



A Professional Corporation

**Mark A. Olthoff**

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January 14, 2008

Mr. Samuel K. Lipari  
297 NE Bayview  
Lee's Summit, **MO** 64064

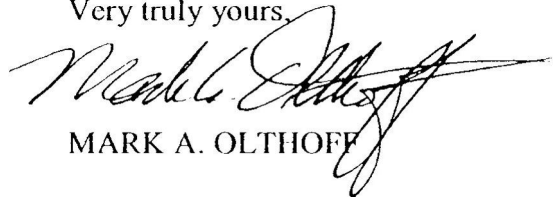
RE: *Lipari v. U.S. Bancorp, et al.*

Dear Mr. Lipari:

Enclosed please find documents produced to you pursuant to Fed. R. Civ. P. 26(a), which provides for disclosures a party "may use to support its claims or defenses."

If you have any questions, please let me know.

Very truly yours,



MARK A. OLTHOFF

MAO:mao

Ene.

cc: Jay E. Heidrick, Esq.

EXHIBIT E



A Professional Corporation

Jay K Heidrick
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March 17, 2008

Mr. Samuel Lipari
297 NE Bayview
Lee's Summit, MO 04004

Re: Lipari vs. U.S. Ban corp, et al.

Dear Sam:

I enclose a Defendants Responses and Objections to Plaintiff's First Request for Production of Documents. I also enclose a copy of Defendant's Motion for Protective Order filed with the court.

Please let me know if you have any questions.

Very truly yours,

Jay E Heidrick
JAY E HEIDRICK

JEH:jah

Enclosure

cc: Mark J. Olthoff, Esq.

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF KANSAS

SAMUEL K. LIPARI,

Plaintiff,

vs.

Case No. 07-CV -02140-CM-D.JW

U.S. BANCORP, and

U.S. BANK NATIONAL ASSOCIATION,

Defendants.

DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFF'S FIRST REQUEST  
EQR\_ PRODUCTION DE. DOCUMENTS

Defendants U.S. Bancorp and U.S. Bank National Association by and through their attorneys of record, Shughart Thomson & Kilroy, P.e., serve upon plaintiff these objections and responses to plaintiff's First Request for Production of Documents. Defendants object to plaintiff's definitions and instructions in that the defendants are not bound by them. Rather, defendants will provide their responses in accordance with the Federal Rules of Civil Procedure and the orders of the Court. Defendants further respond as follows:

I. All records, forms, statements, applications, credit reports, correspondence, call records, documents, contracts, computer notifications displaying on bank teller and supervisor computer terminals related to all accounts and transactions of the plaintiff, Samuel K. Lipari, his former attorney, Bret D. Landrith, and the plaintiff's now-dissolved Missouri corporation, Medical Supply Chain, Inc.

RESPONSE: Defendants object to this request for the following reasons:

- a. Releva119' The request seeks all information related to any account or "transaction" of Mr. Lipari and his former attorney, Bret D. Landrith. The only account or "transaction" between Mr. Lipari and the defendants is a checking account opened by Mr. Lipari. This checking account has no relevance to the allegations in plaintiff's complaint in that plaintiff has made no contention that

funds were mismanaged from that account or that the defendants failed to provide the services related to that checking account. Additionally, any information sought relating to Mr. Landrith is wholly irrelevant in that Mr. Landrith is not and has never been a party to any transaction at issue in this suit. Therefore, this request seeks information that is wholly irrelevant to the claims and defenses of the parties and is not likely to lead to the discovery of admissible evidence.

- h. Overly broad Plaintiff's request is facially overly broad. The request literally requests everything in defendants' possession "related to" Mr. Lipari, Medical Supply and Mr. Landrith since January 1, 1999 through February 12, 2008 whether or not related to this dispute. Such a facially broad request requires the defendants to guess as to what documents may be responsive and is improper in that it fails to describe the documents sought with reasonable particularity as required by Fed. R. Civ. P. 34. It would create an undue burden on the defendants to respond to this request, especially in light of the fact that the documents sought have no relevance to this action.
- c. Attorney-client privilege The request seeks all documents possessed by defendants "related to" Mr. Lipari, Mr. Landrith and Medical Supply. Such a request seeks documents that are communications between defendants and their counsel for the purpose of legal representation and are thus protected by the attorney client privilege. Likewise the request seeks every attorney note, memorandum and **file** material that contains the mental impressions and thoughts of defendants' attorneys. This information is protected by the work product doctrine.

Notwithstanding and without waiving these objections, defendants have conducted good faith search of their records and produce the bank statements Bates numbered DEF 0041-00157 in addition to those documents produced in defendants' initial Rule 26 disclosures.

2. **All** communications, internal or external, between U.S. Bank N.A., U.S. Bancorp, Inc., U.S. Bancorp Piper Jaffray, Inc., Dorsey & Whitney, LLP, and KPMG, LLP, regarding the plaintiffs Samuel K. Lipari or Medical Supply Chain, Inc.

RESPONSE Defendants object to this request for the following reasons:

- a. Relevancy The transactions complained of in plaintiff's petition concerns the defendants alleged failure to provide escrow accounts to plaintiff's former company in October 2002. Any communications relating to U.S. Bancorp Piper Jaffray, Dorsey & Whitney, LLP, and KPMG, LLP are wholly irrelevant and have absolutely no relation to any claim or defense at issue in this lawsuit. The request also seeks documents from January 1, 1999 through February 12, 2008. Any

documents or information not related to the October 2002 time frame are irrelevant.

