

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI, AT
INDEPENDENCE

| | | |
|-----------------------------|---|-------------------------------|
| SAMUEL K. LIPARI |) | |
| (Assignee of Dissolved |) | |
| Medical Supply Chain, Inc.) |) | |
| <i>Plaintiff</i> |) | Case No. |
| |) | |
| vs. |) | <u>Contract Breach</u> |
| |) | |
| US BANCORP, NA |) | <u>Jury Requested</u> |
| US BANK, NA |) | |
| <i>Defendants</i> |) | |

Plaintiff SAMUEL K. LIPARI is the assignee of the dissolved Missouri Corporation Medical Supply Chain, Inc. SAMUEL K. LIPARI resides at 297 NE Bayview, Lee's Summit, MO 64064. His telephone is 816-365-1306 and email is saml@medicalsupplychain.com

Defendant US BANCORP, NA (US Bancorp) NYSE symbol USB is a bank holding corporation headquartered at U.S. Bancorp Center 800 Nicollet Mall, Minneapolis, MN 55402.

Defendant US BANK, NA is a Delaware Corporation organized under the National Bank Act, 12 U.S.C. §§ 21-216d, headquartered at U.S. Bancorp Center 800 Nicollet Mall, Minneapolis, MN 55402 and is a Missouri resident residing at 3640 S Noland Rd, Independence, 64055 Its telephone is (816) 521-3310

PETITION

Comes now the petitioner, SAMUEL K. LIPARI on his personal property interest as the sole assignee of rights for the dissolved Missouri Corporation Medical Supply Chain, Inc. where he was the founder and Chief Executive Officer and appears *pro se*.

This is a petition against the defendants for Breach Of Contract, Fraud, Trade Secret Misappropriation Under

R.S.Mo. § 417.450, Breach Of Fiduciary Duty, and Prima Facie Tort.

I. Jurisdiction

1. This court has jurisdiction over questions of Missouri common law in escrow contracts and Missouri statutory law on trade secrets raised in a timely manner by a plaintiff that has never slept on his rights.

2. The injury complained of occurred on December 1, 2002.

3. The defendants are moneyed corporations having banking powers and subject to the statute of limitations of six years in R.S.Mo. § 516.420.

4. The trade secret misappropriation complained of was discovered on November 6, 2002.

5. The defendants if not subject to the statute of limitations of six years in R.S.Mo. § 516.420 are subject to the five year statute of limitations in R.S.Mo. § 417.461.

II. Venue

6. The plaintiff makes a well pleaded complaint claiming state common law and state statutory causes of action over breach of contract to provide escrow services, fraud, trade secret misappropriation under R.S.Mo. § 417.450, breach of fiduciary duty, and prima facie tort taking place in Jackson County. The plaintiff's complaint is against

defendants that regularly do business in Jackson County, Missouri.

7. Venue is proper in this court.

III. Procedural History

8. Plaintiff, in the name of his Missouri corporation Medical Supply Chain, Inc. ("Medical Supply") brought an action to enjoin possible conduct by the defendants and to declare rights of parties under the subject contract of this claim in a federal action in the US District Court for Kansas in October 2002.

9. Medical Supply's first action for injunctive and declaratory relief in the U.S. District Court for the District of Kansas was captioned *Medical Supply Chain, Inc. v. US Bancorp, NA et al* KS. Dist. Case No.: 02-2539

10. Medical Supply sought relief based on a complaint for an urgent Temporary Restraining Order filed 10/22/02 and amended 11/02/02 because the defendants were repudiating a contract (misusing the USA PATRIOT Act shown to be a false pretext) on 10/15/02 to provide escrow accounts required for the deposit of \$350,000.00 raised from manufacturer rep candidates by Medical Supply. The TRO was denied.

11. The defendants' later conduct breaking the contract caused all funds to be lost on 12/1/02, including the

company's last resources used to recruit the candidates and all funds invested in preparation of training.

12. Medical Supply's cause was controversial because it was an action to seek an injunction against breaking a contract to provide escrow accounts in furtherance of a boycott by US Bancorp and Piper Jaffray's coconspirator identified in the complaint as Novation, a healthcare group purchasing organization ("GPO") competitor of Medical Supply's in the hospital supply market.

13. Also identified in the complaint was Novation's captive e-commerce marketplace Neoforma, Inc. directly competing with Medical Supply on the Internet.

14. Medical Supply sought an interlocutory appeal on the denial of injunctive relief without a memorandum and order or findings of law and fact *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 02-3443.

15. Medical Supply also sought interim pre-hearing relief in the Tenth Circuit seeking to prevent the defendants from filing a malicious USA PATRIOT Act Suspicious Activity Report that would destroy the Medical Supply's ability to obtain escrow arrangements, higher level banking and international fund transfer services elsewhere to accomplish its capitalization and conduct hospital supply transactions. The pre-hearing relief opposed by the

defendants was denied and the interlocutory appeal was dismissed as moot.

16. Medical Supply appealed the dismissal of its injunctive and declaratory relief action *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 03-3342.

17. The Tenth Circuit upheld the trial court's dismissal without findings of law or fact and made a show cause order why Medical Supply and its counsel should not be sanctioned for a frivolous appeal.

18. Medical Supply answered the show cause order asserting the trial court had applied the incorrect legal standard and had misstated the USA PATRIOT Act.

19. The Tenth Circuit found that Medical Supply had pled a conspiracy that included a separate legal entity, contradicting the trial court's ruling and the Tenth Circuit panel found that Medical Supply was correct in the existence of private rights of action under the USA PATRIOT Act.

20. Instead of correcting its ruling and ordering that Medical Supply was entitled to injunctive and declaratory relief, the Tenth Circuit panel ordered that Medical Supply's counsel receive its most serious sanction for a frivolous appeal.

21. Medical Supply sought *en banc* rehearing of its appeal, giving notice that the panel's ruling had no preclusive effect for the parties regarding the future action for monetary damages in the Western District of Missouri. Neither the court nor opposing counsel contradicted Medical Supply's ripeness analysis.

22. The court declined to rehear the case *en banc*.

23. Medical Supply then brought its now ripe damages claims against US BANK and US BANCORP along with its existing pendant state law contract and trade secret misappropriation claims in the Western District of Missouri.

24. The case was transferred to the District of Kansas at Kansas City, Kansas to Kansas District Court Judge Kathryn H. Vratil who made no rulings delaying the opportunity to obtain discovery on the defendants' participation in the wrongful disbarment of Medical Supply's counsel for almost a year.

25. Kansas District Court Judge Kathryn H. Vratil then participated in an *ex parte* discussion on the day of the disbarment oral argument with personnel and justices of the Kansas Supreme Court, disparaging Medical Supply's counsel without his knowledge or opportunity to question Kansas District Court Judge Kathryn H. Vratil's testimony in

conduct designed to cause Medical Supply's counsel to be disbarred without due process.

26. Kansas District Court Judge Kathryn H. Vratil then removed herself from the case on October 20, 2005 minutes before the Kansas Supreme Court justices heard Medical Supply's counsel's oral argument. A transcript of the hearing which was resultantly delayed will give light to these unusual events.

27. The petitioner's case was then transferred to Kansas District Court Judge Carlos Murguia where he took no action for many months until immediately after Medical Supply's counsel was reciprocally disbarred by the Kansas District Court without disclosing to Medical Supply's counsel that Kansas District Court Judge Kathryn H. Vratil had participated in *ex parte* testimony over Medical Supply's counsel's "incompetence".

28. The Kansas District Court refused to postpone its decision on reciprocally disbarring Medical Supply's counsel until the Tenth Circuit ruled on the appeal of *Bolden v. City of Topeka* where Medical Supply's counsel representing James Bolden challenged Judge Kathryn H. Vratil's findings of law in that case and where Magistrate Judge James O'Hara, a managing partner in the defendants' law firm Shugart Thomson & Kilroy authored a case

management recommendation condemning Medical Supply's counsel for properly relying on controlling case law on alternative state law service of process.

29. The Kansas District court also interfered and obstructed providing records to the Tenth Circuit court for the appeal in *Bolden v. City of Topeka* during and after the state proceedings to disbar Medical Supply's attorney causing the Tenth Circuit to have to postpone the briefing schedule of James Bolden's appeal.

30. The Kansas District Court Judge Kathryn H. Vratil was ultimately overruled on two issues appealed by the petitioner and James Bolden's now disbarred counsel and the decision *Bolden v. City of Topeka*, 441 F.3d 1129.

(10thCir.2006) has been favorably cited by the Sixth Circuit.

31. No further court action occurred in the Medical Supply action until the petitioner's counsel had been disbarred, then Kansas District Court Judge Carlos Murguia began in earnest making rulings with the visible purpose of dismissing the action for the lack of counsel and completing the removal of representation participated in by the Kansas District court and to further its adversarial interest in the petitioner's proceeding.

32. The Kansas District Court Judge Carlos Murguia dismissed the federal claims in their entirety for failure to state a claim despite the fact that the complaint was identical in elements of pleading for its claims to the complaint filed in *Craftsman Limousine, Inc. vs. Ford Motor Company and American Custom Coachworks, et al*, 8th Cir. 03-1441 and 03-1554 and Judge Murguia expressly declined to exert jurisdiction over the state law based claims.

33. The Kansas District court retained jurisdiction over the federal action to sanction Medical Supply's former counsel and SAMUEL K. LIPARI for among other reasons, witnessing his counsel's disbarment but then because of a timely motion for reconsideration ruled Medical Supply Chain, Inc. would be sanctioned.

34. Medical Supply Chain, Inc. and SAMUEL K. LIPARI as successor in interest gave notice of appeal of the federal court decision on September 8, 2006 and SAMUEL K. LIPARI's federal law based claims over the injuries to his former corporation are currently before the Tenth Circuit Court of Appeals in *Medical Supply Chain, Inc. v. Novation, et al*, (formerly W.D. MO case no. 05-0210, then KS Dist. Court case no.:05-2299, now 10th Cir. case no. 06- 3331.

