

**In The Supreme Court of the State of Missouri**

STATE OF MISSOURI EX REL.,	)	
SAMUEL K. LIPARI,	)	
<i>Relator,</i>	)	
	)	
v.	)	
	)	No. _____
THE HONORABLE	)	
JUDGE MICHAEL W. MANNERS,	)	
CIRCUIT COURT OF	)	
JACKSON COUNTY,	)	
MISSOURI,	)	
<i>Respondent.</i>	)	

**WRIT SUMMARY FORM NO. 16**

Identity of parties and their attorneys in the underlying action, if any: \_

Samuel K. Lipari, relator appearing pro se  
Honorable Judge Michael W. Manners, respondent

Nature of underlying action, if any:

Seeking enforcement of discovery in real estate contract action.

Action of Respondent being challenged, including date thereof:

Denials of motions to enforce discovery that led to defendants producing no discovery documents and failing to identify witnesses.

Relief sought by Relator or Petitioner:

Order requiring respondent to perform his ministerial duty of fostering discovery production, rescheduling of trial.

Date case set for trial, if set, and date of any other event bearing upon relief sought (e.g., date of deposition or motion hearing):

10/29/2007 , 09:00:00 - Jury Trial

Date, court and disposition of any previous or pending writ proceeding concerning the action or related matter:

10/12/2006 U.S. Court of Appeals for the Eight Circuit, *In re Samuel Lipari*  
8<sup>th</sup> Cir. Case No. 06-3546 Writ of Mandamus seeking remand of action to state court. 11/20/2006 Denied  
11/29/2006 Action remanded to state court by trial judge.  
8/13/2007 *State Of Missouri Ex Rel Samuel K. Lipari vs. Honorable Judge Michael W. Manners* WD68703 Mandamus denied

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<i>Respondent.</i>	)	

**ORIGINAL PROCEEDING IN MANDAMUS**

Comes now the relator Samuel K. Lipari appearing pro se and makes this application for a writ of mandamus to order respondent The Honorable Judge Michael W. Manners of the Circuit Court Of Jackson County, Missouri to afford relator discovery rights in the underlying action, *Lipari v. General Electric, et al*; 16th Cir. Case No. 0616-cv07421 under Supreme Court rule 94.

**I. Summary of underlying action**

The underlying action *Lipari v. General Electric, et al*; 16th Cir. Case No. 0616-cv07421 was brought by the relator seeking redress for alleged breach of a real estate contract as part of what the relator has alleged to be a group refusal to deal or group boycott with co-conspirators including the group purchasing organization (“GPO”) Novation, LLC to prevent new entrants in the national market for hospital supplies. Missouri was the first state to be forced to cut healthcare as a result of rising healthcare costs traceable to artificial inflation of

hospital supplies by the GE defendants and their distribution chain through Novation, LLC and the electronic healthcare marketplace created by the GE defendants to compete with the relator's price lowering technology. The complaint brought by the relator is exhibit 1.

## **II. Significant State Interest**

The Missouri state interest and public concern over forced cuts in state Medicaid spending is implicated because of the relator's effort to protect Missouri and the federal government Medicare and Medicaid insurance programs from the uncompetitive hospital supply marketplace monopolized by Novation LLC in combination with the GE defendants' GHX, LLC.

The state's voters, being deprived of information about the evidence and deprived of having the Congress's antitrust policy vindicated by the relator 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 where the relator's experiences were repeatedly described has himself been removed from office over the general outrage against government corruption.

The Missouri state interest and public concern over forced cuts in state

Medicaid spending is implicated because of the relator's effort to protect Missouri and the federal government Medicare and Medicaid insurance programs from the uncompetitive hospital supply marketplace monopolized by Novation LLC in combination with the GE defendants' GHX, LLC.

As a result of the relator's failure to advance his antitrust and state law based contract claims in federal court, the first 65,000 Missouri residents were cut off of Medicaid benefits on July 1, 2005. A July 2nd, 2005 Los Angeles Times article stated 1/3 of the Missourians losing insurance coverage are children: "An estimated 24,000 children are expected to lose their benefits, dental coverage is being cut for adults, and disabled people are losing coverage for crutches and other aids." See Missouri's Sharp Cuts to Medicaid Called Severe-More than 68,000, a third of them children, may lose benefits in the move to avoid tax hikes. LA Times, July 1, 2005.