- b. Overly broad and unduly burdensome. The request is facially overly broad in that it seeks "all communications ... regarding the plaintiffs Samuel K. Lipari or Medical Supply Chain, Inc." from January 1, 1999 through February 12, 2008. Additionally, any request for information beyond or before the October 2002 timeframe is overly broad in its scope. It would create an undue burden on the defendants to respond to this request, especially in light of the fact that the documents sought have no relevance to this action.
- c. Attorney client privilege and work product doctrine. This request seeks all communications between defendants and their attorneys concerning the plaintiff or Medical Supply Chain. This would include letters, emails and other communications between the defendants and their attorneys for the purpose of legal representation. This information is protected by the attorney client privilege. This request also seeks every email and memorandum circulated among defendants' attorneys concerning this suit. Such information contains the thoughts and mental impressions of defendants' attorneys and are therefore protected by the work product doctrine.

Notwithstanding and without waiving these objections, defendants incorporate the documents produced herein and the documents produced in their initial Rule 26(a)(1) disclosures.

3. The documents related to all internal or defendant-initiated investigations of the events related to the plaintiff and Medical Supply Chain, Inc., including the spoliation report.

**RESPONSE:** Defendants object to this request for the following reasons:

- a. Overly broad and irrelevant. The request is facially overly broad in that it seeks "The documents related to ... [investigations] of the events related to the plaintiff." Such a request requires defendants to guess as to what documents may be responsive and is therefore facially overly broad. Additionally, the request seeks documents from January 1, 1999 to February 12, 2008. Such dates are overly broad and not relevant to the claims and defenses at issue in this suit.
- b. Attorney client privilege and work product doctrine. The request seeks all documents related to defendants' investigation of plaintiff and Medical Supply. This would include all correspondence between defendants and their attorneys for the purpose of representation. This information is protected by the attorney client privilege. The request also seeks documents created by defendants' attorneys during their investigation of this suit which contain the thoughts and mental

impressions of defendants' attorneys. Such information is protected by the attorney work product doctrine.

- c. y\_agllenc\_s~\_;! !It!\_C[yptic nature of the reQl!Cst. The terms "events related to the plaintiff and Medical Supply Chain" are undefined and vague in that defendants are not certain what "events" the plaintiff is referring to with this request. Further, the tCI111"spoliation report" is vague and undefined. The request fails to request documents with reasonable particularity as required by Fed. R. Civ. P.34.

4. All communications of counsel for U.S. Bank N.A., U.S. Bancorp, Inc., and U.S. Bankcorp/Piper Jaffray to and from the plaintiff and his or his (*sic*) dissolved corporation's representatives.

RESPONSE- Defendants object to this request in that the plaintiff already possesses a copy of all communications sent to him from defendants' attorneys. Likewise, plaintiff would already possess all communications sent by him to defendants' attorneys. The plaintiff should therefore already be in possession of all responsive information. Additionally, this request does not seek to discover any information that is relevant to any claim or defense at issue. The request simply seeks a copy of information that has already been provided to or created by the plaintiff. Given these facts, it would be unduly burdensome to require defendants to copy and reproduce documents which are already possessed by the defendants.

Notwithstanding and without waivmg these objections, defendants incorporate by reference the documents produced in their initial Rule 26 disclosures as well as those documents produced herein.

5. All documents related to the public relations events, publications, and communications that resulted in news releases trying to portray U.S. Bank and/or U.S. Bancorp in a favorable light in the greater Kansas City area, Denver, and Topeka during the defendants' litigation with the plaintiff, Medical Supply Chain, Inc., and the Topeka, Kansas School District.

RESPONSE: Defendants object to this request for the following reasons:

- a. Relevancy. This request has absolutely no relevance to the present issues of this lawsuit. Any document that relates to any media coverage "trying to portray [defendants] in a favorable light" has no relevancy to any claim or defense at issue in this suit.
  - b. Overly broad and unduly burdensome. The request is facially overly broad in that it seeks "all documents" related to a broad and general category. Such a broad request requires the defendants to guess which documents may be responsive. The request seeks all "publications" and "communications" (in addition to all "documents"). This request would literally require the defendants to produce every advertisement, newspaper article, commercial, newspaper insert or other "document," "publication," and "communication" between January 1, 1999 and February 12, 2008. Such a request not only seeks irrelevant information but is overly broad because it fails to specify the documents sought with reasonable particularity as required by Fed. R. Civ. P. 34. Given the lack of relevancy to any issue at suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.
  - c. Vagueness under Rule 12(b)(7) request. Defendants are not certain which "public relations events, publications and communications" that plaintiff refers to as attempting to portraying defendants in a "favorable light." Such vague and cryptic terms prevent defendants from formulating a response. Finally, defendants have never engaged in litigation with the Topeka, Kansas School District.
6. All U.S. Bancorp and U.S. Bank intranet and web pages announcing U.S. Bancorp Piper Jaffray's involvement in the healthcare startup venture capital funds.

**RESPONSE:** Defendants object to this request for the following reasons:

- a. Relevancy. This litigation concerns claims for breach of contract and intentional torts stemming from U.S. Bancorp's alleged refusal to provide escrow services to plaintiff's former company. The allegations in plaintiff's complaint have absolutely zero relation to "web pages announcing U.S. Bancorp Piper Jaffray's involvement in healthcare startup venture capital funds."
- b. Overly broad and unduly burdensome. The request seeks information from January 1, 1999 through February 12, 2008. The alleged actions at issue in this suit occurred in October 2002. Therefore, the request is overly broad in that it seeks information from an inappropriate timeframe. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to search every internal and external webpage for the past six years to determine if it contained information related to Piper Jaffray's "involvement in healthcare start up venture capital funds."

c. Defendants are not certain what exactly is being requested by this request. The request is vague and ambiguous and fails to describe the documents sought with reasonable particularity.

7. All notes, research materials related to U.S. Bancorp Piper Jaffray's senior analyst, Daren Marhulas studies in 1999, finding "Internet Poised to Transform United States Healthcare Industry" and in 2000 finding "Internet Companies Will Shake Up Healthcare Industry."

