

## APPENDIX Four

### Plaintiff's Business Relationship With US Bank and US Bancorp

1 The following statement of facts describes the business relationship of the petitioner Samuel K. Lipari with US Bank, NA and US Bancorp Inc. which was tortiously interfered with by the Missouri antitrust defendants as the facts were presented in the petitioner's litigation against US Bank and US Bancorp. Here in the word defendants refers to US Bank NA and US Bancorp, Inc.:

2 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.

3 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.

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

5 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.

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

7 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.

8 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.

9 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.

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

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

**12 US BANK and US BANCORP's Knowledge of Medical Supply**

13 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.

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

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

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

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

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

19 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.

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

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

22 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.

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

24 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.

25 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.

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

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

28 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.

#### **29 Medical Supply's Internal Capitalization Plan**

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

31 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.

32 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.

33 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.

34 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.

35 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.

36 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.

37 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.

38 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.

39 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.

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

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

**42 Defendants' Offer of US BANCORP Escrow Services**

43 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.

44 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.

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

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

47 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.

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

**49 Meeting of the Minds With US BANCORP**

50 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.

51 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.

52 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.

**53 Performance of Escrow Contract**

54 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.

55 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.

56 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.

**57 Oral Confirmation of Escrow Contract**

58 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."

59 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.

**60 Defendants' Receipt of Value for Escrow Contract**

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

62 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.

**63 Written Memorialization of Escrow Service Agreement**

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

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

66 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.

67 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.

68 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.

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

70 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.

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

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

**73 Defendants' Misappropriation Of Trade Secrets**

74 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.

75 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.

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

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

78 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.

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

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

**81 Repudiation of Agreement to Provide Escrows**

82 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.

83 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.

84 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.

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

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

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

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

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

90 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.

**91 US BANCORP Participation in the Repudiation**

92 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.

93 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.

94 Barb asked for more details concerning the problem.

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

96 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.

97 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.

98 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.

99 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.

100 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.

101 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.

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

103 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.

104 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.

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

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

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

108 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.

**109 Defendants' Knowledge of Breach**

110 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.

111 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."

**112 Defendants' Knowledge of Irreparable Harm to Medical Supply**

113 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.

114 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.

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

**116 US BANK Refused to Reverse its Decision**

117 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.

118 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.

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

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

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

**122 Defendants' Fiduciary responsibility for trade secrets**

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

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

125 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.

126 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.

127 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.

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

129 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.

130 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.

131 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.

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

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

134 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.

135 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.

136 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.

137 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.

138 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.

139 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.

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

141 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.

142 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.

143 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.

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

145 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.

146 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.

147 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.

148 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.

149 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.

150 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.

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

152 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.

153 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.

154 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.

155 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.

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

157 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.

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

159 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.

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

**161 Defendants' Intellectual Property Misappropriation**

162 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.

163 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.

164 Douglas Lewis gave the documents back to SAMUEL LIPARI.

165 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.

166 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.

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

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

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

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

171 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.

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

**173 Defendants' Breach Injures Medical Supply**

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

175 The report indicated Medical Supply started in 2000 and has a clear credit history and a strong

financial condition.

**176 Medical Supply Seeks Federal Declaratory Relief**

177 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.

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

179 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.

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

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

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

183 On January 7<sup>th</sup>, 2004, the Tenth Circuit dismissed the interlocutory appeal as moot due to the superceding appeal of the action's dismissal.

**184 The Third Attempt to Cover For Defendants' Breach**

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

186 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.

187 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.

188 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.

189 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.

190 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.

191 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.

192 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.

193 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.

194 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.

195 MSCI sought to enforce its contract with GE and recover damages in federal court so tat MSCI

would still be able to enter the market for hospital supplies and capitalizing its electronic marketplace.

196 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.

**197 US BANCORP and US BANK Work to Frustrate Recovery From GE**

198 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.

199 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.”

200 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.

201 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.

202 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."

203 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.

204 **BREACH OF CONTRACT**

- 2) The Defendants breached their contract with Medical Supply (MSCI) which interests are now
- 3) This contract was executed in writing by the
- 4) Defendants and MSCI when their respective agents opened the Medical Supply Chain Corporate
- 5) The Defendants breached their contract with MSCI to provide MSCI with corporate trust services,
- 6) This contract was made while the plaintiff was influenced by representations over the phone at a
- 7) No writing or other memorialization of this contract to provide a full range of banking services with
- 8) The Defendant's Vice President Brian Kabbes and Samuel Lipari came into formation of a written  
ong term held funds, the directions for US BANK's investment of short term held funds, the selection of investment vehicles
- 9) The Defendants performed diligence to determine whether to accept the contract with MSCI to
- 10) The Defendants required only one item to be rectified for approval; a current good standing status
- 11) The Defendants approved MSCI's escrow form for delivery along with MSCI's associate contract to
- 12) The Defendants breached the contract to provide escrow accounts to MSCI when the defendants

- 13) MSCI attempted to cover or substitute as described in the statement of facts, seeking the services of
- 14) MSCI then attempted to cover or substitute by obtaining the capitalization for entry to market
- 15) The Defendant US BANCORP injured MSCI with a fraudulent misrepresentation material to their
- 16) Then Brian Kabbes speaking as a Vice President of US BANK falsely represented to MSCI that US
- 17) The defendants' officers Lars Anderson and Susan Paine made this fraudulent misrepresentation
- 18) The defendant US BANCORP's officer Andrew Cesere directed the defendants' officers Lars
- 19) misrepresentation when it had been questioned by MSCI and SAMUEL LIPARI and to maintain the
- 20) BANCORP NA, US BANK.
- 21) The defendants' officers Andrew Cesere, Lars Anderson, Susan Paine and Brian Kabbes caused this
- 22) escrow account hosting.
- 23) On 10-24-02 the defendants officer Brian Kabbes communicated to MSCI and SAMUEL LIPARI
- 24) Becky Hainje US Bancorp (Phone Message left on MSCI answering machine 10-24-02);
- 25) **"Becky Hainje:** Hi Sam this is Becky Hainje with US Bank I a... visited again with Brian 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 ) 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 ne a call at 913-261-5725."
- 26) Brian Kabbes called back rather than Ed Higgins:
- 27) **"Bret Landrith MSCI;** "Yes Brian, this is Bret Landrith, returning your call.
- 28) **Brian Kabbes US BANCORP;** "Bret hey a...Lars Anderson wants to be on this call too, he is
- 29) **Bret Landrith MSCI;** " No problem."
- 30) **Lars Anderson US Bancorp;** "Hey Bret, I got Lars Anderson, hey Bret."
- 31) **Bret Landrith MSCI;** "Nice to speak to you"
- 32) **Lars Anderson US BANCORP;** "Susan Pane is here also here in the office a...

- 33) **Brian Kabbes US BANCORP**; “I report to Susan Pane and Lars is our new business
- 34) **Bret Landrith MSCI**; “Yes I didn't realize when I last spoke to Brian that we had already sent
- 35) **Lars Anderson US Bancorp**; “Who approved?”
- 36) **Bret Landrith MSCI**; “Brian Kabbes, he works there in your office, I think he is in front of  
rket a... that became a substantial issue for us and I didn't realize that when I last spoke to Mr. Kabbes.”
- 37) **Lars Anderson US Bancorp**; “Yeah, we were wondering how obviously calling Andy Cesere
- 38) **Bret Landrith MSCI**; “well a...”
- 39) **Lars Anderson US Bancorp**; “as you were not happy with our decision not to move forward
- 40) **Bret Landrith MSCI**; “a... Mr. Kabbes was very helpful, he suggested that we go to some local
- 41) **Lars Anderson US Bancorp**; “Sure”,
- 42) **Brian Kabbes US BANCORP**; “I said that when I said that I said your local bank, I didn't
- 43) **Bret Landrith MSCI**; “Who has really accelerated there a level of customer service just
- 44) **Lars Anderson US Bancorp**; “Got yea...Well then no doubt nobody questions about whether  
id what our duties were.”
- 45) **Bret Landrith MSCI**; “I don't think we need to go into minutia over that right now I think the
- 46) **Lars Anderson US Bancorp**; “We have not divulged your Business Plan to any body, there is
- 47) **Bret Landrith MSCI**; “well a...”
- 48) **Lars Anderson US Bancorp**; “Where did we ever accept the transaction, we never provided
- 49) **Bret Landrith MSCI**; “we had pricing and its oral, and this is Missouri, and this is a business
- 50) **Brian Kabbes US BANCORP**; “I'll tell you what Bret, you can talk with Sam, you can get
- 51) **Bret Landrith MSCI**; “Sam is in the room now.”
- 52) **Sam Lipari MSCI**; “Hi Brian, well Brian, I also had conversations with Becky Hainje, and
- 53) **Bret Landrith MSCI**; “but, but before we go farther down this line, obviously you don't have
- 54) **Brian Kabbes US BANCORP**; “Excuse me”
- 55) **Lars Anderson US Bancorp**; “you do want, on what basis do you consider us to be with you
- 56) **Bret Landrith MSCI**; “well we have our sole banking relationship with you and we have
- 57) **Lars Anderson US Bancorp**; “We don't have a conflict of interest.”
- 58) **Bret Landrith MSCI**; “this comes out of left field that you are accusing us of being Arab
- 59) **Lars Anderson US Bancorp**; “Ok, well I think Brian's conveyed...”
- 60) **Bret Landrith MSCI**; “well those are pretty bad reasons and those end up with a demand
- 61) **Lars Anderson US Bancorp**; “well we are not the right people to talk to about that, we are
- 62) **Bret Landrith MSCI**; “all right well, like I said earlier, I don't see any point in having a
- 63) **Lars Anderson US Bancorp**; “so your, what your what are you stating at this point, that you
- 64) **Bret Landrith MSCI**; “we got ten people that....”

- 65) **Lars Anderson US Bancorp**; “to force us to provide these services, or what, I don't
- 66) **Bret Landrith MSCI**; “your, your characterizing that as a threat, there are no threats here, our
- 67) **Lars Anderson US Bancorp**; “well we certainly never contracted with you or these ten
- 68) **Bret Landrith MSCI**; “well I think we go to a referee on that, first you get the demand letter,
- 69) **Sam Lipari MSCI**; “and, and if I might add something here, this patriot act, that was background check or financial background on these individuals. I mean I am just really concerned why this patriot act
- 70) **Lars Anderson US Bancorp**; “we were not trying to relate the Patriot Act specifically to your
- 71) **Sam Lipari MSCI**; “well according to Ed Higgins, he didn't see how this, where this even
- 72) **Bret Landrith MSCI**; “what other customers has this been an issue with for you and maybe
- 73) **Lars Anderson US Bancorp**; “The patriot act, when it was put in place, caused us to have a
- 74) **Sam Lipari MSCI**; “well according to Ed Higgins, he doesn't think that the Patriot Act has
- 75) **Bret Landrith MSCI**; “but, since you mentioned it the other day, we started looking at who you
- 76) **Lars Anderson US Bancorp**; “yea, you know what...we are not sure...what's your...”
- 77) **Bret Landrith MSCI**; “yea, it is pretty serious and it goes beyond contract damages ok.”
- 78) **Lars Anderson US Bancorp**; “we are not the right people to talk to if you...”
- 79) **Bret Landrith MSCI**; “I know you may not be the right people to talk about trust, that is why
- 80) **Lars Anderson US Bancorp**; “we have already spoken with him and explained the situation,
- 81) **Bret Landrith MSCI**; “no, I think we are going to focus on the Trust Department on US Bank
- 82) **Lars Anderson US Bancorp**; “do you have any other questions today?”
- 83) **Bret Landrith MSCI**; “No, you called us.”
- 84) **Lars Anderson US Bancorp**; “well we were just returning your call to Andy Ceccere”.
- 85) **Bret Landrith MSCI**; “well I think he ought to personally talk to us cause we are still not
- 86) **Lars Anderson US Bancorp**; “you are not looking for a good explanation you are looking to
- 87) **Bret Landrith MSCI**; “no, you guys are the ones that don't even threaten you just kill, but we
- 88) **Sam Lipari MSCI**; “yea, we need, the problem here is that we have these a... , we basically in time we tried to explain the situation and in fact we spoke with Ed, now who is Ed Higgins,
- 89) **Brian Kabbes US BANCORP**; “He is ahead of personal trust in St. Louis.”
- 90) **Sam Lipari MSCI**; “Ok, well when we spoke with Ed, Ed seemed to feel as though this 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
- 91) **Brian Kabbes US BANCORP**; “first off, that was a minor, that was part of our reason that
- 92) **Sam Lipari MSCI**; “well, if, if I quote Becky correctly this morning on her conversation, it going to find out that we are going to constantly come back to this issue where you have a conflict of interest and because
- 93) **Bret Landrith MSCI**; “but they were our ten best you know, former principal of IBM, and
- 94) **Sam Lipari MSCI**; “so all the conversations that we have documented since last week, have