On June 29, 2005, David Moskowitz MD, was invited to testify before the Missouri Medicaid Reform Commission and in his released pretestimony stated for the 65,000 patients losing coverage; "Since oxygen tanks are among the items no longer covered, many patients will soon die"[emphasis added]. Of course patients are the consumers in the market for hospital supplies that is the primary relevant market of relator's antitrust claims. Doctor Moskowitz also stated; "The Missouri Legislature is wrestling with the most critical domestic issue of our time. It is literally a life and death issue for tens of millions of Americans. It seems to me profoundly un-American, on the eve of our nation's birthday, to have people

die simply because Medicaid is still paying retail for drugs.”

The relator’s complaint alleges that the costs of hospital supplies including equipment like oxygen tanks and consumables like prescription drugs are artificially inflated from the defendants’ market manipulations in violation of the antitrust laws and the Sherman Antitrust Act as part of the defendants’ common enterprise to overcharge Medicaid and Medicare. The relator’s complaint alleges that the GE defendants broke their contract with the relator after discovering his entry into the hospital supply market would undercut their monopolized supply distribution chain.

The state’s voters, being deprived of information about the evidence and deprived of having the Congress’s antitrust policy vindicated by the relator 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 where the relator’s experiences were repeatedly described in four consecutive annual hearings over Novation’s anticompetitive practices has himself been removed from office as a Senator of Wisconsin over the general outrage against government corruption.

### **III. The Significant National Interest**

The suppression of economic competition in hospital supplies has led to unsustainable increases in healthcare costs. The actions of the GE defendants to deprive critical inputs required by new entrants to the market, including breaking their contracts with the relator demand investigative scrutiny. Especially where this misconduct is part of an agreement with other hospital supply distributors to control access to the hospital supply market conditioned on participating in a scheme to artificially inflate the costs of hospital supplies.

On April 9, 2007, the relator publicly disclosed his independent discovery revealing the US Attorneys targeted by the deputy chief of staff to the Bush administration, Karl Rove and Attorney General Alberto Gonzales that resulted in Todd Graves being replaced by Bradley J. Schlozman a year earlier. John Wood was finally sworn in as the US Attorney for the Western District of Missouri on April 11, 2007. The relator became concerned because Todd Graves like other US Attorneys targeted had been active in prosecuting Medicare fraud:

“...documents were obtained during Medical Supply Chain's discovery related to the civil antitrust action *Medical Supply Chain, Inc. v. Novation LLC, et al*, Western District of Missouri case #05-210-CV-W-ODS filed on March 9, 2005.

The e-mail dated January 9th, 2006 from Kyle Sampson, chief of staff for Attorney General Alberto Gonzales, to Harriet Miers and William Kelley at the White House, shows the ten U.S. Attorneys that were first selected to voluntarily resign or face termination. Attorneys that resigned were redacted. Todd P. Graves of Missouri resigned March 24, 2006.”

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 to defraud Medicare through payments to administrators and kickbacks. The scheme resulted in almost all of Kansas City, Missouri St. Luke's hospital's one hundred million dollar supply budget being purchased through Novation LLC. St. Luke's merged with University of Kansas Hospital after Irene Cumming, CEO of the University of Kansas Hospital was given a job by University Health System Consortium (UHC) on March 19, 2007.”

Former MO US Attorney Todd Graves the Ninth Attorney Targeted by Alberto Gonzales; Kansas City, MO - April 9, 2007. The McNulty papers and the Washington Post printed this story on May 9<sup>th</sup> and 10<sup>th</sup>, 2007.

The first prosecutor identified as being fired by the Office of the Attorney General was Carol Lam, a U.S. Attorney in San Diego, California. Carol Lam was personally prosecuting Medicare fraud at the Tenet Healthcare Alvarado hospital when political pressure was brought on the Justice Department from Karl Rove to remove her from office. Carol Lam's prosecution caused the U.S. Department of Health and Human Services threatened to cut Medicare and Medicaid funds to Alvarado Hospital Case # 03CR15870 US Dist. Court Southern California.