RESPONSE: Defendants object to this request in that the information sought by this request is completely irrelevant to any claim or defense at issue in this lawsuit. Not only is the subject matter of the request not relevant, it seeks information from 1999 and 2000, before the October 2002 events at issue. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to search **fix** information responsive to this request. Furthermore, U.S. Bancorp Piper Jaffray is not a party to this suit and discovery may only be had from parties under Rule 34.

8. All communications, studies, reports, or other documents related to the underwriting of Neofoma, Inc., all sales of shares owned or controlled by U.S. Bancorp or U.S. Bank and all communications, studies, reports, or other documents related to the class action lawsuits of Neofoma, Inc. shareholders and the National Association of Securities Dealers, the Securities and Exchange Commission, and the New York Attorney General's investigation of U.S. Bancorp subsidiary U.S. Bancorp Piper Jaffray.

RESPONSE: Defendants object to this request for the following reasons:

a. Relevance: This suit is for breach of contract and intentional tort related to defendants' alleged failure to provide escrow services to plaintiff's former company in October 2002. Neither Neofoma, Inc. nor Piper Jaffray is a party to this litigation and neither had any involvement with the October 2002 series of events that led to this suit. Any information related to litigation involving Neofoma, Inc. and Piper Jaffray, Inc. as well as any shares owned or controlled

by U.S. Bancorp of those two entities is wholly irrelevant and not related to any claim or defense at issue in this suit.

- b. QvC!:\_I\_y\_Q\_r\_O~ganduly burdensome. The request is facially overly broad in that it seeks "all documents related to" a wide category of events. The request is so broad that the defendants are required to guess as to which documents may be responsive. The request fails to describe the documents sought with reasonable particularity as required by Fed. R. Civ. P. 34. It would be unduly burdensome to require the defendants to produce information responsive to this request because there is no relevance of the request to any claim or defense at issue in this suit.
- c. 8ttOrDey client, privilege and, ~ product doctrine The request seeks "all documents" concerning several legal proceedings. Although the undersigned counsel does not represent the defendants any proceeding listed in the request, by seeking "all documents related to" the proceedings, the request seeks production of documents protected by the attorney client privilege and work product doctrine.
- d. Y\_aglle ll-ssand I:Iyptil: If:QlJt!st The request is vague in that defendants are uncertain what is requested by "all shares owned or controlled by U.S. Bancorp or U.S. Bank." The request therefore fails to describe the documents sought with reasonable particularity a required by Fed. R. Civ. P.34.

9. All communications with the Royal Bank of Canada and the Edward Jones Company concerning the potential sale of U.S. Bancorp Piper JafTray.

RESPONSE- Defendants object to this request in that it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Defendants further object because the requested information is confidential and not subject to public disclosure. The potential sale of U.S. Bancorp Piper JafTray has absolutely no relation to any claim or defense at issue in plaintiff's complaint. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.

10. All communications between U.S. Bank and U.S. Bancorp with the General Electric Company, its employees, agents, representatives, or counsel related to the plaintiff and/or Medical Supply Chain, Inc.

RESPONSE- Defendants object to this request in that it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. The issues present in this lawsuit stem from defendants' alleged failure to provide escrow services to plaintiff in October 2002. Any communications between defendants and the General Electric Company and its employees, agents, or representatives concerning the plaintiff or Medical Supply Chain, Inc. are wholly irrelevant to the claims or defenses that exist in this lawsuit. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.

II. All communications and other documents related to the backdating of U.S. Bancorp stock options by U.S. Bancorp CFO, Andrew Cocre, and former CEO, Jerry Grundhofer, from 2005 to 2008

RESPONSE- Defendants object to this request for the following reasons:

- a. Relevancy. Plaintiff's lawsuit stems from defendants' alleged failure to provide escrow services to plaintiff in October 2002. Any information related to backdating stock options for Mr. Cocre or Mr. Grundhofer from 2005 to 2008 is wholly irrelevant and is not likely to lead to the discovery of admissible evidence that relates to any claim or defense in this lawsuit.
- h. Overly broad and unduly burdensome. The request is facially overly broad in that it seeks "all communications or other documents related to" the back dating of stock. Such a request requires the defendants to guess as to what documents may be responsive. **It** does not describe the documents sought with reasonable particularity as required by Fed. R. Civ. P. 34. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.
12. All communications to and from municipal, state, and federal government agencies related to Samuel K. Lipari, his former attorneys, Bret D. Landrith, Dennis Hawver, and plaintiff's now dissolved Missouri corporation, Medical Supply Chain, Inc. including all communications to FINCEN, The Securities and Exchange Commission, and the Office of the

Comptroller of the Currency concerning the plaintiff, his claims, his company, witnesses, or former counsel.

RESPONSE: Defendants object to this request for the following reasons:

- a. Relevancy- This lawsuit concerns defendants' alleged failure to provide escrow services to plaintiff in October 2002. Communications with government entities concerning Mr. Lipari or his former attorneys or corporation are wholly irrelevant to any claim or defense at issue in this suit.
- b. Overly Broad and unduly burdensome. The request is facially overly broad because it seeks all communications "related to" plaintiff, his former company as well as his former attorneys. The request fails to describe with reasonable particularity the documents sought as required by Fed. R. Civ. P.34. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.

