IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SAMUEL K. LIPARI,	)	
	)	
Appellant,	)	
	)	
v.	)	**Case No. 08-3115**
	)	
GENERAL ELECTRIC COMPANY, et al.,	)	
	)	
Appellees.	)	

PETITION FOR EN BANC DISPOSITION UNDER FRAP RULE 35A

Comes now the appellant appearing pro se and petitions for en banc review of the dismissal of his appeal for the following reasons:

1. The appeals panel has in clear error of law and fact in upholding Hon. Judge Fernando J. Gaitan Jr.'s failure to recognize tangible injury pled in the appellant's complaint and proposed amended complaint.

The trial court of Hon. Judge Fernando J. Gaitan Jr. was in error over the concept of "concrete" property loss. The plaintiff-appellant's complaint described his sale of the lease remainder to General Electric for $350,000.00 and the ownership and resulting right to possession and accompanying entry onto the premises of the Coronado office building which is a $10.5 million "concrete" pre-cast office building.

All of which are recognizable RICO business property interests under Missouri state law, Eighth Circuit precedent and the US Supreme Court. The trial court of Hon. Judge Fernando J. Gaitan Jr. was in error over the concept of "concrete" injury or business loss as it is applied in determining RICO standing.

The Eighth Circuit recognizes the appellant's business property in his chose in action for recovering in court on his contract with the GE defendants over 1600 NE Coronado which has survived repeated dismissal motions: "...given a surviving chose in action for protection of property rights and a valid merger agreement, Western Delaware could acquire a capacity along with Beneficial to sue Gamble-Skogmo by virtue of an effective assignment." *Western Auto Supply Co. v. Gamble-Skogmo, Inc.,* 348 F.2d 736 at 741 (C.A.8 (Minn.), 1965)

The complaint described the plaintiff's purchase of 1600 NE Coronado and sale of the remainder of the 5.4 million dollar lease to GE Transportation. Underr the averments of the complaint, the appellant was injured in his business through the loss of a property right under Missouri State law:

> "We hold therefore, that plaintiff's Counts I and II state a cause of action for negligent interference with a tenant's right to use and enjoy a leasehold within the limitations we expressed in Counts I and II of the Chubb Group opinion.

> Should plaintiff be able to prove its cause of action, it would be entitled to its prospective profits, limited by the general rule that such profits are recoverable only when proved to be reasonably certain had it not been for defendant's tortious conduct, and when ascertainable and measurable with reasonable certainty. *Riddle v. Dean Machinery Co.*, 564 S.W.2d 238, 257 (Mo.App.1978)."

Volume Services, Inc. v. C.F. Murphy & Associates, Inc., 656 S.W.2d 785 at 792 (Mo. App.W.D., 1983). See also *Shaw v. Greathouse*, 296 S.W.2d 151 at 153 (Mo. App., 1956).

2. The appeals panel has violated the *stare decisis* of the 8th Circuit in *Little Rock School District v. Armstrong*, No. 02-3867EA (8th Cir., 2004)

Under *Little Rock School District v. Armstrong*, No. 02-3867EA (8th Cir., 2004), this court treats the motion for Hon. Judge Fernando J. Gaitan Jr.'s recusal as a director on the board of directors of a defendant as a pre judgment request in the same matter or controversy.

In *Little Rock School District v. Armstrong*, No. 02-3867EA (8th Cir., 2004) the Eighth Circuit was required to determine if a "mandamus proceeding in 1987 involved the same 'matter in controversy' as the present questions before us for purposes of 28 U.S.C. § 455(b)(2)" Id at 4-6. This Circuit's analysis would find that because the state law claims are consistent and unchanged (and as yet never ruled on), the present action is the same "matter in controversy" as *Lipari v. General Electric et al* 06-0573-CV-W-FJG where Hon. Judge Feranado J. Gaitan did not rule on the plaintiff's

timely motion for recusal See Motion to Recuse exb. 1 Supp. Apdx. Vol. Three Pg. 1051, also Pltf Mtn to Alter or Amend Judgment Doc. 61 filed. 08/04/2008 that contained the recusal as exhibits 1, 1-1 and 1-2.

Under *stare decisis*, once a court has answered a question, the same question in other cases must elicit the same response from the same court or lower courts in that jurisdiction.

Respectfully submitted,

S/Samuel K. Lipari
Samuel K. Lipari

CERTIFICATE OF SERVICE

I certify I have sent a copy via email to the undersigned and opposing counsel on 10th Day of December 2009.

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