UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS
KANSAS CITY KANSAS DIVISION

CASE NO.: 2:03-cv-2324

MEDICAL SUPPLY CHAIN, INC.,

Plaintiff,

vs.

GENERAL ELECTRIC COMPANY
GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION
GE TRANSPORTATION SYSTEMS GLOBAL SIGNALING, L.L.C.

Defendants.

PLAINTIFF'S AMENDED COMPLAINT

Comes now the plaintiff Medical Supply Chain, Inc., represented by its attorney Bret D. Landrith, Esq. and makes the following amended complaint against General Electric Company and its subsidiaries GE Transportation Systems Global Signaling, L.L.C. and General Electric Capital Business Asset Funding Corporation and adds the defendant Jeffrey R. Immelt. The plaintiff Medical Supply Chain, Inc. suffered antitrust injury from the defendants' breach of a written contract to buy out the remainder of a lease and provide financing for Medical Supply's entry into the hospital supply market. This contract was a unique credit agreement and an essential facility required for entry into the e-commerce market for hospital supplies.

1. GE founded a cartel or trust with its horizontal and vertical competitors, centered around an electronic marketplace that now has over 80% of the hospital e-commerce

market. The purpose of this cartel is to prevent new entrants to the hospital supply e-commerce market and to maintain uncompetitive higher prices on hospital supply commodities. The cartel maintains control over its members pricing, volume, distribution and customer data to enforce the allocation of customers and to exclude nonmember competitors. The cartel requires tying contracts so suppliers and customers are required to join and are forced to do business through the cartel's e-commerce marketplace. When GE's Medical divisions discovered GE Corporate had made a contract with Medical Supply Chain, Inc., they got Jeffrey R. Immelt's office to order that it not be performed to harm a competitor entering their markets. GE's refusal to deal and group boycott, preventing Medical Supply's entry into a market GE has monopoly power in is a violation of the Sherman and Clayton Antitrust Acts.

Jurisdiction and Venue

2. This court has jurisdiction of this action on a federal question, where there is diversity of citizenship and an amount in excess of $75,000.00.

Parties

Plaintiff:

3. MEDICAL SUPPLY CHAIN, INC., (herein "Medical Supply"), is a Missouri Corporation located at 1300 NW Jefferson Court, Blue Springs, MO 64015. Medical Supply's corporate banking accounts are in Topeka, KS and its counsel is in Pittsburg, KS. The Company provides web-based services (online enterprise software) that dramatically reduce cost when managing healthcare supply chain activities including purchasing transactions made between hospitals and thousands of competing manufacturers on line in Medical Supply's electronic marketplace. These services

manage strategic data and provide direct support to buyers and sellers that make up the healthcare supply chain. By simply replacing the existing maze of supply chain inefficiencies with Medical Supply's services, supply chain cost can be reduced by more than 20%. The Company offers its web-based enterprise as a neutral, pure play driven utility. The Company maintains its autonomy by empowering its customers (buyers/sellers) with enterprise services that efficiently manage their entire supply chain. The tools offered as an enterprise service support extremely efficient and transparent management of procurement, fulfillment, inventory, logistics and settlement activities. In this manner, Medical Supply Chain, Inc. as an e-commerce vendor, replaces a store or distributor as a more efficient and intelligent distributor of hospital supplies. Suppliers offer their products and services through Medical Supply Chain, Inc. and hospitals purchase their supplies through Medical Supply Chain, Inc.

4. Medical Supply's technology is superior allowing for greater market efficiency and transparency than GE's electronic marketplace called GHX, L.L.C. Medical Supply's founder spent 10 years developing it and for the last three years, Medical Supply has been incorporated, completing the research and development for commercialization. Medical Supply's first entry into the hospital supply market was halted in October 2002 by members of GE's cartel directly affiliated with the other electronic marketplace, Neoforma. GE appeared to be acting independently of Neoforma, when it accepted Medical Supply's proposal for a lease buy out and financing, but similarly repudiated a contract for essential facilities, preventing entry into the hospital supply market at great sacrifice when Medical Supply was not in a position to find an alternative. (Neoforma's financial partner, US Bancorp Piper Jaffray, has attested to a threat of filing a Suspicious

Activity Report or "SAR," against Medical Supply under the USA PATRIOT Act, which would destroy Medical Supply's ability to process hospital and supplier purchasing transactions. In an affidavit by Piper Jaffray Vice President and Chief Counsel submitted in Medical Supply vs. US Bancorp et al No. 02-3443 (10th Cir.), Piper Jaffray argues to file a "SAR" at any time it sees fit. Medical Supply is seeking to be protected from Piper Jaffray's extortion and any malicious use of the USA PATRIOT Act. The October 2002 and June 2003, distinct antitrust injuries to Medical Supply prevented it from beginning its operations each time and realizing the expectations of its investors and stakeholders.

Defendants:

5. Jeffrey R. Immelt, Chief Executive Officer, General Electric Company (herein "GE"). Mr. Immelt has been a long time employee of the many divisions and entities of General Electric Company. In 1997 Mr. Immelt was made president of GE Medical, the subsidiary corporation owned and controlled by GE responsible for selling products to the healthcare industry. In or about 1998 GE directed Immelt to identify the form of internet business model that would be a threat to GE Medical's profit margin. Mr. Immelt directed a study that determined that an internet marketplace which was independent of manufacturers and existing healthcare group purchasing organizations would threaten GE by causing prices to be much lower and by freeing hospitals, clinics and doctors from having to purchase products only from channels controlled by GE. These customers would then have access to competing products. Mr. Immelt found GE Medical's healthcare industry customers were rapidly adopting the Internet for purchasing decision making. GE made Immelt and his managers wargame out strategies to prevent an internet based competitor with a more efficient business model from entering the hospital supply

market. As part of that strategy, Immelt spent $50,000,000.00 in 1999 on web site, database and internet communications technologies.

6. The second part of the strategy Immelt developed and implemented under the direction of GE was to organize GE Medical's competitors and combine with them to create a preemptive internet marketplace where prices could be protected from competitive pressure caused by new market entrants and market shares could be preserved by the assignment of territories and the allotment of product markets. Immelt presided over the formation of this cartel and the engineering of the conspiracy to rig prices and markets through exchange of price, volume and other product data in a *per se* restraint of trade. See United States v. Andreas, 216 F.3d 645 (7th Cir., 2000).

7. Mr. Immelt signed and oversaw the preparation of documents incorporating the conspiracy as Global Health Exchange, LLC in 2000. Mr. Immelt oversaw GE's capitalization of the cartel, and caused the articles of incorporation and the operating agreement to secure GE's control of the entity, including the placement of an interlocking board of directors with the other founders of the trust and made the explicit requirement an officer of GE is on the board of directors.

8. Mr. Immelt knew that the illegitimate increased cost of hospital supplies due to the operation of the conspiracy, cartel or trust he had created and incorporated as GHX, LLC. would cause and is causing Medicare to be defrauded out of billions of dollars over paid in artificially inflated claims for devices and procedures utilizing the cartel's supplies.