IV. PARTIES

35. Mr. SAMUEL K. LIPARI was the Chief Executive Officer of the Missouri Corporation Medical Supply Chain, Inc.

36. Medical Supply Chain, Inc. was dissolved by Mr. LIPARI on January 27th, 2006.

37. Mr. LIPARI is the assignee of all interests and rights held previously by the Missouri Corporation Medical Supply Chain, Inc. under *Smith v. Taylor-Morley, Inc.*, 929 S.W.2d 918 (Mo. App. E.D., 1996).

38. Defendant US BANCORP, NA (US Bancorp) NYSE symbol USB is a bank holding corporation headquartered at U.S. Bancorp Center 800 Nicollet Mall, Minneapolis, MN 55402.

39. Defendant US BANK, NA is a Delaware Corporation organized under the National Bank Act, 12 U.S.C. §§ 21-216d, headquartered at U.S. Bancorp Center 800 Nicollet Mall, Minneapolis, MN 55402 and is a Missouri resident residing at 3640 S Noland Rd, Independence, 64055 Its telephone is (816) 521-3310

V. INTRODUCTION

40. The plaintiff brings the following state law claims against the defendants that arose in the course of the defendants' conduct in keeping Medical Supply Chain, Inc. ("MSCI") from competing in the national market for hospital supplies with a web based electronic marketplace capable of automating purchasing, logistics and fulfillment and

thereby reducing costs up to 40% in the 1.3 trillion dollar market.

41. The defendants had concentrated 70% of their venture capital in hospital suppliers through their subsidiary US BANCORP PIPER JAFFRAY.

42. The defendants through their subsidiary US BANCORP PIPER JAFFRAY formed exclusionary contracts to prevent competing hospital suppliers from having access to the market for hospital supplies.

43. The defendants through their subsidiary US BANCORP PIPER JAFFRAY controlled which companies would receive supplier contracts, access to Novation's member hospitals, venture and initial public offering capital.

44. When the defendants discovered the plaintiff would be able to enter the hospital supply market without US Bancorp Piper Jaffray getting a cut and that the plaintiff would be able to compete and undercut Novation's distribution system, the defendants breached their contract to withhold a critical input from the plaintiff and stole the plaintiff's intellectual property to help Novation protect against competition in the hospital supply market.

VI. STATEMENT OF FACTS

45. On or about 3/12/2002, following 3 years of R&D SAMUEL LIPARI, President and CEO of Medical Supply Chain, Inc.

(Medical Supply) began a process of selecting a corporate bank for the rollout of its healthcare supply chain empowerment program that produces significant benefits to healthcare and its patients.

46. SAMUEL LIPARI sought input from associates and advisors concerning selection of an appropriate national bank that would be capable of a full range of corporate banking services, including nation wide checking, escrow services, short and long term credit facilities, receivables financing and international clearing of transactions between thousands of health systems and their suppliers.

47. Several national banks were evaluated but US BANCORP NA was selected because it also had an investment banking relationship with Piper Jaffray.

48. Piper Jaffray had targeted healthcare customers and participated as underwriter and funds manager for pre IPO healthcare manufacturers and service providers and US BANCORP NA acted as underwriter for corporate bonds of healthcare companies.

49. On or about 4/15/02 SAMUEL LIPARI arranged for Medical Supply's corporate account to be opened at US BANK's SW Topeka branch.

50. The account was opened in the name of Medical Supply Chain, Inc., using Medical Supply's federal tax I.D. number with a cashier's check in the name of Medical Supply's agent and drawn on Miner's State Bank of Frontenac Kansas for \$7,500.00.

51. On or about 4/25/02 SAMUEL LIPARI opened a personal account in his name at US BANK's neighborhood branch at 3640 S. Noland Road, Independence, MO.

52. Before opening the checking account, the US Bank employee reviewed SAMUEL LIPARI's account application and submitted SAMUEL LIPARI's personal data to Chex Systems, Inc. for a background check, evaluation and verification of eight years of his previous banking history at other banking institutions.

53. SAMUEL LIPARI was approved for a personal checking account and an electronic debit card.

54. SAMUEL LIPARI initially used the personal account to pay expenses of Medical Supply with reimbursement from the corporation.

US BANK and US BANCORP's Knowledge of Medical Supply

55. On 6/5/02 SAMUEL LIPARI contacted Piper Jaffray's Minneapolis headquarters to speak to Heath Lukatch, managing director of the Piper Jaffray healthcare venture

fund about Medical Supply being considered as a venture capital candidate.

56. SAMUEL LIPARI was instructed to send an executive summary of his business plan via email. (Exb 1.)

57. SAMUEL LIPARI sent the summary and financial projections for Medical Supply with a restriction on disclosure notice.

58. Piper Jaffray made no response to the receipt of the executive summary and financial projections from Medical Supply's business plan.

59. SAMUEL LIPARI again telephoned the Minneapolis offices of the Piper Jaffray venture fund managers and his calls were not taken and not returned.

60. SAMUEL LIPARI also attempted to speak to a Piper Jaffray venture fund manager in their San Francisco office but again, his calls were not taken or returned.

61. On 7/9/02 SAMUEL LIPARI and Medical Supply were visited by a Merger and Acquisitions attorney for another San Francisco venture capital firm and after extensive discussions with her at Medical Supply's Blue Springs, MO headquarters on the need to quickly enter the healthcare supply chain market and take advantage of the opportunity created by the healthcare industry's sudden willingness to reject the existing Group Purchasing Organizations, and

after the New York Times had began uncovering corruption revelations in the market.

62. The discussions revealed the current condition of venture funding and IPO underwriting was very troubling.

63. At the time of these meetings the first news of WorldCom's debacle was breaking.

64. Medical Supply's management felt with the exception of Piper Jaffray, which concentrated its investments in healthcare, that much of the assets venture funds reported were in fact overvalued equities in telecom technology companies and that the collapse of WorldCom would further depress the venture capital markets.

65. The venture capital M&A attorney questioned SAMUEL LIPARI about the overtures of large companies seeking to acquire Medical Supply.

66. SAMUEL LIPARI recounted the contacts made with Supply Solution, a Michigan based company focused on expanding integration in the healthcare industry, GoCoop/Avendra a Florida based company providing e-procurement/group purchasing in the hospitality industry and also wanted to integrate in the healthcare industry, both of which were seeking go to market partners in healthcare, Owen Healthcare the pharmaceutical distribution subsidiary acting for Cardinal and Cerner, a Kansas City healthcare

company with enterprise resource planning software that is based on an older operating system, called EDI that is inferior to Medical Supply's web based services and poorly suited for electronic commerce.

67. Cerner had bought out Mitch Cooper & Associates, a healthcare supply chain consulting company and seemed to be trying to acquire the capability to create an electronic healthcare marketplace.

68. SAMUEL LIPARI told the VC attorney that Medical Supply would not compromise itself by being aligned with any existing healthcare supplier.

69. Medical Supply has the solution and SAMUEL LIPARI did not want to be tainted with companies that support the high cost healthcare problem.

70. SAMUEL LIPARI also recounted how start up healthcare electronic marketplace firms with technology similar to Medical Supply like Empacthealth and Medibuy had been bought up by GPOs for tens of millions of dollars, but that once they were no longer independent, their market potential was eliminated and the technology was used by GPO firms to deceive health systems into thinking their GPO partner was attempting to increase its economic efficiency when in fact they continued to restrict trade in support of monopolizing markets.

Medical Supply's Internal Capitalization Plan

71. Medical Supply resolved to develop a way to internally capitalize a roll out of its supply chain empowerment program and supply chain management technology.

72. Medical Supply settled on a plan that would utilize the value of its healthcare supply chain intellectual property and offer a comprehensive year long education and healthcare supply chain certification program to independent representatives.

73. This plan would put representatives in the field nationwide that possess the knowledge and skills to relate to all levels of management in healthcare systems and assist in the adoption of Medical Supply's supply chain empowerment program.

74. The independent representatives would pay for their certification and fund their own marketing and sales operations, consistent with distribution systems that rely on independent manufacturer's representatives.

75. Since Medical Supply's web services were new to the market, SAMUEL LIPARI decided that it would be critical for the certification fee to be held in escrow until the candidates had a chance to meet Medical Supply's certification team and have a chance to see if they would

succeed in mastering healthcare supply chain empowerment knowledge.

76. After a week long intensive seminar, the candidates would have the opportunity to decide whether or not to commit to the certification program and Medical Supply would have the opportunity to reject any candidates it felt would not succeed in the program.

77. Medical Supply developed a curriculum and contracted with the industry's foremost logistics and supply chain experts to provide instruction during the weeklong seminar and assist and advise candidates throughout the certification process.

78. Medical Supply made arrangements to include information and presenters from companies with expertise in financial analysis of healthcare purchasing, including strategic sourcing and human resource evaluations so that the representatives would be able to represent products and technology services outside of Medical Supply's capabilities that would complement Medical Supply's supply chain empowerment program in allowing a health system/hospital to break free of its GPO supplier.

79. Beginning 8/1/02 Medical Supply advertised nationwide to recruit experienced account executives and sales professionals and processed hundreds of applicants with

detailed evaluation of resumes, job history and financial disclosure applications.

80. For the first of what were to be quarterly classes, Medical Supply selected 15 candidates that had the potential to succeed as independent representatives for its services.

81. After numerous telephone interviews ten applicants had committed to becoming certification candidates and attend the certification class starting the first week of December/02.

82. During this same time, Medical Supply was preparing the escrow account system that the candidates would utilize.

Defendants' Offer of US BANCORP Escrow Services

83. On or about 10/1/02 Medical Supply contacted Chris Walden of the Noland Road, Independence MO branch of US BANK for direction on escrow accounts and commercial banking services.