13. US Bank and US Bancorp's Insurance, Indemnity, Surety, and Subrogation

Agreements including:

- a. The guarantees made to US Bancorp and US Bank NA in February 2003 by The Piper Jaffray Company to compensate the defendants for liability from the plaintiff and from US Bancorp Piper Jaffray's conduct in the capitalization of healthcare technology companies and any modification made after February 2003.
- b. **All** insurance claims, errors and omissions set offs, write downs or transfers of stock applied for or received from underwriting sureties or investment banking houses over the 2003 forced divestiture of US Bancorp Piper Jaffray from US Bancorp due to the breach of agreements between US Bank and the plaintiff.
- c. **All** guarantees and notes of indebtedness created by US Bancorp Piper Jaffray/The Piper Jaffray Company or its principals to compensate US Bancorp for the misconduct against the plaintiff that caused the breach of agreements between US Bank and the plaintiff, including the subordinated debt interest in the new Piper Jaffray Company of \$215 million.
- d. The guarantees of Shughart Thompson (*sic*) & Kilroy and or US Bancorp made to Bruce Blefeld and Kathleen Bone Spangler to insure Novation LLC against liability from the misconduct against the plaintiff that caused the breach of agreements between US Bank and the plaintiff to provide escrow accounts capitalizing Medical Supply Chain, Inc.'s entry into the hospital supply market controlled by Novation LLC.

- e. The negligence insurance policies of Shughart Thompson (*sic*) & Kilroy, P.c. that would reimburse IIS Bancorp, Inc. and Jerry A. Grundbofer for any judgments obtained by the plaintiff or by US Bancorp over negligence over the management of attorneys in defending against the plaintiff's claims.

RESPONSE: Defendants object to this request and its subsections in that it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. The request seeks all insurance, indemnity, surety and subrogation agreements, whether or not such policies would provide coverage for the claim at issue. Any documents that are not related to a potential coverage for this claim are irrelevant and not likely to lead to the discovery of admissible evidence, in that they do not support any claim or defense at issue in this lawsuit. The request also seeks documents outside of October 2002, the relevant time frame contained in plaintiff's Petition. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.

Defendants further object to Subsections (d) & (e) because the requests seek production of documents from a non-party in this action, Shughart Thomson & Kilroy, which is impermissible under Federal Rule of Civil Procedure 34.

14. All phone calls, voice messages, logs, emails, and letters of ex parte communications by the defendants and their agents to employees of the Kansas State Judicial branch and to employees of the U.S. District Court for the Western District of Missouri, U.S. Court of Appeals for the Eighth Circuit, the Kansas District Court and the Tenth Circuit Court of appeals and the contents of any communication oral or otherwise to any of the above by attorneys on behalf of the defendants concerning the plaintiff, his dissolved company, witnesses or former counsel, including communications by:

- a. Susan C. Ilascall, formerly of Shughart Thompson (*sic*) and Kilroy, P.c. with law clerks and other employees of the U.S. Court of Appeals for the Tenth Circuit from 12/10/2003 to 10/13/2005;

- h. Steven D. Ruse, KS lic. 11114(d, of Shughart Thomson & Kilroy, P.e. to lion. Judge Carlos Murguia from October to December of 2002;
- c. Andrew M. DeMarea, KS lic. III 0 141 of Shughart Thompson (sic) & Kilroy to Hon. Magistrate James P. O'l lara from November 2004 to January 2005; to John J. Ambrosio, KS. Lic 1107489 of Ambrosio & Ambrosio, Chtd;
- d. Mark A. Olthoff, KS lic. 1170339 to US District Court Magistrate James P. O'Hara from October 2004 to March, 2005; employees and agents of the Kansas Disciplinary Administrator's office and the Johnson County Kansas Discipline Committee including Rex A. Sharp KBAtll2350 of Gunderson, Sharp & Walke, L.L.P in October, November and December 2007.

RESPONSE- Defendants object to this request and its subsections for the following

reasons:

- a. Re!~Y'Inc y. Communications sent to the court regarding the plaintiff, his former attorney, "witnesses," or plaintiff's dissolved corporation have no relation to the claims or defenses at issue in plaintiff's petition. This action is for breach of contract and **fix** intentional tort for defendants' alleged failure to provide escrow services in October 2002. This request seeks documents concerning defendants' attorneys who were not involved in the series of transactions that lead to this suit. The request also seeks documents and conunications that occurred after October 2002 which have no bearing on this lawsuit. Therefore, the request seeks irrelevant information and is not likely to lead to the discovery of admissible evidence.
- b. Overbroad and unduly burdensome. The request seeks every document that hw been filed in this action as well as the plaintiff's prior two lawsuits. Wluu. irrelevant, the request is also overly broad in that it would require defendants to copy every pleading from this suit and the prior two suits as well as all documents from the appeals of *Medical Supply I & II*. Defendants would also be required to copy every email or other communication concerning scheduling issues, hearing dates, and procedural matters. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request. The request is therefore overly broad and unduly burdensome.
- c. Vaguene~~. The request seeks all "logs" sent to the "Kansas State Judicial branch." The request also seeks production of "oral communications." Such a request is vague, undefined, and fails to describe the documents sought with reasonable particularity as required by Fed. R. Civ. P. 34.

Respectfully submitted, j} /:



MARK A. OLTHOFF

KS # 70339

SHUGHART THOMSON & KILROY, P.C.

20 W 12th Street, Suite 1700

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ANDREW M. DeMAREA

KS #16141

JAY E. HEIDRICK

KS #20770

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32 Corporate Woods, Suite 1100

9225 Indian Creek Parkway

Overland Park, Kansas 66210

Telephone: (913) 451-3355

Facsimile: (913) 451-3361

ATTORNEYS FOR DEFENDANTS

U.S. BANCORP and

U.S. BANK NATIONAL ASSOCIATION

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing document was served via US Mail postage prepaid, upon the plaintiff this 17th day of March, 2008, to:

Mr. Samuel K. Lipari  
297 NE Bayview  
Lee's Summit, MO 64064

  
Attorney for Defendants

The Law Firm Of



A Professional Corporation

**Mark A. Olthoff**  
molthoff@stklaw.com  
Direct Dial (816) 395-0620  
Direct Fax (816) 817-0247  
Fax (816) 374-0509

January 14, 2008

Mr. Samuel K. Lipari  
297 NE Bayview  
Lee's Summit, MO 64064

**RE: *Lipari v. U.S. Bancorp, et al.***

Dear Mr. Lipari:

Enclosed please find documents produced to you pursuant to Fed. R. Civ. P. 26(a), which provides for disclosures a party "may use to support its claims or defenses."