9. Mr. Immelt knew the decreased access to healthcare resulting from the operation of the conspiracy, cartel or trust he had created and incorporated as GHX, LLC. would cause employers and health insurers to reduce coverage and benefits to the nation's

citizens leading to injury and death.

10. Mr. Immelt became CEO of The General Electric Company in September 2001. Under Immelt's leadership, GE's Global Exchange's inefficient and technologically inferior internet marketplace for its appliances was sold off. Immelt, however continued GE's support and participation in GHX, LLC. Immelt's purpose was to prevent other healthcare internet marketplaces from providing competition in hospital supplies. Immelt also expanded the membership to include non-manufacturer members, including the Group Purchasing Organizations that distributed most of the nation's hospital supplies. Immelt caused GHX, LLC. to be even more protective against internet competitors by requiring members to force their customers and suppliers to make anticompetitive contracts with other member companies. Immelt allied GHX, LLC with the other internet marketplace, Neoforma, Inc. to control 80% of the existing hospital supply e-commerce market. Immelt made GHX, LLC. require customers to join both the former competing internet marketplace, Neoforma and GHX, LLC.'s internet marketplaces. See Attachment 2, Marketplace @Novation, Master Supplier Agreement, Schedule B. In this way, GE could allocate customers and suppliers among the members of GHX, LLC and obtain real time price and volume data to enforce the cartel's goal of illegitimately higher hospital supply prices.

11. Mr. Immelt knew the gravamen of his actions when the trade unions of GE held a two day, nationwide strike on January 14th, 2003 to call attention to the high cost of healthcare and the rapid price increases for American working families. This effort to call public attention to the crisis cost the life of a GE worker. Kjeston Michelle Rodgers, a member of IUE-CWA Local 83761, was hit by a police car and killed while on the picket

line.

12. Mr. Immelt's violations of 15 U.S.C. § 1, injuring healthcare supply consumers; including hospitals and patients, in addition to competitors like Medical Supply Chain, Inc. is egregious conduct equivalent to felony. Antitrust Procedures and Penalties Act, Pub.L.No. 93-528, § 3, 88 Stat. 1706, 1708.

13. As CEO, under the Sarbanes-Oxley Act of 2002 Mr. Immelt is responsible for putting in place antitrust compliance procedures. Mr. Immelt failed to stop GE's pernicious antitrust misconduct of price fixing, group boycott refusals to deal and customer allotment, endangering the investment of the corporation's stock holders and injuring the public by preventing competition and efficient delivery of hospital supplies. Mr. Immelt allowed his authority to be used to command GE corporate, its capital and transportation subsidiaries to repudiate a contract designed to capitalize Medical Supply Chain, Inc.'s entry into the hospital supply market to prevent Medical Supply from introducing competition and efficiency into that market.

14. When Medical Supply Chain, Inc. prepared to seek redress in court for its injury, Mr. Immelt through his agents caused Medical Supply Chain, Inc., a victim of GE's deliberate actions to be threatened and intimidated in conduct equivalent to the felony of 18 U.S.C. § 1503 Obstruction of Justice with the intent of preventing Medical Supply Chain, Inc. and its counsel from bringing these charges and to cause them to be withdrawn. By deliberately refusing to cite any authority, case law or statute that Medical Supply's claims were invalid or frivolous, Mr. Immelt through his agents attempted to make GE's victims believe that they would be sanctioned and fined not on the basis of law but on GE's power over the legal system.

15. GENERAL ELECTRIC COMPANY, (herein “GE”), registered agent address for Kansas, The Corporation Company, Inc., 515 S Kansas Ave., Topeka, Ks 66603. GE was a dominant medical device manufacturer and medical equipment and electrical equipment supplier to North American hospitals. GE ceased to be a manufacturer and became a distributor of parts, assemblies, products, systems and credit services to hospitals. GE established monopolies in many product lines for hospitals but feared other distributors would bypass GE and buy the same parts, assemblies, products, systems from foreign sources and sell them to North American hospitals at lower prices in competition with GE. To prevent this, GE made alliances with the dominant distributors for hospitals called GPO’s because they were intended to be group-purchasing cooperatives (organizations). GE and the other dominant manufacturers gave the management of these GPO’s kickbacks to prevent direct competition in distribution, preserve their loyalty and to protect the inflated prices. However, GE saw that the captive customers of these GPO’s were growing dissatisfied at the inefficiency and the failure to achieve group purchasing discounts. To protect against other market entrants, GE formed Global Health Exchange L.L.C. as an electronic market place promising online distribution at lower prices to hospitals. GE owns shares of stock in the privately held company and provided the initial capitalization. As an alliance of a handful of dominant manufacturers (now distributors) the actual goal was to preempt the fledgling e-commerce companies from entering the electronic distribution of hospital supplies. GE found the technology of GHX, Inc. was inadequate to outperform new entrants and aligned itself with Neoforma, Inc., the electronic marketplace co-opted by the dominant GPO’s in an alliance to exchange data among suppliers to reinforce cost structures as inflated as those of the

GPO's. GHX, L.L.C. at the direction and approval of GE has retaliated against suppliers who endanger the marketplace with competitive prices. GHX, L.L.C. at the direction and approval of GE has excluded competitors including Retractable Technologies, Inc. and Maximo for failing to give kick backs to the cartel. Death and injury resulted from the failure of hospitals to obtain these medical devices held out by GHX. GHX, L.L.C. at the direction and approval of GE has excluded Medical Supply Chain, Inc. from entering the market by not allowing Medical Supply to offer GE Capital Healthcare credit to its potential customers in April of 2002, by refusing to offer US Bancorp Piper Jaffray services to Medical Supply in June 2002 and by repudiating essential escrow contracts required by Medical Supply to capitalize its entry into market in October 2002. (US Bancorp has interlocking directorships and an exchange of directors with the two dominant GPO founders of GHX L.L.C.; Novation and Premier. US Bancorp helped Novation acquire control of Neoforma and partner it with GHX, L.L.C. creating a monopoly of over 80% of healthcare e-commerce market). GE repudiated a contract, sacrificing $15 million dollars on June 15th, 2003 to keep Medical Supply from being able to compete against GHX, L.L.C. and Neoforma. The healthcare market is worth 1.3 trillion dollars. GE acted on the tremendous windfall to preserve its monopoly. George Fricke is GE's property manager.

16. While GE is a diverse conglomerate, in 1993, the majority of its income was derived from the capitalization and finance of unrelated companies and individuals that are customers of its financial services divisions.

17. GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION, (herein "GE Capital") registered agent address for Kansas, The

Corporation Company, Inc., 515 S Kansas Ave., Topeka, Ks 66603. GE Capital is a subsidiary of GE performing GE's commercial lending operations. GE in accepting Medical Supply's proposal, committed GE Capital to provide a 5.4% interest rate mortgage for $6.4 million dollars on the building at 1600 NE Coronado, in Blue Springs, MO. GE Capital had its loan officer Doug McKay from their Overland Park, KS office contact Mr. Lipari of Medical Supply.

