

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

MEDICAL SUPPLY CHAIN, INC.,	)	
<i>Plaintiff,</i>	)	
v.	)	Case No. 05-2299
NOVATION, LLC	)	
NEOFORMA, INC.	)	
ROBERT J. ZOLLARS	)	
VOLUNTEER HOSPITAL ASSOCIATION	)	
CURT NONOMAQUE	)	
UNIVERSITY HEALTHSYSTEM CONSORTIUM	)	
ROBERT J. BAKER	)	
US BANCORP, NA	)	
US BANK	)	
JERRY A. GRUNDHOFFER	)	
ANDREW CESERE	)	
THE PIPER JAFFRAY COMPANIES	)	
ANDREW S. DUFF	)	
SHUGHART THOMSON & KILROY	)	
WATKINS BOULWARE, P.C.	)	
<i>Defendants.</i>	)	

**NOTICE OF APPEAL**

Comes now, the plaintiff Medical Supply Chain and Samuel K. Lipari through their counsel, Dennis Hawver, Esq. and enters the present notice of appeal. Plaintiff respectfully appeals for the following reasons:

1. The trial court's order granting dismissal overrules the US Supreme Court decision regarding claim preclusion in *Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122 (1955), a holding repeatedly followed by the Tenth Circuit.

2. The plaintiff has adequately pled Sherman Antitrust Act based claims that the defendants made specific agreements to restrain trade in the two relevant markets identified ( hospital supplies and hospital supplies through an electronic marketplace), that the defendants have monopoly power in the

identified markets and the plaintiff has adequately alleged facts supporting the existence of a defendant antitrust conspiracy in an organized complaint where the required averments and claim elements are easily located by aid of a table of contents. Under the law, a conspiracy may consist of any mutual agreement or arrangement, knowingly made, between two or more competitors. *Law v. Nat'l Collegiate Athletic Ass'n* 185 F.R.D. 324, 336, n.19 (D. Kan. 1999).

3. The plaintiff has adequately pled RICO, RICO Enterprise and RICO Conspiracy claims that included misconduct before the trial court warranting appeal.

4. The trial court has again overruled the US Congress, invalidating two portions of the USA PATRIOT Act Public Law 107–56 “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001” specifically § 814 of the USA PATRIOT Act entitled DETERRENCE AND PREVENTION OF CYBERTERRORISM (18 U.S.C.§1030 (e) ) which creates a private right of action for Medical Supply to address the conduct of the Defendants in gaining access to the FINCEN network for the purpose of filing a suspicious activity report to prevent Medical Supply from providing hospital supplies and reducing healthcare costs and § 351 (31 U.S.C. § 5318 (g)(3)) making the defendants liable for filing a malicious Suspicious Activity Report against the plaintiff.

5. The court has disregarded the principals of *res judicata* and the Rooker-Feldman Doctrine in ignoring the final ruling of a Missouri state court in *Samuel K Lipari V General Electric Company, et al* Jackson County District

Court Case No. 0616-CV07421. Samuel Lipari was determined to be privileged to act *pro se* in vindicating his personal property interest that include the assigned claims of the dissolved Missouri corporation Medical Supply Chain, Inc. under the corporation laws of the State of Missouri, the source for determining Lipari's rights under Federal Rule of Civil Procedure Rule 17. Fed.R.Civ.P. 17(b) requires that "(t)he capacity of a corporation to sue or be sued shall be determined by the law under which it was organized." The defense counsel John K. Power's dismissal motion on behalf of alleged coconspirators in privity with the defendants in this matter was overruled by the Missouri state judge resolving the issue of whether Samuel Lipari acting *pro se* is the proper party under Missouri Statutes to represent the dissolved corporation's claims. See Exb 1. at pg. 2 (Order overruling GE defendants' dismissal and ordering mediation).

5. Finally, the trial court awarded attorneys fees to the defendants when Medical Supply was the prevailing party as an acting private attorney general under the catalyst test described in *Ellis v. University of Kansas Medical Center* 10<sup>th</sup> Cir. Case No. 96-3343a 12/21/1998. The defendants settled antitrust claims in the identified relevant market and would have continued their monopoly control of the hospital supply of retractable needles but for the plaintiff's present lawsuit. See Exb 2. and 3.

6. The plaintiff requires the opening brief to be increased from 30 to 80 pages.

Respectfully submitted,

/s/ Dennis Hawver

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And Samuel K. Lipari

### **Certificate of Service**

I certify that on September 8th, 2006 I have served the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

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/s/ Dennis Hawver

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