintiff's now dissolved company, Medical Supply Chain, Inc. John K. Power MO Lic # 70448 accomplished this by never addressing the controlling US Supreme Court case law the plaintiff's antitrust complaint was based on and cited to in the plaintiff's pleadings, knowing the trial court was relying on his firm Husch & Eppenberger, LLC's prestigious reputation.

The plaintiff was materially injured by the conflict of interest exploited by the defendants in *Medical Supply Chain, Inc. v. General Electric Company, et al.*, Kansas Dist. Court case number 03-2324-CM where US District Court Magistrate James P. O'Hara had a fiduciary interest in Shughart Thomson & Kilroy, the firm defending the then hospital supply cartel member US Bancorp Piper Jaffray which had an

officer on the Board of Directors of Novation LLC and had 70% of its venture capital funds invested in healthcare technology companies. Magistrate James P. O'Hara was an employee of the Kansas Attorney Discipline Office, then an eighteen year employee of Shughart Thomson & Kilroy (SKT) where he became a managing partner, hiring US Bancorp's counsel Andrew DeMarea and becoming a shareholder of the SKT. The US Bancorp defendants relied on a common coordinated defense with the present General Electric defendants and are in privity.¹ The two groups of defendants have coordinated their defenses of separate Tenth Circuit appeals.²

The only defense of the defendants who have publicly admitted most of the conduct charged by the plaintiff in corporate press releases connected with the sale of securities and in Securities and Exchange Commission required disclosures was to have the plaintiff's counsel repeatedly sanctioned and disbarred.³

¹ "404. The defendants US Bancorp, US Bank, Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff **coordinated their defense of Medical Supply's action for injunctive and declaratory relief with the coconspirators Jeffrey R. Immelt, GE, GHX, GE Healthcare, GE Capital and GE Transportation** who inconceivably attached the Medical Supply complaint and order to their 12(b)6 motion to dismiss in Medical Supply's separate action against Jeffrey R. Immelt, GE, GHX, GE Capital and GE Transportation. The former eighteen year Shughart Thomson & Kilroy shareholder acting as magistrate on the GE case denied Medical Supply discovery and the court did not even permit discovery when the dismissal attachments necessitated conversion of the GE motion to one for summary judgment."

Plaintiff's Novation Complaint pg. 80 ¶ 404 (emphasis added)

² "405. On January 29, 2004, March 4, 2004, April 2, 2004 **US Bancorp's counsel, Nicholas A.J. Vlietstra and Piper Jaffray's counsel Reed coordinated their appeal (10th C.C.A. 03-3342) with the GE defense.** The GE defendants included the action against the US Bancorp defendants and Unknown Healthcare Provider as a related appellate case in (10th C.C.A. 04-3075) and used the US Bancorp order as a basis for a cross appeal (10th C.C.A. 04-3102) challenging the failure of the trial court to grant sanctions against Medical Supply."

Plaintiff's Novation Complaint pg. 80-81 ¶ 405 (emphasis added)

³ "406. The coconspirators **UHC, Robert J. Baker, VHA, Inc., Curt Nonomaque, Novation LLC, Neoforma, Inc. and Robert J. Zollars did however renew their conscious commitment to a common scheme designed to achieve an unlawful objective of keeping Medical Supply out of the market for hospital supplies by reviewing the case against US Bancorp and consulting with representatives for US Bancorp, US Bank, Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff.** The cartel decided to rely on the continuing efforts to illegally influence the Kansas District Court and Tenth Circuit Court of Appeals to uphold the trial court's erroneous ruling. The cartel also renewed their efforts to have Medical Supply's sole counsel disbarred, knowing that an extensive search for counsel by Medical Supply had resulted in 100% of the contacted firms being conflicted out of opposing US Bancorp and actually effected a frenzy of disbarment attempts against Medical Supply's counsel in the period from December 14, 2004 to