18. GE TRANSPORTATION SYSTEMS GLOBAL SIGNALING, L.L.C. (herein "GE Transportation") registered agent address for Kansas, The Corporation Company, Inc., 515 S Kansas Ave., Topeka, Ks 66603. GE Transportation acquired the building and its transferable lease when it bought the railroad signal company Harmon Industries, Inc. and dismissed its employees. GE Transportation sought to escape the $5.4 million dollar liability of the remaining 7-year lease because of the $50,000 to $60,000 dollar a month lease and insurance on the building that had not been occupied for over 8 months with no sub lease offers. Previously the building had been under utilized while GE dismissed Harmon's staff. The high monthly cost was making the subsidiary fail to meet GE's economic performance requirements and hurting the conglomerate's bottom line and share price.

Statement of Facts

19. On or about June 1st, 2002, Mr. Lipari, CEO of Medical Supply Chain, Inc. contacted the leasing agent Cohen & Esrey Property Management regarding a building located at 1600 N.E. Coronado Drive in Blue Springs, MO. The leasing agent indicated the building was already leased but that the lessee could and would like to sub-lease the building. The building was not occupied so Mr. Lipari made a verbal offer to sub-lease a

portion of the building. The leasing agent declined his offer indicating the existing lessee would not accept anything less than sub-leasing the entire building.

20. On or about April 1st, 2003 Mr. Lipari contacted the new leasing agent (B.A. Karbank & Company) in the event the new agent had different instructions regarding a sub-lease of the property located at 1600 N.E. Coronado Drive in Blue Springs, MO. The new leasing agent told him that GE was the lessee seeking to sub-lease the building due to their vacating the building after GE Transportation bought out Harmon Industries. The building was still not occupied so again Mr. Lipari made a verbal offer to lease a portion of the building. The leasing agent declined his offer indicating GE Corporate Properties would not accept anything less than leasing the entire building.

21. On or about April 7th Mr. Lipari contacted GE and spoke with the GE property manager, George Frickie regarding Medical Supply's interest in sub-leasing the building. George Frickie indicated again that GE would not be interested in sub-leasing a portion of the building but rather would be interested in leasing the entire building. Mr. Lipari requested the name of the owners and Mr. Frickie gave him the name and number of Barry Price with Cherokee Properties L.L.C. Mr. Lipari contacted Mr. Price, he was referred to Scott Asner who also had a substantial interest in the building. While speaking with Mr. Asner he provided Mr. Lipari the background and current details on the building lease with GE, terms and a price to purchase the building. The lease was transferable and GE was still obligated for 7-years out of a 10-year lease. Mr. Asner agreed to sell Medical Supply the building for the remaining balance of the GE 7-year lease ($5.4 million) and provided Mr. Lipari with a letter of intent to sell the building to Medical Supply.

22. On or about April 15th, Mr. Lipari contacted Mr. Frickie with GE Commercial Properties and indicated that he had an interest in purchasing the building. Mr. Lipari ask Mr. Frickie if GE had an interest in buying out the remainder of their lease so that Medical Supply could occupy the building following the purchase. Mr. Frickie offered GE's lease payments for the remainder of 2003 ($350,000) as a buy out offer.

23. On or about May 1st, 2003 Mr. Lipari tentatively contacted several local Banks, knowing that US Bank had threatened his company with a malicious USA PATRIOT Act report to keep Medical Supply from entering the hospital supply market where US bank was affiliated with Neoforma, an existing electronic marketplace for healthcare supplies. Mr. Lipari knew Medical Supply could not get a loan because of the threat and extortion, but knew he needed input from bankers familiar with the commercial real estate market in Blue Springs. Mr. Lipari felt Medical Supply could form a holding company to obtain the property without US Bank realizing he could enter the hospital supply market. Mr. Lipari spoke with Allen Lefko President of Grain Valley Bank, Pat Campbell branch manager of Gold's Bank and Randy Castle Senior Vice-President of Jacomo Bank. Each of the banks indicated a wiliness to provide the mortgage because they felt the property was worth far more than the price offered by Cherokee Properties L.L.C., but the mortgage was too large for the regulatory size of their bank and they each suggested a national bank as an alternative. Due to US Bank's extortion and racketeering, including the pretext and very real threat of a malicious USA PATRIOT Act suspicious activity report (SAR) against Medical Supply since Mr. Lipari had tried to enter the hospital supply market in October of 2002, Mr. Lipari knew he was unable to solicit a national bank for the real estate loan.

24. On or about May 7th, Medical Supply contracted a financial consultant (Joan Mark) for advice on how to put a mortgage together to buy the building which has a 7-year revenue stream from GE in the amount of $5.4 million, the identical amount offered to purchase the building and for which Medical Supply had a letter of intent from the owner Cherokee Properties L.L.C. Mrs. Mark suggested Mr. Lipari propose a mortgage arrangement directly to George Frickie with GE Corporate. Mrs. Mark explained how a purchase of the $10 Million dollar property for $5.4 Million was a great deal for any mortgage lender. Mrs. Mark also explained if GE provided a $5.4 million dollar mortgage on a $10 million dollar property and eliminated a $5.4 million dollar lease obligation that GE would directly benefit from a $15 million dollar swing to their balance sheet.

25. On or about May 15th, 2003, Medical Supply's corporate counsel sent a proposed transaction to George Frickie outlining the terms of its proposal:

Dear Mr. Fricke:

I am writing on behalf of Medical Supply Chain, Inc. with a proposal to release GE from a seven-year 5.4 million dollar obligation on 1600 N.E. Coronado Dr., Blue Springs MO. We have spoke with the City of Blue Springs economic development officer and the city attorney. Medical Supply Chain, Inc. has also obtained a letter of intent from the building's owner, Cherokee South, L.L.C. (Barry Price/Scott Asner) to purchase the building.

We offer to release GE from its lease and 5.4 million dollar obligation, providing GE pays Medical Supply Chain, Inc. at closing for the remainder of the 2003 lease and transfers title to the building's furnishings. This offer is contingent on GE's acceptance by 3pm (EST), Friday, May 23rd; the City of Blue Spring's approval of Medical Supply Chain's purchase and occupation of the building and is contingent upon GE Capital securing a twenty year mortgage on the building and the property with a first year moratorium.

Medical Supply Chain, Inc. believes this arrangement will result in a net gain in revenue for GE and GE's Capital services was our first choice for the commercial mortgage when our area bankers advised us the building and the property at 6.2 million dollars was substantially less than its market value of 7.5 million dollars, but would require a commercial lender. Medical Supply Chain, Inc. has no existing debt and a valuation of thirty two million dollars. See attachment 1.