If you have any questions, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark A. Olthoff", written over the typed name below. The signature is fluid and cursive.

MARK A. OLTHOFF

MAO:mao

Enc.

cc: Jay E. Heidrick, Esq.

EXHIBIT E

Twelve Wyandotte Plaza, 120 W. 12th Street, Kansas City, MO 64105 • (816) 421-3355 • [www.stklaw.com](http://www.stklaw.com)

KANSAS CITY, MO • OVERLAND PARK, KS • SPRINGFIELD, MO • DENVER, CO • PHOENIX, AZ • ST. JOSEPH, MO

2204239.01

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March 17, 2008

Mr. Samuel Lipari  
297 NE Bayview  
Lee's Summit, MO 64064

*Re: Lipari vs. U.S. Bancorp, et al.*

Dear Sam:

I enclose a Defendant's Responses and Objections to Plaintiff's First Request for Production of Documents. I also enclose a copy of Defendant's Motion for Protective Order filed with the court.

Please let me know if you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Jay E. Heidrick".

JAY E. HEIDRICK

JEH:jah

Enclosure

cc: Mark A. Olthoff, Esq.

Twelve Wyandotte Plaza, 120 W. 12th Street, Kansas City, MO 64105 • (816) 421-3355 • [www.stklaw.com](http://www.stklaw.com)

KANSAS CITY, MO • OVERLAND PARK, KS • SPRINGFIELD, MO • DENVER, CO • PHOENIX, AZ • ST. JOSEPH, MO

2247366.01

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

SAMUEL K. LIPARI,	)	
	)	
	)	Plaintiff,
	)	
vs.	)	Case No. 07-CV-02146-CM-DJW
	)	
U.S. BANCORP, and	)	
	)	
U.S. BANK NATIONAL ASSOCIATION,	)	
	)	
	)	Defendants.

**DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFF'S FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS**

Defendants U.S. Bancorp and U.S. Bank National Association by and through their attorneys of record, Shughart Thomson & Kilroy, P.C., serve upon plaintiff these objections and responses to plaintiff's First Request for Production of Documents. Defendants object to plaintiff's definitions and instructions in that the defendants are not bound by them. Rather, defendants will provide their responses in accordance with the Federal Rules of Civil Procedure and the orders of the Court. Defendants further respond as follows:

1. All records, forms, statements, applications, credit reports, correspondence, call records, documents, contracts, computer notifications displaying on bank teller and supervisor computer terminals related to all accounts and transactions of the plaintiff, Samuel K. Lipari, his former attorney, Bret D. Landrith, and the plaintiff's now-dissolved Missouri corporation, Medical Supply Chain, Inc.

**RESPONSE:** Defendants object to this request for the following reasons:

- a. Relevancy. The request seeks all information related to any account or "transaction" of Mr. Lipari and his former attorney, Bret D. Landrith. The only account or "transaction" between Mr. Lipari and the defendants is a checking account opened by Mr. Lipari. This checking account has no relevance to the allegations in plaintiff's complaint in that plaintiff has made no contention that

funds were mismanaged from that account or that the defendants failed to provide the services related to that checking account. Additionally, any information sought relating to Mr. Landrith is wholly irrelevant in that Mr. Landrith is not and has never been a party to any transaction at issue in this suit. Therefore, this request seeks information that is wholly irrelevant to the claims and defenses of the parties and is not likely to lead to the discovery of admissible evidence.

- b. Overly broad and unduly burdensome. Plaintiff's request is facially overly broad. The request literally requests everything in defendants' possession "related to" Mr. Lipari, Medical Supply and Mr. Landrith since January 1, 1999 through February 12, 2008 whether or not related to this dispute. Such a facially broad request requires the defendants to guess as to what documents may be responsive and is improper in that it fails to describe the documents sought with reasonable particularity as required by Fed. R. Civ. P. 34. It would create an undue burden on the defendants to respond to this request, especially in light of the fact that the documents sought have no relevance to this action.
- c. Attorney client privilege and work product doctrine. The request seeks all documents possessed by defendants "related to" Mr. Lipari, Mr. Landrith and Medical Supply. Such a request seeks documents that are communications between defendants and their counsel for the purpose of legal representation and are thus protected by the attorney client privilege. Likewise the request seeks every attorney note, memorandum and file material that contains the mental impressions and thoughts of defendants' attorneys. This information is protected by the work product doctrine.

Notwithstanding and without waiving these objections, defendants have conducted good faith search of their records and produce the bank statements Bates numbered DEF 0041-00157 in addition to those documents produced in defendants' initial Rule 26 disclosures.

2. All communications, internal or external, between U.S. Bank N.A., U.S. Bancorp, Inc., U.S. Bancorp Piper Jaffray, Inc., Dorsey & Whitney, LLP, and KPMG LLP, regarding the plaintiffs Samuel K. Lipari or Medical Supply Chain, Inc.

**RESPONSE:** Defendants object to this request for the following reasons:

- a. Relevancy. The transactions complained of in plaintiff's petition concerns the defendants alleged failure to provide escrow accounts to plaintiff's former company in October 2002. Any communications relating to U.S. Bancorp Piper Jaffray, Dorsey & Whitney, LLP, and KPMG LLP are wholly irrelevant and have absolutely no relation to any claim or defense at issue in this lawsuit. The request also seeks documents from January 1, 1999 through February 12, 2008. Any

documents or information not related to the October 2002 time frame are irrelevant.