On May 17, 2006, Alvarado Hospital's parent company, Tenet Healthcare, agreed to sell or close the hospital and pay \$21 million to settle criminal and civil charges.

The United States Attorney for the District of Kansas Eric F. Melgren was on the purge list in January 2006 but was removed from the targeting list by demonstrating his loyalty to Karl Rove and Attorney General Alberto Gonzales

and did not intervene in the False Claims Act case against Blue Cross Blue Shield of Kansas for fraud in processing Medicare claims for Missouri, Kansas and Nebraska. This caused Blue Cross to mistakenly believe it could continue to destroy and delay valid claims while giving preferential treatment to some providers to advance the anticompetitive interests over the healthcare marketplace of the states effected. This resulted in Blue Cross management losing the contract and 350 living wage jobs in Topeka, Kansas.

On July 30, 2006 the British newspaper the Daily Mail reported that Novation was under a bribes probe by the US Department of Justice stating Novation; "...is being investigated by American prosecutors following accusations that it has accepted huge 'bribes' from medical manufacturers."

On July 31, 2006 the London Times reported the existence of the US Department of Justice investigation of Novation's conduct as a hospital group purchasing organization or "GPO" and quoted Professor Prakash Sethi, president of the International Center for Corporate Accountability at Baruch College in New York who stated "My most conservative estimates suggest that GPOs extract extra profits of \$5 billion (£2.6 billion) to \$6 billion which legitimately belong to their principal clients, the hospitals."

The relator attempting to obtain capital inputs a third time to enter the hospital supply market through a Chicago Illinois financier named Michael W. Lynch was stopped again by the GE defendants in conduct the relator will amend his complaint to describe after obtaining discovery.

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 influencing the outcome of any action threatening General Electric's monopolies or actions to retaliate against witnesses who threatened General Electric's monopolies.

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.

On July 1<sup>st</sup>, 2007 Hon. Judge Eugene R. Wedoff stepped down as Chief Bankruptcy Judge of the Northern District of Illinois. As a result of federal government investigations of illegal conduct that the relator believes was a protection selling racketeering scheme, Bradley J. Schlozman has resigned his current position at main justice, Deputy Attorney General Paul McNulty who authored the memo used by the GE CEO Jeffrey Immelt and the General Electric

defendants to conceal the financial records of Neoforma and defeat the Sarbanes-Oxley Act of 2002 as described in the relator's underlying complaint has resigned.

The government investigation also includes the deputy chief of staff to the Bush administration, Karl Rove. Rove has so far prevented production of US Justice Department and White House documents sought by The US House of Representatives' Judiciary Committee related to the removal of US Attorneys.

#### **IV. Procedural History**

The underlying action was filed in state court on March, 2006 and served on the defendants April 4, 2006.

The relator had originally brought this claim under state law in a federal action in the US District Court for Kansas (*Medical Supply Chain, Inc. v. General Electric Company, et al.*, case number 03-2324-CM) within a week of the June 15th, 2003 breach. The trial court dismissed the plaintiff's federal antitrust based claims and expressly dismissed the relator's state law claims without prejudice stating GE's requests for sanctions was inappropriate where the plaintiff's contract claims could have merit.

The Tenth Circuit upheld the trial court's express dismissal without prejudice of the state law claims but reversed the trial court on sanctions.

The GE defendants threatened to bring sanctions after remand and to take the relator's counsel's house if all claims including the state claims were not dropped.

The relator demonstrated that the sanction order was in contradiction to

Tenth Circuit authority and if sanctions were issued they would be a trespass at law. They were not issued.

The plaintiff sought to have these claims added to a related antitrust action (*Medical Supply Chain, Inc. v. Neoforma, et al.*, case number 05-2299) first through combination with the remanded case against the GE defendants and then through raising new federal claims against the GE defendants for continuing and later antitrust and racketeering conduct on September 15, 2005 in the related antitrust action.