GE Capital or its underwriter would need to provide Medical Supply Chain, Inc. a

twenty-year mortgage at 5.4 % on the full purchase price of 6.4 million dollars, with a moratorium on the first full year of mortgage payments. The City of Blue Springs would be paid the balance of lease payments for the land ($800,000.00) or in the alternative, the mortgage will include an escrow account to complete the lease and purchase of the land on its original terms. GE Capital can provide or designate the closing agent and would be required to provide 5.4 million dollars to Cherokee South, L.L.C. and your division's check for the remainder of the lease payable to Medical Supply Chain, Inc. along with a bill of sale for the buildings furniture and equipment. This closing would need to be completed by June 15th, 2003.

Please contact us at your receipt of this offer and provide us a contact person for GE Capital or its mortgage agent.

Bret D. Landrith

26. The afternoon of May 15th, Mr. Frickie responded, leaving a taped voicemail message and stating he had spoke with the business leaders at GE corporate and that they will accept Medical Supply's proposal.

May 15th 2003-George Frickie
"Bret, George Frickie, ah…. I know I sent you an email saying that my counsel way out ah…and I followed up with another email but I spoke to the business leaders and we will accept that transaction ah… let's start the paper work ah… if you want to do some drafting of lease termination or if you would like us to do that, give me a holler 203-431-4452."

27. The second e-mail Mr. Frickie referenced on the phone conversation explicitly stated that GE would accept Medical Supply's proposal and initialed the written acceptance in addition to the electronic signature file for the e-mail:

From: Fricke, George (CORP)
To: Bret Landrith
Cc: Newell, Andrew (TRANS) ; Payne, Robert J (TRANS) ; Davis, Tom L (TRANS) ; Jakaitis, Gary (CORP)
Sent: Thursday, May 15, 2003 6:05 PM
Subject: RE: Lease buyout GE/Harmon building

Bret, I would like to confirm our telephone conversation in that GE will accept your proposal to terminate the existing Lease. Robert Payne GE Counsel will start working on the document. He is out of the office until Monday the 19th. GCF

28. On or about May 20th, 2003, Medical Supply was given a walk through of the

property to inventory the buildings furniture and fixtures and discuss building maintenance and operational procedures. Tom Davis, the property manager for GE Transportation in Blue Springs and John Phillips, the GE Transportation building maintenance engineer provided a three-hour walk through in addition to the building maintenance and operational procedures. John Philips also provided the construction blue prints of the building and allowed Mr. Lipari to make copies. Mr. Lipari returned the blue prints after copies were made. They both stated they were being dismissed from employment with GE since they would no longer be needed.

29. On May 22nd, 2003 Mr. Lipari spoke to Doug McKay with GE Capital who had called earlier that week with regard to the mortgage outlined in Medical Supply's proposal. Mr. McKay asked that Mr. Lipari send the company information regarding the mortgage. Mr. Lipari indicated that he could meet him the following Tuesday because Medical Supply had a loan package for him that included its financials, the proposal that George Frickie and GE's business leaders accepted, the letter of intent from the owners and our Dunn &Bradstreet report showing Medical Supply's good credit and strong financial condition. Mr. Lipari gave the information to Mr. McKay and Mr. McKay indicated he needed to speak with GE Transportation to see how they wanted to handle the terms of the accepted proposal.

30. On or about June 2nd, 2003 Mr. Lipari called McKay to see how they were doing on closing and McKay indicated that the person he needed to speak with was at corporate and that he needed to speak with him before moving forward. As the June 15, 2003 closing date approached, medical Supply had not received any definitive closing date so Medical Supply's corporate counsel called and sent George Frickie and email stating that

a delay in closing would not effect the lease buyout of $350,000. Medical Supply's counsel later again called Mr. Frickie when he receive no response and Mr. Frickie became extremely angry and hung up the phone. Medical Supply then proceeded to speak with GE's counsel Kate O'Leary to determine if the contract had been repudiated. Supporting statutes and the antitrust basis and damages implications were explained to Ms O'Leary. Medical Supply gave GE a deadline of June 10th to clarify whether there had been a repudiation. Mrs. O'Leary later faxed a letter on the 10th requesting that Medical Supply not speak to anyone at GE and that any correspondence relating to this matter be directly to her. Medical Supply then emailed a letter stating that if no earnest money were deposited to indicate the contract was not being repudiated, Medical Supply would file on June 16th for antitrust and breach of contract.

Claims

31. The plaintiff makes the following claims with short and plain statements showing Medical Supply is entitled to relief, having made a short and plain statement of the grounds upon which the court's jurisdiction depends, above and prior to concluding with a demand for the judgment sought against the defendants. See Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit (91-1657), 508 U.S. 223 (1993).

> **"…after Leatherman, an antitrust plaintiff need not include 'the particulars of his claim' to survive a motion to dismiss. 33 F.3d at 782.** It is instead sufficient for the plaintiff to include in its complaint only "a short and plain statement of the claim" showing an entitlement to relief. (emphasis added)." *Apani Southwest, Inc., Plaintiff-Appellant, v. Coca-Cola Enterprises, Inc.*, No. 01-11026 (5th Circuit, August 12, 2002).

32. The court has interpreted this requirement to mean that "factual pleading is required only insofar as it is necessary to place a defendant on notice as to the type of claim

alleged and the grounds upon which it rests, thereby enabling a defendant to prepare a responsive pleading." Mountain View Pharmacy v. Abbott Labs., 630 F.2d at 1388 (10th Cir. 1980). The defendants are hereby given notice of the facts within the totality of this pleading and the claims as follows:

I. Sherman Antitrust Claims Under 15 U.S.C. § 1

33. Count 1, Concerted Refusal to Deal: The Defendants refused to deal with Medical Supply in violation of the Sherman Act in concert with other healthcare suppliers as part of an open and notorious conspiracy incorporated as Global Health Exchange, L.L.C., (See Attachment 3, affidavit of Lynn Everard) and nakedly restrained trade by preventing the entry of Medical Supply Chain, Inc. as an electronic marketplace competing with the defendants' cartel in the relevant market for North America of providing hospital supplies through e-commerce. The purpose of the defendants' creation of a cartel or trust among their competitors was to keep prices of hospital supplies high without competition and to allocate customers, suppliers and distribution channels among the cartel members by contracts in a per se violation of 15 U.S.C. § 1. See U.S. v. Suntar Roofing, Inc., 897 F.2d 469 (C.A.10 (Kan.), 1990). The defendants' refusal to deal in concert with other suppliers and electronic marketplaces (the members of GHX, Inc.) is a per se restraint of trade violating 15 U.S.C. § 1 under Klor's Inc. v. Broadway-Hale Stores, 359 U.S. 207, 79 S.Ct. 705, 3 L.Ed.2d 741 (1959).

34. Count 2, Refusal to Deal in Furtherance of a Monopoly: The Defendants have through their repudiation of their agreement to buy out their lease and provide financing, furthered their monopoly cartel of hospital supplies through e-commerce in North America. Concerted refusal to deal in furtherance of a monopoly or as attempted

monopolization is a per se restraint of trade in violation of 15 U.S.C. § 1 under Eastman Kodak Co. v. Southern Photo Materials Co., 273 U.S. 359, 375, 47 S.Ct. 400, 71 L.Ed. 684 (1927).