- b. Overly broad and unduly burdensome. The request is facially overly broad in that it seeks “all communications...regarding the plaintiffs Samuel K. Lipari or Medical Supply Chain, Inc.” from January 1, 1999 through February 12, 2008. Additionally, any request for information beyond or before the October 2002 timeframe is overly broad in its scope. It would create an undue burden on the defendants to respond to this request, especially in light of the fact that the documents sought have no relevance to this action.
- c. Attorney client privilege and work product doctrine. This request seeks all communications between defendants and their attorneys concerning the plaintiff or Medical Supply Chain. This would include letters, emails and other communications between the defendants and their attorneys for the purpose of legal representation. This information is protected by the attorney client privilege. This request also seeks every email and memorandum circulated among defendants’ attorneys concerning this suit. Such information contains the thoughts and mental impressions of defendants’ attorneys and are therefore protected by the work product doctrine.

Notwithstanding and without waiving these objections, defendants incorporate the documents produced herein and the documents produced in their initial Rule 26(a)(1) disclosures.

3. The documents related to all internal or defendant-initiated investigations of the events related to the plaintiff and Medical Supply Chain, Inc., including the spoliation report.

**RESPONSE:** Defendants object to this request for the following reasons:

- a. Overly broad and irrelevant. The request is facially overly broad in that it seeks “The documents related to...[investigations] of the events related to the plaintiff.” Such a request requires defendants to guess as to what documents may be responsive and is therefore facially overly broad. Additionally, the requests seeks documents from January 1, 1999 to February 12, 2008. Such a dates are overly broad and not relevant to the claims and defenses at issue in this suit.
- b. Attorney client privilege and work product doctrine. The request seeks all documents related to defendants’ investigation of plaintiff and Medical Supply. This would include all correspondence between defendants and their attorneys for the purpose of representation. This information is protected by the attorney client privilege. The request also seeks documents created by defendants’ attorneys during their investigation of this suit which contain the thoughts and mental

impressions of defendants' attorneys. Such information is protected by the attorney work product doctrine.

- c. Vagueness and cryptic nature of the request. The terms "events related to the plaintiff and Medical Supply Chain" are undefined and vague in that defendants are not certain what "events" the plaintiff is referring to with this request. Further, the term "spoliation report" is vague and undefined. The request fails to request documents with reasonable particularity as required by Fed. R. Civ. P. 34.

4. All communications of counsel for U.S. Bank N.A., U.S. Bancorp, Inc., and U.S. Bankcorp/Piper Jaffray to and from the plaintiff and his or his (*sic*) dissolved corporation's representatives.

**RESPONSE:** Defendants object to this request in that the plaintiff already possesses a copy of all communications sent to him from defendants' attorneys. Likewise, plaintiff would already possess all communications sent by him to defendants' attorneys. The plaintiff should therefore already be in possession of all responsive information. Additionally, this request does not seek to discover any information that is relevant to any claim or defense at issue. The request simply seeks a copy of information that has already been provided to or created by the plaintiff. Given these facts, it would be unduly burdensome to require defendants to copy and re-produce documents which are already possessed by the defendants.

Notwithstanding and without waiving these objections, defendants incorporate by reference the documents produced in their initial Rule 26 disclosures as well as those documents produced herein.

5. All documents related to the public relations events, publications, and communications that resulted in news releases trying to portray U.S. Bank and/or U.S. Bancorp in a favorable light in the greater Kansas City area, Denver, and Topeka during the defendants' litigation with the plaintiff, Medical Supply Chain, Inc., and the Topeka, Kansas School District.

**RESPONSE:** Defendants object to this request for the following reasons:

- a. Relevancy. This request has absolutely no relevance to the present issues of this lawsuit. Any document that relates to any media coverage “trying to portray [defendants] in a favorable light” has no relevancy to any claim or defense at issue in this suit.
  - b. Overly broad and unduly burdensome. The request is facially overly broad in that it seeks “all documents” related to a broad and general category. Such a broad request requires the defendants to guess which documents may be responsive. The request seeks all “publications” and “communications” (in addition to all “documents”). This request would literally require the defendants to produce every advertisement, newspaper article, commercial, newspaper insert or other “document,” “publication,” and “communication” between January 1, 1999 and February 12, 2008. Such a request not only seeks irrelevant information but is overly broad because it fails to specify the documents sought with reasonable particularity as required by Fed. R. Civ. P. 34. Given the lack of relevancy to any issue at suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.
  - c. Vagueness and cryptic request. Defendants are not certain which “public relations events, publications and communications” that plaintiff refers to as attempting to portraying defendants in a “favorable light.” Such vague and cryptic terms prevent defendants from formulating a response. Finally, defendants have never engaged in litigation with the Topeka, Kansas School District.
6. All U.S. Bancorp and U.S. Bank intranet and web pages announcing U.S.

Bancorp Piper Jaffray’s involvement in the healthcare startup venture capital funds.

**RESPONSE:** Defendants object to this request for the following reasons:

- a. Relevancy. This litigation concerns claims for breach of contract and intentional torts stemming from U.S. Bancorp’s alleged refusal to provide escrow services to plaintiff’s former company. The allegations in plaintiff’s complaint have absolutely zero relation to “web pages announcing U.S. Bancorp Piper Jaffray’s involvement in healthcare startup venture capital funds.”
- b. Overly broad and unduly burdensome. The request seeks information from January 1, 1999 through February 12, 2008. The alleged actions at issue in this suit occurred in October 2002. Therefore, the request is overly broad in that it seeks information from an inappropriate timeframe. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to search every internal and external webpage for the past six years to determine if it contained information related to Piper Jaffray’s “involvement in healthcare start up venture capital funds.”

- c. Vagueness and cryptic request. Defendants are not certain what exactly is being requested by this request. The request is vague and ambiguous and fails to describe the documents sought with reasonable particularity.

7. All notes, research materials related to U.S. Bancorp Piper Jaffray's senior analyst, Daren Marhula's studies in 1999, finding "Internet Poised to Transform United States Healthcare Industry" and in 2000 finding "Internet Companies Will Shake Up Healthcare Industry."

