



prejudice” by the Kansas District Court:

“In particular, an interim order that is not accompanied by an express entry of final judgment "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." Fed.R.Civ.P. 54(b); see also, e.g., *United States v. Arkansas*, 791 F.2d 1573, 1576 (8th Cir.1986).”

*Avx Corp. v. Cabot Corp.*, 424 F.3d 28 at 32-33 (Fed. 1st Cir., 2005).

3. It is the controlling law of the Western District that to invoke collateral estoppel (issue preclusion) when the prior adjudication resulted in a final decision on the merits. See *Miller v. Pool and Canfield, Inc.*, 800 S.W.2d 120 at 124 (Mo. App.W.D., 1990). Of course, the Kansas District Court cases for damages corruptly cited by Husch Blackwell Sanders LLP in their dismissal are still being litigated over the substantive issues Husch Blackwell Sanders LLP fraudulently misrepresented were resolved against the plaintiff so Husch Blackwell Sanders LLP could corruptly obtain dismissal of the plaintiff’s first petition through the unlawful extra judicial influence of the other jurisdiction’s interim orders.

4. The Novation LLC defendants again commit actionable antitrust conduct against the plaintiff in ¶4 of their opposition to amendment by inviting this court to unlawfully base its dismissal on interim decisions in other jurisdictions that this court is prohibited from doing under controlling state and federal law. In addition to violating Missouri Professional Conduct Rule 3.3 Candor Toward the Tribunal by knowingly making false statements of fact and law to this tribunal and by failing to correct the false statements of material fact or law previously made to the tribunal in Husch Blackwell Sanders LLP’s motion to dismiss erroneously granted by this court. See issue and claim preclusion in ¶¶ 2-3 *supra*.

5. Husch Blackwell Sanders LLP and the Novation LLC cartel defendants will be required to present evidence to a jury under *Defino v. Civic Ctr. Corp.*, 780 S.W.2d 665, 668 (Mo.App.1989) on the applicability or inapplicability of the *Noerr- Pennington* doctrine regarding the enormous damages resulting from the conduct of litigation which prevented the plaintiff from enforcing contracts under Missouri State law and kept him out of the Missouri market for hospital supplies since 2002 and from the monopoly which continues through the actions of the antitrust defendants and their agents today.

6. The plaintiff’s claims are based on Chapter 416 of RSMo, the Missouri Antitrust Act. The Act closely parallels provisions of the Sherman Act of federal antitrust law. See Title 15 United States Code. The Missouri Act expressly directs that its provisions "shall be construed in harmony with ruling judicial interpretations of comparable federal antitrust statutes." § 416.141 RSMo 1978. *Fischer, Etc. v. Forrest T.*

*Jones & Co.*, 586 S.W.2d 310, 313 (Mo. banc 1979).

7. Federal courts recognize sham litigation includes defenses to antitrust claims and filings by Husch Blackwell Sanders LLP and the other defendant/appellees are chargeable antitrust conduct:

“*Noerr-Pennington* immunity, and the sham exception, **also apply to defensive pleadings**, *In re Burlington N., Inc.*, 822 F.2d 518, 532-33 (5th Cir.1987), because **asking a court to deny one's opponent's petition is also a form of petition**; thus, we may speak of a "sham defense" as well as a "sham lawsuit." [Emphasis added]

*Freeman v. Lasky, Haas & Cohler*, 410 F.3d 1180 (Fed. 9th Cir., 2005).

8. The antitrust liability of the defendants including Husch Blackwell Sanders LLP can also be recognized in sham petitioning that takes the form of unlawful conduct to influence government entities including disparaging the plaintiff with judges and their clerks or by making fraudulent representations to government agencies:

“*In Re IBP Confidential Business Documents Litigation*, 755 F.2d 1300, 1313 (8th Cir.1985) (Noerr-Pennington doctrine cannot be extended to "activities which, **although 'ostensibly directed toward governmental action,' are actually nothing more than an attempt to harm another" or to "false communications" or to tortious, violent, defamatory or other illegal acts** [citations omitted].)” [Emphasis added]

*Central Telecommunications, Inc. v. TCI Cablevision, Inc.*, 800 F.2d 711 at 724 (C.A.8 (Mo.), 1986).

9. The Novation LLC defendants still monopolize hospital supplies in the State of Missouri and still keep the plaintiff out of that market<sup>1</sup> through a cartel and anticompetitive conduct made illegal by the State of Missouri Legislature.