35. Count 3, Refusal To Deal/Denial of Unique Financial Instrument: The Defendants accepted a proposal in a signed writing, committing to provide novel or custom financing utilizing the equity in a commercial building the Defendants knew was in excess of ten million dollars as a security for an unusual (100%) mortgage loan of 6.4 million dollars to Medical Supply which had no revenue at an unusually low interest rate (5.4%) for an unusually longer period (20 years), with the unusual provision that there would be a moratorium on mortgage payments for the first year. This unique and custom financing provided Medical Supply a capital asset with 3.6 million in equity, coupled with a $350,000 dollar lease buy out payment from the defendants, was to be used for the purpose of capitalizing Medical Supply's entry into the hospital supply market. The defendants accepted this proposal in a telephone call and in a signed writing, having evaluated Medical Supply's forward financials and business summary and determining that the mortgage could be repaid by Medical Supply's entry into the hospital supply e-commerce market. This unique and custom financing could not be replicated at any bank or in the injured venture fund markets. The value of an e-commerce company is the intellectual property contained in its business model, software, industry and customer relationships. While this is infinitely more valuable than machine tools or the 19th century physical capital, it is difficult or impossible to obtain conventional financing. Medical Supply did not have the means or time to register securities offerings and sell public bonds as GE does to raise money for its operations, financing suppliers, customers

and to capitalize its subsidiaries and affiliates, including GHX, Inc. and Neoforma. The financing GE committed to with Medical Supply was a unique and custom credit facility under United States Steel Corporation v. Fortner Enterprises, Inc., 429 U.S. 610, 51 L. Ed. 2d 80, 97 S. Ct. 861 (1977). The defendants' repudiation of the financing cut off access to a facility necessary to enable Medical Supply to capitalize its entry into the North American hospital supply e-commerce market dominated by the defendants' cartel GHX, Inc. which has over 80% of the market and is a per se naked restraint of trade violating 15 U.S.C. § 1 under Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co., ante, at 294.

36. Count 4, Conspiracy in Restraint of Trade: "[A]greements whose nature and necessary effect are so plainly anticompetitive . . . no elaborate study of the industry is needed to establish their illegality-they are 'illegal per se.'" National Society of Professional Engineers v. United States, 435 U.S. 679, 692, 98 S. Ct.1355, 1365, 55 L. Ed. 2d 637 (1978). Medical Supply charges that: (1) the defendants contracted, combined, conspired forming an open and notorious cartel with other suppliers and electronic market places to operate in the hospital supply market with joint exchange of data and information among companies that were previously competitors so that less efficient cartel members including Premier, Inc. and Novation, Inc. could maintain their inflated price structure and anticompetitive distribution contracts; (2) that the combination or conspiracy produced adverse, anti-competitive effects by preventing the efficiency of competitive electronic commerce in the relevant North American hospital supply market resulting in excess charges of 20 to 40% , reducing the bottom line profit and loss statements of U.S. hospitals by an average of 5% and forcing over 2000 North

American hospitals to operate at an unsustainable loss, endangering the nation's access to healthcare, increasing the cost of care and health insurance and forcing the closing and merging of treatment centers, resulting in needless suffering and death; (3) the object of the defendants' conduct, refusing to deal or boycotting Medical Supply pursuant to their involvement in a cartel with other suppliers and electronic marketplaces in contract and conspiracy is illegal; and (4) the plaintiff Medical Supply was injured as a proximate result of that conspiracy. Medical Supply has been harmed in antitrust injury from the concerted behavior of the cartel members, included repeated denial of essential facilities and a course of dealing proving illegal intentional cooperative behavior by its competitors in open contact with each other. See American Tobacco Co. v. United States, 328 U.S. 781, 809-10 (1946) ("The essential combination or conspiracy in violation of the Sherman Act may be found in a course of dealing or other circumstances as well as in any exchange of words.") The defendants have committed a per se antitrust conspiracy in restraint of trade violating 15 U.S.C. § 1 under Arnold Pontiac-GMC, Inc. v. General Motors Corp., 786 F.2d 564, 572 (3d Cir.1986).

II. Sherman Antitrust Claims Under 15 U.S.C. § 2

37. Count 5, Restraint of Trade Through Monopoly: The defendants possess monopoly power, having over 80% market share in the relevant market of hospital supplies delivered through e-commerce in North America which they use to set prices by exchanging data and information among their members so that inefficient existing distributor market members including the GPO's Premier and Novation can preserve their inflated cost structures (the cartel has prevented the annual $23 billion dollar savings identified by US Bancorp Piper Jaffray's 2001 study by maintaining prices

regardless of internal efficiencies) and by preventing the entry of competitors to the relevant market. The defendants willfully acquired and maintained that power by forming the cartel GHX, Inc. to buy an inferior electronic marketplace and exchanging ownership interests with suppliers and distributors that previously were competitors. The defendants further acted to maintain that monopoly by repudiating Medical Supply's financing and lease buy out agreement with full knowledge that Medical Supply had been previously prevented from entering the hospital supply e-commerce market by other cartel members of GHX, Inc. The defendants have restrained trade through a monopoly in violation of 15 U.S.C. § 2 under United States v. Grinnell Corp., 384 U.S. 563, 570-71, 16 L. Ed. 2d 778, 86 S. Ct. 1698 (1966).

38. Count 6 Restraint of Trade Through Attempted Monopolization: The defendants' combinations, contracts, conspiracy with other former competitor companies in the open incorporation of the GHX, Inc. cartel are intentional acquisition of enhanced monopoly power to keep prices inflated and competitors excluded (as a manufacturer and supplier GE created several subsidiaries that have products with monopoly power in niches as a result of their initial superiority, business acumen and by historical accident, GE leveraged these hospital product monopolies to form GHX, Inc.) The defendants repudiated their agreement with Medical Supply, knowing the financing was required to enter the hospital supply market. Theses actions show: 1) the defendants have a specific intent to monopolize the North American hospital supply e-commerce market; 2) the defendants have a dangerous probability of success where they already posses monopolies in the hospital supply market and now have 80% of the hospital supply e-commerce market by adding Neoforma (the remaining existing electronic marketplace) to

their GHX, Inc. cartel and 3) the defendants repudiated their agreement with Medical Supply to provide financing and lease buy out funds once they realized that Medical Supply was a competitive threat to their cartel and hospital supply monopolies. The defendants restrained trade through attempted monopolization in violation of 15 U.S.C. § 2 under TV Communications Network, Inc. v. Turner Network Television, Inc., 964 F.2d at 1025.