84. Medical Supply was referred to Becky Hainje a US BANCORP "Private Banker" and on or about 10/3/02 Becky Hainje contacted SAMUEL LIPARI and told him she would arrange to put him in contact with the persons in different departments of US BANK that could provide Medical Supply the services Medical Supply requested and needed.

85. Becky Hainje connected Medical Supply with Brian Kabbes in St. Louis who was responsible for US BANK commercial trust accounts in Missouri and Kansas.

86. Becky Hainje also connected Medical Supply with Douglas Lewis, responsible for commercial loans in the Noland Road office.

87. SAMUEL LIPARI described Medical Supply's need for escrow accounts to Brian Kabbes and emailed him an escrow contract that Medical Supply counsel had prepared for its candidates.

88. Brian Kabbes asked questions about the candidates, the certification program and how many candidates had been selected so far.

Meeting of the Minds With US BANCORP

89. SAMUEL LIPARI negotiated with Brian Kabbes to reduce the escrow fee per account since all escrow accounts would be identical, and US BANK had refused to have the funds in a single account.

90. Brian Kabbes agreed to lower the fee for US Bank's escrow agent services from the normal of \$1,500 to \$600 per account and no hidden or additional transaction or disbursement fees.

91. After reviewing the escrow contract, on or about 10/5/02 Brian Kabbes communicated to SAMUEL LIPARI that the

language of paragraph 10 "Security Interests" should be changed so that a security interest for US BANK could be created in the \$5,000 portion of the escrow that became Medical Supply's property the moment a candidate submitted their certification funds into escrow.

Performance of Escrow Contract

92. Medical Supply altered its escrow contract to conform to Brian Kabbes' suggestion and on or about 10/7/02 emailed the changes to Brian Kabbes.

93. Brian Kabbes and US BANK were identified as the escrow agent in the escrow agreement and Brian Kabbes' address was included in the body of the agreement.

94. On or about 10/8/02 SAMUEL LIPARI spoke again to Becky Hainje about Medical Supply's need for a business line of credit based on the Medical Supply portion of the escrow assets.

Oral Confirmation of Escrow Contract

95. Becky Hainje said she had talked to Brian Kabbes and he had told her there would be no problems with the escrow accounts, that they were a "slam dunk."

96. Becky Hainje suggested SAMUEL LIPARI call Douglas Lewis and make an appointment to apply for the line of credit, which was based on the escrow account assets.

Defendants' Receipt of Value for Escrow Contract

97. On or about 10/9/02 Brian Kabbes called to request an additional change in the escrow contract.

98. Brian Kabbes supplied a specified US Treasury fund investment language for the funds while the funds were in the custody of US Bank Trust Department, without disclosing the treasury funds vehicle was also owned by US Bancorp which profited from steering US Bank's trust business into the treasury funds vehicle.

Written Memorialization of Escrow Service Agreement

99. Medical Supply agreed to the additional change and modified the investment instructions exactly as Brian Kabbes instructed.

100. Medical Supply also ask if there were any other changes needed before Medical Supply sent the contracts out to its certification candidates.

101. Brian Kabbes said there would be no other changes, thereby acknowledging the completion of the memorializing of the written agreement and asked why Medical Supply was sending the candidates the escrow contract.

102. Medical Supply explained that the contracts were going out with the certification program agreement so candidates would have a chance to review the information before their

November 1st deadline, which required their funds to be in the US Bank escrow accounts.

103. Brian Kabbes acknowledged the explanation and agreed to look over the release document Medical Supply developed that candidates would execute following the week long evaluation seminar to be held the first week of December.

104. During this conversation, Brian Kabbes also requested Medical Supply's current corporate good standing documentation from the Missouri Secretary of State's Office.

105. Medical Supply agreed to send him the reinstatement and tax clearance documents on Friday 10/11/02 and that Samuel Lipari was meeting with Douglas Lewis at the Noland Road Branch on the afternoon of Thursday 10/10/02 to set up the credit facility using the escrow accounts as security.

106. Samuel Lipari told Brian Kabbes he would have Douglas Lewis send the requested information to Brian Kabbes on 10/11/02.

107. Brian Kabbes made no statement that US Bank had yet to approve Medical Supply's escrow accounts and sought no additional information.

Defendants' Misappropriation Of Trade Secrets

108. On or about Thursday 10/10/02, Samuel Lipari delivered the Medical Supply business plan and associate program to

Douglas Lewis, at the US Bank, Noland road office to apply for the agreed upon commercial line of credit based on the portion of the escrow accounts Medical Supply would retain from its associate program.

109. The business plan and associate program booklets each had cover pages giving notice of restricted use and that Medical Supply protected the confidential business trade secret and intellectual property contained in them.

110. A letter of introduction also stated the contents were protected and restricted disclosure and possession of the materials.

111. Two more folders contained the good standing documentation Brian Kabbes requested and the associate program contracts that were sent to the candidates.

112. Douglas Lewis asked how many candidates Medical Supply had and SAMUEL LIPARI reached into his brief case and held up the ten folders of applicants who had committed to sending in their funds by November 1st and five others who were in the final stages.

113. SAMUEL LIPARI further explained that he planned to start a new certification group each quarter.

114. SAMUEL LIPARI was given a loan application and agreed to and did return the application the next day.

Repudiation of Agreement to Provide Escrows

115. On or about Tuesday 10/15/02 Brian Kabbes called SAMUEL LIPARI and informed him that US Bank had turned down the escrow accounts because of the USA PATRIOT Act.

116. When asked to clarify, he said the know your customer requirements had changed and US Bank could not set up the escrow accounts for Medical Supply.

117. SAMUEL LIPARI was shocked and stunned and handed away the phone, where Brian Kabbes repeated again The Patriot Act as the reason the accounts were denied.

118. Later that morning SAMUEL LIPARI called Becky Hainje and asked if she could see what happened.

119. SAMUEL LIPARI explained that Medical Supply was counting on the escrow accounts and that the line of credit depended on them too.

120. SAMUEL LIPARI said he could not believe the USA PATRIOT Act could be a reason that applied to Medical Supply.

121. Becky Hainje said she would call and see what happened.

122. Becky Hainje called back and left a taped recording on the Medical Supply answering system and listed the reasons Brian Kabbes told her.

123. Becky Hainje said the reasons were the lack of a "relationship with the Bank... that the principals involved with the business were people unknown to the bank, but the main reason is the know your customer provisions of the "Patriot Act" that was enacted after 9/11, and which we could not really give all the correct answers on the source and flow of money.

US BANCORP Participation in the Repudiation

124. On or about 10/15/02 Medical Supply found Andrew Cesere was the head of US Bancorp trust department on the US Bank web site and at 4 p.m. called his secretary Barb in Minneapolis.

125. Andrew Cesere was unavailable so Medical Supply asked Barb to leave instructions for him to call SAMUEL LIPARI about Medical Supply's corporate escrow account rejection at 9 a.m. the following morning.

126. Barb asked for more details concerning the problem.

127. Barb said Mr. Cesere had a morning meeting but she would get the message to him.

128. At 4:30 p.m. Barb called back and asked for additional information and the names of the people Medical Supply had dealt with so that Mr. Cesere could inquire about the problem.

129. At 9 a.m. the following morning on or about 10/16/02 Ed Higgins called, leaving a tape-recorded message on Medical Supply's answering system identifying him as the executive vice president of Midwest trusts for US BANK.

130. SAMUEL LIPARI, believing that the USA Patriot Act had probably been used to reject the escrow accounts because of his family sir name which is also the name of a small group of Islands in the Mediterranean Sea and which ends in "ari" like many Moslem sir names of people of Arabic descent, activated a tape recorder with a built in microphone and called Mr. Higgins back on the speaker phone.

131. Each subsequent call to US BANK in which Samuel Lipari participated was also recorded by him to document what he suspected was discrimination based on his national origin or ethnic descent. See Attachment 1 Transcript of Recordings.

132. Ed Higgins listened to SAMUEL LIPARI after stating he was an attorney and how long he had been working in trust banking, agreed with him that he saw no reason why the USA Patriot Act would apply to Medical Supply.

133. SAMUEL LIPARI explained that Medical Supply needed additional US Bank services including credit facilities, receivables financing and clearing and settlement services

for approximately \$90 million worth of transactions in the first year of operations.

134. Ed Higgins said he would check into the matter and call SAMUEL LIPARI back later that day.

135. Instead of Ed Higgins, Brian Kabbes called back with Lars Anderson who he identified as head of corporate trust new business development person and Susan Paine who he said he reported to, both on the line with him.

136. Medical Supply explained that at the time of his previous call, it was not realized that the escrow account contracts that US BANK had approved had already been sent out to the candidates in reliance on US BANK's agreement to host the escrow accounts.

137. Lars Anderson expressed some irritation that Medical Supply had contacted the head of the trust unit about the rejection of escrow accounts.

138. Lars Anderson said the bank had never been on board and it was not a done deal.

139. Brian Kabbes denied that there had been an agreement; he said he had twice told SAMUEL LIPARI.

140. Lars Anderson said that there had never been a signed off agreement to provide the service and that there had never been any bid for it.

Defendants' Knowledge of Breach

141. Medical Supply contradicted that and said the price for the service had been quoted by Brian Kabbes and after negotiating, a specific amount had been agreed upon.

142. SAMUEL LIPARI also told them Brian Kabbes provided and requested changes to the escrow and that Brian Kabbes had told Becky Hainje it was a "slam dunk."

Defendants' Knowledge of Irreparable Harm to Medical Supply

143. During the call Medical Supply attempted several times to work out any misunderstandings and set up at least the 10 accounts Medical Supply had relied on US Bank for and that US Bank had known about and that Medical Supply was now in danger of being irreparably harmed.

144. Medical Supply stated that the US Patriot Act did not apply and that Medical Supply was in actuality an established US BANK customer and that Medical Supply had been in a trust relationship with US BANK and the bank even had its business plan and information about its proprietary business model.