10. The Novation LLC defendants have never refuted ¶27 of the original petition at pg. 4 giving notice that under controlling US Supreme Court law the defendants are liable for each **SUBSEQUENT** day the Novation LLC cartel monopolizes hospital supplies in Missouri.:

“27. The petitioner’s right to bring new claims based on subsequent conduct of previous defendants is governed by *Lawlor v. National Screen Service Corp.*, 349 U.S. 322:

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<sup>1</sup> Subsequent to the service of the plaintiff’s initial state petition on the Novation LLC cartel member Cox-Health, Cox-Health made an affirmative act partially disassociating itself from the conspiracy to monopolize hospital supplies that has killed so many citizens of Missouri by restricting access to healthcare and injured this state’s economy by causing the loss of numerous factory jobs including the closure of the Chrysler and General Motors plants. Suppliers were invited to register with Cox-Health as if Cox-Health was going to break the illegal long term VHA-Novation LLC supply contract that allocates market share in return for an illegal commercial bribe and the extortion of unlawful kickbacks from the suppliers. Therefore the plaintiff is already 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.

*“Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122,. In Lawlor five new defendants were brought into the case in the new action. Substantial new antitrust violations subsequent to the termination of the prior litigation were charged.”  
*Engelhardt, v. Bell & Howell Co.*, 327 F.2d 30 at ¶ 42 (8th Cir, 1964).”

11. The plaintiff *will* obtain the judgment of damages he is entitled to at law (it is incontrovertible that during this action Lathrop & Gage committed additional antitrust acts not immunized by the *Noerr-Pennington* doctrine and prohibited at law with knowledge of the cartel’s conspiracy that had the foreseeable effect of delaying the plaintiff’s entry into the Missouri hospital supply market and are now the record of this case<sup>2</sup>) and an outcome in court that will open the Missouri hospital supply market to price competition either in this action or a subsequent or concurrent action during the pendency of the appeals from the present action.

12. The conduct of the Novation LLC defendants and their counsel Husch Blackwell Sanders LLP in this action and the state action against the related General Electric cartel members turned the Jackson County Court into a racketeering enterprise under *U.S. v. Murphy*, 768 F.2d 1518 (C.A.7 (Ill.), 1985). Through the conduct of the Husch Blackwell Sanders LLP attorneys much like the Illinois attorneys practicing before John M. Murphy including John K. Power (Mo. Lic.# 70448) communicating to Christopher M. McDaniel a defendant in the GE action<sup>3</sup> and the chief officer of the defendant Heartland Financial Group, Inc. that the Jackson County Court was a pay to play enterprise by encouraging Christopher M. McDaniel to misrepresent to the City of Blue Springs officials that the petitioner did not have “any money” and therefore could not win in court. Despite the petitioner having the property rights to the \$350,000.00 in cash for the lease buyout, a contract for a mortgage of the purchase of the building; all

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<sup>2</sup> William G. Beck (Mo. Lic. # 26849); Peter F. Daniel (Mo. Lic.# 33798); and J. Alison Auxter (Mo. Lic. # 59079) of Lathrop & Gage L.C. fraudulently misrepresented material aspects of Lipari’s complaint at page 2 of their November 6, 2008 motion for security to this court as limited to claims based on the petitioner’s formerly incorporated entity Medical Supply Chain, Inc. when in fact this complaint was filed after its dissolution and includes claims based on allegations of conduct **SUBSEQUENT** to the earlier litigation listed at page 1 of their motion for security costs where Lipari’s petition clearly states he is a sole proprietor of an unincorporated business and for claims expressly dismissed without prejudice where Lipari is the assignee of rights held by the dissolved corporation. William G. Beck (Mo. Lic. # 26849); Peter F. Daniel (Mo. Lic.# 33798); and J. Alison Auxter (Mo. Lic. # 59079) then corruptly obtained a judgment of dismissal by making the same fraudulent argument in their November 12, 2008 Suggestion in Support of Judgment on the Pleadings misrepresenting the facts and the law to deceive this court into granting a judgment based on the clear error that the plaintiff did not have standing for claims after the dissolution of Medical Supply Chain, Inc. in 2006 and by fraudulent misrepresenting that the petition did not state restraints of trade by the Novation LLC cartel taking place later than 2002.

<sup>3</sup> *Lipari v. General Electric, et al*, Jackson County Missouri at Independence Case No. 0616-cv07421

of which John K. Power (Mo. Lic.# 70448) knew to be the benefits of the plaintiff's bargain with GE. However the Husch Blackwell Sanders LLP attorney John K. Power (Mo. Lic.# 70448) instead involved Christopher M. McDaniel in a scheme to procure false testimony of the Blue Springs officials to rig the Jackson County court outcome:

“Some counts were based on the theory that Murphy aided and abetted others who violated the Hobbs Act. The remaining count was based on the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. Sec. 1962(d), which prohibits the operation of an "enterprise" in interstate commerce through a "pattern" (two or more events) of "racketeering" (the violation of specified state or federal laws). **The "enterprise" here was the Cook County Circuit Court.**”[ Emphasis added].