Conflicted court officials have been essential to accomplishing the defendants' unlawful litigation strategy. The week after the plaintiff filed *Medical Supply Chain, Inc. v. Novation LLC et al* W.D. Mo Case No. 05-0210, the defendants counsel called the court to inquire *ex parte* how the case could be filed in the Western District of Missouri by the plaintiff's counsel Landrith. Shughart's managing partner, Kansas Magistrate James P. O'Hara made the pretextual report used by the City of Topeka to file a second ethics complaint against Landrith in the representation of the African American James Bolden for arguing an unqualified entry of appearance by city officials through their counsel completed the Rule 4 process requirements under alternative Kansas state process requirements, an article by KS District Court law clerks asserting the same later appeared as a Kansas Bar Association Magazine cover story. Never the less, Kansas District Court Judge Kathryn H. Vratil, while sitting on the plaintiff's action *Medical Supply Chain, Inc. v. Novation LLC et al* now Kansas Dist. Court case number 03-2324-KV transferred to her and Kansas Magistrate James P. O'Hara from Missouri even though she had recused herself from Landrith's action to enjoin his state ethics prosecution, participated in an *ex parte* discussion with personnel and justices of the Kansas Supreme Court, disparaging Medical Supply's counsel without his knowledge or opportunity to respond. Kansas District Court Judge Kathryn H. Vratil's testimony was designed to cause Medical Supply's counsel to be disbarred without due process.

Kansas District Court Judge Kathryn H. Vratil then removed herself from *Medical Supply Chain, Inc. v. General Electric Company, et al.*, Ks Dist case # 03-2324 on October 20, 2005 minutes before the Kansas Supreme Court justices heard Medical Supply's counsel's oral argument. A transcript of the hearing which was resultantly delayed gives light to these unusual events.

The petitioner's case was then transferred to Kansas District Court Judge Carlos Murguia where he took no action for the many months until immediately after Medical Supply's counsel was reciprocally disbarred by the Kansas District Court in *In the Matter of the Disciplinary Proceedings Of Bret Landrith* KS Dist. Court Case No. 05-1201-A without disclosing to Medical Supply's counsel that Kansas District

February 3rd, 2005, all originating from the cartel's agents Shughart Thomson and Kilroy's past and current share holders."

Plaintiff's Complaint Novation pg. 81 ¶ 406 (emphasis added)

Court Judge Kathryn H. Vratil had participated in *ex parte* testimony over Medical Supply's counsel's "incompetence". The Kansas District Court, receiving the harsh dismissal and sanction order against both the plaintiff and his disbarred counsel secured by John K. Power MO Lic # 70448 in from *Medical Supply Chain, Inc. v. General Electric Company, et al.*, Ks Dist case # 03-2324 also refused to extend their decision until the Tenth Circuit had ruled on James Bolden's appeal where the federal issues ruled erroneously on by the Kansas Supreme Court were being heard. The Tenth Circuit, a month after Landrith was disbarred, overturned Kansas District Court Judge Kathryn H. Vratil in *Bolden v. City of Topeka*, 441 F.3d 1129. (10thCir.2006) which has now been favorably cited by the Sixth Circuit in *Coles v. Granville* Case No. 05-3342 (6th Cir. May 22, 2006).

The complaints on which the plaintiff witnessed Landrith being disbarred were open conflicts of interest. The charged conduct was retribution for Landrith accurately describing the injuries to the his clients and his witnesses in pleadings on behalf of James Bolden and Bolden's witness David Price. The naked purpose of the retribution was to discourage the plaintiff's counsel from assisting in James Bolden obtaining relief for property taken from by the City of Topeka for a public purpose without compensation and from interfering in the retaliation against David Price through the sale of Price's son in a fraudulent adoption as punishment for his protected speech against the City of Topeka. The complaint was made against Landrith by Judge G. Joseph Pierron who like Hon. Judge Gaitan, sat on the board of a non profit civic organization that in actuality was a business under Judicial Cannon 5. Judge G. Joseph Pierron was a director of Kansas' largest commercial adoption agency, the Kansas Children Service League (KCSL). At the time of Price's adoption appeal, the Kansas Supreme Court web site stated a Judge G. Joseph Pierron is a director of KCSL. Until Landrith's disciplinary panel hearing in January of 2005, KCSL had a \$33.6 million adoption contract with the state. See "Foster care agency loses contract" Lawrence journal World, January 28, 2005.

The Kansas Supreme Court opinion in *In The Matter Of Bret D. Landrith* Ks Sup Ct Case No. 05-94333 on its face denies Landrith Due Process by rebuking the concept a judge sitting on a board of directors has a "fiduciary interest" an issue resolved by the US Supreme Court in *Liljeberg v. Health Services Acquisition Corp*, 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1987).