145. Brian Kabbes said that the trust department was a "stand-alone unit" and had its own criteria for accepting customers.

US BANK Refused to Reverse its Decision

146. Medical Supply pointed out that it had not received a true reason for denial of the accounts and that the reason given was a pretext at best.

147. Viewing US BANK's actions, Medical Supply stated they could only be explained by a conflict of interest due to US BANCORP's existing healthcare investments and involvement.

148. Medical Supply felt extremely disturbed by the apparent outcome of this situation, there was not enough time to establish a new banking relationship with another nationally recognized Bank and Medical Supply would lose substantial momentum.

149. Medical Supply had spent several months building up to roll out its supply chain empowerment program and felt to change a trust relationship in the middle will be devastating to its entry to market.

150. Medical Supply researched over 300 resumes only to find 30 that appeared to be qualified.

Defendants' Fiduciary responsibility for trade secrets

151. On or about 10/17/02 SAMUEL LIPARI telephoned Douglas Lewis and told him what had happened.

152. Douglas said he had sent Brian Kabbes the good standing documentation but not the business plan and associate program.

153. SAMUEL LIPARI instructed him not to send the business plan and associate program materials to the corporate trust office of US Bank in St. Louis because of previous losses of intellectual property from unauthorized business plan dissemination.

154. SAMUEL LIPARI told Douglas Lewis that Medical Supply would be litigating over the escrow decision and planned to renew its application for a line of credit once it had the situation straightened out.

155. SAMUEL LIPARI suggested he might find another bank to provide the escrow accounts but Douglas Lewis said that would make the line of credit difficult. SAMUEL LIPARI further instructed Douglas Lewis to hold on to the materials and keep anyone else from having access to them.

156. Douglas Lewis agreed and stated he would keep the business plan materials safe.

157. On or about 10/18/02 Medical Supply drafted a letter and sent it to Jerry A. Grundhoffer, the President and Chief Executive Officer of US BANCORP NA with a copy being sent to Andrew Cesere, explaining the staggering damages US Bancorp would be liable for in imminent litigation due to the refusal to provide escrow accounts to Medical Supply.

158. Medical Supply suggested an alternative of fact finding depositions to take place in St. Louis, MO before

the end of the day Tuesday 10/22/02, believing US BANK to be misinformed about the USA Patriot Act and any reason for denying the escrow accounts.

159. US BANCORP Trust Department corporate counsel, Kristen Strong replied Friday 10/18/02 via fax and priority delivery with a letter denying US BANCORP NA was in contract with Medical Supply and that if any law suit is filed to address service for the trust department to her at her office.

160. Medical Supply called the trust department counsel Monday 10/21/02 to ask for service addresses of the other named entities and employees.

161. Kristen Strong said the same address would be good for all and then proceeded to ask what the causes of action were.

162. Medical Supply explained that it was chiefly an antitrust action based on the Sherman, Clayton and Hobbs Act and that causes of action under the USA Patriot Act were also a basis for the suit.

163. Kristen Strong was surprised Medical Supply was told the USA Patriot Act had been given as the reason for the denial of escrow account service but reiterated that there was no contract in her view and she saw no basis for the other causes of action.

164. Medical Supply stated that it would fax the complaint to her at the time the action was filed at the end of business Thursday 10/24/02, but they were still waiting for Mr. Jerry Grundhoffer to select the alternative of mutual fact finding to promote a resolution of the matter without litigation.

165. Kristen Strong stated that the depositions would not lead to any meaningful explanation, that Medical Supply had her letter explaining US BANK's reason for denying the escrow accounts and that the bank reserved the right to choose whom it served.

166. Medical Supply reminded her that US BANCORP had extensive investments in healthcare and that choosing not to provide a service to a competitor is actionable under antitrust law.

167. Kristen Strong warned Medical Supply not to contact anyone at US BANK and said If Medical Supply filed an action against US BANCORP NA, she would send a letter to the judge in advance of her answer to our complaint saying we had *ex parte* communications.

168. Medical Supply stated that it had not had any communications with US BANK employees since receiving her reply on Friday 10/18/02.

169. Medical Supply informed Strong it was an account holder at US BANK and would continue to have communications with US BANK regarding its other bank business.

170. Medical Supply contacted an attorney, familiar with the healthcare supply chain research and development done by SAMUEL LIPARI at the law firm of Shook, Hardy and Bacon and asked if his firm could act as escrow agent for accounts to be set up in US Bank.

171. The Shook, Hardy and Bacon attorney said the bank is better prepared to provide escrow services, fearing the liabilities and risks for an escrow agent where the USA PATRIOT Act had been invoked and declined to act as escrow agent.

172. On Thursday 10/24/02 Medical Supply filed for urgent injunctive relief against US BANCORP NA, its subsidiaries and named employees.

173. Medical Supply counsel contacted US BANK counsel Kristin Strong to clarify the clerk of the court's questioning of service and to attempt to schedule a hearing.

174. Ms. Strong said she would call the following morning Friday 10/25/02 to answer the question about service. She did not call and took the day off.

175. Medical Supply counsel called her on Monday morning 10/28/02 at which time she said the case had been transferred to outside counsel and gave the phone number to Medical Supply.

176. On or about 10/28/02 Medical Supply contacted US BANCORP's retained counsel and explained that there were questions about service and that Medical Supply was seeking to schedule a hearing that week for its requested relief to stop the harm it was suffering and to avoid a terminal outcome for the company.

177. US BANCORP's counsel said he had to travel and was unsure of his schedule but by the next day he might know of a time he could make a hearing.

178. Without hearing from the opposing counsel, Medical Supply became concerned and sent an email on or about 10/29/02 suggesting portions of the injunctive relief it seemed likely the two parties could agree on and explaining the harm it was suffering and what delaying the relief beyond critical dates would inflict on Medical Supply, its associates and customers.

The Defendants' Acceptance of Liability for Medical Supply's Business Plan Damages

179. The email explained the losses as follows: the damages of failing to receive the \$350,000 to \$450,000 it depended

on November 1st and the resulting effects of that delay on its projected financials including lost profit of \$51,795,005.00 lost increase in average valuation of \$155,385,015.00 Candidate lost revenue of \$15,499,788.00. 180. The email explained that these injuries would be far greater if a December 1st deadline is missed and if the company does not recover from US Bank's denial of the escrow accounts the total third year losses of the company would be as follows: lost profits \$51,795,005.00 loss of increased company avg. valuation of \$155,385,015.00 Candidate lost revenue of \$15,499,788.00 and Customer losses of \$697,486,200.00.

181. On or about Wednesday 10/30/02, US BANCORP's counsel sent a letter to the court dismissive of Medical Supply's complaint and stating that it would oppose all requested relief.

182. On or about Thursday 10/31/02, Medical Supply called US BANCORP's counsel explaining the necessity of the relief sought and specifically the relief requested under paragraph 66 of the first federal complaint seeking to stop US BANK from reporting negative information about Medical Supply under the USA PATRIOT Act.

183. US BANCORP's counsel reiterated his belief Medical Supply needed to find another bank and that no liability existed.

184. Medical Supply's counsel explained that SAMUEL LIPARI will not risk a hundred million dollar company that requires high level banking services to future damage from a secret USA PATRIOT Act report that has misinformation in it and would create a black mark preventing them from ever being able to do any business.

185. US BANCORP's counsel said it would not agree to even just the relief sought in paragraph 66 of the first federal complaint.

186. Medical Supply asked US BANCORP's counsel if his firm would act as an escrow agent for accounts to be deposited in US BANK, since Shook, Hardy and Bacon had declined to do so.

187. US BANCORP's counsel refused to do so stating that US Bank did not owe any duty to Medical Supply.

Defendants' Intellectual Property Misappropriation

188. Realizing there was no immediate solution to this matter, and the fact that a previous business model pricing system developed by SAMUEL LIPARI in 1993-1995 was appropriated by HSCA, Medecon and Cardinal Healthcares' subsidiary Owen Healthcare through exploitation of a

confidential business relationship and then taken later by many other GPOs.

189. On or about 11/6/02 SAMUEL LIPARI visited US BANK, Noland road branch to retrieve the documents left by him following the meeting with Douglas Lewis on 10/10/02.

190. Douglas Lewis gave the documents back to SAMUEL LIPARI.

191. SAMUEL LIPARI specifically ask if the documents were copied or faxed and Douglas Lewis said he put all of the information in his analysis and Samuel Lipari left the bank.

192. Upon returning to Medical Supply's office SAMUEL LIPARI inspected the documents and found that the binders had been separated and copies or faxes had been made of the associate program and the business plan documents.

193. There were also tractor marks from a copy or fax machine on the back of the entire associate program and the business plan pages.

194. The documents relating to the escrow agreement associate program application, and certification contract were not faxed or copied.

195. There were no marks tractor marks on the back of these documents.

196. Medical Supply became fearful of where these documents were sent and who has reviewed them.

197. The documents that were copied or faxed contain all confidential details to the business, business model, management team, investors, industry experts, advisors, business practices, market strategies, revenue model, service structure, formula, algorithms and financials including 5 year details, 5 year condensed and break even analysis.

198. SAMUEL LIPARI became fearful this information would fall into the wrong hands further blocking or eliminating entry to market.

Defendants' Breach Injures Medical Supply

199. On or about 11/7/02 SAMUEL LIPARI received a complimentary D&B report dated 10/31/02 on Medical Supply.

200. The report indicated Medical Supply started in 2000 and has a clear credit history and a strong financial condition.

Medical Supply Seeks Federal Declaratory Relief

201. On November 18, 2002, Medical Supply obtained a TRO hearing on its request for preliminary injunctive relief. Medical Supply sought urgent preliminary injunctive relief from trade secret misappropriation and urgent preliminary injunctive relief from USA PATRIOT Act reporting.