**RESPONSE:** Defendants object to this request in that the information sought by this request is completely irrelevant to any claim or defense at issue in this lawsuit. Not only is the subject matter of the request not relevant, it seeks information from 1999 and 2000, before the October 2002 events at issue. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to search for information responsive to this request. Furthermore, U.S. Bancorp Piper Jaffray is not a party to this suit and discovery may only be had from parties under Rule 34.

8. All communications, studies, reports, or other documents related to the underwriting of Neoforma, Inc., all sales of shares owned or controlled by U.S. Bancorp or U.S. Bank and all communications, studies, reports, or other documents related to the class action lawsuits of Neoforma, Inc. shareholders and the National Association of Securities Dealers, the Securities and Exchange Commission, and the New York Attorney General's investigation of U.S. Bancorp subsidiary U.S. Bancorp Piper Jaffray.

**RESPONSE:** Defendants object to this request for the following reasons:

- a. Relevancy. This suit is for breach of contract and intentional tort related to defendants' alleged failure to provide escrow services to plaintiff's former company in October 2002. Neither Neoforma, Inc. nor Piper Jaffray is a party to this litigation and neither had any involvement with the October 2002 series of events that led to this suit. Any information related to litigation involving Neoforma, Inc. and Piper Jaffray, Inc. as well as any shares owned or controlled

by U.S. Bancorp of those two entities is wholly irrelevant and not related to any claim or defense at issue in this suit.

- b. Overly broad and unduly burdensome. The request is facially overly broad in that it seeks “all documents related to” a wide category of events. The request is so broad that the defendants are required to guess as to which documents may be responsive. The request fails to describe the documents sought with reasonable particularity as required by Fed. R. Civ. P. 34. It would be unduly burdensome to require the defendants to produce information responsive to this request because there is no relevance of the request to any claim or defense at issue in this suit.
- c. Attorney client privilege and work product doctrine. The request seeks “all documents” concerning several legal proceedings. Although the undersigned counsel does not represent the defendants any proceeding listed in the request, by seeking “all documents related to” the proceedings, the request seeks production of documents protected by the attorney client privilege and work product doctrine.
- d. Vagueness and cryptic request. The request is vague in that defendants are uncertain what is requested by “all shares owned or controlled by U.S. Bancorp or U.S. Bank.” The request therefore fails to describe the documents sought with reasonable particularity a required by Fed. R. Civ. P. 34.

9. All communications with the Royal Bank of Canada and the Edward Jones Company concerning the potential sale of U.S. Bancorp Piper Jaffray.

**RESPONSE:** Defendants object to this request in that it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Defendants further object because the requested information is confidential and not subject to public disclosure. The potential sale of U.S. Bancorp Piper Jaffray has absolutely no relation to any claim or defense at issue in plaintiff’s complaint. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.

10. All communications between U.S. Bank and U.S. Bancorp with the General Electric Company, its employees, agents, representatives, or counsel related to the plaintiff and/or Medical Supply Chain, Inc.

**RESPONSE:** Defendants object to this request in that it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. The issues present in this lawsuit stem from defendants' alleged failure to provide escrow services to plaintiff in October 2002. Any communications between defendants and the General Electric Company and its employees, agents, or representatives concerning the plaintiff or Medical Supply Chain, Inc. are wholly irrelevant to the claims or defenses that exist in this lawsuit. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.

11. All communications and other documents related to the backdating of U.S. Bancorp stock options by U.S. Bancorp CFO, Andrew Cecre, and former CEO, Jerry Grundhofer, from 2005 to 2008

**RESPONSE:** Defendants object to this request for the following reasons:

- a. **Relevancy.** Plaintiff's lawsuit stems from defendants' alleged failure to provide escrow services to plaintiff in October 2002. Any information related to backdating stock options for Mr. Cecre or Mr. Grundhofer from 2005 to 2008 is wholly irrelevant and is not likely to lead to the discovery of admissible evidence that relates to any claim or defense in this lawsuit.
- b. **Overly broad and unduly burdensome.** The request is facially overly broad in that it seeks "all communications or other documents related to" the back dating of stock. Such a request requires the defendants to guess as to what documents may be responsive. It does not describe the documents sought with reasonable particularity as required by Fed. R. Civ. P. 34. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.

12. All communications to and from municipal, state, and federal government agencies related to Samuel K. Lipari, his former attorneys, Bret D. Landrith, Dennis Hawver, and plaintiff's now dissolved Missouri corporation, Medical Supply Chain, Inc. including all communications to FINCEN, The Securities and Exchange Commission, and the Office of the

Comptroller of the Currency concerning the plaintiff, his claims, his company, witnesses, or former counsel.

**RESPONSE:** Defendants object to this request for the following reasons:

- a. Relevacy. This lawsuit concerns defendants' alleged failure to provide escrow services to plaintiff in October 2002. Communications with government entities concerning Mr. Lipari or his former attorneys or corporation are wholly irrelevant to any claim or defense at issue in this suit.
- b. Overly broad and unduly burdensome. The request is facially overly broad because it seeks all communications "related to" plaintiff, his former company as well as his former attorneys. The request fails to describe with reasonable particularity the documents sought as required by Fed. R. Civ. P. 34. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.