*U.S. v. Murphy*, 768 F.2d 1518 (C.A.7 (Ill.), 1985). A racketeering act now being litigated in *Samuel Lipari v. General Electric Company, et al* 8th Cir. 08-3115.

13. The conduct of the Novation LLC defendants and their counsel Husch Blackwell Sanders LLP has necessitated the addition of defendants and for the plaintiff to seek to obtain prospective injunctive relief from the Missouri Board of Bar Governors to restrain further unlawful conduct by Husch Blackwell Sanders LLP to obstruct justice and obtain outcomes in Jackson County court through extrinsic fraud. Otherwise the will of State of Missouri Legislature will have been treasonously frustrated and the plaintiff will likely have to seek redress from Missouri State House and Senate.

14. The balance of equities in the five factors of *Manzer v. Sanchez*, 985 S.W.2d 936, 939 (Mo.App. E.D.1999) in whether or not to permit amendment is overwhelmingly in favor of resolving the antitrust problem in Missouri's hospitals in this case by allowing the amendment, even without the problems raised by Novation LLC defendants' unclean hands in fraudulently misrepresenting the law to this tribunal, seeking a dismissal based on mere interim orders obtained through Husch Blackwell Sanders LLP's fraud in the District of Kansas and which the Husch Blackwell Sanders LLP attorneys know cannot lawfully be a basis for dismissal in the present action. See generally *Hyde Park Amusement Co. v. Mogler*, 214 S.W.2d 541 (Mo., 1948).

## CONCLUSION

The Novation LLC cartel plan to corruptly starve out the plaintiff rather than undergo discovery and a resolution of the prohibited antitrust conduct that has injured consumers in the State of Missouri market for hospital supplies, and restrained commerce from the artificial inflation of healthcare costs to the point that the State of Missouri House of Representatives has had to cut planned expenditures including

salary raises for state judges, is unlikely to be sustainable. Conventional wisdom would hold that the federal government might begin enforcing laws against restraint in trade for hospital supplies before it bankrupts the nation through what Peter Orszag, director of the Office of Management and Budget has described as unsustainable cost increases.

The defendant Husch Blackwell Sanders LLP's co chairmen Joseph P. Conran and David A. Fenley should voluntarily discontinue the firms' attempted *pro se* representation of which the untimely suggestion in opposition to amendment that continues the firms' extrinsic fraud misconduct is illustrative of; and seek competent antitrust counsel. In the meantime Husch Blackwell Sanders LLP should counsel its Novation LLC cartel clients to rescind the ten year soul source hospital supply contracts and refund all consulting funds corruptly paid to hospital administrators against the interests of their Missouri institutions and refund all kickbacks received by VHA Novation LLC and UHC for hospital supplies sold in Missouri.

If this court denies the amendment on the basis of Husch Blackwell Sanders LLP's untimely suggestion in opposition and the suggestion's purported incorporation of an earlier motion to dismiss, the court will be violating the Missouri Rules of Civil Procedure to adopt a legal argument (extrajudicial influence or notice of non-final decisions in other jurisdictions against the Missouri controlling law requiring a final judgment) that the court is on notice it cannot lawfully do and Husch Blackwell Sanders LLP which has committed yet another antitrust act through a sham defense petition will become liable for each day of hospital supply purchases throughout Missouri during the resulting delay at treble the difference between the cartel price and the competitive price. Liquidating the houses of all partners of Husch Blackwell Sanders LLP<sup>4</sup> could conceivably cover a few days additional delay but the plaintiff is doubtful this would be practical redress even if Joseph P. Conran and David A. Fenley provided all the Husch Blackwell Sanders LLP members' titles in the form of a bond.

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<sup>4</sup> To extort the plaintiff's legal representation from pursuing the GE contract claims which later withstood dismissal in Jackson County court Husch Blackwell Sanders LLP threatened to take the plaintiff's attorney's house through false sanctions, not realizing Husch Blackwell Sanders LLP's repeated lies and misrepresentations to the federal court had caused the plaintiff's attorney to lose his family, his house and his car. Later Husch Blackwell Sanders LLP would participate in causing him to lose his law license.

**Whereas**, there is no legal basis for prohibiting amendment and indeed this court has already granted amendment over the timely opposition of Lathrop & Gage, the plaintiff respectfully requests that the court grant leave to amend his pleading.

Respectfully submitted,

S/Samuel K. Lipari  
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#### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 2nd day of March, 2009, by email to:

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S/Samuel K. Lipari  
Samuel K. Lipari