202. Medical Supply had a second preliminary injunction hearing at 12:00 p.m. on December 12, 2002.

203. Medical Supply again sought urgent preliminary injunctive relief, opposed by the defendants from trade secret misappropriation and urgent preliminary injunctive relief from USA PATRIOT Act reporting, but was denied.

204. On December 17, 2002 Medical Supply filed a notice of interlocutory appeal to The Tenth Circuit Court of Appeals.

205. On June 16, 2003, the Kansas District Court dismissed Medical Supply's action for injunctive and declaratory relief.

206. After losing a motion for new trial, Medical Supply filed a timely notice for appeal on November 21, 2003.

207. On January 7th, 2004, the Tenth Circuit dismissed the interlocutory appeal as moot due to the superceding appeal of the action's dismissal.

The Third Attempt to Cover For Defendants' Breach

208. The defendants subjected MSCSI to threatened and or actual USA PATRIOT Act Suspicious Activity Reporting (S.A.R.) with the knowledge that such reporting would harm or destroy MSCSI's ability to capitalize its entry into the market for hospital supplies.

209. Never the less, on or about May 1st, 2003 Samuel Lipari again attempted to substitute or cover the

defendants breach, this time with a capitalization plan involving the purchase of an office building at 1600 N.E. Coronado Drive in Blue Springs.

210. On or about May 7th, 2003 MSCI's loan consultant Joan Mark explained if the General Electric Company 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.

211. Samuel Lipari negotiated a contract to purchase 1600 N.E. Coronado Drive creating for MSCI \$350,000.00 in funds earned in the purchase bargain from selling the termination of the building's ten year \$5.4 million dollar lease with the building's tenant GE Transportation to its parent corporation, the General Electric Company (GE), which also agreed to provide MSCI a purchase mortgage as part of its contract with MSCI to release GE Transportation from the ten year lease.

212. When GE entered into the contract with MSCI, knowing of the S.A.R. threat by US BANK and US BANCORP related to GE by SAMUEL LIPARI.

213. GE on May 15th, 2003 agreed to buy the deeply discounted remainder of the lease and fund MSCI's mortgage to purchase the office building at 1600 N.E. Coronado Drive

after performing diligence over the executive summary of MSCI's business plan and affirming MSCI would be able to repay the mortgage based on MSCI's value proposition and the opportunity in the market for an independent hospital supply electronic marketplace on the internet.

214. Later, GE Medical and its former president Jeffrey R. Immelt, now CEO of GE learned that GE corporate had capitalized MSCI's entry into the hospital supply marketplace when GE's former CEO Jack Welch had specifically instructed Jeffrey R. Immelt to distribute GE Medical's equipment and supplies on the internet first in GE's electronic marketplace Global Exchange and then to form GHX,LLC as an electronic marketplace, both because Jack Welch feared an independent hospital supplier creating an electronic marketplace that would provide lower prices selling supplies from GE's competitors.

215. GHX, L.L.C. was capitalized by and remains under the control of GE and Jeffrey R. Immelt which retains a directorship on the board of the privately held company.

216. With GE and Jeffrey R. Immelt's approval GHX, L.L.C. had subsequently formed a joint venture with the remaining electronic marketplace for hospital supplies, Neoforma, Inc. part of a healthcare technology company capitalization syndicate with US BANCORP's Piper Jaffray and together in

an agreement, GHX, L.L.C. and Neoforma allocated market share of the nation's hospitals between each other.

217. GE repudiated its 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 in the market for hospital supplies.

218. MSCI sought to enforce its contract with GE and recover damages in federal court so that MSCI would still be able to enter the market for hospital supplies and capitalizing its electronic marketplace.

219. SAMUEL LIPARI filed a *lis pendens* notice in the Jackson County Register of Deeds office based on his state law and antitrust claims in the US District Court.

US BANCORP and US BANK Work to Frustrate Recovery From GE

220. The defendants US BANCORP and US BANK along with Jerry A. Grundhoffer, Andrew Cesere, Piper Jaffray Companies and Andrew S. Duff coordinated their defense of Medical Supply's action for injunctive and declaratory relief with the GE defendants Jeffrey R. Immelt, GE, GHX, GE Healthcare, GE Capital and GE Transportation who inconceivably attached the Medical Supply complaint and order to their 12(b)6 motion to dismiss in Medical Supply's separate action against Jeffrey R. Immelt, GE, GHX, GE Capital and GE Transportation.

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

222. A cartel of hospital suppliers organized in an anticompetitive agreement as members of GE's GHX, LLC and including the University Hospital Consortium (UHC), Robert J. Baker, the Volunteer Hospital Association (VHA, Inc.), Novation LLC, Neoforma, Inc. and Robert J. Zollars renewed their conscious commitment to a common scheme designed to achieve an unlawful objective of keeping Medical Supply out of the market for hospital supplies by reviewing the case against US BANCORP and consulting with representatives for the defendants US BANCORP and US BANK along with Jerry A. Grundhoffer, Andrew Cesere, the Piper Jaffray Companies and Andrew S. Duff.

223. The cartel decided to rely on the continuing efforts to illegally influence the Kansas District Court and Tenth

Circuit Court of Appeals to uphold the trial court's erroneous ruling.

224. The cartel also renewed their efforts to have Medical Supply's sole counsel disbarred, knowing that an extensive search for counsel by Medical Supply had resulted in 100% of the contacted firms being conflicted out of opposing US BANCORP and actually effected a frenzy of disbarment attempts against Medical Supply's counsel in the period from December 14, 2004 to February 3rd, 2005, originating from US BANCORP and US BANK's agent Shughart Thomson and Kilroy's past and current share holders."

225. The former eighteen year Shughart Thomson & Kilroy shareholder acting as magistrate on the GE case denied Medical Supply discovery and the court did not even permit discovery when the dismissal attachments necessitated conversion of the GE motion to one for summary judgment.

VII. CLAIMS

194. Plaintiff alleges the following claims against the defendants US BANK and US BANCORP upon information and belief that discovery will support findings against the defendants.

COUNT I **CAUSE OF ACTION FOR BREACH OF CONTRACT**

195. Plaintiff hereby re alleges the preceding averments of facts and incorporates them herein.

196. The Defendants breached their contract with Medical Supply (MSCI) which interests are now assigned to SAMUEL LIPARI to provide MSCI with a full range of business banking services, including corporate trust services and escrow agency to be performed lawfully and professionally with a "five star guarantee" of quality of service.

197. This contract was executed in writing by the Defendants and MSCI when their respective agents opened the Medical Supply Chain Corporate checking account.

198. The Defendants breached their contract with MSCI to provide MSCI with corporate trust services, escrow agency and the service of hosting escrow accounts for MSCI and its candidates.

199. This contract was made while the plaintiff was influenced by representations over the phone at a distance of 300 miles between the defendant US BANK's St. Louis office and the plaintiff as chief executive officer of MSCI a customer of US BANK's Noland Road Independence office in the regular course of business.

200. No writing or other memorialization of this contract to provide a full range of banking services with a "Five Star Guarantee" was referred to or contemplated at any time

during its negotiation and formation by either the Defendants or MSCI.

201. The Defendant's Vice President Brian Kabbes and Samuel Lipari came into formation of a written contract for escrow account services when both had agreed upon some or all of the terms in exchanges of email including: the composition of the escrow form, the language limiting the liability of US BANK and the escrow agent, the language designating US BANK's compensation for its duties in any legal disputes arising between the parties, the directions for US BANK's investment of long term held funds, the directions for US BANK's investment of short term held funds, the selection of investment vehicles for both funds respectively, the name and address of BRIAN KABBES as escrow agent on the escrow form, the name and address of US BANK as escrow depository on the escrow form, the price term US BANK is charging for the agreed upon escrow service and the price term and payment schedule for maintaining the account.

202. The Defendants performed diligence to determine whether to accept the contract with MSCI to provide MSCI with corporate trust services, escrow agency and the service of hosting escrow accounts for MSCI and its candidates.

203. The Defendants required only one item to be rectified

for approval; a current good standing status from the Missouri Secretary of State, which MSCI provided, satisfying their sole open element.

204. The Defendants approved MSCI's escrow form for delivery along with MSCI's associate contract to MSCI's independent representative candidates for their examination and submission for review to their personal legal counsel. After entering into a contract with MSCI, the defendants breached the contract and did not provide the escrow accounts.

205. The Defendants breached the contract to provide escrow accounts to MSCI when the defendants discovered MSCI would reduce hospital supply prices nationwide with an internet based electronic marketplace.

206. MSCI attempted to cover or substitute as described in the statement of facts, seeking the services of Shook, Hardy & Bacon, then the defendants' own law firm to administer escrow accounts unsuccessfully.

207. MSCI then attempted to cover or substitute by obtaining the capitalization for entry to market through a real estate transaction with GE which breached its contract when it also discovered MSCI would reduce hospital supply prices nationwide with an internet based electronic marketplace.

COUNT II
CAUSE OF ACTION FOR FRAUD

208. Plaintiff hereby re-alleges the preceding averments of facts and incorporates them herein.

209. The Defendant US BANCORP injured MSCI with a fraudulent misrepresentation material to their transaction of escrow agency and escrow account hosting through US BANK for MSCI and SAMUEL LIPARI.

210. Then Brian Kabbes speaking as a Vice President of US BANK falsely represented to MSCI that US BANK and the commercial trust department would not perform as escrow agent or host MSCI's escrow accounts because of the "know your customer provisions" diligence requirements of the USA PATRIOT Act had come into effect and made it impossible for the bank to perform this service for MSCI.

208. The defendants' officers Lars Anderson and Susan Paine made this fraudulent misrepresentation through the defendant Brian Kabbes by directing him to give this reason to MSCI's chief executive officer, SAMUEL LIPARI.