The trial court ordered the federal claims dismissed against the GE defendants' alleged coconspirators including Neoforma and Novation LLC and determined the motion to add the GE Defendants to be moot. The trial court again expressly declined to exercise jurisdiction over the state claims on March 7, 2006.

### **PETITION**

The petitioner respectfully requests relief in the form of a Mandamus order for the following reasons:

#### **(A) Relief relator seeks from Supreme Court;**

1. The relator respectfully seeks to have the Honorable Judge Michael W. Manners ordered to perform his ministerial duty of fostering discovery production and to postpone the scheduled jury trial until after the General Electric defendants have satisfied the relator's discovery requests and until after the General Electric defendants have produced discovery substantiating any nonfrivolous affirmative defense.

**(B) The action that the relator challenges;**

2. On 03/14/2007, the respondent denied relator's first motion to compel production of discoverable documents from the defendants, including the defendant's lease of the building that is the subject of the contract action and the sales contract, ruling that the plaintiff had failed to conform to specific discovery rules, but not finding a duty of the defendant to produce relevant documents or witnesses. See exhibits 2 thru 6.

3. On 05/11/2007, the respondent denied the relator's second request to compel production of documents which corrected the previous identified deficiencies. Again the respondent did not find a duty of the defendant to produce relevant documents or witnesses. See exhibits 7-10.

4. On 08/06/2007, the defendants served upon the relator a set of interrogatories to be answered by the respondent and a request for production of documents ( which the relator had dutifully produced previously on 01/19/2007 ).

5. As of 08/10/2007, the defendants have not produced a single evidentiary document or information about witnesses related to the relator's claims or the General Electric defendants' affirmative defenses.

**(C) The legal reasons for the challenge to respondent's action;**

Mandamus under Missouri Supreme Court Rule 94 is the relator's appropriate remedy for the trial court's denial of discovery. See *St. Louis Little Rock Hosp., Inc. v. Gaertner*, 682 S.W.2d 146, 148[1, 2] (Mo.App.1984); *State ex*

*rel. Chandra v. Sprinkle*, 678 S.W.2d 804 (Mo. banc 1984); *State ex rel. J.E. Dunn Const. v. Sprinkle*, 650 S.W.2d 707, 712 (Mo.App.1983).

Mandamus will lie to review the action of the trial court in sustaining an objection to discovery of a matter which is properly discoverable. *St. Louis Little Rock Hosp., Inc. v. Gaertner, supra*, 682 S.W.2d at 148.

The relator has a clear unequivocal right to discovery from the General Electric defendants upon which to prosecute his real estate contract related claims. Mandamus will lie only when there is a clear, unequivocal, and specific right. See *State ex rel. Sayad v. Zych*, 642 S.W.2d 907, 911 (Mo. banc 1982).

The relator's right to discovery is clearly established and presently existing. See *State ex rel. Commissioners of the State Tax Comm'n v. Schneider*, 609 S.W.2d 149, 151 (Mo. banc 1980).

Mandamus lies to require the disclosure of information during discovery when the information is relevant to the lawsuit or reasonably calculated to lead to the discovery of admissible evidence. *State ex rel. Rowland v. O'Toole*, 884 S.W.2d 100, 102 (Mo. App. 1994).

Mandamus will lie to review a trial court's sustention of objections to discovery because the refusal to permit discovery of matters which are relevant to the lawsuit and reasonably calculated to lead to admissible evidence and which are neither work product nor privileged is an abuse of discretion. *State ex rel. Hudson v. Ginn*, 374 S.W.2d 34 (Mo. banc 1964).

Application to the Missouri Supreme Court after an appeals court denial of a previous writ of mandamus is appropriate. *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573 at pg. 576 (Mo., 1994)

**(D) Relator’s suggestions in support of the challenge.**

The relator has a right guaranteed at law under Rule 56.01(b)(1) to obtain discovery related to the prosecution of his civil action:

“Rule 56.01(b)(1) plainly says that a party "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . ." (emphasis added)

*State ex rel Svejda v. Roldan*, 2002 MO 1420 at ¶21 (MOCA, 2002).