39. Count 7 Single firm Refusal to Deal: The defendants have monopoly power in the relevant North American hospital supply e-commerce market through their subsidiaries. Under Copperweld, a company and its subsidiaries are treated as a single firm. The defendants as a single firm repudiated the agreement to provide market entry capitalization for Medical Supply through financing and a lease buy out at the sacrifice of over $15 million dollars of profit for the defendant entities, removing a $5.4 million dollar liability from GE Transportation's balance sheet and adding substantial interest income of $3.4 million dollars and a lending portfolio book asset of $10million dollars to GE Business Capital. The defendants chose to repudiate their agreement even knowing the resulting present suit for business plan expectation damages trebled, an additional billion dollar liability that arising through fraudulent misrepresentation of GE's intent to honor its contract will require SEC reporting disclosure under Section 302(a)(3) Sarbanes-Oxley Act of 2002. The refusal to accept the immediate benefits of release from GE Transportation's 7-year $5.4 million dollar liability at a mere $350,000.00 and to repudiate an agreement to provide a profitable loan at an interest rate twice that of GE's credit cost in a first mortgage for slightly more than half of the 1998 value of the commercial building GE intimately knew having maintained and at possibly less than

half of the replacement cost or market value with the subsequent development of an adjacent golf course and a Marriott Court Yard Hotel with extensive conferencing centers owned by the City of Blue Springs, causing circumstances where there was no cost to GE resulting from risk on the loan or in the broader business sense; GE would not suffer from losses due to an absence of economic efficiency performing under the loan agreement. Thus the evidence supports an inference that like Ski Co. in Aspen Skiing, the defendants were not motivated business lending efficiency concerns and that GE was willing to sacrifice short-run benefits and business goodwill in exchange for a perceived long-run impact on the fledging rival to its e-commerce cartel. Aspen Highlands Skiing Corp. v. Aspen Skiing Co., 472 U.S. at pg. 611-612. The defendants are liable under 15 U.S.C. § 2 for a refusal to deal where they had monopoly power in the relevant market the refusal excluded Medical Supply from and the refusal to deal sacrificed profit available from exercising that monopoly power in order to exclude competition and thereby to create additional market power. GE sought to enlarge its monopoly by "attempting to exclude rivals on some basis other than efficiency." Id.., 472 U.S. 585, 605 (1985).

40. Count 8, Refusal to Deal “Change of Pattern”: The defendants are a large conglomerate operating thousands of facilities around the world engaged in design, manufacture, sales, distribution and servicing of millions of discrete or distinct products. The defendants were pioneers in electronic signaling for business communications purposes including buy and sell orders for distribution of property having conducted distance transactions for over 150 years. Later the defendants were among the first business entities to transmit electronically facsimiles of paper documents including contracts. Now, over 93% (the average for an American corporation) of the defendants’

contracts are transmitted electronically. There is not a process performed or service provided anywhere in the world by GE or any of its subsidiaries that is not dependent on the enforceability of electronically transmitted offers and acceptances between parties geographically removed from each other. From outsourced subcomponents to real estate mortgages, bonds and shares of GE stock, the defendants have at any given second, billions of dollars of electronic contract transactions relying solely on the security of commercial law in the many countless jurisdictions GE operates and the expertise of their legions of corporate counsel. On June 15th, 2003, GE interrupted that pattern of distribution of property arising in a competitive market and existing for over a century, by denying the validity of an electronic contract with clear terms, an exchange of promises comprising a verified offer and acceptance, committing GE, bearing the digital signature of its authorized agent, under the federal E-Sign Act of the United States. GE's home nation, knowingly harming Medical Supply and preventing its entry into the hospital supply market dominated by GE's GHX, Inc. cartel for no valid business reason and no pro-competitive business justification in violation of 15 U.S.C. § 2 under Aspen Skiing at 605, 105 S.Ct. at 2858.

41. Count 9, Refusal to Deal Denial of Essential Facility: GE controls an essential facility for the capitalization of business entities, both its own subsidiaries and affiliate companies and for hire through its business capital and venture funding divisions. GE facilities to obtain capital through the sale of securities in the form of stocks and bonds has taken over a hundred years to develop. It would take more than a year to develop securities registrations in all fifty states and substantial capital to obtain the accountancy and legal review to make a public offering of stocks or bonds, far more capital to be listed

on the NYSE or to create a market among investors trusting enough to demand GE securities in very large supplies for low rates of return. It would be far more reasonable and practical to overcome Aspen's development red tape hurdles and bull doze four more mountains for new slopes. The mortgage and lease buy out was a unique financial instrument no other lender could have provided due to the absence of the financial stake in being released from the lease, banks are prohibited from making 100% mortgages by the F.D.I.C. Only GE had the economic power in the Wall Street financial markets to obtain the low cost bond money required to provide the low interest rate for twenty years under the terms of the loan. The agreement's uniqueness made it an essential facility, Fortner I 394 U.S. at 505, 89 S.Ct. 1252. In Alaska Airlines, the court defined the essential facilities doctrine, generally, as: imposing "liability when one firm, which controls an essential facility, denies a second firm reasonable access to a product or service that the second firm must obtain to compete with the first." Alaska Airlines, 948 F.2d at 542. The capitalization of Medical Supply's entry into the hospital supply e-commerce market could not be reasonably and practically duplicated once repudiated by GE. The financing and lease buy out was an essential facility under Anaheim v. Southern California Edison Co., 955 F.2d 1373, 1380 (9th Cir.1992). GE's repudiation of the financing and lease buy out essential facility harmed the competitive process in the absence of a legitimate business justification. Kodak, 504 U.S. at 483 n. 32, 112 S.Ct. at 2090 n. 32 (citing Aspen Skiing, 472 U.S. at 602, 105 S.Ct. at 2857).

III. Clayton Antitrust Claims Under 15 U.S.C. § 13

42. Count 10, Discrimination in Services or Facilities: The defendants have dominant market power in the hospital supply market and provide a significant (80%) of the

commerce in the hospital supply e-commerce market. GE provided the initial capitalization of the GHX, L.L.C. cartel at its formation in 2000 in exchange for an ownership interest in the fledging electronic marketplace. GHX, L.L.C initially valued itself at $100 million dollars, but lacked the web based multiparty communications technology of Medical Supply, limiting GHX, L.L.C's potential to create efficiency through supplier competition inherent in Medical Supply's business model. GE and G.H.X., L.L.C. joined with Neoforma, the remaining electronic exchange to create a common e-commerce exchange at the exclusion of Medical Supply. GE provides credit to Neoforma and has electronic contracts for property transactions on GE products sold through Neoforma and GHX, L.L.C. GE repudiated its agreement to provide facilities to Medical Supply when it realized Medical Supply would compete with GE's e-commerce cartel. The Court held that neither 'cost-justification' nor an absence of competitive injury may constitute 'justification' of a prima facie § 2(e) violation. FTC v. Simplicity Pattern Co., Inc. 79 S.Ct. 1005, 3 L.Ed.2d 1079 (1959).