211. The defendant US BANCORP's officer Andrew Cesere directed the defendants' officers Lars Anderson, Susan Paine And Brian Kabbes not to retract this fraudulent misrepresentation when it had been questioned by MSCI and SAMUEL LIPARI and to maintain the misrepresentation in

their capacity as managing speaking officers for US BANCORP NA, US BANK.

212. The defendants' officers Andrew Cesere, Lars Anderson, Susan Paine and Brian Kabbes caused this fraudulent misrepresentation to be communicated to SAMUEL LIPARI with the intention to induce MSCI to refrain from enforcing US BANK's agreement to provide MSCI escrow agency services and escrow account hosting.

213. On 10-24-02 the defendants officer Brian Kabbes communicated to MSCI and SAMUEL LIPARI that US BANK's corporate trust division (US BANCORP) would not provide the escrow accounts because of the "know your customer" provision of the USA PATRIOT Act prevents them from providing the agreed upon escrow accounts.

214. Becky Hainje US Bancorp (Phone Message left on MSCI answering machine 10-24-02);

"Becky Hainje: Hi Sam this is Becky Hainje with US Bank I a... visited again with Brian Kabbes in the a... corporate trust area and a... ask him what would you need to provide in order to have the a... request for the escrow trust reviewed and he was very honest, he said a... really it does not look good, this is something that the bank would be willing to do and he doesn't want you to invest any more time in it with him, but he did give me a... the listing of the main reasons, the concerns that the bank had a... first of all was that of course this is an unknown start up business that a... did not have any prior existing relationship with the a... Bank a... that the principals involved with the business were people unknown to the bank as you mentioned they were National and he really had no idea, and but the

main reason is to know your customer "Patriot Act" that was enacted after 911, and which we really could not give all the correct answers a... on the course and the flow of money, so that's what the situation was a...I understand that your coming up with a unique way to finance and get a business off of the ground unfortunately this seems to be a day and an age where unique thinking outside of the box isn't a... is being, a...is very difficult to get anything going, and I apologize that I wasn't able to be of more service to you a...hopefully you will be able to get this going perhaps with Doug on financing, and I do wish you all the best, if you have any more concerns, please feel free to give me a call at 913-261-5725."

215. Brian Kabbes called back rather than Ed Higgins:

"Bret Landrith MSCI; "Yes Brian, this is Bret Landrith, returning your call.

Brian Kabbes US BANCORP; "Bret hey a...Lars Anderson wants to be on this call too, he is our new business development guy, do you mind if I get him on the line."

Bret Landrith MSCI; " No problem."

Lars Anderson US Bancorp; "Hey Bret, I got Lars Anderson, hey Bret."

Bret Landrith MSCI; "Nice to speak to you"

Lars Anderson US BANCORP; "Susan Pane is here also here in the office a..."

Brian Kabbes US BANCORP; "I report to Susan Pane and Lars is our new business development person, now you had called Andy Cesere yesterday."

Bret Landrith MSCI; "Yes I didn't realize when I last spoke to Brian that we had already sent out the escrow agreements that he approved, am of course."

Lars Anderson US Bancorp; "Who approved?"

Bret Landrith MSCI; "Brian Kabbes, he works there in your office, I think he is in front of you, a... of course it is sort of inherent in an escrow customer that somebody is seeking an escrow account because there is not a sufficient establishment of trust yet so between the parties and realizing that we are going to have to change the escrow account contracts with the, our ten best candidates that we've chosen who will produce the most revenue for our business in it's first year in market a... that became a substantial issue for us and I didn't realize that when I last spoke to Mr. Kabbes."

Lars Anderson US Bancorp; "Yeah, we were wondering how obviously calling Andy Cesere a..."

Bret Landrith MSCI; "well a..."

Lars Anderson US Bancorp; "as you were not happy with our decision not to move forward on the transaction to get a hold of management at the bank that runs our overall unit."

Bret Landrith MSCI; "a... Mr. Kabbes was very helpful, he suggested that we go to some local bank, you know some big bank hasn't bought up like you all and taken and run off the staff that knew anything, but a...he a... was also not clear on why we had sought a trust account at US Bank, because he didn't see why we didn't go to our own bank, of course you are our bank and have been since about April, the first corporate account we ever opened was with you all."

Lars Anderson US Bancorp; "Sure",

Brian Kabbes US BANCORP; "I said that when I said that I said your local bank, I didn't know it was with US Bank."

Bret Landrith MSCI; "Who has really accelerated there a level of customer service just recently in the former First Star Bank, you guys took over and occupied, and now they actually connect us with the people that can provide the services they say they have, and that is how come our local bank forwarded us to your Trust Department."

Lars Anderson US Bancorp; "Got yea...Well then no doubt nobody questions about whether you have an account or whether, you know we can't handle this type of transaction generally, the question centers around when did we commit to this transaction specifically and Brian and I have been talking and we don't know at any point where we specifically said we are on board a... we were trying to evaluate the transaction therefore looking at some of the specifics of the document and what our duties were."

Bret Landrith MSCI; "I don't think we need to go into minutia over that right now I think the chronology will come with the demand letter a...but we understood that you knew the purpose and why we kept contacting you in getting the second change approved, by the time you made the negative decision you also had our business plan and that's pretty serious."

Lars Anderson US Bancorp; "We have not divulged your Business Plan to any body, there is no confidentiality issue here."

Bret Landrith MSCI; "well a..."

Lars Anderson US Bancorp; "Where did we ever accept the transaction, we never provided you pricing, we never

provided you a bid and we certainly never signed off on the escrow agreement."

Bret Landrith MSCI; "we had pricing and its oral, and this is Missouri, and this is a business contract in your regular line of business and we relied and depended on your exception that it was ok and we sent it out to our best people."

Brian Kabbes US BANCORP; "I'll tell you what Bret, you can talk with Sam, you can get him on the phone if you want, because when I went over numbers with Sam, I said by no means is this a done deal, I need to run it past some people, I told him that twice, so I discussed numbers with him, but I said to him twice, I we came to what would work for you."

Bret Landrith MSCI; "Sam is in the room now."

Sam Lipari MSCI; "Hi Brian, well Brian, I also had conversations with Becky Hainje, and Becky had indicated as well that your conversation with her according to the recording that I have of the conversation is that you guys, you or her or combination thereof, had no problem with this and it should be a slam-dunk, to quote her exactly."

Bret Landrith MSCI; "but, but before we go farther down this line, obviously you don't have your new business development guy in there so you can help document why it was good of you not to take on our new business and we are sort of flabbergasted that you got any reason not to take on our business and we are sorry we are with you, but we are with you for at least these ten people."

Brian Kabbes US BANCORP; "Excuse me"

Lars Anderson US Bancorp; "you do want, on what basis do you consider us to be with you guys, I mean in any cap.. in this transaction."

Bret Landrith MSCI; "well we have our sole banking relationship with you and we have shared an incredible amount of trust with you and divulged our business practices model and everything to you and are are corporate financials, we knew that a large major competitor of ours is headquartered in St. Louis and we had no concept that there would be a conflict of interest issue, but a... a....

Lars Anderson US Bancorp; "We don't have a conflict of interest."

Bret Landrith MSCI; "this comes out of left field that you are accusing us of being Arab terrorist or something and not wanting to set up a basic account your bread and butter services of your department, I think you are taking on other customers this year sometime, if you are still going to have a trust office in St. Louis, and we are sort of

surprised you are not taking us on and we can't imagine a reason for it.

Lars Anderson US Bancorp; "Ok, well I think Brian's conveyed..."

Bret Landrith MSCI; "well those are pretty bad reasons and those end up with a demand letter, and yes there will be extensive chronology and we will explain trust obligations and fiduciary duties and where we think we were in contract and we think we will have an explanation that wins."

Lars Anderson US Bancorp; "well we are not the right people to talk to about that, we are just..."

Bret Landrith MSCI; "all right well, like I said earlier, I don't see any point in having a discussion about that, obviously you guys provide a service, you got your new business development guy there on this phone call, either you are talking to us about the services you are going to provide, or what we need to do to be your customer."

Lars Anderson US Bancorp; "so your, what your what are you stating at this point, that you are going to..."

Bret Landrith MSCI; "we got ten people that..."

Lars Anderson US Bancorp; "to force us to provide these services, or what, I don't understand now what you want."

Bret Landrith MSCI; "your, your characterizing that as a threat, there are no threats here, our business future depended on these ten people for the next six months or year revenue, you took them out you didn't even threaten us before you did it, so we will try and save what we can, but probably since you got your team there you ought to think about how to make us a customer at least for these ten so that we can remediate this damage."

Lars Anderson US Bancorp; "well we certainly never contracted with you or these ten people."

Bret Landrith MSCI; "well I think we go to a referee on that, first you get the demand letter, you get to respond to your version and then we go to a forum where they will make a ruling."

Sam Lipari MSCI; "and, and if I might add something here, this patriot act, that was identified as a reason for not extending the escrow services to us might you guys explain how that applies to a company that has been incorporated and in good standing for three years in the state of Missouri, in addition to the fact that we have a trail of where the funds come from, we also have signatures on both financial and criminal discovery of these individuals where anyone can run a background check or financial background on these individuals. I mean I am just really concerned

why this patriot act was brought into this when we don't have anything to do with that.

Lars Anderson US Bancorp; "we were not trying to relate the Patriot Act specifically to your status of business or your integrity it only..."

Sam Lipari MSCI; "well according to Ed Higgins, he didn't see how this, where this even came from."

Bret Landrith MSCI; "what other customers has this been an issue with for you and maybe you shouldn't be dealing with those types of customers?"

Lars Anderson US Bancorp; "The patriot act, when it was put in place, caused us to have a clear set of rules on how we take on business."

Sam Lipari MSCI; "well according to Ed Higgins, he doesn't think that the Patriot Act has anything remotely to do with Medical Supply Chain, and what we are trying to do here."