The Kansas Supreme Court has a strong current interest contrary to David's Price's advocacy for the election of judges. Hon. Justice Donald L. Allegrucci headed the court's participation in a Judicial Council with Kansas State Senator John L. Vratil preparing a substitute reform of performance reporting in retention elections announced on December 26, 2005 to counter legislative efforts to change the selection process for judges resulting from "...Kansas Supreme Court orders overturning the death penalty and ordering the Legislature to increase school funding. Those rulings prompted some lawmakers to propose measures that would limit the court and require legislative input in the selection of justices." The head of the Kansas Supreme Court panel hearing the respondent's case, Hon. Justice Donald L. Allegrucci chaired the Judicial Council, but did not disclose his participation in it. See "Judicial panel suggests reviews", Topeka Capital Journal December 26, 2005.

The face of the disbarment of the plaintiff's attorney expressly finds Landrith should be disbarred for his association with David Price and David price's protected speech unrelated to Landrith's representation of Price in violation of the Fourteenth Amendment's protection of the rights to Free Speech, Association and Redress. Additionally the disbarment of Landrith is expressly for taking James Bolden's action to federal court where the Tenth Circuit overturned the dismissal.

However Hon. Judge Feranado J. Gaitan refused to grant the plaintiff's counsel an evidentiary hearing, required under the Western Missouri District Court local rules in *In the Matter of the Disciplinary Proceedings Of Bret Landrith*. This reciprocal disbarment was necessary due to the defendants' knowledge that John K. Power MO Lic # 70448 had fraudulently obtained the transfer *Medical Supply Chain, Inc. v. Novation LLC et al* W.D. Mo Case No. 05-0210 to Kansas District court.

The General Electric defendants in evidence contained in records submitted under seal in the Western District of Missouri case *United States ex rel Michael W. Lynch v Seyfarth Shaw et al.* W.D. Mo Case no. 06-0316-CV-W- SOW make use of a property interest held by a trial court judge to control the outcomes of cases in which they are a party. Hon. Judge Eugene R. Wedoff, the Chief Bankruptcy Judge of the Northern District of Illinois has revealed to the Federal Bureau of Investigation the defendants' widespread use of offshore funds in the continuation of a "Greylord" racketeering enterprise effecting the outcomes of federal court cases in several states where the General Electric company's interest in a cartel member's monopoly interest is at stake. The evidence shows GE Capital, a defendant in this case and Alcoa

further General Electric's interests by positioning trial judges to have a property interest in the outcome of any action threatening General Electric's monopolies or actions to retaliate against witnesses who threatened General Electric's monopolies.

The relator Michael W. Lynch provided evidence to Western District US Attorney Bradley J. Schlozman discovered in April 2006 that a \$39,000,000.00 bribery fund was being used to secure outcomes in court cases including the shift of unfunded pension obligations of McCook Metals, Inc. to the Pension Benefit Guaranty Board (PBGC) at the expense of US taxpayers despite the obligation of Alcoa Aluminum financed by General Electric, pursuant to Alcoa's acquisition of Reynolds Metals, under ERISA law.

The Hon. Judge Fernando J. Gaitan is a Witness

Discovery has not yet started for the plaintiff's action against Novation LLC, a corporation headquartered in Texas and with no office in Missouri or Kansas. St. Luke's as a VHA member hospital and owner of Novation which has also signed term long term anticompetitive monopolizing St. Luke' off line hospital supply purchasing through Novation and St. Luke' web based purchasing through Neoforma, Inc. (now owned by the GE defendants' GHX, LLC with money from the defendant GE Capital) identified in the present lawsuit complaint, will be an important source of witnesses and discoverable documents for the plaintiff. Hon. Judge Fernando J. Gaitan's position on the board of directors of St. Luke's controlling the VHA and Novation defendants in the related action by the plaintiff where the facts of the complaint aver the present GE Defendants broke this action's subject contract to further an agreement to restrain trade by the monopolization of hospital supplies as members of a cartel places the judge in the position of being a likely witness in the Novation case and in having personal knowledge over facts related to the present contract action.

Price Bros. Co. v. Philadelphia Gear Corp., 629 F.2d 444 (6th Cir.1980), the court applied Fed.R.Evid. 605 in considering the conduct of a judge in a bench trial. *Price Bros.* was an action for breach of contract and warranties concerning a pipe-wrapping machine manufactured by Price Brothers Company. The judge's law clerk visited Price Brothers' plant, observed Price Brothers' malfunctioning pipe-wrapping machine, and, apparently, reported to the judge concerning the clerk's observations at the plant. The appeals court recognized the judicial duty to avoid off-the-record contacts that might be influential in the outcome of a bench trial and concluded:

“In a case analogous to the one before us, the Fifth Circuit reversed a jury verdict for the plaintiff where the trial court permitted its law clerk to testify to what he saw at a curiosity-inspired private view of the scene of a slip-and-fall injury. *Kennedy v. Great Atlantic & Pacific Tea Co.*, 551 F.2d 593 (5th Cir.1977)... The trial judge repeatedly cautioned the jury not to attach any special significance to his law clerk's testimony. The Court of Appeals, nevertheless, held that it was required to vacate the judgment in the exercise of its supervisory power.... Reasoning that the finder of fact must be "free from external causes tending to disturb the exercise of deliberate and unbiased judgment," and that the courts must not tolerate "any ground of suspicion that the administration of justice has been interfered with," quoting *Mattox v. United States*, 146 U.S. 140, 149, 13 S.Ct. 50, 53, 36 L.Ed. 917 (1892), the appeals court concluded that the potential for prejudice resulting from the identification of the witness with the trial court was so great that the verdict could not be permitted to stand....

....
... The problem attendant to a judge having personal knowledge of the facts is that he may thereby be transformed into a witness for one party. Where the trial is to a jury, explicit rules provide some protection. If a judge is to preside, he may not testify. Rule 605, Fed.R.Evid. ... A rule that merely prohibits a presiding judge from testifying in open court, however, does not insure that the fact finder will be "free from external causes tending to disturb the exercise of deliberate and unbiased judgment," [citation omitted], where the trial is to the bench. Whether, in a bench trial, a judge can avoid an involvement destructive of impartiality where he has personal knowledge of material facts in dispute is a question that cannot be answered satisfactorily, see Advisory Committee's Notes, Rule 605, Fed.R.Evid., and, **therefore, a judge should recuse himself in such circumstances.**" [Citation omitted.] [emphasis added]

629 F.2d at 446-47.

Hon. Judge Fernando J. Gaitan's position as a W.D. of Missouri judge on the board of directors of St. Luke's also places him in the overlapping witness zones of the related claims of the State of Missouri for Medicaid fraud. The unusual maneuvering of this case through the fraudulent removal on facially altered and insufficient documentation of federal jurisdiction and subsequent *ex parte* orders before the plaintiff had even been served is the conduct of obstruction of justice in the State of Missouri's claims by the defendants' attorney John K. Power in his role as an agent an attorney of VHA and Novation LLC, the actors causing the described Medicaid fraud in Missouri.

CONCLUSION

The *ex parte* communications poisoning the plaintiff's action in Kansas and Missouri federal district courts, causing a pre existing bias in Patrick Fisher the former Clerk of the Tenth Circuit and leading to the shocking sanctioning of the plaintiff by the Tenth Circuit in decisions controverting express language of Congress in the USA PATRIOT Act and controlling Tenth Circuit case law, and directly causing the disbarment of the plaintiff's counsel on the pre text of harming the African American James Bolden in a civil rights action where the Kansas District Judge Kathryn H. Vratil was overturned after her undisclosed *ex parte* communications depriving the plaintiff's counsel of Due Process in defending his

license to practice law, has all allowed the Sherman Act prohibited monopolization of hospital supplies in the American market to go unchecked. In fact, this open prejudice denying the plaintiff a fair trial has allowed the cartel to further consolidate the American market and to monopolize the hospital supply market of the United Kingdom.

The danger that Hon. Judge Fernando J. Gaitan as a director of the hospital member of the related action's defendant VHA and controlling the related action's defendant Novation, LLC is himself prejudiced by his first hand knowledge of the financial condition of a Novation contract hospital or by his fiduciary interest as a controlling officer over Novation LLC is far too great and in excess of US Supreme Court's *Liljeberg* prohibitions on what are operatively the same facts.

The plaintiff's responsibilities are far too great where thousands of Americans are dying each year as a result of Novation LLC's Sherman Act prohibited artificial inflation of healthcare costs⁴, jobs are being lost and even the nation's auto plants are being shut down over healthcare cost increases.⁵ As the sole efficient enforcer⁶ party outside of the coercive anticompetitive Novation contracts and Novation LLC's retaliatory enforcement documented against hospitals and suppliers, the plaintiff is saddled with a superhuman duty even without having to confront prohibited bias. However, the plaintiff deprived of counsel through Hon. Judge Fernando J. Gaitan's own reciprocal disbarment of Bret D. Landrith and now