IV. Breach of Contract

43. Count 11, Breach of a Written Contract: George Fricke, property manager for The General Electric Company who Medical Supply had been told by Fricke and his agents, was the authority for the building at 1600 NE Coronado Dr. telephoned Medical Supply Chain's Missouri headquarters and placed a message on its answering machine stating he had been instructed by "business leaders" to accept Medical Supply's proposal and he was calling to do so. Then, George Fricke sent a written acceptance via e-mail with his initials added a signature at the end of the email message. No terms were disputed and the acceptance confirmed The General Electric Company would make its subsidiary GE

Transportation L.L.C. pay $350,000 for the buy out of the lease and its GE Capital subsidiary provide the $6.4 million dollar mortgage and closing at 5.4% for twenty years with a first year moratorium on payments. In diversity actions, the Court applies the substantive law, including choice of law rules, that Kansas state courts would apply. See Moore v. Subaru of Am., 891 F.2d 1445, 1448 (10th Cir. 1989). Kansas courts apply the doctrine of lex loci contractus, which requires that the Court interpret the contract according to the law of the state in which the parties performed the last act necessary to form the contract. See Missouri Pac. R.R. Co. v. Kansas Gas and Elec. Co., 862 F.2d 796, 798 n.1 (10th Cir. 1988) (citing Simms v. Metropolitan Life Ins. Co., 9 Kan. App. 2d 640, 642-43, 685 P.2d 321 (1984)). George Fricke's signed written acceptance referenced the proposal he had received from Medical Supply earlier that day. The set of documents then became an bilateral contract completed with the last act exchanging mutual promises (D.L. Peoples Group, Inc. v. Hawley, — So.2d — (2002 WL 63351, Ct. App., Fla., 2002) enforceable for the sale of the lease interest and the benefit of the bargain obtained by Medical Supply under its clear and complete terms meeting the writing requirements of a real estate purchase contract in Missouri and the writing and definiteness requirement of a credit agreement under Missouri statute RMS 432.045.2 . The formation of an enforceable contract in a set of documents created in correspondence is well settled See Estate of Younge v. Huysmans, 127 N.H. 461, 465-66, 506 A.2d 282, 284-85 (1965). Since state law requires a writing, the e-mail acceptance and signature of George Fricke is valid and enforceable under 15 USC §7001, the federal Electronic Signatures in Global and National Commerce Act, widely known as "E-SIGN." Section 101(a) of E-SIGN states that "(1) a signature, contract, or other record relating to such transaction may not

be denied legal effect, validity, or enforceability solely because it is in electronic form; and (2) a contract relating to such transaction may not be denied legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation."

44. Medical Supply performed as required, introducing itself to the City of Blue Springs Economic Development, and committed to purchase the building from its owner in reliance on the contract with GE Transportation made open partial performance of the contract by opening the building for a three hour briefing on the operation and maintenance of the building's complex systems. This briefing was made by GE Transportation's Blue Springs property manager and the building's maintenance engineer, both of whom told Medical Supply's CEO Mr. Lipari that they had been terminated and will be leaving employment with GE Transportation the following month because they were no longer needed. GE Capital partially performed as required and made an appointment with Mr. Lipari in its Overland Park, Kansas office where Mr. Lipari took the building's blueprints furnished him by GE Transportation, the building's physical description and photo furnished by George Fricke of GE corporate and Medical Supply's corporate records for the loan. The GE Capital loan officer Douglas McKay discussed the terms and questioned Mr. Lipari in detail about the USBank lawsuit. Mr. Lipari explained why under the threat by US Bank of a malicious USA PATRIOT Act suspicious activity report, Medical Supply could not risk going to a bank until the lawsuit was settled. Mr. McKay agreed the USA PATRIOT Act had no valid relationship to Medical Supply's involvement with US Bank and stated he would obtain the additional requirements GE Capital required from George Fricke and GE Transportation. Mr.

McKay indicated it could take longer to close but he would check into it.

45. Medical Supply communicated to its stakeholders, business associates, potential customers, and the owners of the building that it had obtained the financing and made commitments in reliance of GE's performance on the contract.

46. No letter similar to that which Mr. McKay had described was received from GE Capital by the June 15th contract deadline and no notice of rejection of credit has been received. George Fricke communicated by phone and e-mail that the GE Capital performance would be at arm's length but since the financing was the benefit bargained for by Medical Supply, this did not contradict the contract. When doubts about GE' intent to honor the contract arose, counsel for GE, GE Transportation and GE Capital each refused to confirm the repudiation.

47. The proposal accepted by George Fricke on behalf of GE's business leaders contained the executive summary of Medical Supply's business plan, including an explanation of the antitrust lawsuit with US Bancorp, et al and the financial projections for Medical Supply's entry into market. Under Anuhco, Inc. v. Westinghouse Credit Corp., 883 S.W.2d 910 (Mo App 1994) GE is responsible for the expectation damages of the forward projections that it had accepted at the time it entered into contract with Medical Supply. Medical Supply is able to prove its projected profits with reasonable certainty. Lost future profits may be used as a method of calculating damage where no other reliable method of valuing the business is available, see Albrecht v. The Herald Co., 452 F.2d 124 at 129 (8th Cir. 1971) cited for this purpose by 10th Cir.

48. Count 12,Fraudulent Misrepresentation: The defendants have gained the opportunity to destroy Medical Supply and prevent it from entering the hospital supply

market by communicating by telephone and in a written signed communication that they have accepted the plaintiff's offer and in overt actions demonstrating that they are in a binding agreement, including partial performance when in fact they had no intention of being bound by the agreement once they discovered Medical Supply as an electronic marketplace would compete with their GHX, L.L.C. and go against their agreement with Neoforma to exclude competitors. Missouri case law supports a claim against the defendant on this conduct. See City of Warrensburg, Mo. v. RCA Corp., 571 F.Supp. 743 (W.D.Mo.1983), which distinguished negligent misrepresentation from a misrepresentation to perform an agreement 'If the agreement is not enforceable as a contract, as when it is without consideration, the recipient still has, as his only remedy, the action in deceit under the rule stated in § 525 [Liability for Fraudulent Misrepresentation].' " 571 F.Supp. at 753. The RCA court went on to state:"Unlike § 530, § 552 does not, by its terms, apply to misrepresentation of intention to perform an agreement. Nor do the illustrations to § 552 apply to other than typical cases of misrepresentation of factual, commercial information. [Kansas also recognizes this basis for a claim against GE] The Comments to § 530 specifically state that where there is no viable action on the [265 Kan. 665] contract, the exclusive remedy for misrepresentation of intention to perform an agreement lies in the action for deceit…". 571 F.Supp. at 753. . Bittel V.Farm Credit Services Of Central Kansas, P.C.A. 962 P.2d 491 at pg. 501, 265 Kan. 651, (1998)

49. Count 13, Breach of Duty of Care and Fair Dealing: The defendants have harmed Medical Supply by breaching a contract to buy out the lease and provide financing because the defendants discovered they have a conflict of interest in the electronic

marketplace for hospital supplies. The defendants then acted to destroy the value of the bargain negotiated and obtained by Medical Supply. The defendants fraudulently represented to the plaintiff and the owner of 1600 NE Coronado that the plaintiff and GE were not in contract. Kansas courts imply a duty of good faith and fair dealing in every contract. Parties shall not "intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." Bonanza, Inc. v. McLean, 242 Kan. 209, 222, 747 P.2d 792 (1987). In dealing with good faith arguments against lenders by borrowers, we have stated the test of good faith is subjective and requires only honesty in fact. Karner v. Willis, 238 Kan. 246, 249, 710 P.2d 21 (1985).