Bret Landrith MSCI; "but, since you mentioned it the other day, we started looking at who you got investments in, and you got some investments in some healthcare entities that are under the gun, they have either been indicated for anti-trust violations or illegal kick-back schemes and for us now looking at space alien excuse for not having our trust accounts hosted by you, we are starting to think conflict of interest explains it."

Lars Anderson US Bancorp; "yea, you know what...we are not sure...what's your..."

Bret Landrith MSCI; "yea, it is pretty serious and it goes beyond contract damages ok."

Lars Anderson US Bancorp; "we are not the right people to talk to if you..."

Bret Landrith MSCI; "I know you may not be the right people to talk about trust, that is why I was trying to get your Vice Chairman, still haven't gotten to him, hopefully we can get this resolved today."

Lars Anderson US Bancorp; "we have already spoken with him and explained the situation, if you want to talk about other things in the Bank and our policies, whatever, I mean."

Bret Landrith MSCI; "no, I think we are going to focus on the Trust Department on US Bank for sometime here, it is probably a three-year process, but we will get to know each other quite well."

Lars Anderson US Bancorp; "do you have any other questions today?"

Bret Landrith MSCI; "No, you called us."

Lars Anderson US Bancorp; "well we were just returning your call to Andy Ceccere".

Bret Landrith MSCI; "well I think he ought to personally talk to us cause we are still not getting a good explanation here."

Lars Anderson US Bancorp; "you are not looking for a good explanation you are looking to force us to do the transaction."

Bret Landrith MSCI; "no, you guys are the ones that don't even threaten you just kill, but we are still wondering how we can fix this."

Sam Lipari MSCI; "yea, we need, the problem here is that we have these a..., we basically have a..., out of 300 resumes we've pined it down to approximately 15 of which 10 we sent out the contract and the escrow and then you guys decide that you don't want to do the escrow over a Patriot Act that we don't have anything do with in the first place, now you claim that we do and be on, I...I still don't understand where you are coming from that standpoint, but that is ok, in the mean time we tried to explain the situation and in fact we spoke with Ed, now who is Ed Higgins,

Brian Kabbes US BANCORP; "He is ahead of personal trust in St. Louis."

Sam Lipari MSCI; "Ok, well when we spoke with Ed, Ed seemed to feel as though this doesn't have anything to do with the Patriot Act, and basically, that is what we are saying, but I will indicate to you this....Becky had already established the fact that Brian you and her had talked last week and you didn't see any problem with it and if you didn't see any problem with it, you also suggested we make a change on #10 of the escrow agreement, so that we could leverage the asset to create a line of credit here at the local level, a... and everything seemed to be going in order and then all of a sudden you guys come back and say well you are not going to do it and you guys want to basically climb behind the Patriot Act as a basis for your decision, but Patriot Act doesn't have anything to do with what we are doing.

Brian Kabbes US BANCORP; "first off, that was a minor, that was part of our reason that was a minor reason..."

Sam Lipari MSCI; "well, if, if I quote Becky correctly this morning on her conversation, it was the fact that you don't know who all is involved in the Company, you don't know where these, where the Executives are that are running this company, in other words, you didn't have background information on the company itself to set up the trust, that, why is that any of your business in the first places as it relates to setting up an escrow? That's my question, and again I think we are going to find out that we are

going to constantly come back to this issue where you have a conflict of interest and because of your knowing our business model and how we are arriving at generating revenue and so on and so forth that you basically kill our escrow, so by killing our escrow, especially in this particular situation on these ten that we have sent the information out to, you have essentially cut off at least \$300 and possibly \$450 thousand dollars."

Bret Landrith MSCI; "but they were our ten best you know, former principal of IBM, and people we hand picked from all over the country at the best change of getting our hundreds of millions of dollars or revenue we count on in the next couple of years."

Sam Lipari MSCI; "so all the conversations that we have documented since last week, have basically indicated that you had no problem in doing the escrow in the first place, in fact, Bryan you and I hammered out a Cost and Price and I would think..."

Brian Kabbes US BANCORP; "you are missing a very important part of that, twice I said to you I need to run this past something, and I stopped you and said it a second time."

Sam Lipari MSCI; "ok well then let me ask you this Brian, why won't you just set the escrow up? Why? We don't have anything to do with the...a..."

Brian Kabbes US BANCORP; "well"

Sam Lipari MSCI; "there is a conflict of interest Brian, and you know there is, and I don't know why you are hiding behind the Patriot Act because the Patriot Act doesn't have anything to do with us, and you know it doesn't, and I am upset about it, I have spent two weeks working with Becky and Doug and You and everybody else, we've got basically \$300 to \$450 thousand dollars in the pipeline here that has been basically cutoff cause we don't have an escrow for these people to deposit and we are going to have to go back to them to try and save them if we can, and if we can't all this is really kind of a mute issue, it is just a fact that you don't want to do business with us because you have a conflict of interest with other companies that are doing banking business with you and frankly, you are right, if we ever get our business model off the ground, we are going to put them out of business, in fact, we may not have to the Justice Department has already indicted them, the Federal Trade Commission is after them, and not Medicare and Medicaid is after these GPO's. In addition to that, I have a glass pipe line to the New York Times, so if we really want to bring everybody into this thing and really nail down what is going on we can. All we asked for was a

simple escrow so that we had a place to put our certification program candidates until they receive the weeks worth of training and we were able to identify whether or not they were going to be part of our organization or not. That is all we asked you people to do, instead, you guys have carried this thing farther, in other words, you want to know more information about the company, or you want to know about our background, or you want to know whose involved in this because there is a conflict of interest and that is the only reason you guys wouldn't provide these services. You would provide them for anyone else that walked in off of the street, but you have a conflict. So admit you have a conflict and let's move on. If you don't have a conflict, then set the escrow up."

Lars Anderson US Bancorp; "Sam, this is Lars, Brian and I have talked about this since he bounced the transaction off of me to find out if we should do the deal and I couldn't see good reason to do the deal, but we have never talked about any kind of conflict of interest. I don't even know where you are coming from that standpoint."

Brian Kabbes US BANCORP; "I don't have any idea what he is talking about."

Bret Landrith MSCI; "I understand you are not admitting it yet, but you have not come up with a plausible non-protectoral reason to not set up escrow accounts. We are going to be looking at..."

Brian Kabbes US BANCORP; "we have to know our customers I have to have complete information and to know our customers and to know who we are doing business with."

Bret Landrith MSCI; "I don't think a US Bank knows too much about US Bank, but in terms of, we filled out credit application you got business plan, you got all that information, and once you got all that information then we are surprised you are not accepting the account."

Lars Anderson US Bancorp; "we take on a trust business stand alone, and we have our own acceptance criteria and it's got nothing to do with what someone else got your financials or whatever..."

Bret Landrith MSCI; "like I said, I don't think US Bank is a coherent entity and I am really alarmed at some of the laissez-faire lack of control of practices that you have and I am sure we are going to see a lot of disturbing things, unless you are here are calling us to set up some trust accounts we will probably do our next communications in correspondence."

Lars Anderson US Bancorp; "Ok, well we are trying to explain to you today the reason why we are not taking on the account."

Sam Lipari MSCI; "and what is that reason exactly, because we have gone""

Transcript of tape recorded telephone conference.

216. MSCI and SAMUEL LIPARI justifiably relied upon this fraudulent misrepresentation to not enforce US BANK's promise with the defendants' officer Brian Kabbes upon learning that US BANK was not going to provide the escrow services. MSCI and and SAMUEL LIPARI justifiably relied upon this fraudulent misrepresentation and did not seek a reversal of the decision from the St. Louis office of US BANK's Commercial Trust department and instead contacted US BANCORP NA's Andrew Cesere, to try and resolve the problem, unintentionally angering Lars Anderson and Susan Paine.

217. The defendants US BANCORP NA and US BANK caused this fraudulent misrepresentation to be communicated to MSCI with knowledge of its falsity or reckless disregard as to whether it was true or false to the point of not checking and realizing that the increased duties of the "know your customer" for new account holders had not been enacted.

218. Or, in the alternative the defendants caused this fraudulent misrepresentation to be communicated with reckless disregard as to whether it was true or false to

the point of not checking and realizing MSCI and Sam Lipari were established existing customers of US BANK the increased duties of the "know your customer" did not apply to.

219. US BANK and US BANCORP intentionally deceived MSCI and SAMUEL LIPARI over the pretext of the USA PATRIOT Act as a false reason to breach the contract to provide escrow accounts because the defendants knew or should have known that it is well established that a change in federal law does not excuse breach of a banking contract.

220. US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI to prevent MSCI from competing with or otherwise disadvantage hospital suppliers US BANCORP PIPER JAFFRAY a wholly owned subsidiary of US BANCORP had invested in and underwritten.

221. US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI to prevent MSCI from competing with or otherwise disadvantage US BANCORP PIPER JAFFRAY and US BANCORP relationships with the hospital Group Purchasing Organization ("GPO") Novation, LLC.

222. US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI to prevent MSCI from competing with or otherwise disadvantage US BANCORP PIPER JAFFRAY and US BANCORP relationships with the hospital

Group Purchasing Organization ("GPO") Neoforma, Inc. (now acquired by GHX, LLC an electronic healthcare marketplace created by The General Electric Company, "GE")

223. MSCI and SAMUEL LIPARI relied on the Defendants fraudulent misrepresentation to MSCI and SAMUEL LIPARI's detriment.

224. MSCI and SAMUEL LIPARI were harmed by the Defendants' actions, resulting in the immediate loss of from three hundred thousand to four hundred and fifty thousand dollars and the inability to act on the opportunity it had planned to realize with the funds, including the recruitment and training of a nationwide network of independent representatives and the revenue the representatives would create through MSCI's entry into commerce.