⁴ Medical Supply Chain, Inc. (now Samuel Lipari) v. Novation, et al. :
"86. The rise in healthcare costs of which hospital supply inflation is a significant contributing factor led to a reported 18,000 deaths a year in the USA resulting from 40 million Americans being uninsured in 2001. See "Study Blames 18,000 deaths in USA on Lack of Insurance", USA Today, May 23, 2002.
87. In 2002, the number of uninsured increased to 43.6 million Americans and without decreases in the mortality rates of untreated illnesses or observed improvements in public health systems, the number of deaths resulting from the lack of affordable health insurance was 19,962.
88. The following year, 2003, the number of uninsured Americans increased to 45 million, resulting in an expected 20,603 deaths resulting from the lack of affordable health insurance.
89. During the period of time in which Medical Supply has been foreclosed from competing in the market for healthcare supplies as a result of the actions of the defendants, at least 41, 206 Americans have died as a result of the increasing cost of hospitalization and medical care of which artificially inflated hospital supply costs are a significant contributing factor. " *Id*, Complaint ¶¶ 86-89

⁵ Bush, Automakers Talk Health Care, Trade by Ken Thomas, AP Nov 15, 2006

⁶ "...the court should determine whether the plaintiff is an efficient enforcer of the antitrust laws, which requires some analysis of the directness or remoteness of the plaintiff's injury. This two-pronged approach was endorsed by the Supreme Court when it stated that "[a] showing of antitrust injury is necessary, but not always sufficient, to establish standing under Sec. 4, because a party may have suffered antitrust injury but may not be a proper plaintiff under Sec. 4 for other reasons." *Cargill*, 479 U.S. at 110 n. 5, 107 S.Ct. at 489 n. 5. "*Todorov v. DCH Healthcare Auth.*, 921 F.2d 1438 at 1449 (11th Cir. 1991),

the plaintiff is a private attorney general having to act *pro se* to prosecute Novation, LLC. Even where the two senior Assistant US Attorney's connected to the US Justice Department's investigation⁷ of Novation LLC for bribery and kickbacks, Thelma Quince Colbert of Texas and Shannon Ross of Kansas were found dead shortly after subpoenas were issued for Novation, LLC.

As the plaintiff forewarned the court, the Missouri state interest and public concern over forced cuts in state Medicaid spending was so great that this Medical Supply Chain litigation and its important policy issues (rarely covered in any media due to the repeated prejudiced federal rulings) is the result of the plaintiff's effort to protect Missouri and the federal government from the uncompetitive electronic marketplace monopolized by VHA's Novation LLC in combination with the GE defendants' GHX, LLC. The voters, being deprived of information about the evidence and deprived of having the Congress's antitrust policy vindicated in federal courts, threw out Missouri Republican Senator Jim Talent and replaced him with Democrat Claire McCaskill, thinking more taxes are needed to meet the state's responsibility of caring for its disadvantaged citizens. See St. Louis Post-Dispatch: Senate race tied to state issues by Jo Mannies, St. Louis Post-Dispatch "Missouri voters say they're willing to spend more tax dollars to restore Medicaid coverage to 90,000 residents..." The head of the US Senate Antitrust Subcommittee Senator DeWine has himself been removed from office over the general outrage against government corruption.

Given his precarious circumstances and the gigantic public interest at stake, the plaintiff could not ignore the fraudulent removal of his state contract based claims to federal court, Hon. Judge Fernando J. Gaitan's selective enforcement of professional ethics against his counsel where the plaintiff witnessed first hand the State of Kansas breaking every ethical rule and several criminal laws in its prosecution of and adjudication of his counsel's disbarment for protected speech while the record in this action clearly documents the defendants' attorney has repeatedly committed fraud on this court without even sanction or censure. Neither can the plaintiff ignore the failure of this court to hold a hearing or rule on the plaintiff's emergency remand motion filed DATE Finally, the plaintiff cannot ignore that this same counsel for the defendants has been discovered to be Hon. Judge Fernando J. Gaitan's fiduciary's law firm counsel and law

⁷ "Wide U.S. Inquiry Into Purchasing for Health Care," by Mary Williams Walsh NY Times, August 21, 2004.

firm Husch & Eppenberger, LLC in the plaintiff's related action against Novation LLC and the members of VHA.

Whereas for the above mentioned reasons, the plaintiff who has not forfeited his right to remand this action back to state court now respectfully requests that the judge hearing this matter recuse himself.

Respectfully submitted,

Samuel K. Lipari *Pro se*

Certificate of Service

This is to certify that a copy of the foregoing notice was mailed postage pre-paid along with a copy of the Proposed Order, this 20th day of November, 2006, to the following:

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