50. The traditional rule is that the lender-borrower relationship creates no special duty. Denison State Bank v. Madeira, 230 Kan. at 695, 640 P.2d 1235. However the defendants have acted in fraud out of a conflict of interest, the exception to this rule. See Rossi, Lender Liability in Kansas: A Paradigm of Competing Tort and Contract Theories, 29 Washburn L.J. 495, 503-05 (1990) (comprehensive review of Kansas lender liability cases).

51. Count 14, Bad Faith: The defendants have refused to cooperate in determining if the contract sought to be enforced had been repudiated. The corporate counsel for each of the defendant entities have received the antitrust implications of their GE's conduct and the antitrust harm that will be inflicted upon Medical Supply by the denial of the essential facility of financing that is the bargain obtained by Medical Supply in the contract. GE's counsel answered the plaintiff's Nelson v. Miller notice by denying without justification

in fact or law the claims of the plaintiff. The defendants' cartel members in a previous attack on Medical Supply to prevent market entry utilized a frivolous defense to delay Medical Supply's access to discovery, intimidate victims and witnesses through an effort to cut off all resources to the company during the litigation in an effort to prevent the plaintiff from testifying and seeking redress in a prima facie violation of 18 U.S.C. § 1503 Obstruction of Justice. GE and its subsidiaries have retained outside counsel that repeatedly threatened the plaintiff and has misrepresented the facts and applicable case law regarding this case in a letter dated June 13th, litigating defenses to enforcement that are without merit. As a lender, the defendants can be found to be liable litigating defenses to enforcement that are without merit under Commercial Cotton Co. v. United Cal. Bank, 163 Cal. App. 3d 511, 516, 209 Cal. Rptr. 551 (1985) [bank liable for "stonewalling" assertion of an invalid defense to customer's lawsuit]

Relief

52. Preliminary Injunctive Relief: Medical Supply Chain, Inc. seeks preliminary injunctive relief under antitrust law to protect the nation's healthcare consumers from the defendants' control over pricing through exclusion of the plaintiff's more efficient electronic market place, while this matter is being litigated. The plaintiffs will file a separate motion for preliminary injunction and evidentiary hearing, supported by a memorandum, documentary evidence and affidavits. The preliminary injunction relief will not be the ultimate relief sought in adjudication on the merits of this case, however will include initially preventing the defendants from leasing 1600 N.E. Coronado, pendente lite attorney fees and two offices and a reception area, to facilitate Medical Supply's prosecution of this complaint and to allow it to prevent further damage by the

defendants to the nation's consumers and Medical Supply's business associates and stakeholders. Medical supply is eligible for preliminary injunctive relief for the following reasons: (a) Medical Supply is likely to prevail on some or all of its antitrust claims. The facts are undisputed and by statute, there are no defenses to most claims, which are per se violations. (b) The defendants have no legitimate interest in maintaining their prevention of Medical Supply's entry into the hospital supply market, which could outweigh the continuing injury to Medical Supply if no action in pretrial equitable relief is made. (c) The public has been harmed by the exclusion of Medical Supply and by the cartel's previous exclusion of manufacturers where death and needless pain and suffering resulted, a current crisis in decreasing access to healthcare services at hospitals exists nationwide due to rising costs. There would only be a benefit to the public by allowing Medical Supply to enter the hospital supply market, prior to the trial on the merits of this action. (d) Medical Supply in seeking injunctive relief provided for under the Clayton Antitrust Act is not required to show irreparable harm under controlling law for this jurisdiction. See Atchison, T. & S. F. Ry. Co. v. Lennen, 640 F.2d at 260 (C.A.10 (Kan.), 1981) stating: "Moreover, it is not necessary that the Railroads show that they will suffer irreparable harm if the injunction is denied. When the evidence shows that the defendants are engaged in, or about to be engaged in, the act or practices prohibited by a statute which provides for injunctive relief to prevent such violations, irreparable harm to the plaintiffs need not be shown."

53. Permanent Injunctive Relief: Medical Supply will seek to protect healthcare consumers by obtaining permanent injunctive relief including divestiture of GE's ownership and control in healthcare supply distributors including GHX, L.L.C. Medical

Supply also seeks GE's renouncement of anticompetitive agreements with other distributors and manufacturers in the healthcare supply market.

54. Damages: Medical Supply Chain, Inc. seeks damages in excess of $75,000.00 for its antitrust injury and breach of contract. The monetary relief sought is the contract expectation damages as determined by the business plan summary and forward financials in possession of GE at the time the proposal was accepted and the contract was formed. Medical Supply seeks the lost profits that can be determined with reasonable certainty that it would have made for the next four years of operations, had it been allowed to enter the market. In addition to this amount, Medical Supply seeks the equity it would have gained from the purchase of the building, and the cash payment for the remainder of the lease.

55. Medical Supply Chain, Inc. seeks damages for the injury of its business associates and stakeholders, including Blue Springs, Missouri, loss of good will and the injury of the 2000 hospitals loosing money due to high supply costs under Mid Atl. Telecom, Inc. v. Long Distance Servs., Inc., 18 F.3d 260, 263 (4th Cir.1994)'s interpretation of standing on a RICO statutes having a common antitrust basis.

Demand For Trial By Jury

Comes now plaintiff and makes demand for a trial before 12 jurors on all such issues so determinable.

The Seventh Amendment (right to jury trial) does apply to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law.

When Congress provides for enforcement of statutory rights in an ordinary civil

action in the district courts, where there is obviously no functional justification for denying the jury trial right, a jury trial must be made available if the action involves rights and remedies of the sort typically enforced in an action at law. Curtis v. Loether, 415 U.S. 189, 94 S.Ct. 1005, 39 L.Ed.2d 260 (1974), at 194-195, 94 S.Ct. at 1008.

Designation Of Place Of Trial

Comes now plaintiff and designates Kansas City, Kansas as the place of trial.

Prayer

WHEREFORE, plaintiff prays for declaratory and injunctive relief as indicated; costs, including all appropriate attorney's fees, expert fees and expenses allowed; and for such other and further relief as the Court may deem appropriate in law and equity.

Respectfully submitted,

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AFFIDAVIT OF FACTS

I attest to the facts in the above complaint seeking injunctive relief and verify that they are true based on my information and belief.

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Samuel K. Lipari
CEO
Medical Supply Chain, Inc.

CERTIFICATE OF SERVICE

I certify that on August 15th, 2003, emailed this document to the defense counsel :

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