- 95) **Brian Kabbes US BANCORP**; “you are missing a very important part of that, twice I said to
- 96) **Sam Lipari MSCI**; “ok well then let me ask you this Brian, why won’t you just set the escrow
- 97) **Brian Kabbes US BANCORP**; “well”
- 98) **Sam Lipari MSCI**; “there is a conflict of interest Brian, and you know there is, and I don't  
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  
Commission is after them, and not Medicare and Medicaid is after these GPO's. In addition to that, I have a glass pipe line  
ced you people to do, instead, you guys have carried this thing farther, in other words, you want to know more  
: a conflict, then set the escrow up.”
- 99) **Lars Anderson US Bancorp**; “Sam, this is Lars, Brian and I have talked about this since he
- 100) **Brian Kabbes US BANCORP**; “I don't have any idea what he is talking about.”
- 101) **Bret Landrith MSCI**; “I understand you are not admitting it yet, but you have not come up
- 102) **Brian Kabbes US BANCORP**; “we have to know our customers I have to have complete
- 103) **Bret Landrith MSCI**; “I don't think a US Bank knows too much about US Bank, but in terms
- 104) **Lars Anderson US Bancorp**; “we take on a trust business stand alone, and we have our own
- 105) **Bret Landrith MSCI**; “like I said, I don't think US Bank is a coherent entity and I am really
- 106) **Lars Anderson US Bancorp**; “Ok, well we are trying to explain to you today the reason why
- 107) **Sam Lipari MSCI**; “and what is that reason exactly, because we have gone””
- 108) Transcript of tape recorded telephone conference.
- 109) MSCI and SAMUEL LIPARI justifiably relied upon this fraudulent misrepresentation to not enforce  
Andrew Cesere, to try and resolve the problem, unintentionally angering Lars Anderson and Susan
- 110) Paine.
- 111) The defendants US BANCORP NA and US BANK caused this fraudulent misrepresentation to be
- 112) Or, in the alternative the defendants caused this fraudulent misrepresentation to be communicated
- 113) US BANK and US BANCORP intentionally deceived MSCI and SAMUEL LIPARI over the
- 114) US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI
- 115) US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI
- 116) US BANK and US BANCORP had a bad faith motive and deceived MSCI and SAMUEL LIPARI

117) MSCI and SAMUEL LIPARI relied on the Defendants fraudulent misrepresentation to MSCI and

118) MSCI and SAMUEL LIPARI were harmed by the Defendants' actions, resulting in the immediate

**119) TRADE SECRET MISAPPROPRIATION UNDER SECTION 417.450 RSMO OF THE**

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

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

3 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.

4 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

120) Kabbes.

1 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.

2 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.

3 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.

**121) BREACH OF FIDUCIARY DUTY**

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

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

3 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.

4 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.

5 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.

6 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.

7 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.

8 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.

9 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.

10 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.

11 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.

12 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.

13 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.