13. US Bank and US Bancorp's Insurance, Indemnity, Surety, and Subrogation

Agreements including:

- a. The guarantees made to US Bancorp and US Bank NA in February 2003 by The Piper Jaffray Company to compensate the defendants for liability from the plaintiff and from US Bancorp Piper Jaffray's conduct in the capitalization of healthcare technology companies and any modification made after February 2003.
- b. All insurance claims, errors and omissions set offs, write downs or transfers of stock applied for or received from underwriting sureties or investment banking houses over the 2003 forced divestiture of US Bancorp Piper Jaffray from US Bancorp due to the breach of agreements between US Bank and the plaintiff.
- c. All guarantees and notes of indebtedness created by US Bancorp Piper Jaffray/The Piper Jaffray Company or its principals to compensate US Bancorp for the misconduct against the plaintiff that caused the breach of agreements between US Bank and the plaintiff, including the subordinated debt interest in the new Piper Jaffray Company of \$215 million.
- d. The guarantees of Shughart Thompson (*sic*) & Kilroy and or US Bancorp made to Bruce Blefeld and Kathleen Bone Spangler to insure Novation LLC against liability from the misconduct against the plaintiff that caused the breach of agreements between US Bank and the plaintiff to provide escrow accounts capitalizing Medical Supply Chain, Inc.'s entry into the hospital supply market controlled by Novation LLC.

- e. The negligence insurance policies of Shughart Thompson (*sic*) & Kilroy, P.C. that would reimburse US Bancorp, Inc. and Jerry A. Grundhofer for any judgments obtained by the plaintiff or by US Bancorp over negligence over the management of attorneys in defending against the plaintiff's claims.

**RESPONSE:** Defendants object to this request and its subsections in that it seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. The request seeks all insurance, indemnity, surety and subrogation agreements, whether or not such policies would provide coverage for the claim at issue. Any documents that are not related to a potential coverage for this claim are irrelevant and not likely to lead to the discovery of admissible evidence, in that they do not support any claim or defense at issue in this lawsuit. The request also seeks documents outside of October 2002, the relevant time frame contained in plaintiff's Petition. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request.

Defendants further object to Subsections (d) & (e) because the requests seek production of documents from a non-party in this action, Shughart Thomson & Kilroy, which is impermissible under Federal Rule of Civil Procedure 34.

14. All phone calls, voice messages, logs, emails, and letters of ex parte communications by the defendants and their agents to employees of the Kansas State Judicial branch and to employees of the U.S. District Court for the Western District of Missouri, U.S. Court of Appeals for the Eight Circuit, the Kansas District Court and the Tenth Circuit Court of appeals and the contents of any communication oral or otherwise to any of the above by attorneys on behalf of the defendants concerning the plaintiff, his dissolved company, witnesses or former counsel, including communications by:

- a. Susan C. Hascall, formerly of Shughart Thompson (*sic*) and Kilroy, P.C. with law clerks and other employees of the U.S. Court of Appeals for the Tenth Circuit from 12/02/2003 to 10/13/2005;

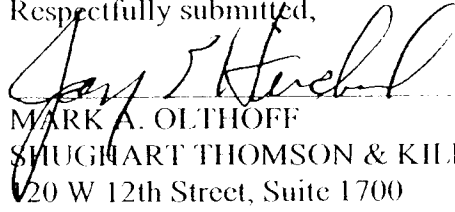
- b. Steven D. Ruse, KS lic. #11461, of Shughart Thomson & Kilroy, P.C. to Hon. Judge Carlos Murguia from October to December of 2002;
- c. Andrew M. DeMarea, KS lic. #16141 of Shughart Thompson (*sic*) & Kilroy to Hon. Magistrate James P. O'Hara from November 2004 to January 2005; to John J. Ambrosio, KS. Lic #07489 of Ambrosio & Ambrosio, Chtd;
- d. Mark A. Olthoff, KS lic. #70339 to US District Court Magistrate James P. O'Hara from October 2004 to March, 2005; employees and agents of the Kansas Disciplinary Administrator's office and the Johnson County Kansas Discipline Committee including Rex A. Sharp KBA#12350 of Gunderson, Sharp & Walke, L.L.P in October, November and December 2007.

**RESPONSE:** Defendants object to this request and its subsections for the following

reasons:

- a. Relevancy. Communications sent to the court regarding the plaintiff, his former attorney, "witnesses," or plaintiff's dissolved corporation have no relation to the claims or defenses at issue in plaintiff's petition. This action is for breach of contract and for intentional tort for defendants' alleged failure to provide escrow services in October 2002. This request seeks documents concerning defendants' attorneys who were not involved in the series of transactions that lead to this suit. The request also seeks documents and communications that occurred after October 2002 which have no bearing on this lawsuit. Therefore, the request seeks irrelevant information and is not likely to lead to the discovery of admissible evidence.
- b. Overbroad and unduly burdensome. The request seeks every document that has been filed in this action as well as the plaintiff's prior two lawsuits. While irrelevant, the request is also overly broad in that it would require defendants to copy every pleading from this suit and the prior two suits as well as all documents from the appeals of *Medical Supply I & II*. Defendants would also be required to copy every email or other communication concerning scheduling issues, hearing dates, and procedural matters. In light of the lack of relevance to any issue in this suit, it would be unduly burdensome to require the defendants to produce information responsive to this request. The request is therefore overly broad and unduly burdensome.
- c. Vagueness. The request seeks all "logs" sent to the "Kansas State Judicial branch." The request also seeks production of "oral communications." Such a request is vague, undefined, and fails to describe the documents sought with reasonable particularity as required by Fed. R. Civ. P. 34.

Respectfully submitted,



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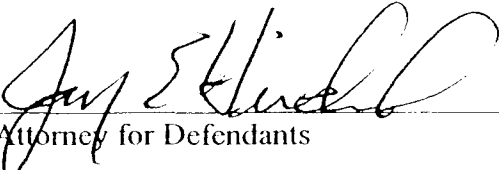
U.S. BANCORP and

U.S. BANK NATIONAL ASSOCIATION

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the above and foregoing document was served via US Mail postage prepaid, upon the plaintiff this 17th day of March, 2008, to:

Mr. Samuel K. Lipari  
297 NE Bayview  
Lee's Summit, MO 64064

  
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Attorney for Defendants