

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

MEDICAL SUPPLY CHAIN, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:05-cv-2299-KHV-GLR
)	
NOVATION, LLC, et al.,)	
)	
Defendants.)	

**NOVATION, LLC, VHA INC. , UNIVERSITY HEALTHSYSTEM CONSORTIUM
ROBERT BAKER AND CURT NONOMAQUE’S
MOTION FOR SANCTIONS**

TO THE HONORABLE JUDGE OF THIS COURT:

Defendants Novation, LLC (“Novation”), VHA Inc. (“VHA”), University Healthsystem Consortium (“UHC”), Robert Baker (“Baker”) and Curt Nonomaque (“Nonomaque”) (collectively, “Defendants”) respectfully request that the Court impose sanctions on Plaintiff’s counsel pursuant to Federal Rule of Civil Procedure 11 and 28 U.S.C. 1927.

1. Defendants request that they be awarded their expenses and reasonable attorneys’ fees incurred in defending this lawsuit as well as expenses and attorneys’ fees incurred in preparing and presenting this motion and suggestions in support.

2. Plaintiff filed its Complaint in this case on March 7, 2005 and has since filed an opposition papers to the Motions to Dismiss filed by Defendants.

3. This is not the first time these claims have been asserted by Plaintiff. Indeed, many of the same underlying purported “facts,” conduct and many of the same claims have been already dismissed by the Kansas District Court and affirmed by the Tenth Circuit Court of Appeals in *Medical Supply Chain, Inc. v. US Bancorp, et al.*, Case No. 02-2539-CM. Many of

the same facts alleged in this case also were alleged in another suit dismissed as to Medical Supply Chain. *Medical Supply Chain, Inc. v. General Elec. Co., et al.*, Case No. 03-2324-CM. The 10th Circuit recently affirmed the dismissal of that complaint and held that Rule 11 sanctions against Plaintiff were appropriate because the Complaint alleged frivolous claims against an individual officer of GE without any allegations that the officer had any connection to Plaintiff's injury. *See Medical Supply Chain v. General Elec. Co., et al.*, Case No. 04-3075 (10th Cir. July 26, 2005).

4. This lawsuit suffers from the same fundamental legal defects as the prior suits, and adds additional frivolous and unsupported claims in this lawsuit.

5. By filing this frivolous lawsuit, plaintiff and plaintiff's counsel have violated Fed. R. Civ. P. 11 and 28 U.S.C. § 1927 and are liable to defendants for their expenses and reasonable attorneys' fees incurred in defending this lawsuit and preparing and presenting this motion.

6. Pursuant to Fed. R. Civ. P. 11(1)(A), Defendants served this motion on plaintiff's counsel at least twenty-one (21) days before this Motion was filed with the Court. Counsel has refused to withdraw the objectionable pleading.

WHEREFORE, for all of these reasons and for the reasons stated in the accompanying supporting suggestions, Defendants pray this Court enter its Order sanctioning plaintiff and plaintiff's counsel under Rule 11 and/or § 1927, including striking the Complaint in this case and awarding Defendants their expenses and reasonable attorneys' fees incurred in defending this lawsuit, preparing and presenting this motion and any other further relief to which they are entitled.

HUSCH & EPPENBERGER, LLC

By: /s/ John K. Power

John K. Power, # 70448
1200 Main Street, Suite 1700
Kansas City, MO 64105
Telephone: (816) 421-4800
Facsimile: (816) 421-0596

ATTORNEYS FOR DEFENDANTS NOVATION,
LLC, VOLUNTEER HOSPITAL ASSOCIATION,
CURT NONOMAQUE, UNIVERSITY
HEALTHSYSTEM CONSORTIUM, ROBERT J.
BAKER

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2005, I electronically filed 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::

Andrew M. DeMarea
Jonathan H. Gregor
Kathleen Ann Hardee
Bret D. Landrith
Mark A. Olthoff

ademarea@stklaw.com
jgregor@stklaw.com
khardee@stklaw.com
landrithlaw@cox.net
molthoff@stklaw.com

/s/ John K. Power
John K. Power