The Missouri Supreme Court in *State ex rel. Collins v. Edwards*, 652 S.W.2d 98 at 102 (Mo., 1983) has established that the respondent the Honorable Judge Michael W. Manners has the ministerial duty of fostering discovery as provided by the rules.

The Missouri Supreme Court in *State ex rel. Collins v. Edwards* also established that the factual substance behind claims of privilege should be reviewed by the trial judge for good faith. *State ex rel. Collins v. Edwards*, 652 S.W.2d 98 at 102 (Mo., 1983).

Missouri courts prohibit assertion of a blanket privilege upheld by the respondent:

“*Health Midwest Development v. Daugherty*, 965 S.W.2d 841 (Mo.banc 1998), the Supreme Court of Missouri equated the statutory peer review privilege to other privileges when, in analyzing section 537.035, it characterized all privileges as impediments to the truth and declared that, as such, they are to be strictly construed. *Id.* at 843[32]. In a similar vein, the

*Daugherty* court held that "the general principles that govern [other] privileges[]" are to be used in interpreting section 537.035. *Id.* at 843. *Dixon v. Darnold*, 939 S.W.2d 66, 70-71 (Mo.App. 1997) (holding rule against blanket assertion of work product privilege sufficiently analogous to be applied when hospital attempts to make blanket assertion of peer review privilege).”

*State ex rel St. John's Regional Medical Center v. Dally*, 2002 MO 1367 at ¶31 (MOCA, 2002) The Supreme Court of Missouri held in *Friedman*, 668 S.W.2d at 80, that " blanket assertions of privilege' will not suffice to invoke its protection."

The defendants have not identified any of the documents requested by the plaintiff that are privileged, nor have they described the circumstances leading to the documents being protected:

“Where the party opposing a discovery is in control of facts peculiarly within that party's knowledge, as was the case in the instant proceedings, and it is asserting a privilege or immunity from the discovery request, the burden of proof must necessarily shift from the proponent of discovery to the opponent of discovery. See 1 MO. CIVIL TRIAL PRACTICE, § 5.61 (MOBAR 2D ED.1988) ; see also discussion of blanket assertion of privilege *State ex rel. Friedman v. Provaznik*, 668 S.W.2d 76, 80 (Mo. banc 1984), *infra*.

*State ex rel. Dixon v. Darnold*, 939 S.W.2d 66 at pg. 70 (Mo. App. S.D., 1997).

The remedy by appeal is not adequate. Like in *State ex rel. Collins v. Edwards* the problems of the defense’s lack of good faith have appeared at the inception of the discovery process. The defendants are seeking to frustrate the discovery process intentionally, to force the relator to go to trial without the benefit of discovery as to the subject matter of his action. The relator would face

an impossible burden in establishing that the denial of this information could have affected the result of the trial. This court is justified in intervening at the writ stage, for otherwise the defendants would benefit from their inappropriate attempts. *State ex rel. Collins v. Edwards*, 652 S.W.2d 98 at 102 (Mo., 1983).

### **CONCLUSION**

Whereas because the defendants have produced no discovery documents and have not identified specific records protected from discovery by privilege or witnesses addresses to the relator's claims or their affirmative defenses as a result of the respondent's orders denying discovery, the relator respectfully requests that the court order the respondent to perform his ministerial duty of fostering discovery. Additionally the relator respectfully requests that this court order the jury trial postponed until the General Electric defendants have satisfied their discovery production requirements under Missouri State law.

Respectively submitted,

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Samuel K. Lipari  
Relator  
Pro se

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 27th day of August, 2007, by first class mail postage prepaid to:

Leonard L. Wagner and John K. Power, Esq., Husch & Eppenberger, LLC 1700  
One Kansas City Place 1200 Main Street Kansas City, MO 64105-2122

and by personal delivery to the office of Hon. Judge Michael W. Manners in the Circuit Court Of Jackson County, Missouri.

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

#### Attachments

1. Complaint Petition
2. Document Production Request
3. Insurance Document Production Request
4. Privilege Document Production Request
5. First Motion to Compel Production
6. Order denying First Motion to Compel
7. Second Motion to Compel
8. Golden Rule Letter
9. Notice of Service of Production Requests
10. Order denying Second motion to compel