COUNT III

CAUSE OF ACTION FOR TRADE SECRET MISAPPROPRIATION UNDER SECTION 417.450 RSMO OF THE UNIFORM TRADE SECRETS ACT

225. Plaintiff hereby re-alleges the preceding averments of facts and incorporates them herein.

226. Plaintiff hereby re-alleges the averments of facts in the following counts and incorporates them herein.

227. The Defendants have misappropriated MSCI's business plan and associate program containing MSCI's trade secrets.

228. The Defendants have made use of MSCI's trade secrets through unauthorized copying and transmittal.

229. The Defendants directed Douglas Lewis to disassemble MSCI's Business Plan and Associate Program and make copies and or fax their contents in violation of SAMUEL LIPARI's oral instructions to Douglas Lewis and the notice of limitations of disclosure, use, transmittal and copying expressly stated on the covers and in the bodies of the above documents.

230. US BANK exceeded its authorized use and copied and or transmitted the above documents to the defendant US BANCORP and its officers Lars Anderson, Susan Paine and Brian Kabbes.

231. The Defendants directed Douglas Lewis to disassemble MSCI's Business Plan and Associate Program and make a derivative analysis document containing MSCI's trade secret and or fax their contents in violation of Sam Lipari's oral instructions to Douglas Lewis and the notice of limitations of disclosure, use, transmittal and copying expressly stated on the covers and in the bodies of the above documents.

232. The defendant US BANCORP NA, its officers Lars Anderson, Susan Paine and Brian Kabbes and its subsidiary US BANCORP PIPER JAFFRAY acquired unconsented knowledge of MSCI's trade secrets and made use thereof.

233. The Defendants were at the time attempting to settle litigation through payment of several million dollars for theft of customer information in an unrelated class action lawsuit giving rise to MSCI's heightened fears of being materially injured if its trade secrets are not recovered and their dissemination is not disclosed.

COUNT IV
CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

234. Plaintiff hereby re-alleges the preceding averments of facts and incorporates them herein.

235. US BANCORP through its investment banking subsidiary US BANCORP PIPER JAFFRAY dominated the capitalization of health care technology companies.

236. US BANCORP through its relationship directly with Novation, LLC and through its subsidiary US BANCORP PIPER JAFFRAY's relationship with Novation, LLC dominated the access to the nationwide hospital supply market.

237. Until April 28, 2003 when US BANCORP PIPER JAFFRAY settled charges it was guilty of aiding and abetting efforts to defraud investors and manipulating investment research, US BANCORP through its investment banking subsidiary US BANCORP PIPER JAFFRAY was able to dominate investor research and exclude potential competitors to

Novation, LLC's control of the market for hospital supplies from having a market for securities.

238. SAMUEL LIPARI placed his trust in US BANK and US BANCORP to provide escrow services to MSCI in his plan to alternatively capitalize MSCI's entry into the market for hospital supplies through the participation of its certification candidates who would function as MSCI's marketing representatives.

239. US BANCORP's corporate trust division acting through US BANK was a trustee of the highest order to MSCI by virtue of US BANK's contract with SAMUEL LIPARI to provide MSCI escrow services.

240. In forming the trust relationship with MSCI, US BANK and US BANCORP asked for and obtained from SAMUEL LIPARI all of MSCI's confidential information relating to the escrow accounts and MSCI's certification candidates.

241. US BANK was a trustee of the highest order to MSCI by virtue of US BANK's officer Douglas Lewis' promise to SAMUEL LIPARI that US BANK would safeguard MSCI's confidential business plan.

242. US BANCORP and US BANK violated the high standard of conduct and loyalty owed to MSCI required by the defendants' fiduciary relationship as an escrow services provider to MSCI when US BANCORP and US BANK improperly

used a change in federal law as a pretext to breach US BANCORP and US BANK's agreement to provide escrow services.

243. US BANCORP and US BANK violated the high standard of conduct and loyalty owed to MSCI required by the defendants' fiduciary relationship as an escrow services provider to MSCI when US BANCORP and US BANK fraudulently claimed a change in federal law excused their breach US BANCORP and US BANK's agreement to provide escrow services, knowing the change did not render performance impossible and knowing that a change in law or regulations did not relieve the defendants of their duty to perform under the escrow contract.

244. US BANK violated the high standard of conduct and loyalty owed to MSCI required by the defendants' fiduciary relationship as custodian of MSCI's confidential trade secrets contained in MSCI's business plan and MSCI's certification program when it reproduced the trade secrets and transmitted them to US BANCORP offices outside of the Independence, Missouri office of Douglas Lewis.

245. US BANCORP violated the high standard of conduct and loyalty owed to MSCI required by the defendants' fiduciary relationship as custodian of MSCI's confidential trade secrets contained in MSCI's business plan and MSCI's certification program when it received the MSCI trade

secrets transmitted to them by Douglas Lewis and disseminated them to hospital suppliers and GPO's competing with MSCI.

246. US BANCORP and US BANK violated their duty of undivided loyalty to MSCI and to the escrow beneficiaries thereof by engaging in self-dealing by requiring the escrow account funds to be invested in a fund owned by US BANCORP without disclosure of US BANCORP's interest.

COUNT V

CAUSE OF ACTION FOR PRIMA FACIE TORT

247. Plaintiff hereby re-alleges the preceding averments of facts and incorporates them herein.

248. Plaintiff hereby re-alleges the preceding averments of facts and incorporates them herein.

249. US BANK and US BANCORP's Prima Facie Tort Part 1

1) Intentional lawful acts were committed by US BANK and US BANCORP including:

- a. refusing to provide escrow account services;
- b. circulating derogatory financial information about MSCI.
- c. placing warning notes against MSCI's officers on US BANK's computer system
- d. disparaging MSCI's legal claims against US BANK and US BANCORP

e. causing a Kansas attorney disciplinary complaint to be filed against MSCI's counsel

f. preventing MSCI from obtaining a loan secured with escrow account funds as they were released to MSCI.

2) US BANK and US BANCORP's committed these lawful acts with intent to injure the MSCI;

3) US BANK and US BANCORP's acts caused injury to MSCI and SAMUEL LIPARI

4) There is an absence of justification and in the alternative insufficient justification for US BANK and US BANCORP's acts.

a. MSCI had good credit.

b. MSCI was a registered Missouri corporation in good standing.

c. MSCI was being kept out of the market for hospital supplies by the concerted action off its competitors and their publicized exclusive agreements over hospital supplies with US BANCORP and US BANCORP PIPER JAFFRAY.

e. The defendants' agent Shughart Thomson & Kilroy did not have good faith cause to make an ethics complaint against MSCI's counsel for appealing the Kansas District Court's clear error.

250. US BANK and US BANCORP's injury from US BANK and US BANCORP's Prima Facie Tort was great and contrary to public policy, causing injury to the state's social and economic interests.

1) the nature and seriousness of the harm to MSCI was great, the company could not afford to hire employees or enter the market after having \$350,000.00 to \$450,000.00 abruptly taken from it; MSCI could not realize the returns on over ten years of its founder's research and development. MSCI's stake holders were prevented from recovering their inputs.

2) the interests promoted by the US BANK and US BANCORP's conduct are the felonious manipulation of hospital supply prices at the foreseeable risk of permanent injury and death to healthcare consumers across the nation;

251. While the reconsideration of transfer motion was being argued in federal court, the first 65,000 Missouri residents were cut off of Medicaid benefits on July 1, 2005.

252. 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.

253. 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].

254. Patients are the consumers in the market for hospital supplies that is the primary relevant market of Medical Supply's antitrust claims against the defendants US BANK, US BANCORP and their coconspirators.

255. Doctor Moskowitz also stated; "The Missouri Legislature is wrestling with the most critical domestic issue of our time.

256. It is literally a life and death issue for tens of millions of Americans.

257. 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."

3) the character of the means used by US BANK and US BANCORP were in bad faith and deceptive; and

4) US BANK and US BANCORP's motive was to take advantage of confidential information and power it had acquired over MSCI to keep MSCI from displacing relationships and income US BANCORP had obtained through its subsidiary US BANCORP PIPER JAFFRAY's manipulation of healthcare technology stocks and exclusive dealing with Novation, LLC.

VIII. Prayer for relief

258. Under *Anuhco, Inc. v. Westinghouse Credit Corp.*, 883 S.W.2d 910 (Mo App 1994) US Bank and US BANCORP are responsible for the expectation damages of the forward projections that it had accepted at the time it entered into contract with Medical Supply. The plaintiff is able to prove Medical Supply Chain Inc.'s projected profits with reasonable certainty.

259. 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).

Expectation Damages

260. The monetary relief sought is the contract expectation damages as determined by the business plan and forward

financials in possession of US BANK and US BANCORP at the time the escrow was accepted and the contract was formed from the US BANK and US BANCORP defendants.

Punitive Damages For Misappropriation of Trade Secrets

261. MSCI's business plan and associate program are trade secrets and will be made available to the court and defendants for in camera inspection.

262. Mr. LIPARI seeks the lost profits that can be determined with reasonable certainty that MSCI would have made for the next four years of operations, had it been allowed to enter the market for hospital supplies from the US BANK and US BANCORP defendants.

263. The total damages from US BANCORP and US BANK Defendants sought by the plaintiff Mr. LIPARI is four hundred and fifty million dollars (\$450,000,000).

264. The plaintiff seeks any other relief the court believes is just.

Respectfully Submitted,

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

Attachments: Exhibit 1 Executive summary of Medical Supply Business Plan

REQUEST FOR JURY

The plaintiff respectfully requests a jury decide all questions of fact.

Samuel K. Lipari

Plaintiff has served a copy of this complaint upon the

Office of the Comptroller of the Currency
1301 McKinney Street, Suite 3450
Houston, TX 77010-9050

VERIFICATION

State of Missouri)
) SS
County of Jackson)

I Samuel K. Lipari being of lawful age and being first duly sworn upon my oath, state that I have read the above and foregoing petition and attachments and find the statements therein to be true and correct to the best of my information, knowledge and belief.

Samuel K. Lipari

Subscribed and sworn to before me on this _____ day of November, 2006

Notary

Commission expires: