IN THE STATE OF MISSOURI
WESTERN DISTRICT COURT OF APPEALS
AT KANSAS CITY, MISSOURI

Case No. WD70832 (16th Cir. Case No. 0816-04217)

SAMUEL K. LIPARI
Appellant

v.

NOVATION, LLC; NEOFORMA, INC.; GHX, LLC; VOLUNTEER HOSPITAL ASSOCIATION; VHA MID-AMERICA, LLC; CURT NONOMAQUE; THOMAS F. SPINDLER; ROBERT H. BEZANSON; GARY DUNCAN; MAYNARD OLIVERIUS; SANDRA VAN TREASE; CHARLES V. ROBB; MICHEAL TERRY; UNIVERSITY HEALTHSYSTEM CONSORTIUM; ROBERT J. BAKER; JERRY A GRUNDHOFER; RICHARD K. DAVIS; ANDREW CECERE; COX HEALTH CARE SERVICES OF THE OZARKS, INC.; SAINT LUKE'S HEALTH SYSTEM, INC.; STORMONT-VAIL HEALTHCARE, INC.; SHUGHART THOMSON & KILROY, P.C.; HUSCH BLACKWELL SANDERS LLP
Respondents

BRIEF OF RESPONDENTS NEOFORMA, INC. AND GHX, LLC

John K. Power, Mo. #35312
Michael S. Hargens, Mo. #51077
HUSCH BLACKWELL SANDERS LLP
4801 Main Street, Suite 1000
Kansas City, Missouri 64112
Phone: 816.983.8000
Fax: 816.983.8080

ATTORNEYS FOR RESPONDENTS NEOFORMA, INC AND GHX, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

JURISDICTIONAL STATEMENT

This Court has jurisdiction over the appeal of the trial court's dismissal of Appellant's claims for violations of the Missouri Antitrust Act and related common law claims.

STATEMENT OF FACTS

On February 25, 2008, Appellant filed his Petition in this case in the Circuit Court of Jackson County at Independence, Missouri. Respondents Neoforma, Inc. and GHX, LLC (hereinafter "Respondents") moved to dismiss the Petition for failure to state a claim, and, on August 8, 2008, the trial court granted those motions and dismissed Appellant's claims with prejudice.[1] Appellant brings his appeal to seek reversal of that dismissal.

Appellant's Petition contends that various health care supply related entities, venture capital, real estate and banking firms, law firms, hospitals, and individuals have conspired to inflate prices for medical supplies and to prevent Appellant's now-dissolved corporation, Medical Supply Chain ("MSC"), from entering the health care supply market. Appellant alleges that the steps Respondents and the other defendants in the case took to prevent him from selling

[1] GHX, LLC filed its motion to dismiss on June 13, 2008, and Neoforma, Inc. filed its motion to dismiss (which incorporated the suggestions filed in support of GHX's motion) on July 25, 2008. Because Neoforma's motion to dismiss simply incorporated the arguments made in GHX's motion to dismiss, these two motions will be referred to collectively as "Respondents' Motion to Dismiss."

health care supplies involved money laundering, extortion, using fraudulent means to persuade federal courts to dismiss MSC's prior antitrust claims and even murder (including an alleged attempt to lure Appellant to his death). Appellant further claims that the conspiracy was aided by former White House Deputy Chief of Staff Karl Rove, the governor of Missouri, and other officials at virtually every level of government and involved such wide-ranging schemes as attempting to dismantle Missouri's health insurance system, establishing a cancer treatment center for money laundering purposes, and causing Kansas Highway Patrol to wrongfully arrest drivers working for Appellant's father. Appellant seeks over $3 billion in damages (before trebling) and asserts claims under the Missouri antitrust statute and various common law theories.

This lawsuit is not the first time Appellant has brought suit on these bizarre allegations. Appellant has repeatedly tried and failed to prosecute claims under various federal law theories in federal court in Kansas. MSC sued many of these same parties in the U.S. District Court for the District of Kansas in 2002 ("*Medical Supply Chain I*"). In that case, which contained many of the same allegations made in this case, the district court dismissed the case and warned MSC's counsel "to take greater care in ensuring that the claims he brings on his clients' behalf are supported by the law and the facts." *Medical Supply Chain, Inc. v. US Bancorp, NA*, No. 02-2539-CM, 2003 WL 21479192, *6 (D. Kan. June 16, 2003). The Tenth Circuit affirmed the District Court's dismissal and held that MSC's appeal

was frivolous. *Medical Supply Chain, Inc. v. US Bancorp, NA*, 112 Fed. Appx. 730 (10th Cir. 2004).

In June of 2003, Appellant filed suit in the U.S. District Court for the District of Kansas against General Electric and certain related parties (the "GE Defendants") alleged to be co-conspirators in this action ("*Medical Supply Chain II"*). That case involved many of the same factual and legal allegations as alleged here. In the district court's order dismissing that suit, the Court noted that the federal antitrust claims failed "at the most fundamental level." *Medical Supply Chain, Inc. v. General Elec. Co*., 03-2324-CM, 2004 WL 956100, *3 (D. Kan. Jan 29, 2004). The 10th Circuit affirmed the dismissal of that complaint and upheld the district court's award of sanctions against MSC. *Medical Supply Chain, Inc. v. General Elec. Co.*, 144 Fed. Appx. 708 (10th Cir. 2005).

In yet a third case ("*Medical Supply Chain III*"), MSC sued Neoforma and others in the U.S. District Court for the District Of Kansas in March 2005. The court dismissed MSC's federal antitrust, RICO and USA Patriot Act claims, finding that the complaint "fails at the most basic level to allege sufficient facts to support cognizable legal claims." *Medical Supply Chain, Inc. v. Neoforma, Inc.*, 419 F.Supp.2d 1316 (D. Kan. 2006). MSC and its counsel were again sanctioned for asserting frivolous claims. MSC had also asserted claims under the state law theories Appellant asserts in this case, but the court declined to exercise supplemental jurisdiction over the claims and dismissed them without prejudice. *Id*. at 1330. Appellant attempted to join the case as a substitute plaintiff and

appealed the dismissal, but the Tenth Circuit held that the Notice of Appeal was untimely filed. *Medical Supply Chain, Inc. v. Neoforma, Inc.*, 508 F.3d 572 (10th Cir. 2007). Appellant attempted a subsequent appeal from the denial of a Motion for Rehearing and the Tenth Circuit affirmed the District Court's refusal to re-open the case. *Medical Supply Chain, Inc. v. Neoforma, Inc.*, 322 Fed. Appx. 630, 2009 WL 1090070 (10th Cir. 2009).

ARGUMENT

As will be established below, (i) Appellant's Points Relied On ("Points") do not conform to the Missouri Rules of Civil Procedure; (ii) none of Appellant's Points provide a basis for reversing the trial court's decision to dismiss this case; and, (iii) even if any of Appellant's Points were valid—and they are not—the trial court's dismissal should be affirmed because Appellant completely failed to address other grounds for dismissal of each of his claims.

I. Point 1 Does Not Support Reversal Because it Mistakenly Assumes that Dismissal Was Predicated on Claim Preclusion When, In Fact, Respondents Invoked Issue Preclusion

As a threshold matter, Point 1 fails to conform to Rule 84.04(d) of the Missouri Rules of Civil Procedure in that the Point itself does not specifically identify the trial court's order or ruling to which it applies.

In addition to Appellant's failure to comply with Rule 84.04(d), his Point 1 suffers from several fatal substantive defects. In Point 1, Appellant argues that the trial court erroneously applied claim preclusion to bar Appellant's state court

claims. However, Point 1 is based on Appellant's misunderstanding of the arguments in the Respondents' Motion to Dismiss and, therefore, the basis for the trial court's dismissal of Appellant's Petition. Respondents did not rely upon claim preclusion, but rather asserted that issue preclusion applied to bar Appellant's Missouri antitrust claims.

Thus, Appellant's Point 1 provides no basis for reversal of the trial court's order of dismissal. Indeed, Point 1 is completely beside the point as it attacks an argument not made by Respondents in the court below. The Motion to Dismiss filed by Respondents in the trial court clearly invokes "issue preclusion" and sets forth the requirements for that doctrine. Respondents' Motion to Dismiss stated, in relevant part:

> Lipari's antitrust claims in this action should be barred by the doctrine of collateral estoppel because he, or someone he is in privity with, has raised these same issues in previous litigation. Under Missouri law, the Court considers four elements to determine whether collateral estoppel applies:
>
> > (1) Whether the issue decided in the prior adjudication was identical with the issue presented in the present action; (2) whether the prior adjudication resulted in a judgment upon the merits; (3) whether the party against whom collateral estoppel is asserted is a party or in privity with a party to the prior adjudication; and

> (4) whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue.
>
> *City of Ste. Genevieve v. Ste. Genevieve Ready Mix, Inc.*, 765 S.W.2d 361, 364 (Mo. App. 1989).

Legal File, at pp. 375-376.

The source of Appellant's confusion appears to be that Respondents sought dismissal of Appellant's "claims" based on collateral estoppel. *See* Brief of Appellant at 12-13 (arguing that seeking dismissal of "claims" based on collateral estoppel was an invocation of claim preclusion, rather than issue preclusion). However, dismissal of the claims was the correct consequence of the application of issue preclusion in this case. As will be discussed in Section II, *infra*, issues concerning the legal viability of antitrust claims were decided against MSC (Appellant's assignor) in a prior federal case under federal law. Because those issues were the same under Missouri state law and were relevant to the legal viability of Appellant's Missouri antitrust claims asserted in this case, dismissal of the claims was the correct result and should be affirmed by this Court.

II. Point 2 Does Not Support Reversal Because the Trial Court Properly Applied Issue Preclusion In That Appellant's Missouri Antitrust Act Claims Imported the Same Fundamental Pleading Deficiencies That Had Been Determined in the Prior Federal Action

As an initial matter, Point 2 fails to conform to Rule 84.04(d) of the Missouri Rules of Civil Procedure in that the Point itself does not specifically identify the trial court's order or ruling to which it applies.

In Point 2, Appellant argues that issue preclusion was improperly applied by the trial court to dismiss Appellant's Petition. In the trial court, Respondents argued that Appellant's Petition was deficient with regard to pleading conspiracy and relevant markets and that, because these deficiencies had been established under federal law in the prior action, the trial court could dismiss the state law claims under the doctrine of collateral estoppel. Although it is not entirely clear, Appellant appears to argue that collateral estoppel did not apply because: (i) the issues relevant to his claims in this proceeding are not the same as in the prior case; and, (ii) the relevant issues were not sufficiently developed in the prior case because the case was dismissed prior to discovery. Neither of these arguments have merit. And in any event, even if the trial court did not rely on the federal court's determination of these issues, it could have dismissed the claims due to the pleading deficiencies in the first instance. Appellant's Point 2 does not provide any basis for a determination that Appellant's Petition meets the requirements of

the Missouri Antitrust Act. Thus, Appellant's claims were properly dismissed even if collateral estoppel were not applied.

A. The Trial Court Properly Applied Collateral Estoppel

The trial court could properly dismiss Appellant's Missouri Antitrust Act claims under the doctrine of issue preclusion, or collateral estoppel. The two relevant issues are whether (1) a plaintiff could assert a legally viable claim under Section 1 of the Sherman Act [or its Missouri counterpart] without alleging any facts to show that there was an agreement among the alleged co-conspirators, and (2) whether a legally viable claim under Section 2 of the Sherman Act [or its Missouri counterpart] could be based on alleged relevant markets of the "hospital supply market", the "e-commerce hospital supply market" and the "upstream healthcare technology company capitalization market."

Both of these issues were decided against MSC in *Medical Supply Chain III*, a prior federal case under federal antitrust law. The U.S. District Court held that "[a]lthough plaintiff asserts many conspiracy theories, it does not allege any facts that support its allegations." *Medical Supply Chain III*, 419 F.Supp.2d at 1327. The court also noted that MSC's prior complaints were found to be deficient in this regard. *Id.* Similarly, the court in *Medical Supply Chain III* rejected as deficient MSC's allegations that the relevant market consists of the hospital supply market, the e-commerce hospital supply market, and the healthcare capitalization market. *See Medical Supply Chain III*, 419 F.Supp.2d at 1327.

Appellant, proceeding in this case as assignee of MSC's claims, asserted his Missouri antitrust claims based on the same conclusory conspiracy and market allegations that MSC relied upon in the prior federal case, except that the "hospital supply market", the "e-commerce hospital supply market" and the "healthcare capitalization markets" were geographically limited to those markets in Missouri. Appellant provides no argument or basis for determining that his Petition in this case cures these fundamental legal defects or differs in any significant regard on these points.

Moreover, Appellant does not provide any argument or authority for the proposition that such pleadings fare any better under Missouri law. On the contrary, it is well established that Missouri state antitrust law is to be construed in harmony with federal law. Section 416.031(1) of the Missouri Antitrust Act closely parallels Section 1 of the Sherman Antitrust Act and Section 416.031(2) of the Missouri Antitrust Act closely parallels Section 2 of the Sherman Act. *Defino v. Civic Center Corp*., 718 S.W.2d 505, 510 (Mo. App. 1986). The Missouri Antitrust Act expressly requires Missouri state antitrust claims to be "construed in harmony with ruling judicial interpretations of comparable federal antitrust statutes." MO. REV. STAT. § 416.141; *Fisher, Etc. v. Forrest T. Jones & Co*., 586 S.W.2d 310, 313 (Mo. banc 1979).

Appellant's argument that the federal court's dismissal of the federal claims cannot serve as a basis for collateral estoppel because the case did not proceed to discovery and trial is wholly without merit. It is well established that a dismissal

for failure to state a claim is a judgment that is fully and fairly litigated for purposes of the collateral estoppel doctrine. The Restatement (Second) of Judgments, makes it clear that an issue can be fully and fairly litigated for collateral estoppel purposes "on a motion to dismiss for failure to state a claim, a motion for judgment on the pleadings, a motion for summary judgment . . . or their equivalents, as well as on a judgment entered on a verdict. A determination may be based on a failure of pleading or of proof as well as on the sustaining of the burden of proof." RESTATEMENT (SECOND) OF JUDGMENTS, § 27, cmt d (1982). Missouri courts follow this rule. In *Bachman v. Bachman*, 997 S.W.2d 23 (Mo. App. 1999), the court cited this section of the Restatement and held that a dismissal for failure to state a claim could be the basis for collateral estoppel. *Id.* at 25.

B. Appellant's Petition is Deficient in Regard to Conspiracy Allegations under Section 416.031(1) of the Missouri Antitrust Act.

Respondents' Motion to Dismiss did not rest on only the collateral estoppel doctrine to argue that Appellant's Missouri Antitrust Act claims were deficient. The Respondents also argued that the claims were legally deficient even apart from the result in the prior federal court case. The trial court properly dismissed these defective claims.

In Count I of Appellant's Petition, he asserts that Defendants violated Section 416.031(1) of the Missouri Antitrust Statute. In order to establish a violation of the statute, Appellant must demonstrate that "(1) that there was a

contract, combination, or conspiracy; (2) that the agreement unreasonably restrained trade under either a per se rule of illegality or a rule of reason analysis; and (3) that the restraint affected interstate commerce." *See Minnesota Ass'n of Nurse Anesthetists v. Unity Hosp.*, 5 F.Supp.2d 694, 703 (D. Minn. 1998), *aff'd*, 208 F.3d 655 (8th Cir. 2000). The "contract, combination, or conspiracy" element "requires that defendants had a conscious commitment to a common scheme designed to achieve an unlawful objective." *Id.*

Appellant's Petition repeatedly states that the defendants acted in concert, but does not allege any facts concerning a common scheme relating to any action against Plaintiff or other unlawful objective. Appellant's conclusory statements are insufficient under Missouri law. *See Love v. St. Louis City Bd. of Educ.*, 963 S.W.2d 364, 365 (Mo. App. 1998) ("Mere conclusions of a pleader not supported by factual allegations cannot be taken as true, and therefore, must be disregarded in determining whether the petition states a claim upon which relief can be granted."). There are no facts relating to any contact or communication between Respondents on the one hand and the defendants and other parties alleged to have deprived Appellant of financing, real estate and escrow services. The Petition provides no factual basis for a belief that the Respondents had any knowledge of the events relating to Appellant (or had even heard of MSC or Appellant prior to these lawsuits). Moreover, the Petition fails to allege facts sufficient to plead an agreement or concerted action relating to group boycott or allocation of customers.

"[A] plaintiff must do more than cite relevant antitrust language to state a claim for relief." *TV Communications Network, Inc. v. Turner Network*, 964 F.2d 1022, 1027 (10th Cir. 1992). A complaint must "provide, whenever possible, some details of the time, place and alleged effect of the conspiracy; it is not enough merely to state that a conspiracy has taken place." *Estate Constr. Co. v. Miller & Smith Holding Co.*, 14 F.3d 213, 221 (4th Cir. 1994). The U.S. Supreme Court recently emphasized that a cognizable claim under Section 1 of the Sherman Act requires "a complaint with enough factual matter (taken as true) to suggest that an agreement was made." *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007). In other words, there must be "plausible grounds to infer an agreement" in order to "raise a reasonable expectation that discovery will reveal evidence of illegal agreement." *Id.*

The Petition completely fails this test. Appellant does not, and could not, allege that the Respondents agreed with anyone to harm Appellant. Appellant never elaborates on the alleged conspiracy other than to simply assert that such an agreement exists. Because of Appellant's failure to allege any of the required particulars, "[d]ismissal of [this] 'bare bones' allegation of antitrust conspiracy without any supporting facts is appropriate." *Estate Constr. Co.*, 14 F.3d at 221.

C. Appellant's Petition is Deficient in Regard to Relevant Market and Market Domination Allegations under Section 416.031(2) of the Missouri Antitrust Act.

Appellant's alleged relevant markets (*i.e.* the Missouri hospital supply market, the Missouri e-commerce hospital supply market, and the upstream healthcare technology company capitalization market) are legally deficient and cannot provide a basis for a claim under Section 416.031(2) of the Missouri Antitrust Act. A plaintiff is required to establish a relevant market to prevail on a monopolization or attempted monopolization claim. *Lantec, Inc. v. Novell, Inc.*, 306 F.3d 1003, 1024 (10th Cir. 2002). *See generally Walker Process Equip., Inc. v. Food Mach. & Chem. Corp.*, 382 U.S. 172, 177 (1965) ("Without a definition of that market there is no way to measure [a defendant's] ability to lessen or destroy competition.").

Appellant's pleadings with regard to relevant market are plainly insufficient. A proper relevant market consists of all products or services that are reasonably interchangeable. *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 395 (1956). In addition, a market definition must be plausible to survive a motion to dismiss. *See TV Communications Network*, 964 F.2d at 1028 (affirming dismissal because the plaintiff "did not allege a relevant product market which [the defendant] was capable of monopolizing, attempting to, or conspiring to monopolize in violation of Section 2 of the Sherman Act."); *Adidas Am., Inc. v. NCAA*, 64 F. Supp. 2d 1097, 1102 (D. Kan. 1999) (to survive a motion to dismiss,

the plaintiff "must allege a relevant market that includes all [products or services] that are reasonably interchangeable").

First, the market cannot be limited to "hospital supplies through e-commerce" simply because that is the only way that MSC plans to sell hospital supplies. "[A]n antitrust plaintiff may not define a market so as to cover only the practice complained of, this would be circular or at least result-oriented reasoning." *Adidas Am.*, 64 F. Supp. 2d at 1102. Rather, the market alleged in a complaint must be justified through application of the relevant legal principles for market definition. As Judge Van Bebber noted:

> 'Where [an antitrust] plaintiff fails to define its proposed relevant market with reference to the rule of reasonable interchangeability and cross-elasticity of demand, or alleges a proposed relevant market that clearly does not encompass all interchangeable substitute products even when all factual inferences are granted in plaintiff's favor, the relevant market is legally insufficient and a motion to dismiss may be granted.'

Adidas Am., 64 F. Supp. 2d at 1102 (quoting *Queen City Pizza, Inc. v. Domino's Pizza, Inc.*, 124 F.3d 430, 436-37 (3d Cir. 1997) and collecting cases).

Second, hospital supplies, defined as such, are not reasonably interchangeable products. *See Community Publishers, Inc. v. Donrey Corp*., 892 F.Supp. 1146, 1153 (W.D. Ark. 1995), *aff'd*, *Community Publishers, Inc. v. DR Partners*, 139 F.3d 1180 (8th Cir. 1998) (noting that "products belong in the same

market when they are reasonably interchangeable for the same uses and thus exhibit a high cross-elasticity of demand."). Appellant fails to explain how this test is met in a market definition that includes such different items as CT scanners, sutures, and bandages.

The trial court properly dismissed Appellants claims under Section 416.031(2).

III. Point III Does Not Support Reversal Because the *Noerr-Pennington* Doctrine Protects the Legal Defense of Antitrust Claims in Court and Appellant Has Pled No Facts to Support the Application of the Sham Petitioning Exception to that Doctrine

Appellant's Point 3 fails to conform to Rule 84.04(d) of the Missouri Rules of Civil Procedure. Specifically, Appellant's Point Relied Upon 3 fails in two important respects: (i) the Point itself does not specifically identify the trial court's order or ruling to which it applies and (ii) it fails to include the third component of a valid Point Relied On (i.e., the "in that" component).

Appellant's failure to comply with Rule 84.04(d) is not the lone deficiency with regard to Point 3. Appellant's argument also suffers from a myriad of other legal deficiencies. As noted in the Statement of Facts Section of this Brief, Appellant and his predecessor in interest have brought three prior cases against some of the same parties in this case based on many of the same facts alleged in this case. All of those cases ended in a dismissal for failure to state a claim and an award of sanctions for bringing frivolous claims or prosecuting frivolous appeals.

In the Petition in this case, however, Appellant claims that those parties' defense of those prior claims, including the successful filing of motions to dismiss those claims, constituted antitrust violations itself. In other words, Appellant contends that he has been wrongfully deprived of a "property interest" in MSC's antitrust claims because of Defendants' conduct in defending the prior lawsuits. For example, Appellant alleges that Defendants "obstruct[ed] the petitioner in his federal litigation to recover the market entry capitalization . . . ." Legal File, p. 23; *see also* Legal File, p. 90 ("[T]he direct goal of the hospital supply cartel . . . was to make it possible to influence the outcome of the petitioner's litigation in Kansas District Court to take a [sic] business expectancies and property rights from the petitioner without the possibility of a broader civic involvement causing the petitioner's claims to be taken seriously."). In this same vein, Appellant asserts that Respondents have made attempts to "deprive the petitioner of his corporate counsel." Legal File, p. 23. This claim is apparently based on Appellant's contention that Defendants conspired to have Plaintiff's former counsel, Bret Landrith, disbarred for incompetence and that the prior sanctions awards against MSC prevented other attorneys from agreeing to represent MSC. Appellant alleges that this difficulty in getting replacement counsel led him to dissolve MSC in the hope that he could then continue the litigation *pro se*. *Id.*

First, GHX, LLC was not a party to any of the prior lawsuits and there is no allegation that they had any knowledge of or involvement in the defense of any of those suits.

Second, Appellant's claim that he has a "property interest" in his federal antitrust claims that was wrongfully taken from him by Defendants is ludicrous. MSC's federal antitrust claims have been ruled to be frivolous in the prior lawsuits. If MSC's claims were not "taken seriously," it was because they were not cognizable claims. It would be a strange result indeed for a plaintiff to be sanctioned for bringing frivolous antitrust claims, and then allowed to proceed in a subsequent case on the theory that the defendant's conduct in establishing the fundamental legal defects of the initial claims was itself an antitrust violation. Defending oneself against a frivolous antitrust lawsuit is simply not wrongful.

Third, the Petition contains absolutely no factual allegation that would connect Respondents to Landrith's disbarment or any efforts by Appellant to obtain additional or different counsel. Moreover, this Court can take judicial notice of the docket of *Medical Supply Chain III* and the fact that MSC was represented by attorney Ira Hawver until after the lawsuit was closed and the first appeal was rejected by the Tenth Circuit. If Appellant chose to dissolve MSC as a litigation tactic, that was his decision—there are no facts alleged that would support a claim that Respondents forced him to do so or even knew about the dissolution until after it was completed.

In any event, the *Noerr-Pennington* doctrine mandates dismissal of Appellant's claims to the extent that they involve allegations relating to Defendants' defense of the prior lawsuits. The *Noerr-Pennington* doctrine immunizes defendants from liability for their "genuine efforts to seek redress

through the judicial process, even if the outcome of such litigation is certain to affect or eliminate competition." *Central Telecommunications, Inc. v. TCI Cablevision, Inc*., 610 F.Supp. 891 (W.D. Mo. 1985), *aff'd*, 800 F.2d 711 (8th Cir. 1986). The inapplicability of the *Noerr-Pennington* doctrine is an essential element of plaintiff's case. *Defino v. Civic Center Corp.*, 780 S.W.2d 665, 668 (Mo. App. 1989). Appellant has failed to overcome that hurdle in this case.

Appellant contends that the defense of the prior lawsuits was a "sham" and, as a result, the *Noerr-Pennington* doctrine is not applicable. Specifically, Appellant contends that the defendants in the prior suit filed briefs "disparaging the plaintiff/appellant with judges and their clerks or by making fraudulent representations to government agencies" in order to "procure outcomes in litigation that deprive the plaintiff/appellant of the ability to enforce contracts or enjoy the privileges and immunities of a business owner under Missouri law." Brief of Appellant at 30-31. Further, Appellant complains that he was "denied equal protection and the privileges of citizenship by the trial court's adoption of the defendants' sham arguments for dismissal." *Id.* at 31. In other words, Appellant complains that Defendants won the prior case and contends it is a "sham" because he disagrees with the outcome. This argument is frivolous. Making successful legal arguments about the legal defects in Appellant's pleading is not a sham and is not defamatory. The case on which Appellant relies, *In re IBP Confidential Business Documents Litigation*, 755 F.2d 1300, 1313 (8th Cir. 1985), which addressed whether the *Noerr-Pennington* doctrine shielded liability

for defamatory statements simply because the statements were contained in a letter to Congressional representatives, does not support Appellant's argument.

IV. Point 4 Does Not Support Reversal of the Trial Court's Order Dismissing the Claims Against the Undersigned Respondents Because it is Relevant Only to the Motion to Dismiss Filed by Defendant Lathrop & Gage

Respondents need not address Point 4, as it is directed at the Motion to Dismiss filed by Lathrop and Gage, L.C. and the resulting December 29, 2008 Order and is not relevant to the trial court's August 5, 2008 dismissal of the undersigned Respondents.

V. Point 5 Does Not Support Reversal of the Trial Court's Order Denying Leave to Amend Because the Trial Court Had Discretion to Deny Leave and Properly Did So In That the Proposed Amended Complaint Cured None of the Legal Defects of the Claims

Point 5 fails to conform to Rule 84.04(d) of the Missouri Rules of Civil Procedure in that (i) the Point does not specifically identify the trial court's order or ruling to which it applies and (ii) it fails to include an adequate third component of a valid Point Relied On (i.e., the "in that" component).

In addition to Appellant's failure to comply with Rule 84.04(d), Point 5 has other, equally fatal deficiencies. Appellant's argument on Point 5, which discusses the timing of various orders and the fact that the trial court ordered Appellant to cure his failure to file a copy of his proposed first amended petition,

is beside the point and fails to raise any reversible error with regard to the trial court's denial of Appellant's motions to amend his Petition. The trial court had entered an order granting Appellant's first motion to amend, but then withdrew that order because it was made in error because Appellant's Notice of Appeal divested the trial court of jurisdiction. *See* Respondents' Appendix, p. 1-2. After the dismissal of the appeal as premature, the trial court permitted Appellant to re-file its motion but instructed Appellant to attach a copy of the proposed amended pleading. *Id.* at p. 3-5. Instead of doing that, Appellant chose to file a second Motion to Amend and attached a second proposed amended Petition. There can be no dispute that the trial court had jurisdiction on March 23, 2009 to consider both of Appellant's Motions for Leave to Amend Petition and that the Court did consider those motions and denied Appellant leave to file. *Id.* at p. 144-145.

The denial of a leave to amend is discretionary with the trial court and "will not be disturbed unless there is a showing that the court palpably and obviously abused its discretion." *Curnutt v. Scott Melvin Transport, Inc*., 903 S.W.2d 184, 193 (Mo. App. 1995). In deciding a motion to amend a pleading, the trial court should consider the following factors: (1) hardship to the moving party if leave to amend is denied; (2) the reasons for failure to include any new matter in the prior pleading; (3) timeliness of the motion to amend; (4) whether the amendment could cure the inadequacy of the prior pleading; and (5) injustice to the opposing party if amendment is allowed. *Id*. Appellant makes no argument that these factors compel the trial court to grant leave.

These factors support the trial court's denial of Appellant's Motion to Amend. First, neither of Appellant's proposed amended petitions did anything to cure the legal inadequacies of his Original Petition. In all material respects, the allegations against the undersigned Respondents in the proposed First and Second Amended Petitions are the same as in the Original Petition and Appellant reprised all of the fundamental legal defects of his first effort. As a consequence, Appellant's first and second proposed amended petition, just like his original Petition, fail to state a legally viable claim. Missouri courts have noted that "[a] trial court does not err when it denies a motion to amend a pleading to assert a claim that possesses no merit." *Stewart Title Guar. Co. v. WKC Restaurants Venture Co*., 961 S.W.2d 874, 888 (Mo. App. 1998). In addition, Missouri courts have held that it was not error to deny a motion to amend a petition when there was no showing that the "amended petition would make any difference in the legal situation already existing." *Chapman v. St. Louis County Bank*, 649 S.W.2d 920, 923 (Mo. App. 1983). *See also Birt v. Consolidated School District No. 4*, 829 S.W.2d 538, 543 (Mo. App. 1992) (holding that denial of a motion to amend was properly denied where the claims sought to be added were without merit).

Moreover, Appellant had already been given ample opportunity to plead a legally viable cause of action relating to his alleged exclusion from the medical supply markets and he has repeatedly failed. In his proposed amended petitions, Appellant added to his Petition wholly inflammatory allegations of bias and error against several members of the judiciary, including the trial court. *See*

Respondents' Appendix, p. 137-139 (alleging a conspiracy based upon Judge Manners' appearance at a restaurant on a certain day and the alleged "temporal relationship" between Judge Manners' rulings and rulings against Appellant in other courts). The trial court should not have to expend judicial resources on a proposed petition that has as its central claim that all rulings adverse to Appellant were procured as a result of opposing counsel's fraud and a corrupt judiciary. Appellant suffered no legitimate hardship upon the denial of his motion to amend. On the other hand, Respondents have been forced to incur legal fees to defend themselves against Appellant's and MSC's legally frivolous claims for years now. The trial court's denial of leave to amend was not an abuse of discretion and should be affirmed by this Court.

VI. Point 6 Does Not Support Reversal Because the Savings Statute is Inapplicable to this Case and Because Appellant's Legally Defective Allegations of Continuing Conduct Does Not Revive Stale Claims

Point 6 fails to conform to Rule 84.04(d) of the Missouri Rules of Civil Procedure in that the Point itself does not specifically identify the trial court's order or ruling to which it applies.

Moreover, the limitations period has run on Appellant's claims. The limitations period for claims under the Missouri Antitrust statute is four years. MO. REV. STAT. § 416.131.2. Appellant alleges that MSC attempted to enter the health care supply market sometime in 2002, but that the alleged antitrust conspiracy blocked his efforts in that regard. Because more than four years have

elapsed between that alleged injury and the filing of this lawsuit in 2008, the Missouri statute of limitations precludes Appellant from bringing claims relating to MSC's alleged attempt to enter the market. Thus, the alleged deprivation of MSC's initial capitalization was properly dismissed on this ground alone. Further, to the extent that any other antitrust claim asserted in this lawsuit is based on conduct occurring more than four years ago, it is time-barred and was properly dismissed. This would include the myriad allegations contained in Appellant's Appendix Four ("Plaintiff's Business Relationship with US Bank and US Bancorp") and Appendix Five ("Plaintiff's Business Relationship with GE, GE Capital, and GE Transportation").

Appellant tries to avoid the time bar by invoking Missouri's savings statute, MO. REV. STAT. § 516.230, which provides that if claims are timely asserted in one suit and then dismissed without prejudice or ended by a non-suit, the plaintiff has one year from that dismissal or non-suit to refile the claims. *See* Legal File at p. 14. Appellant alleges that his claims are revived because he has brought this case within a year of the dismissal of his state court claims in *Medical Supply Chain III* –a dismissal which Appellant asserts occurred on March 7, 2007. Appellant misstates the date of the dismissal by one year. The court in *Medical Supply Chain III* actually dismissed Lipari's state court claims on March 7, 2006. *See Medical Supply Chain, Inc. v. Neoforma, Inc.*, 419 F.Supp.2d 1316 (D. Kan. 2006). As a consequence, this lawsuit was not filed within the one year time period of the savings statute. In any event, the Missouri savings statute does not

apply to claims, such as claims under the Missouri antitrust statute, which carry their own statutory limitations period. *See Boggs v. Farmers State Bank*, 846 S.W.2d 233 (Mo. App. 1993). Thus, the savings statute does not save these time barred claims.

Appellant also argues that the "continuing antitrust conduct" of the Respondents prevented the expiration of the statute of limitation on his claim. Appellant misunderstands the law in this regard. It is true that new antitrust violations which injure the plaintiff start the limitations period for those particular violations and injuries. *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 190 (1997) (noting that the "commission of a separable, new predicate act within a 4-year limitations period permits a plaintiff to recover for the additional damages caused by that act."). However, Appellant cannot revive long-barred claims on the theory that the Respondents' defense of those claims was wrongful and constituted a continuing antitrust conspiracy which, in effect, perpetually re-started the limitations clock on the initial injury. In fact, the law is clear that an antitrust plaintiff "cannot use an independent, new predicate act as a bootstrap to recover for injuries caused by other earlier predicate acts that took place outside the limitations period." *Id.* Appellant does not allege a legally viable antitrust violation and injury within the four years preceding this suit. Instead, Appellant alleges that the Defendants' alleged continuing conduct continued to deprive him of the property right in his antitrust claims and prevented redress for the alleged

injury of being foreclosed from the medical supply market in 2002. The trial court properly dismissed the antitrust claims on the basis of statute of limitations.

VII. Point 7 Does Not Support Reversal Because the Trial Court's Order Requiring Appellant to Serve Papers on Counsel Did Not Impact the Dismissal of Appellant's Claims

Point 7 fails to conform to Rule 84.04(d) of the Missouri Rules of Civil Procedure in that (i) the Point does not specifically identify the trial court's order or ruling to which it applies and (ii) it fails to include the second component of a valid Point Relied On (i.e., the "because" component).

In addition, Point 7 does not raise any reversible error because the alleged error is harmless. The trial court's order requiring Appellant to serve papers on counsel was entered after Appellant's claims against Respondents were dismissed for failure to state a claim. The order has no impact on the propriety of that dismissal. Even if the order regarding service of papers was reversed, it would have no effect because the case is terminated unless the dismissal is reversed (and, for all of the reasons stated in this Brief, the dismissal was properly granted). Thus, there should be no further proceedings in the trial court to which this order would apply.

VIII. Points 8 and 9 Do Not Support Reversal of the Trial Court's Order Dismissing the Claims Against the Undersigned Respondents Because They Are Relevant Only to the Motion to Dismiss Filed by Defendant Lathrop & Gage

Respondents need not address Points 8 and 9, as they are directed at the Motion to Dismiss filed by Lathrop and Gage, L.C. and are not relevant to the trial court's August 5, 2008 dismissal of the undersigned Respondents.

IX. Point 10 Does Not Support Reversal of the Trial Court's Order Dismissing the Claims Against the Undersigned Respondents Because Appellant's Petition Fails to Adequately Plead Tortious Interference, Prima Facie Tort, Fraud, or Antitrust Conspiracy Under the Pleading Standard Invoked by Appellant

Point 10 fails to conform to Rule 84.04(d) of the Missouri Rules of Civil Procedure in that (i) the Point does not specifically identify the trial court's order or ruling to which it applies and (ii) it fails to include the third component of a valid Point Relied On (i.e., the "in that" component).

In Point 10, Appellant argues that the trial court erred in applying *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) to dismiss Appellant's antitrust conspiracy, tortious interference, prima facie tort, and fraud claims. As a preliminary matter, Respondents' Motion to Dismiss cited *Twombly* only in connection with the antitrust conspiracy claims and not with respect to any of

Appellant's common law claims. Thus, Point 10 is irrelevant to the trial court's dismissal of any other claims against Respondents.

Because the Missouri Antitrust Act is to be construed in harmony with the federal antitrust law, *see Fisher, Etc*., 586 S.W.2d at 313, this Court should apply *Twombly* to Appellant's Missouri antitrust law claims. However, this Court need not decide whether *Twombly* would apply to Missouri Antitrust Act claims because Appellant's Petition is so devoid of factual allegations relevant to a conspiracy claim that it fails to meet the pleading standard invoked by Appellant in his brief. Appellant relies upon *Taylor v. Richland Motors*, 159 S.W.3d 492 (Mo. App. 2005) to argue that his conspiracy claim is sufficiently pled. However, *Taylor* stresses that a pleading must allege "that two or more persons, with an unlawful objective, committed at least one act in furtherance of a conspiracy after a meeting of the minds and thereby damaged plaintiff." *Id.* at 496. Appellant also cites *Gregory v. Dillard's, Inc*., 565 F.3d 464 (8th Cir. 2009), which stressed that a pleading "must contain facts which state a claim as a matter of law and must not be conclusory." *Id.* at 473.

Appellant's Petition falls far short of these standards. There are simply no factual allegations that Respondents had any interaction with the other defendants, much less reached a meeting of the minds with them to harm Appellant. Indeed, there are no facts which show that Respondents were even aware of Appellant's existence before he began suing them for billions of dollars. Thus, Appellant's pleadings fail even under the most lenient interpretation of pleading standards.

X. Appellant Fails to Address Other Grounds of Dismissal of Each of His Claims

Even if any of Appellant's Points Relied On were valid—and, as set forth above, they are not—the trial court's dismissal is still correct and should be affirmed on other grounds. Where, as here, the trial court "does not indicate its reason for dismissal . . . an appellate court will assume the trial court's actions were in accordance with the reasons offered in the motion to dismiss, and its decision will be affirmed if any argument contained in the motion to dismiss can sustain the trial court's dismissal." *American Association of Orthodontists v. Yellow Book USA, Inc.*, 277 S.W.3d 686, 690 (Mo. App. 2008); *see also State ex rel. Mo. Highway & Transp. Comm'n v. Overall*, 73 S.W.3d 779, 782 (Mo. App. 2002). The trial court's dismissal of the claims against Respondents can be affirmed on the following grounds, each of which was argued by Respondents in the court below.

A. Appellant Lacks Standing to Assert His Claims Under the Missouri Antitrust Act

Appellant lacks standing to recover damages arising from the alleged anticompetitive actions of the alleged hospital supply cartel he alleges exists to overcharge hospitals for medical supplies. Appellant does not allege that he or his now-dissolved former company is a hospital, so he is not directly injured by the alleged conspiracy to charge high prices. Indeed, as a competitor of the alleged cartel, Appellant would benefit by any agreement to charge high prices, because it

could either undercut the price to win business or profit from the cartel's pricing "umbrella." Appellant's allegations affirmatively establish this lack of standing, as he claims that he "found it easy to beat the 'volume discounts' on even very small quantity purchases for widely dispersed customers . . ." Legal File, p. 66.

The case law is unequivocal that Appellant lacks standing to complain of Defendants' alleged price fixing conduct. *Atlantic Richfield Co. v. USA Petroleum Co.*, 495 U.S. 328, 339-40 (1990) (holding that a firm has not suffered antitrust injury where competitors have agreed to fix prices); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 582-83 (1986) (same); *Anesthesia Advantage, Inc. v. Metz Group*, 759 F. Supp. 638, 645-46 (D. Colo. 1991) (holding that plaintiffs had "no standing to assert [against its competitors] the price fixing claim independently or as a larger conspiracy, even assuming that the defendants were price fixing.").

Moreover, Appellant's Petition alleges several alleged "schemes" that, on their face, have nothing to do with him or with MSC. For example, Appellant complains about the establishment of a National Cancer Institute Certified Research Center at St. Luke's Hospital in Kansas City. There is no allegation that Lipari or MSC was harmed by this. Similarly, Appellant complains about a potential change in health insurance in Missouri. Again, there is nothing which connects this allegation to MSC's alleged inability to compete. Similarly, Appellant has not alleged any antitrust injury resulting from Appellant's myriad allegations of inflated prices, harm to patients, harm to Medicare and Medicaid,

and the alleged efforts to foil any investigation of these alleged facts. Consequently, Appellant cannot recover for that alleged conduct as a matter of law and his claims were properly dismissed by the trial court.

B. Appellant's Fraud Claim Must Be Dismissed Because Appellant Fails to Plead That Respondents Made A Fraudulent Statement to Appellant With Knowledge of its Falsity On Which Appellant Relied

Appellant asserts a claim for fraud and deceit against Respondents. The elements of fraudulent misrepresentation are: (1) a false, material representation; (2) the speaker's knowledge of its falsity or his ignorance of its truth; (3) the speaker's intent that it should be acted upon by the hearer in the manner reasonably contemplated; (4) the hearer's ignorance of the falsity of the statement; (5) the hearer's reliance on its truth, and the right to rely thereon; and (6) proximate injury. *Premium Financing Specialists, Inc. v. Hullin*, 90 S.W.3d 110, 115 (Mo. App. 2002).

The Court need not go further than the first requirement in order to affirm the dismissal of the fraud claim against Respondents. Nowhere in the Petition is there an allegation that Respondents made any statement, false or otherwise, to Appellant. *See In re Lifecore Biomedical, Inc. Sec. Litig*., 159 F.R.D. 513, 516 (D. Minn. 1993) (noting that "the complaint must allege the time, place, speaker and sometimes even the content of the alleged misrepresentation."). Moreover, Appellant fails to satisfy the other requirements of pleading a fraud claim, as there

are no factual allegations regarding Respondents' intent or knowledge of the alleged falsity of any statement made to Appellant, nor are there any factual allegations regarding Appellant's reliance on any statement made by Respondents. Thus, Appellant's fraud claim fails at the threshold and Count V was properly dismissed.

C. Appellant Has Failed to Plead Requisite Elements of a Tortious Interference Claim

Appellant claims that Defendants tortiously interfered with "trust accounts with U.S. Bank" and some unknown putative sale or lease arrangement with "General Electric Transportation Co." Legal File, p. 23. Tortious interference with a contract or business expectancy requires plaintiff to plead the following elements: (1) a contract or valid business expectancy; (2) defendant's knowledge of the contract or relationship; (3) an intentional interference by the defendant inducing or causing a breach of the contract or relationship; (4) absence of justification; and (5) damages. *Acetylene Gas Co. v. Oliver*, 939 S.W.2d 404, 408 (Mo. App. 1996).

Even assuming there was a valid contract or business expectancy involved, Appellant wholly fails to allege that Respondents knew about it or intentionally interfered with such contract or business expectancy. Indeed, the Petition is devoid of any facts which would ever justify an inference of knowledge or intention. To fill that gap, Appellant impermissibly relies on its conclusory allegations that Defendants acted in conspiracy with each other with regard to all

the conduct in the Petition in order to try to tie these Defendants to banking and real estate transactions they had nothing to do with between Plaintiff and other parties. However, as established above, Appellant's conspiracy allegations are fundamentally defective and insufficient. Thus, the trial court properly dismissed Appellant's tortious interference claim.

D. Appellant's Prima Facie Tort Pleadings Contradict the Basis for a Legally Viable Claim

Appellant wholly failed to adequately plead the elements of a *prima facie* tort. *Lohse v. St. Louis Children's Hospital, Inc.*, 646 S.W.2d 130, 131 (Mo. App. 1987). The specific elements of a *prima facie* tort claim are: (1) an intentional lawful act by the defendant; (2) an intent to cause injury to the plaintiff; (3) injury to the plaintiff; and (4) an absence of any justification or an insufficient justification for the defendant's act. *Rice v. Hodapp*, 919 S.W.2d 240 (Mo. banc 1996); *Wilt v. Kansas City Area Transp. Authority*, 629 S.W.2d 669 (Mo. App. 1982). Failure to plead that the defendant committed an intentional lawful act is fatal to a claim for *prima facie* tort. *Bradley v. Ray*, 904 S.W.2d 302 (Mo. App. 1995).

The thrust of a *prima facie* tort claim is the intentional undertaking of an otherwise lawful act, which is done with the intent to cause injury to Appellant, and which is without any recognized justification. Here Appellant failed to allege action by Respondents which is both intentional and lawful. In fact, Appellant

specifically alleges the "acts and activities of Respondents are still *unlawful and fraudulent*." Legal File, p. 24 (emphasis added).

CONCLUSION

For all of the foregoing reasons, this Court should affirm the trial court's August 8, 2008 Order dismissing the claims against Respondents.

Respectfully Submitted:

John K. Power Mo. #35312
Michael S. Hargens Mo. #51077
HUSCH BLACKWELL SANDERS LLP
4801 Main Street, Suite 1000
Kansas City, Missouri 64112
Phone: 816.983.8000
Fax: 816.983.8080

ATTORNEYS FOR RESPONDENTS NEOFORMA, INC. AND GHX, LLC

CERTIFICATE OF SERVICE

The undersigned certifies a true and correct copy of the above and foregoing was provided, in both paper and electronic format, to the following persons via first-class US mail, on September 18, 2009:

Samuel K. Lipari
3520 NE Akin Blvd., Apt. 918
Lee's Summit, MO 64064

Michael Thompson
Sean D. Tassi
Husch Blackwell Sanders
4801 Main Street, Suite 1000
Kansas City, MO 64112

Jay E. Heidrick
Shughart Thomson & Kilroy, PC
32 Corporate Woods, Suite 1100
9225 Indian Creek Parkway
Overland Park, KS 66210

Mark A. Olthoff
William E. Quirk
Shughart Thomson & Kilroy, PC
Twelve Wyandotte Plaza
120 W. 12th Street
Kansas City, MO 64105

Peter F. Daniel
Lathrop & Gage, L.C.
2345 Grand Boulevard, Suite 2800
Kansas City, MO 64108

_____
Michael S. Hargens

CERTIFICATE OF COMPLIANCE

Respondents Neoforma, Inc. and GHX, LLC, pursuant to Rule 84.06(c), hereby state that their brief complies with the limitations contained in Rule 84.06(b) and Local Rule XLI(A) in that this brief is comprised of 8,016 words.

Furthermore, pursuant to Rule 84.06(g) and Local Rule XXXIII, Respondents hereby state that their brief was prepared using Microsoft Word 2003. In addition, a CD-ROM containing the Respondents' brief has been provided herewith, and has been scanned and is virus-free.

HUSCH BLACKWELL SANDERS LLP

By:_____

John K. Power #35312
Michael S. Hargens #51077
4801 Main Street, Suite 1000
Kansas City, MO 64112
Telephone: (816) 983.8000
Facsimile: (816) 983.8080
john.power@huschblackwell.com
Michael.hargens@huschblackwell.com

ATTORNEYS FOR RESPONDENTS NEOFORMA, INC. AND GHX, LLC

IN THE STATE OF MISSOURI
WESTERN DISTRICT COURT OF APPEALS
AT KANSAS CITY, MISSOURI

Case No. WD70832 (16th Cir. Case No. 0816-04217)

SAMUEL K. LIPARI
Appellant

v.

NOVATION, LLC; NEOFORMA, INC.; GHX, LLC; VOLUNTEER HOSPITAL ASSOCIATION; VHA MID-AMERICA, LLC; CURT NONOMAQUE; THOMAS F. SPINDLER; ROBERT H. BEZANSON; GARY DUNCAN; MAYNARD OLIVERIUS; SANDRA VAN TREASE; CHARLES V. ROBB; MICHEAL TERRY; UNIVERSITY HEALTHSYSTEM CONSORTIUM; ROBERT J. BAKER; JERRY A GRUNDHOFER; RICHARD K. DAVIS; ANDREW CECERE; COX HEALTH CARE SERVICES OF THE OZARDS, INC.; SAINT LUKE'S HEALTH SYSTEM, INC.; STORMONT-VAIL HEALTHCARE, INC.; SHUGHART THOMSON & KILROY, P.C.; HUSCH BLACKWELL SANDERS LLP
Respondents

RESPONDENTS NEOFORMA, INC. AND GHX, LLC APPENDIX

John K. Power, Mo. #35312
Michael S. Hargens, Mo. #51077
HUSCH BLACKWELL SANDERS LLP
4801 Main Street, Suite 1000
Kansas City, Missouri 64112
Phone: 816.983.8000
Fax: 816.983.8080

ATTORNEYS FOR RESPONDENTS NEOFORMA, INC AND GHX, LLC

INDEX

A

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

SAMUEL K. LIPARI,

Plaintiff,

v. Case Number 0816-CV04217

NOVATION, LLC, et al., Division 2

Defendants.

ORDER

On December 29, 2008, this Court entered a Judgment which sustained the Motion of Defendant, Lathrop and Gage, L.C., for Judgment on the Pleadings. On January 5, 2009, Plaintiff filed his "Motion for Leave to Amend the Original Petition for Relief." The Motion was filed pursuant to Supreme Court Rule 67.06. On January 9, 2009, Defendant, Lathrop and Gage, L.C., filed Suggestions in Opposition to that Motion. This Court sustained Plaintiff's Motion for Leave to Amend on January 13, 2009.

Unknown to the Court at the time it granted Plaintiff's Motion, on January 9, 2009, Plaintiff filed his Notice of Appeal. (The Notice of Appeal had not caught up to the Court file when this Court entered its January 13, 2009 Order).

The filing of the Notice of Appeal on January 9 deprived this Court of jurisdiction to exercise any judicial function in this case and vests that jurisdiction in the appellate court, Rodman v. Schrimpf, 18 S.W. 3d 570, 572 (Mo. App. 2000). It follows that this Court lost jurisdiction of this cause on January 9, 2009, for which reason its Order sustaining Plaintiff's Motion for Leave to Amend was a nullity and must be VACATED.

IT IS SO ORDERED.

MICHAEL W. MANNERS
JUDGE, DIVISION 2

Dated: Jan. 14, 2009

I certify a copy of the above was faxed or mailed this 14th day of January, 2009, to:

Peter F. Daniel, Attorney for Defendant
Fax # (816) 292-2001

Samuel K. Lipari,
Medical Supply Chain,
3520 Akin Boulevard, # 918
Lee's Summit, MO 64064

Brennan B. Delaney, Law Clerk, Division 2

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

SAMUEL K. LIPARI,

Plaintiff,

v. Case Number 0816-CV04217

NOVATION, LLC, et al., Division 2

Defendants.

ORDER

On December 29, 2008, this Court entered a Judgment which sustained the Motion of Defendant, Lathrop and Gage, L.C., for Judgment on the Pleadings. On January 5, 2009, Plaintiff filed his "Motion for Leave to Amend the Original Petition for Relief." The Motion was filed pursuant to Supreme Court Rule 67.06. On January 13, 2009, this Court granted that Motion. This Court's Order was erroneous in three respects:

1) It was entered before Defendant, Husch Blackwell Sanders, LLP, had the opportunity to file opposing suggestions. (Said Defendant filed its Suggestions in Opposition to Plaintiff's Motion for Leave to Amend on January 13, but the Court did not see said Suggestions until a later date.);

2) Unknown to the Court, Plaintiff had already appealed the dismissal of his action, thereby depriving this Court of jurisdiction to rule on his Motion, *see* Order of January 14, 2009; and

3) Contrary to the averments in Plaintiff's January 5 Motion, no proposed First

Amended Petition was attached to the Motion. It is the Court's usual practice to require a copy of the proposed amended pleading to be attached to a motion to amend before ruling thereon so that the Court can determine whether the amendment is appropriate.

On February 24, 2009, the Missouri Court of Appeals dismissed Plaintiff's appeal for the instant cause, thereby obviating the second problem noted above. The effect of the dismissal of the appeal was to reinstate this Court's jurisdiction. Apparently, that prompted several more Defendants, including Novation, LLC, to file Suggestions in Opposition to Plaintiff's Motion to Amend Petition on February 25, 2009.

Since this Court vacated its January 13 Order on January 14, 2009, the Court will consider Plaintiff's January 5 Motion anew, but this time only after Plaintiff files his proposed pleading, denominated "Proposed First Amended Petition," thereby permitting the Court to consider the merit of the various Defendants' suggestions opposing Plaintiff's January 5 Motion. The Proposed First Amended Petition should be attached to a renewed Motion for Leave to Amend within 10 days of this Order. If no such renewed Motion is filed, the January 5 Motion will be denied.

IT IS SO ORDERED.

Michael W. Manners

MICHAEL W. MANNERS
JUDGE, DIVISION 2

Dated: March 2, 2009

I certify a copy of the above was faxed or mailed this 2nd day of March, 2009, to:

Samuel K. Lipari,
Medical Supply Chain,
3520 Akin Boulevard, # 918
Lee's Summit, MO 64064

Peter F. Daniel, Attorney for Defendant Lathrop and Gage, L.C.
Fax # (816) 292-2001

Michael S. Hargens, Attorney for Defendant Novation, et al.
Fax # (816) 421-0596

Jay E. Heidrick, Attorney for Defendants Grundhofer, David and Cecere
Fax # (913) 451-3361

Brennan B. Delaney, Law Clerk, Division 2

IN THE STATE OF MISSOURI
JACKSON COUNTY SIXTEENTH CIRCUIT COURT
AT INDEPENDENCE, MISSOURI

SAMUEL K. LIPARI *Plaintiff* vs. NOVATION, LLC NEOFORMA, INC. GHX, LLC ROBERT J. ZOLLARS VOLUNTEER HOSPITAL ASSOCIATION VHA MID-AMERICA, LLC CURT NONOMAQUE THOMAS F. SPINDLER ROBERT H. BEZANSON GARY DUNCAN MAYNARD OLIVERIUS SANDRA VAN TREASE CHARLES V. ROBB MICHEAL TERRY UNIVERSITY HEALTHSYSTEM CONSORTIUM ROBERT J. BAKER JERRY A. GRUNDHOFER RICHARD K. DAVIS ANDREW CECERE THE PIPER JAFFRAY COMPANIES ANDREW S. DUFF COX HEALTH CARE SERVICES OF THE OZARKS, INC. SAINT LUKE'S HEALTH SYSTEM, INC. STORMONT-VAIL HEALTHCARE, INC. SHUGHART THOMSON & KILROY, P.C. HUSCH BLACKWELL SANDERS LLP LATHROP & GAGE L.C. GENE E SCHROER, REX A. SHARP, ISAAC L. DIEL, ANDREW R. RAMIREZ, JOEL B. VORAN, NEAL PATTERSON, IRVINE O. HOCKADAY CRAIG E. COLLINS THOMAS M. BURKE *in his official capacity as President of the Board of Bar Governors* KEITH A. BIRKES *in his official capacity as Secretary of the Board of Bar Governors* WILLIAM R. BAY; ERIK A. BERGMANIS; STEPHEN R. BOUGH; SUZANNE B. BRADLEY; P. JOHN BRADY; HON. RICHARD C. BRESNAHAN; THOMAS J. CASEY;	) **Case No. 0816-cv-04217** **Missouri Antitrust, Fraud, Tortious Interference, Prima Facie Tort** **Jury Trial Demanded**	

Petition Cover Page
Proposed Amended Petition
Party Service address Contact Information

CAROL HAZEN FRIEDMAN;)
MARK W. COMLEY;)
DANA TIPPIN CUTLER;)
BRIAN FRANCKA;)
ALAN B. GALLAS;)
TRACY HUNSAKER GILROY;)
JOHN R. GUNN;)
RICHARD F. HALLIBURTON;)
CHARLIE J. HARRIS, JR.;)
PAUL G. HENRY;)
EDWARD J. HERSHEWE;)
VINCENT F. IGOE, JR.;)
JOHN S. JOHNSTON;)
JENNIFER M. JOYCE;)
HON. JOHN F. KINTZ;)
WILLIAM J. LASLEY;)
NEIL F. MAUNE, JR.;)
MARK H. LEVISON;)
KAREN KING MITCHELL;)
MAX E. MITCHELL;)
MATTHEW M. MOCHERMAN;)
DOUGLASS F. NOLAND;)
MEGAN E. PHILLIPS;)
W. EDWARD REEVES;)
BRETT W. ROUBAL;)
DEANNA K. SCOTT;)
ALLAN D. SEIDEL;)
PATRICIA A. SEXTON;)
REUBEN A. SHELTON;)
WALTER R. SIMPSON;)
WALLACE S. SQUIBB;)
PATRICK B. STARKE;)
HON. DAVID LEE VINCENT;)
LYNN ANN VOGEL;)
H. A. "SKIP" WALTHER;)
RAYMOND E. WILLIAMS;)
ERIC JOSEPH WULFF,)
in their official capacities)
as Members of the Board of Bar Governors;)
Defendants.)

PROPOSED AMENDED PETITION

Pursuant to 16th Circuit Court of Jackson County Missouri local rule 3.2, the plaintiff lists the names address and contact information if known for the parties and registered agents for service of process by the Jackson County Sheriff:

Parties

Plaintiff :

Samuel K. Lipari, 3520 NE. Akin Blvd, Lee's Summit, MO 64064 816-365-1306
saml@medicalsupplychain.com

Defendants:

Novation LLC. ("Novation") 125 East John Carpenter Frwy Suite 1400 Irving, TX 75062. 972-581-552 kgoldste@novationco.com

Neoforma Inc. (Neoforma), 3061 Zanker Road, San Jose, California 95134.

GHX, LLC, 1315 W. Century Drive, Louisville CO 80027 720-887-7000 kconway@ghx.com

Robert J. Zollars, 525 Race Street, San Jose, CA 95126 408-882-5100

Volunteer Hospital Association of America, Inc. (VHA), 220 E. Las Colinas Blvd., Irving, TX 75039.

VHA Mid-America, LLC, c/o The Corporation Company, Inc., 515 South Kansas Avenue , Topeka, KS 66603

Curt Nonomaque, President and CEO, VHA Inc., 220 E. Las Colinas Blvd., Irving, TX 75039.

Thomas F. Spindler, Area Senior Vice President, VHA Mid-America LLC, 8500 West 110th Street - Suite 118, Overland Park, KS 66210 913-319-6220 tspindle@vha.com

Robert H. Bezanson, President & CEO CoxHealth, 1423 North Jefferson, Springfield, MO 65802 417-269-6107 robert.bezanson@coxhealth.com

Gary Duncan, President & CEO (Chair) Freeman Health System,1102 West 32nd Street Joplin, MO 64804-3599 417-347-6602 gdduncan@freemanhealth.com

Charles V. Robb SVP/CFO., Saint Luke's Health System, 10920 Elm Avenue, Kansas City, MO 64134 816-932-2206 crobb@saint-lukes.org

Sandra Van Trease, Group President, BJC HealthCare, 4444 Forest Park Avenue, St. Louis, MO 63108 314-286-2111 svantrease@bjc.org

Micheal Terry, President/Chief Executive Officer, Salina Regional Health Center, 400 South Santa Fe (67401), PO Box 5080 Salina, KS 67402-5080 785-452-7144 mterry@srhc.com

University Healthsystem Consortium (UHC) is a company headquartered at 2001 Spring Road, Suite 700 Oak Brook, Illinois 60523-1890.

Robert J. Baker, President and CEO of UHC, 2001 Spring Road, Suite 700 Oak Brook, Illinois 60523.

Jerry A. Grundhofer, Chairman of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

Richard K. Davis, President and CEO of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

Andrew Cecere, Chief Financial Officer of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

The Piper Jaffray Companies ("Piper"), 800 Nicollet Mall, Suite 800, Minneapolis, MN 55402

Andrew S. Duff, CEO of Piper Jaffray, 800 Nicollet Mall, Suite 800, Minneapolis, MN 55402.

Cox Health Care Services Of The Ozarks, Inc., c/o Registered Agent Robert H. Bezanson, 1423 N. Jefferson Avenue, Springfield MO 65802

Saint Luke's Health System, Inc., 10920 Elm Avenue, Kansas City, MO 64134

Stormont-Vail Healthcare, Inc., 1500 Southwest Tenth Avenue, Topeka, KS 66604; c/o Michael Lummis, Registered Agent Office: 1500 Southwest Tenth Avenue , Topeka, KS 66604

Shughart Thomson & Kilroy, P.C. ("Shughart") c/o STK Registered Agent, Inc., 120 W 12th ST Ste 1800, Kansas City MO 64105

Husch Blackwell Sanders LLP ("Husch Blackwell") c/o C T Corporation System, 120 South Central Avenue, Clayton, MO 63105

Lathrop & Gage L.C. c/o Registered Agent Ltd., 2345 Grand #2500, Kansas City, MO 64108

Proposed added defendants:

Gene E Schroer, 115 SE 7th St, Topeka, KS 66603

Rex A. Sharp, Gunderson Sharp & Rhein PC, 5301 W. 75th St., Prairie Village, KS 66208

Isaac L. Diel, Sharp McQueen, P.A., 419 North Kansas Avenue, P.O. Box 2619, Liberal, Kansas 67905

Andrew R. Ramirez, 10851 Mastin Boulevard , Building 82, Suite 1000, Overland Park, KS 66210-1669

Joel B. Voran, 2345 Grand Blvd. Suite 2800 Kansas City, MO 64108, jvoran@lathropgage.com

Neal Patterson, Cerner Corporation, 2800 Rockcreek Parkway, Kansas City, MO 64117

Irvine O. Hockaday; Kansas City Life Sciences Initiative, 2405 Grand Boulevard, Suite 500, Kansas City, MO 64108

Craig E. Collins, 420 SW 33rd, Topeka, Kansas 66611. craig@collinslawoffice.net

Burke, Thomas M.; The Hullverson Law Firm, 1010 Market St., Suite 1480, St. Louis, MO 63101tburke@hullverson.com

Birkes, Keith A. ; 326 Monroe St., P.O. Box 119 Jefferson City, MO 65102

Bay, William R.; Thompson Coburn, LLP, One US Bank Plaza; St. Louis, MO 63101 wbay@thompsoncoburn.com

Bergmanis, Erik A.; Bergmanis & McDuffey, 237 W. Hwy. 54, Suite 201, P.O. Box 229 Camdenton, MO 65020, ebergmanis@ozarklawcenter.com

Bough, Stephen R.; The Law Offices of Stephen R. Bough, 917 W. 43rd St., Kansas City, MO 64111stephen@boughlawfirm.com

Bradley, Suzanne B.; Shughart Thompson & Kilroy, P.C., 3101 Frederick Ave.; St. Joseph, MO 64506, sbradley@stklaw.com

Brady, P. John; Shughart Thomson & Kilroy, 120 W. 12th St., Suite 1600, Kansas City, MO 64105, jbrady@stklaw.com

Bresnahan, Hon. Richard C.; St. Louis County Courthouse, 7900 Carondelet, St. Louis, MO 63105, rcbres@msn.com

Casey, Thomas J.Casey & Devoti, P.C.; 10 S. Broadway, Suite 825, St. Louis, MO 63102 tjc@caseydevoti.com

Chazen Friedman, Carol Law Offices of Carol; Chazen Friedman , Suite 1550, 120 S. Central Ave., St. Louis, MO 63105, ccfriedman@ccfriedmanlaw.com

Comley, Mark W.; Newman, Comley & Ruth, 601 Monroe Street, Suite 301, Jefferson City, MO 65101; comleym@ncrpc.com

Cutler, Dana Tippin; James W. Tippin & Associates, 21 West Gregory Blvd., Kansas City, MO 64114, dtcutler@tippinlawfirm.com

Francka, Brian; Schreimann, Rackers, Francka & Blunt, L.L.C., 2316 St. Mary's Blvd., Suite 130 Jefferson City, MO 65109, bfrancka@srfblaw.com

Gallas, Alan B.; Gallas & Schultz, 9140 Ward Parkway, Suite 200, Kansas City, MO 64114, agallas@gallas-schultz.com

Gilroy, Tracy Hunsaker; The Gilroy Law Firm, Suite 800, 231 S Bemiston Ave, St. Louis, MO 63105 gilroyth@aol.com

Gunn, John R., The Gunn Law Firm, P.C., 1714 Deer Tracks Trail, St. Louis, MO 63131 jgunn@thegunnlawfirm.com

Halliburton, Richard F., Legal Aid of Western Missouri, 1125 Grand Blvd., Suite 1900 Kansas City, MO 64106-2230, rhalliburton@lawmo.org

Harris, Jr., Charlie J.; Seyferth Blumenthal & Harris LLC, 300 Wyandotte, Suite 430 Kansas City, MO 64105, charlie@sbhlaw.com

Henry, Paul G.; Denlow & Henry, 7777 Bonhomme, Suite 1910, St. Louis, MO 63105 pghenry@denlow.com

Hershewe, Edward J., The Hershewe Law Firm, P.C., 431 Virginia, Joplin, MO 64801-2324, ed.hershewe@h-law.com

Igoe, Jr., Vincent F.; Withers, Brant, Igoe & Mullenix, P.C., 2 South Main, Liberty, MO 64068-2323 vigoe@withersbrant.com

Johnston, John S.; Shook, Hardy & Bacon, 2555 Grand Blvd., Kansas City, MO 64108-2613 jjohnston@shb.com

Joyce, Jennifer M.; St. Louis Circuit Attorney, 1114 Market St., Room 401, St. Louis, MO 63101 joycej@stlouiscao.org

Kintz, Hon. John F.; Circuit Court, 21st Judicial Circuit, 7900 Carondelet, Clayton, MO 63105 john.kintz@courts.mo.gov

Lasley, William J.; Flanigan, Lasley & Moore, LLP, 400 Grant St., P.O. Box 272 Carthage, MO 64836 bill-lasley@sbcglobal.net

Petition Cover Page
Proposed Amended Petition
Party Service address Contact Information

Levison, Mark H.; Lathrop & Gage, L.C., 10 South Broadway, 13th Floor, St. Louis, MO 63102 mlevison@lathropgage.com

Maune, Jr., Neil F.; Wasinger, Parham, Morthland, Terrell & Wasinger, L.C., 2801 St. Mary's Avenue, P.O. Box 962, Hannibal, MO 63401 nfmaune@socket.net

Mitchell, Karen King; Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102 karen.mitchell@ago.mo.gov

Mitchell, Max E.; Law Offices of Max E. Mitchell, 112 W. 4th St., Room 13, P.O. Box 432, Sedalia, MO 65302-0432 max@maxmitchell.org

Mocherman, Matthew M.; Bradshaw, Steele, Cochrane & Berens, LC, 3113 Independence, P.O. Box 1300, Cape Girardeau, MO 63702 mattm@bradshawsteele.com

Noland, Douglass F.; Noland Law Firm, LLC, 34 Westwoods Drive, Liberty, MO 64068 doug@nolandlawfirm.com

Phillips, Megan E.; Mo. Court of Appeals, Eastern District, 815 Olive St., 3rd Floor, St. Louis, MO 63101 mphillips@swbell.net

Reeves, W. Edward; Ward & Reeves 711 Ward Ave., P.O. Box 169, Caruthersville, MO 63830 ereeves@semo.net

Roubal, Brett W.; Baird, Lightner, Millsap & Harpool, P.C., 1949 E. Sunshine, Two Corporate Centre 2-102, Springfield, MO 65804 broubal@blmhpc.com

Scott, Deanna K.; Legal Services of Southern Missouri, 2872 S. Meadowbrook, Springfield, MO 65807 deanna.scott@lsosm.org

Seidel, Allan D.; Miller, Seidel & Havens, LLP, 705 Main St., Trenton, MO 64683-2009 allan_mshlaw@sbcglobal.net

Sexton, Patricia A.; Polsinelli Shalton Flanigan Suelthuas, P.C., 700 W. 47th Street, Suite 1000, Kansas City, MO 64112 psexton@polsinelli.com

Shelton, Reuben A.; Monsanto Company, 800 N. Lindbergh Blvd, Ste. E2411N, St. Louis, MO 63108 reuben.a.shelton@monsanto.com

Simpson, Walter R.; Sanders & Simpson, P.C., 1125 Grand, Suite 1400, Kansas City, MO 64106 wrsimpson@ssfs.com

Squibb, Wallace S.; Squibb Law Firm, P.C., 3840 S. Cox Ave., Suite F102, Springfield, MO 65807 wsquibb@squibblaw.com

Starke, Patrick B.; Starke Law Offices, 801 West Vesper, Blue Springs, MO 64015 patstarke@msn.com

Vincent, Hon. David Lee; St. Louis County Circuit Court, 7900 Carondelet, Clayton, MO 63105 david.vincent@courts.mo.gov

Vogel, Lynn Ann; Vogel Law OfficesP.O. Box 50295, St. Louis, MO 63124 lawvogel@earthlink.net

Walther, H. A. "Skip"; Walther, Antel, Stamper & Fischer, P.C., 700 Cherry St., P.O. Box 7686, Columbia, MO 65205-7686 skip@wasf-law.com

Petition Cover Page
Proposed Amended Petition
Party Service address Contact Information

Williams, Raymond E.; Williams Law Offices, L.L.C., P.O. Box 169, 213 E. Main St. West Plains, MO 65775 rwilliams@centurytel.net

Wulff, Eric Joseph; Burke, Wulff, Flach, Luber & Briscoe, LLP, Suite 2, 501 First Capitol Drive, St. Charles, MO 63301 ewulff@501Lawfirm.com

Petition Cover Page
Proposed Amended Petition
Party Service address Contact Information

TABLE OF CONTENTS

COMPLAINT

Comes now the petitioner, Samuel K. Lipari on his personal property interest as the sole assignee of rights for the dissolved Missouri Corporation Medical Supply Chain, Inc. where he was the founder and Chief Executive Officer and after dissolution of Medical Supply Chain. Inc. Samuel K. Lipari is a sole proprietor competing in the market for hospital supplies within the State of Missouri. Samuel K. Lipari appears *pro se*.

I. Introduction

1. The petitioner brings this actions against some members of a hospital supplies cartel for their conduct in keeping the plaintiff out of the Missouri market for hospital supplies distributed to hospitals and other health systems including clinics and nursing homes through anticompetitive long term exclusionary contracts.

2. The hospital supply cartel of VHA, UHC and Novation LLC artificially inflates the costs of hospital supplies, hospital supply management services and of hospital supplies distributed through electronic marketplaces like the petitioner's and during the time period complained of, shared with its member hospitals the unlawful overcharging of healthcare insurance providers.

3. The previous litigation by the petitioner has ended the utility of Neoforma, Inc for passing on these unlawful kickbacks and has forced the defendants to enter into two failed schemes to substitute the flow of government healthcare tax dollars through VHA, UHC and Novation LLC in Missouri.

4. The first was to eliminate Medicaid in this state and to replace the insurance plan with an unlawful Missouri state pilot program administering the federal Medicare and Medicaid funds without federal controls or auditing called Insure-Missouri as the Republican National Committee model for the nation.

5. The second failed plan was to take from the State of Kansas the academic credentials, doctors and residents of the University of Kansas School of Medicine and to unlawfully operate the Novation LLC Saint Luke's Plaza hospital in Kansas City, Missouri as a National Cancer Institute Certified Research Center even though no curriculum, staff or qualifying programs were in existence.

6. The defendants were desperate to replace the loss of preferential treatment of their Medicare claims by Blue Cross Blue Shield of Kansas, Inc. on February 29, 2008.

7. During the complained of time period Blue Cross Blue Shield of Kansas, Inc. and the defendant Lathrop & Gage L.C. sheltered the defendant conspirator's Missouri hospitals and Nursing homes from effective oversight and permitted CoxHealth and Saint Luke's to unlawfully grow their revenue by tens of millions of dollars a year.

8. The two schemes failed when the petitioner on April 9, 2007 discovered and press released that the US Attorney Todd Graves had been the Ninth targeted by Karl Rove and former US Attorney General Alberto Gonzales for Graves' investigation of Medicare fraud at CoxHealth, the petitioner's press release and the resulting articles by The McClatchy Company newspapers and the Washington Post contradicted the US Attorney General Gonzales' testimony that only eight US Attorneys had been fired.

8.1 The defendant members of the hospital supply market continue their monopolization of the Missouri hospital supply market through Novation LLC which is now also referred to as VHA Mid-America, LLC.

8.2 The monopolization has resulted in injury to consumers in the market for hospital supplies: the deaths and suffering of Missouri's citizens from unaffordable or inaccessible healthcare, the loss of jobs and the closing of Ford, Chrysler and General Motor's manufacturing plants that had employed workers residing in Missouri; and the overpayment and cutbacks of programs by the State of Missouri all resulting from the cartel's artificial inflation of hospital supplies.

8.3 The defendant cartel members have conducted an antitrust conspiracy against the petitioner that has sought to deprive the petitioner of inputs required to enter the Missouri hospital supply market including through "sham petitioning" of former Governor Matt Blunt's administration to replace period Blue Cross Blue Shield of Kansas, Inc. with an illegal State of Missouri administrated dispensing of Medicaid funds without Congress's mandated over sight and through the allocation of hospital supply market share and purchasing management through the Cerner Corporation in a secret no bid scheme; and to use the influence of Lathrop & Gage L.C. to deprive the petitioner of the right to enforce contracts, retain legal counsel or even to operate as an incorporated entity.

8.4 The petitioner has now amended his petition to include subsequent antitrust, conspiracy, and fraud claims in addition to prospective injunctive and declaratory relief including the Missouri Board of

Bar Governors to obtain relief from the defendant cartel's extortion over attorneys otherwise willing to represent the petitioner and vindicate the state legislature's public policy of prohibiting monopolies.

II. Averments

9. The petitioner makes the following averments of fact regarding the jurisdiction of this court, the previous and related proceedings and the identity and conduct of the parties.

10. Each factual averment is pled to meet the requirements of Missouri Supreme Court Rule 55(b)(3) in that the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

11. Each factual averment is relative to proving the petitioner's claims and the petitioner is entitled to discovery of records in the possession of the defendants to produce documents or papers, which contain evidence relevant to the subject matter involved in the pending action under Missouri Supreme Court Rule 56.01.

A. Jurisdiction

The petitioner asserts the following basis for the court's jurisdiction over this matter.

1. Subject Matter Jurisdiction

12. This court has subject matter jurisdiction over the defendants herein to state statutory causes of action consisting of violations of Missouri state antitrust statutes §§ 416.011 to 416.161, RSMo and state common law tortuous interference with business relationships; fraud; and prima facie tort claims.

2. Personal Jurisdiction

13. Personal jurisdiction over the defendant corporations and individual persons exists under Mo. Rev. Stat. § 416.131.

14. Personal jurisdiction over the defendant corporations and individual persons exists under the Missouri long-arm statute, Mo. Rev. Stat. § 506.510 (2007).

3. Venue

15. The plaintiff makes a well pleaded complaint claiming state statutory causes of action over violations of Missouri state antitrust statutes §§ 416.011 to 416.161, RSMo and state common law tortuous interference with business relationships; fraud; and prima facie tort claims against the defendants' conduct occurring in Jackson County.

16. The plaintiff's complaint is against defendants that regularly do business in Jackson County, Missouri.

17. Venue in Jackson County is proper under Mo. Rev. Stat. § 416.545 where the plaintiff resides and the causes of action herein accrued.

18. Venue in Jackson County is proper under Mo. Rev. Stat. § 416.131. 1 where defendants reside, engage in business and have agents.

4. Timeliness

19. This matter is timely under Mo. Rev. Stat. § 416.131. 2 having been commenced within four years after the relative antitrust causes of action against new defendants and subsequent conduct of prior defendants accrued.

20. This matter is timely under Mo. Rev. Stat. § 516.230 having been commenced within one year after the suffering of a nonsuit on March 7, 2007 in *Medical Supply Chain, Inc. v. Novation LLC et al* KS Dist. Court Case No.: 05-2299, an action originally filed in Missouri on March 9, 2005 as *Medical Supply Chain, Inc. v. Novation LLC et al.* W.D. of MO Case No. 05-0210-CV-W-ODS.

5. Procedural History

21, The petitioner, in the name of his Missouri corporation Medical Supply Chain, Inc. ("Medical Supply") initiated litigation against members of the defendants' hospital supply cartel in the US District Court for Kansas in October 2002 to enjoin the cartel from interdicting $350,000.00 the plaintiff had raised to enter the hospital supply market. A detailed description of the legal actions between the plaintiff and members of the defendants' hospital supply cartel is incorporated by reference as **Appendix One**.

6. Table of Prior and Related Cases

23. The petitioner as a hospital supply distributor prevented from entering the market is the efficient enforcer of Missouri antitrust statutes. The related federal and state legal actions against the defendant cartel's members are listed in a table incorporated by reference as **Appendix Two**.

7. Governing Law

24. The Missouri state long arm statute § governs this court's jurisdiction over the out of state defendants.

25. The Missouri State Antitrust Chapter 416 Monopolies, Discriminations and Conspiracies; statutes §§ 416.011 to 416.161, RSMo govern the substantive claims of the petitioner related to statutory violations of state law against anticompetitive conduct.

26. The petitioner has averred the existence of antitrust conspiracy to the current new antitrust pleading standard under *Bell Atlantic Corp. v. Twombly*, ___ U.S. ___, 127 S.Ct. 1955, 1970, 167 L.Ed.2d 929 (2007).

27. The petitioner's right to bring new claims based on subsequent conduct of previous defendants is governed by *Lawlor v. National Screen Service Corp.*, 349 U.S. 322:

> *"Lawlor v. National Screen Service Corp.*, 349 U.S. 322, 75 S.Ct. 865, 99 L.Ed. 1122,. In Lawlor five new defendants were brought into the case in the new action. Substantial new antitrust violations subsequent to the termination of the prior litigation were charged."

Engelhardt, v.Bell & Howell Co., 327 F.2d 30 at ¶ 42 (8th Cir, 1964).

28. The petitioner's claims for tortuous interference with a business expectancy, fraud and prima facie tort are governed by the common law of the State of Missouri.

B. Statement of Facts

29. The plaintiff avers the following facts as true to the best of his knowledge or will likely to be proven through discovery:

1.Parties

30. The following persons and corporations are subject to this legal action:

a. Plaintiff

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

b. Defendants

32. Novation LLC. ("Novation") 125 East John Carpenter Frwy Suite 1400 Irving, TX 75062

33. Neoforma Inc. (Neoforma), 3061 Zanker Road, San Jose, California 95134.

34. GHX, LLC, 1315 W. Century Drive, Louisville, CO 80027.

35. Robert J. Zollars, 525 Race Street, San Jose, CA 95126.

36. Volunteer Hospital Association of America, Inc. (VHA), 220 E. Las Colinas Blvd., Irving, TX 75039.

37. VHA Mid-America, LLC, c/o The Corporation Company, Inc., 515 South Kansas Avenue , Topeka, KS 66603.

38. Curt Nonomaque, President and CEO, VHA Inc., 220 E. Las Colinas Blvd., Irving, TX 75039.

39. Thomas F. Spindler, Area Senior Vice President, VHA Mid-America LLC, 8500 West 110th Street - Suite 118, Overland Park, KS 66210.

40. Robert H. Bezanson, President & CEO CoxHealth, 1423 North Jefferson, Springfield, MO 65802.

41. Gary Duncan, President & CEO (Chair) Freeman Health System,1102 West 32nd Street Joplin, MO 64804-3599.

42. Charles V. Robb SVP/CFO., Saint Luke's Health System, 10920 Elm Avenue, Kansas City, MO 64134.

43. Sandra Van Trease, Group President, BJC HealthCare, 4444 Forest Park Avenue, St. Louis, MO 63108.

44. Micheal Terry, President/Chief Executive Officer, Salina Regional Health Center, 400 South Santa Fe (67401), PO Box 5080 Salina, KS 67402-5080.

45. University Healthsystem Consortium (UHC) is a company headquartered at 2001 Spring Road, Suite 700 Oak Brook, Illinois 60523-1890.

46. Robert J. Baker, President and CEO of UHC, 2001 Spring Road, Suite 700 Oak Brook, Illinois 60523.

47. Jerry A. Grundhofer, Chairman of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

48. Richard K. Davis, President and CEO of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

49. Andrew Cecere, Chief Financial Officer of US Bancorp, Inc., 800 Nicollet Mall, Minneapolis, MN 55402.

50. The Piper Jaffray Companies ("Piper"), 800 Nicollet Mall, Suite 800, Minneapolis, MN 55402.

51. Andrew S. Duff, CEO of Piper Jaffray, 800 Nicollet Mall, Suite 800, Minneapolis, MN 55402.

52. Cox Health Care Services Of The Ozarks, Inc. ("CoxHealth"), c/o Registered Agent Robert H. Bezanson, 1423 N. Jefferson Avenue, Springfield MO 65802.

53. Saint Luke's Health System, Inc., 10920 Elm Avenue, Kansas City, MO 64134.

54. Stormont-Vail Healthcare, Inc., 1500 Southwest Tenth Avenue, Topeka, KS 66604; c/o Michael Lummis, Registered Agent Office: 1500 Southwest Tenth Avenue , Topeka, KS 66604.

55. Shughart Thomson & Kilroy, P.C. ("Shughart") c/o STK Registered Agent, Inc., 120 W 12th ST Ste 1800, Kansas City MO 64105.

56. Husch Blackwell Sanders LLP ("Husch Blackwell") c/o C T Corporation System, 120 South Central Avenue, Clayton, MO 63105.

57. Lathrop & Gage L.C. c/o Registered Agent Ltd., 2345 Grand #2500, Kansas City, MO 64108.

57.1 Andrew R. Ramirez, 10851 Mastin Boulevard , Building 82, Suite 1000, Overland Park, KS 66210-1669.

57.2 Joel B. Voran, Lathrop & Gage L.C., 2345 Grand Blvd., Suite 2800, Kansas City, MO 64108.

57.3 Gene E Schroer, 115 SE 7th St, Topeka, KS 66603, (785) 357-7300.

57.4 Rex A. Sharp. Gunderson Sharp & Rhein PC, 5301 W. 75th St., Prairie Village KS 66208.

57. 5 Isaac L. Diel, Sharp McQueen, P.A., 419 North Kansas Avenue, P.O. Box 2619, Liberal, Kansas 67905.

57.6 Neal Patterson, Cerner Corporation, 2800 Rockcreek Parkway, Kansas City, MO 64117.

57.7 Irvine O. Hockaday, KC Life Sciences, 2405 Grand Boulevard, Suite 500, Kansas City, MO 64108.

57.8 Craig E. Collins, 420 SW 33rd, Topeka, Kansas 66611

2. The Relative Markets

58. The petitioner identifies the following relative product and services markets as being monopolized by the defendants Novation LLC. Neoforma Inc., GHX, LLC, Robert J. Zollars, Volunteer Hospital Association of America, Inc.(VHA), VHA Mid-America, LLC, Curt Nonomaque, Thomas F. Spindler, Robert H. Bezanson, Gary Duncan, Charles V. Robb, Sandra Van Trease, Micheal Terry, University Healthsystem Consortium (UHC), Robert J. Baker, Jerry A. Grundhofer, Richard K. Davis, Andrew Cecere, The Piper Jaffray Companies, Andrew S. Duff, Cox Health Care Services Of The Ozarks, Inc. (CoxHealth), Saint Luke's Health System, Inc., Stormont-Vail Healthcare, Inc., Shughart Thomson & Kilroy P.C., Husch Blackwell Sanders LLP, Lathrop & Gage L.C. Andrew R. Ramirez, Joel B. Voran, Neal Patterson, and Irvine O. Hockaday:

a. The Missouri Hospital Supply Market

59. The petitioner avers that the defendants monopolized and/or attempted to monopolize the geographic market of hospital supplies sold in the State of Missouri to hospitals.

60. The petitioner avers that the defendants monopolized and/or attempted to monopolize the geographic market of hospital supplies sold in the State of Missouri to nursing homes.

61. The petitioner avers that the defendants monopolized and/or attempted to monopolize the geographic market of automated hospital supplies management sold in the State of Missouri to hospitals.

62. The petitioner avers that the defendants monopolized and/or attempted to monopolize the geographic market of automated hospital supplies management sold in the State of Missouri to nursing homes.

b. The Missouri e-commerce Hospital Supply Market

63.The petitioner avers that the defendants monopolized and/or attempted to monopolize the sub market of hospital supplies sold in the geographic area of the State of Missouri to hospitals through electronic marketplaces.

64. The petitioner avers that the defendants monopolized and/or attempted to monopolize the sub market of hospital supplies sold in the geographic area of the State of Missouri to nursing homes through electronic marketplaces.

c. The Upstream Healthcare Technology Company Capitalization Market in Missouri.

65. The petitioner avers that the defendants monopolized and/or attempted to monopolize the geographic market of healthcare technology company capitalization hospital in the State of Missouri for new ventures with products for hospital use in the treatment of patients.

2. Anticompetitive Activity in the Subject Relevant Markets

66. The petitioner avers that the defendants have monopolized the above relevant markets through conduct prohibited by the Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo and that the prohibited conduct has injured Missouri hospital supply customers including health systems and patients.

67. The petitioner also avers that the petitioner has been injured by conduct prohibited by the Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo and that but for the actions of the defendants, the petitioner would be selling hospital supplies to hospitals and nursing homes in the State of Missouri.

a. The Harm To Buyers In The Market

68. The petitioner avers that the defendants have violated the Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo injuring Missouri hospital supply customers including health systems and patients.

i. The Harm to Hospitals

69. VHA through Novation LLC contracts management controls the purchasing at 41 hospitals in Missouri, including: BJC HealthCare, Cox Health System in Springfield, Freeman Health System in Joplin, St. Luke's Health System in Kansas City, Liberty Hospital, Skaggs Medical Center in Branson, St. Francis Medical Center in Cape Girardeau, and Citizens Memorial Hospital in Boliver.

70. As VHA members, the hospitals are deceived into participating in VHA programs where artificially inflated hospital supply contracts are controlled by Novation LLC to add 20 to 45% on average to the costs of purchases of essential, but expensive, supplies for their patients.

71. The defendants VHA and UHC are group purchasing organizations ("GPOs").

72. The defendants VHA and UHC represent themselves as extensions of hospital purchasing departments providing special expertise, negotiating experience, electronic tools and processes to streamline buying and save hospitals hundreds of millions of dollars each year.

73. In actuality, VHA steered its members to the Novation LLC scheme that artificially inflates hospital supplies and extorts illegal kickbacks from the manufacturers represented by Novation LLC.

74. VHA steered Missouri hospitals toward purchasing more than $718.4 million in supplies in 2005 exclusively through Novation LLC.

75. The defendants through VHA and VHA Mid-America, LLC misrepresent that "On average, hospitals buying through Novation save an average of one to three percent, compared with purchasing on their own or through another GPO. These savings fall immediately to a hospital's bottom line, giving them resources that can be used for other purposes, such as providing the hospital with more staff to provide better care." VHA press release dated February 23, 2008.

76. And that Missouri hospital members "saved more than $43.3 million in 2005. " VHA press release dated February 23, 2008.

77. In reality, Novation LLC has taken money belonging to Missouri hospitals in the market the petitioner is being kept out of by the defendants.

78. On August 21, 2004 the NY Times reported that the Justice Department had opened a broad criminal investigation of the medical-supply industry revealing that Novation is being subjected to a criminal inquiry:

> "Novation's primary business is to pool the purchasing volume of about 2,200 hospitals, as well as thousands of nursing homes, clinics and physicians' practices, and to use their collective power to negotiate contracts with suppliers at a discount. In many cases, the contracts offer special rebates to hospitals that meet certain purchasing targets. **Although Novation is not well known outside the industry, it wields formidable power because it can open, or impede, access to a vast institutional market for health products.**" [emphasis added]

79. On July 31, 2006 the London Times reported the existence of the US Department of Justice investigation of Novation's conduct as a hospital group purchasing organization or "GPO" and quoted Professor Prakash Sethi, president of the International Center for Corporate Accountability at Baruch

College in New York who stated "My most conservative estimates suggest that GPOs extract extra profits of $5 billion (£2.6 billion) to $6 billion which legitimately belong to their principal clients, the hospitals."

80. Missouri hospitals purchasing through Novation LLC, VHA or UHC in actuality lost 5% annually of their bottom line revenue as institutions and suffered a resulting loss of capacity to serve Missourians.

ii. The Harm To Healthcare Services Consumers

81. The anticompetitive conduct of the defendants have artificially inflated hospital supply costs creating an over 11% per year increase in healthcare costs.

82. The suppression of economic competition in hospital supplies has led to unsustainable increases in healthcare costs.

83. The actions of the hospital supply cartel defendants to deprive critical inputs required by new entrants to the market, including breaking their contracts with the petitioner demand investigative scrutiny.

84. The injury to Missouri's healthcare consumers has been aggravated by the defendants' misconduct as part of an agreement with other hospital supply distributors to control access to the hospital supply market conditioned on participating in a scheme to artificially inflate the costs of hospital supplies.

iii. Loss of Healthcare Insurance

85. The artificial inflation of hospital supply costs and the resulting continuing double digit increases in healthcare costs have become unsustainable for private healthcare insurance plans.

86. As a result of the relator's failure to advance his antitrust and state law based contract claims in federal court due to the misconduct of the defendants, the first 65,000 Missouri residents were cut off of Medicaid benefits on July 1, 2005.

87. A July 2nd, 2005 Los Angeles Times article stated 1/3 of the Missourians losing insurance coverage are children: "An estimated 24,000 children are expected to lose their benefits, dental coverage is being cut for adults, and disabled people are losing coverage for crutches and other aids." See Missouri's Sharp Cuts to Medicaid Called Severe-More than 68,000, a third of them children, may lose benefits in the move to avoid tax hikes. LA Times, July 1, 2005.

88. On June 29, 2005, David Moskowitz MD, was invited to testify before the Missouri Medicaid

Reform Commission and in his released pretestimony stated for the 65,000 patients losing coverage; "Since oxygen tanks are among the items no longer covered, many patients will soon die"[emphasis added]. Of course patients are the consumers in the market for hospital supplies that is the primary relevant market the petitioner is attempting to enter.

89. Doctor Moskowitz also stated; "The Missouri Legislature is wrestling with the most critical domestic issue of our time. It is literally a life and death issue for tens of millions of Americans.

90. Currently 719,000 Missourians are without health insurance.

91. However, the increased costs on health systems including hospitals and nursing homes is being passed on to the five million Missourians covered by health insurance, increasing the loss of jobs and healthcare insurance benefits.

iv. The Injury To Healthcare Insurance Plans

92. Insure-Missouri quotes Dwight L. Fine, Senior Vice President for Health Policy, Missouri Hospital Association as stating:

"As more people lose coverage, the costs associated with caring for the growing uninsured population are shifted to those with health insurance thus making it more expensive. As health insurance costs increase, more employers stop offering coverage to their employees..."

v. The Loss Of Life From Decreased Access To Healthcare

93. Insure-Missouri also quotes Dwight L. Fine, Senior Vice President for Health Policy, Missouri Hospital Association as stating:

"Studies show that those who are uninsured delay seeking needed care, which leads to the onset of chronic diseases. More importantly, those studies tell us that those who have health insurance live longer than those who do not."

94. The rise in healthcare costs of which hospital supply inflation is a significant contributing factor led to a reported 18,000 deaths a year in the USA resulting from 40 million Americans being uninsured in 2001. See "Study Blames 18,000 deaths in USA on Lack of Insurance", USA Today, May 23, 2002.

95. In 2002, the number of uninsured increased to 43.6 million Americans and without decreases in the mortality rates of untreated illnesses or observed improvements in public health systems, the number of deaths resulting from the lack of affordable health insurance was 19,962.

96. The following year, 2003, the number of uninsured Americans increased to 45 million, resulting in an expected 20,603 deaths resulting from the lack of affordable health insurance.

97. During the period of time in which Medical Supply has been foreclosed from competing in the market for healthcare supplies as a result of the actions of the defendants, at least 103,015 Americans have died as a result of the increasing cost of hospitalization and medical care of which artificially inflated hospital supply costs are a significant contributing factor.

98. Videotapes exist and are discoverable of surgeries in Missouri hospitals which were stopped due to unforeseen shortages of critical hospital supplies with the foreseeable and certain death of the patient resulting.

b. The Harm to Medical Supply

99. The petitioner has been injured by conduct prohibited by the Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo.

100. The petitioner lost over $300,000.00 raised in October 2002 to capitalize his entry into the hospital supply market through US Bank escrow accounts the petitioner had contracted for as a substitute for Piper Jaffray's venture capital services.

101. The petitioner obtained a replacement of over $300,000.00 to capitalize his entry into the hospital supply market by selling the lease of a Blue Springs, Missouri Office building to the General Electric Company.

102. The defendants have repeatedly violated Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo during the period of March 25, 2004 through February 25, 2008 to deprive the petitioner of inputs required to enter the subject relevant Missouri markets including tortiously interfering with the petitioner's property rights to his claims against US Bank NA, US Bancorp, Inc. and the General Electric Company.

103. The conduct of the defendants in obstructing the petitioner in his federal litigation to recover the market entry capitalization included separate Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo violations to deprive the petitioner of his corporate counsel, representation by Missouri and Kansas attorneys and therefore the enjoyment of the right for Medical Supply Chain, Inc. to be incorporated under the laws of the State of Missouri.

104. The conduct and transactions of the defendants in violation of Missouri Antitrust Statutes §§ 416.011 to 416.161, RSMo caused the foreseeable injury of the petitioner being forced to dissolve Medical Supply Chain, Inc. on January 27th, 2006

105. The conduct and transactions of the defendants to cause the petitioner to be forced to dissolve his Missouri corporation occured subsequent to the petitioner's filing of the federal antitrust action on March 9, 2005 styled *Medical Supply Chain, Inc. v. Novation LLC et al.* W.D. of MO Case No. 05-0210-CV-W-ODS.

106. The petitioner is obstructed from necessary inputs and critical facilities including capitalization for marketing as long as he is deprived of the right to be incorporated under the laws of the State of Missouri by the anticompetitive conduct of the defendants.

107. The defendants chose to injure the petitioner by depriving him of state and federal government related benefits and immunities constructively and through bribery and extortion instead of *Noerr-Pennington* Doctrine protected petitioning.

c. The Need For Private Antitrust Enforcement

108. The petitioner brings his claims for redress because of the inability of the State of Missouri and the Federal Government to enforce their respective antitrust regulatory schemes in the complex electronic marketplaces where hospital supplies are distributed.

i. The Limited Resources Of The US Department Of Justice

109. The plaintiff asserts that the US Department of Justice under for Attorney General Alberto Gonzales and the Federal Trade Commission Chairwoman Deborah Platt Majoras have acted to protect the hospital supply cartel created by Novation LLC.

(A) FTC Chairwoman Deborah Platt Majoras

110. The Federal Trade Commission enforcement attorneys had to hire the petitioner's expert witnesses Lynn Everard and Patti King to document and explain how the electronic marketplaces for hospital supplies run by Neoforma, Inc. and GHX LLC created a choke point over all the supplies purchased in the nation's hospitals.

111. The Federal Trade Commission enforcement attorneys were excited about ending the monopoly in hospital supplies Lynn Everard and Patti King revealed to them.

112. The Chairwoman Deborah Platt Majoras saw to it that the agency did not prevent the merger of Neoforma, Inc. and GHX LLC to further Karl Rove's protection of the defendants' hospital supply cartel.

(B) F.B.I. Director Robert Mueller

113. The Federal Bureau of Investigation under Director Robert Mueller has no will to exercise the responsibilities of his office and did not investigate the criminal conduct against the petitioner in the Kansas District Court in a complaint made by the petitioner at the direction of the US Tenth Circuit Court of Appeals in 2005.

114. To this date less than one third of Federal Bureau of Investigation employees even have access to the Internet at their workspace desks as was disclosed in answers to questions made by Willie T. Hulon, Executive Assistant Director.

115. National Security Branch of the Federal Bureau of Investigation in a recent House and Senate hearing on the F.B.I.'s implementation of recommendations made by the 9/11 Commission.

116. FBI Executive Assistant Director Willie T. Hulon testified on October 23, 2007 with 9/11 Commission Chairmen Lee Hamilton & Thomas Kean before a Senate Select Intelligence Committee hearing on the FBI's National Security Strategic Plan.

117. The hearing examined the FBI's reform effort and how the agency is adapting to meet national security challenges.

118. Sen. John Rockefeller of West Virginia chaired the hearing and the senior minority party member Sen. Kit Bond of Missouri also questioned the witnesses.

119. The hearing is on video including Executive Assistant Director Willie T. Hulon at the following url:

http://12.170.145.161/search/basic.asp?ResultStart=1&ResultCount=10&BasicQueryText=Senate+Select+Intelligence+Cmte.+Hearing+on+the+FBI%27s+National+Security+Strategic+Plan

ii. How the Defendants' Cartel Avoided Federal Prosecution in Texas

120. Two US Attorneys that appeared connected to the criminal investigation of Novation, LLC have died and three more in the Ft Worth office of the US Department of Justice with antitrust expertise have been terminated.

(A) The deaths of two Assistant US Attorneys

121. On the night of July 29, 2004 some lawyers from the US Attorney for the Northern District of Texas Office watched the conclusion of the Democratic National Convention on television.

122. Senator John Forbes Kerry had accepted the nomination and gave a stirring speech interrupted 43 times by applause.

123. Senator Kerry said his brand of leadership "starts by telling the truth to the American people. That is my first pledge to you tonight: As president, I will restore trust and credibility."

124. The speech inspired some listeners in Dallas Texas to think that by January, John Ashcroft would no longer be Attorney General or control the US Department of Justice for the Bush administration.

125. Breaking Main Justice's unwritten policy of prosecuting only healthcare providers and never the two giant Group Purchasing Organizations Novation LLC and Premier, Inc. that put their customers up to wholesale Medicare fraud, a criminal subpoena was issued

126. The Dallas Texas U.S. Attorney's office Criminal Chief Shannon Ross who was just 44 years old supervised seventy criminal prosecutors.

(1) AUSA Thelma Louise Quince Colbert

127. Federal whistleblower False Claims Act cases for the district were overseen by Fort Worth, Texas Civil Enforcement Head Thelma Louise Quince Colbert.

128. Southern University Law Center awarded Assistant US Attorney Thelma Louise Quince Colbert the 1998 Distinguished Alumnus Award for having served as the first editor-in-chief of the school's law review and where she was first in her class, graduating summa cum laude.

129. Assistant US Attorney Thelma Louise Quince Colbert was tasked with the majority of Medicare Fraud cases for Texas.

129.1 Assistant US Attorney Thelma Louise Quince Colbert was the attorney that brought the government's Medicare Fraud prosecution of Novation LLC captioned *USA et al Cynthia Fitzgerald v. Novation LLC et al*, N. Dist. of TX Case No. 03-01589.

129.2 After Assistant US Attorney Thelma Louise Quince Colbert's suspicious death and the later resignation of US Attorney General Alberto Gonzales, Hon. Judge David C. Godbey ordered the evidence provided by the Novation LLC manager Cynthia Fitzgerald to be unsealed.

129.3 Assistant US Attorney Thelma Louise Quince Colbert had based her prosecution on evidence provided by Cynthia Fitzgerald who had witnessed and documented the kickbacks and commercial bribes supporting the plaintiff-appellant's antitrust allegations against Novation LLC in *Medical Supply Chain, Inc. v. Neoforma et al.*, W. D. of MO Dist Court Case No. 05-0210- CV-W-ODS (later KS Dist. Court Case No.: 05-2299).

(2) AUSA Shannon K. Ross

130. New York Times reporter Mary Williams Walsh wrote "Wide U.S. Inquiry Into Purchasing for Health Care," one of the most comprehensive early stories on August 21, 2004 regarding the Justice Department's (USDOJ) inquiry into healthcare industry purchasing, antitrust issues and other Medicare abuses.

131. Novation LLC, Merck, Bristol-Myers Squibb, Genentech, G.E. Healthcare and Cardinal Health were all cited in the subpoena.

132. Federal investigators were seeking evidence of health care fraud, conspiracy to defraud the United States, theft or bribery involving programs receiving federal funds, obstruction of investigations and other possible violations.

133. Mary Williams Walsh reported the subpoena was signed by Assistant US Attorney Shannon K. Ross, criminal chief of the United States attorney's office in Dallas.

134. Assistant U.S. Attorney Shannon K. Ross was interviewed about the subpoenas by New York Times reporter Mary Williams Walsh for a follow up story on Saturday September 11, 2004.

135. The story ran in the New York Times on September 14, 2004, the day of the second US Senate Judiciary Committee hearing on Novation LLC's anticompetitive conduct and was entitled "U.S. to Address Possible Abuses in Hospital Supply Industry"

136. The article described Shannon K. Ross's work stating:

"The United States attorney in Dallas is now conducting a criminal investigation and about a month ago served subpoenas on more than a dozen companies in the hospital supply business, and on Novation.

One particular problem is the practice among the purchasing companies of accepting payments from the very medical product suppliers whose products they are supposed to evaluate.

The payments are ostensibly to cover the cost of administering the contracts, and limited payments for that purpose are expressly exempted from the federal anti-kickback law for health care. But this loophole has long created the appearance that lucrative contracts are sometimes awarded to suppliers making the highest payments.

The payments have also become extremely complicated and hard to trace over the years. In the past, some payments were made in cash, some in stock or stock options; some were a percentage of each hospital's purchases. And some payments were larger than allowed under the law."

137. However, unknown to many of the Senate antitrust hearing participants, Assistant U.S. Attorney Shannon Ross was found dead on September 13, 2004, just 55 days after Colbert turned up dead in her swimming pool on July 20, 2004.

138. When the petitioner called Shannon Ross' office he was surprised and shocked to hear she was not there and had passed away.

(B) Press Release of Death of Assistant US Attorney

139. The petitioner checked and verified that the tragedy had occurred and posted an announcement on September 17th, 2004 for others in the healthcare industry, unwittingly providing the only press announcement of the event:

"Second US Attorney Death in Novation Medicare Fraud Case

US Attorney Shannon Ross, the second death in the Ft. Worth, TX US Attorney office connected to the governments investigation of Novation, GE and other GHX members for Medicare fraud

Kansas City, MO (PRWEB) September 17, 2004 -- Assistant US Attorney for Texas, Shannon Ross died on Monday September 13th, 2004. Shannon Ross, who supervised 70 US Justice Department prosecutors, had issued the criminal subpoenas to healthcare suppliers General Electric in addition to other members of GHX, LLC that do business with Novation, the largest healthcare GPO, under the investigation that sparked the New York Times article Wide U.S. Inquiry Into Purchasing For Health Care" on Saturday August 21, 2004.

Sam Lipari, President of Medical Supply Chain, Inc. stated that Ms. Ross was a courageous believer in the rule of law and that the Ft. Worth, TX Office of the US Attorney was the first to actually obtain manufacturer records and compare them to the monopolist suppliers and their client hospitals. Medical Supply Chain, Inc. has alleged that Medicare is overcharged by sum 40% through Sherman Act prohibited supplier cartels in the $1.8 Trillion dollar healthcare industry and is civilly prosecuting Novations joint venture partners GE and US Bancorp Piper Jaffray for conspiring to keep its more efficient web based marketplace from providing lower cost products to hospitals.

Shannon Ross death was preceded by the death of Thelma Quince Colbert on July 20th, also of the Ft. Worth US Attorneys office and the head of a special civil litigation unit that prosecuted companies for defrauding government-funded programs.

About Medical Supply Chain

Medical Supply Chain, Inc. (MSCI) is a Health System service center providing supply chain resources and technology to the health system (hospital) and their trading partners. MSCI supports and complements the work and goals of the supply chain professional in their pursuit to strategically direct supply-chain activities and relationships. When this occurs real supply-chain value will find its way into healthcare and only then will the layers of cost and inefficiencies be removed. MSCI transforms health systems with empowerment to control their own supply chain costs."

Above from Medical Supply Chain, Inc. press release September 17th, 2004.

(C) The termination of three more experienced Assistant US Attorneys

140. Karl Rove utilized Alberto Gonzales take over of the US Department of Justice to reign in the independence of the US Attorneys around the nation to strengthen the protection racket of the conspiracy hub and to further protect the control of hospital supply distribution through the Novation LLC cartel.

141. Karl Rove with Alberto Gonzales also caused enemies of the cartel to be targeted by unlawful wiretapping and electronic surveillance for the purpose of more effectively obstructing justice where it could not be controlled by a US Attorney or the F.B.I.

142. Karl Rove was caught by surprise when the Assistant US Attorney Shannon K. Ross that headed the criminal division for the Northern District of Texas signed criminal subpoenas against the Novation LLC cartel members in an investigation triggered by a whistleblower False Claims Act filing against Novation LLC.

143. Karl Rove therefore relied on then U.S. Deputy Attorney General Paul J. McNulty to change the rules for investigating publicly traded corporations in the McNulty Memo authored in December 2006 to prevent the Northern District of Texas US Attorney's office from requesting records of member hospital funds being laundered by Novation LLC through the petitioner's competitor Neoforma, Inc.

144. Former US Attorney General Alberto Gonzales was a partner in Vinson & Elkins, LLP which represented the defendant Novation, LLC in antitrust cases including the one brought by the petitioner in 2005.

145. On information and belief, the defendants' protectors in the current administration determined the stakes were high enough over Novation LLC to necessitate decimating the whole civil fraud unit in Dallas-Fort Worth, Texas.

146. The remainder of the experienced core of white collar crime prosecutors in the Dallas and Ft. Worth offices were terminated by Richard B. Roper, III after Roper was sworn in as interim United States Attorney for the Northern District of Texas and at the direction of Attorney General Alberto Gonzales for having violated Karl Rove's protection of Novation LLC, VHA and UHC.

147. On October 18, 2004 Leonard Senerote, A former U.S. Army Special Forces officer who was an expert in complex securities cases and an antitrust trial attorney, Michael Uhl and Michael Snipes, veteran prosecutors with expertise in white collar fraud and corruption were announced as separating from the Ft. Worth Office of the US Attorney.

148. The Dallas Morning News described the office as already reeling from the unexpected deaths of criminal chief Shannon Ross [the source of the widespread criminal inquiry into medical supplies and False Claims Act violations against Medicare] and False Claims Act litigator Thelma Louise Quince Colbert.

149. The Dallas Morning News article stated Ms. Ross, who had been feeling ill, was found September in her home. Ms. Colbert accidentally drowned a month earlier in July.

iii. Discovery that the Hospital Supply Cartel Protection Reached To Kansas City

150. On April 9, 2007 the petitioner published a press release to call attention to the unusual circumstances in which the extremely competent US Attorney for the Western District of Missouri, Todd Graves had been removed from office and bizarrely replaced with Bradley J. Schlozman of Kansas.

(A) Medical Supply Chain press release dated April 9, 2007

151. The press release referenced documents obtained by the petitioner from third party sources in his litigation against Novation LLC and the other hospital supply cartel members and stated:

> "Medical Supply Chain founder Samuel Lipari unearthed a US Department of Justice memo revealing the Office of the Attorney General had targeted not eight but ten US Attorneys including the former attorney for the Western District of Missouri, Todd P. Graves. The documents were obtained during Medical Supply Chain's discovery related to the civil antitrust action *Medical Supply Chain, Inc. v. Novation LLC, et al*, Western District of Missouri case #05-210-CV-W-ODS filed on March 9, 2005.
>
> The e-mail dated January 9th, 2006 from Kyle Sampson, chief of staff for Attorney General Alberto Gonzales, to Harriet Miers and William Kelley at the White House, shows the ten U.S. Attorneys that were first selected to voluntarily resign or face termination. Attorneys that resigned were redacted. Todd P. Graves of Missouri resigned March 24, 2006.
>
> The Western District of Missouri US Attorney office under Todd P. Graves had been active in prosecuting Medicare fraud. Medical Supply Chain, Inc.'s civil antitrust suit against Texas based

Novation LLC, Volunteer Hospital Association (VHA), University Health System Consortium (UHC) and Neoforma, Inc. alleges the companies formed a cartel and were involved in a scheme to monopolize hospital supplies to defraud Medicare through payments to administrators and kickbacks. The scheme resulted in almost all of Kansas City, Missouri St. Luke's hospital's one hundred million dollar supply budget being purchased through Novation LLC. St. Luke's merged with University of Kansas Hospital after Irene Cumming, CEO of the University of Kansas Hospital was given a job by University Health System Consortium (UHC) on March 19, 2007.

The first prosecutor identified as being fired by the Office of the Attorney General was Carol Lam, a U.S. Attorney in San Diego, California. Carol Lam was personally prosecuting Medicare fraud at the Tenet Healthcare Alvarado hospital when political pressure was brought on the Justice Department to remove her from office. Carol Lam's prosecution caused the U.S. Department of Health and Human Services threatened to cut Medicare and Medicaid funds to Alvarado Hospital Case # 03CR15870 US Dist. Court Southern California.

On May 17, 2006, Alvarado Hospital's parent company, Tenet Healthcare, agreed to sell or close the hospital and pay $21 million to settle criminal and civil charges.

Medical Supply Chain discovered documents include a December 4, 2006 e-mail from Attorney General Alberto Gonzales' Chief of Staff Kyle Sampson targeting Carol Lam. On December 7, 2006, the Justice Department fired Carol Lam and the six other U.S. attorneys that refused to resign.

Samuel Lipari became concerned that Attorney General Alberto Gonzales was using the firing of appointed US Attorneys and senior assistant US Attorneys to obstruct justice in investigations involving public corruption on October 18, 2004 when white collar crime prosecuting Assistant US Attorneys Leonard Senerote, Michael Uhl and Michael Snipes were fired from the Ft. Worth Texas office of the US Attorney that had issued subpoenas in an ongoing investigation of Novation LLC and other hospital suppliers for anticompetitive practices. Samuel Lipari was especially concerned over the firings in the Ft. Worth office where the chief US Attorney responsible for Medicare fraud, Thelma Louise Quince Colbert had been found dead in her swimming pool on July 20th, 2004 and the Ft. Worth office Senior US Prosecuting Attorney that had signed the subpoenas, Shannon Ross (formerly of Kansas) was found dead in her home on September 13th, 2004. Shannon Ross's investigation of Novation LLC sparked the New York Times article "Wide U.S. Inquiry Into Purchasing For Health Care" on Saturday August 21, 2004.

Attorney General Alberto Gonzales used a little known provision of the USA PATRIOT Act to replace Todd P. Graves with Bradley Schlozman. Bradley Schlozman failed to prosecute public corruption related to the Medical Supply Chain litigation and failed to enforce civil rights laws related to the Novation LLC defendants success in getting Medical Supply Chain's counsel Bret D. Landrith disbarred. Samuel Lipari raised these concerns before the US Court of Appeals for the Eight Circuit. On January 16, 2007 Attorney General Gonzales tried to quell criticism of the mass US Attorney firings and the misuse of the USA PATRIOT Act by announcing John Wood would be taking Schlozman's place in Kansas City."

Above from Medical Supply Chain press release dated April 9, 2007.

152. When Karl Rove's role in politically influencing the operations of the US Department of Justice started coming to light as a result of the "Ninth US Attorney" press release created by the petitioner in the first part of April, 2007, the hospital supply cartel's protection conspiracy hub of Rove and McNulty turned to Scott J. Bloch, head of the Office of Special Counsel (and former Kansas Disciplinary Administrator representative) to run protection for Karl Rove.

159. Senator Kit Bond 's spokesman Shana Marchio said in a statement: "Senator Bond ... upon (Graves') request personally called the White House to gain Todd extra time to wrap up case work before his departure."

160. The White House rejected Senator Kit Bond's efforts on Graves' behalf because of "performance" concerns. E-mails from the Justice Department and the White House have used similar language in discussing the other U.S. attorneys who were fired.

(B) Appointment of USA Bradley J. Schlozman

161. Bradley J. Schlozman was appointed to serve as the United States Attorney for the Western District of Missouri under an Attorney General Appointment on March 23, 2006.

162. On July 3, 2006 , the federal grand jury investigating Medicare fraud at CoxHealth in Springfield, Missouri ended its term without issuing indictments.

163. However, the evidence of Medicare fraud by defendant Robert H. Bezanson's CoxHealth hospital that had been heard and recorded during the grand jury term was too substantial for the USDOJ not to proceed.

164. The hospital supply cartel was concerned that the widespread inquiry started by former US Attorney Todd Graves would also lead to charges against the artificial inflation of hospital supplies through the kickback practices and Medicare fraud used by the defendants VHA Mid-America, LLC, VHA and Novation, LLC.

165. The continuing prosecution of CoxHealth had to be narrowed and kept from targeting Novation LLC.

(C) Appointment of USA John Wood

166. After the petitioner's April 9, 2007 press release caused Bradley J. Schlozman to be recalled, the administration at the direction of Karl Rove appointed John F. Wood to the position of US Attorney for the Western District of Missouri on April 11, 2007.

167. US Attorney John F. Wood is a cousin of Senator Kit Bond.

167.1 US Attorney John F. Wood attempted to cover up the illegal wire tapping and surveillance of the petitioner for trying to compete in the hospital supply market against the General Electric and Novation LLC cartel by authorizing a baseless criminal investigation of the petitioner in October of 2007.

167.2 US Attorney John F. Wood brought baseless charges against the petitioner's witness Dustin Sherwood to misconduct in the Western District of Missouri including fraud and extortion by the defendants Lathrop & Gage L.C.; Husch Blackwell Sanders LLP; Shughart Thomson & Kilroy, P.C. and Shughart's successor in interest Polsinelli Shalton Flanigan Suelthaus P.C.

167.3 US Attorney John F. Wood had Dustin Sherwood imprisoned without charges in what appeared to be a US PATRIOT Act rendition to Southwest Missouri initially without visiting privileges for his attorney or family to prevent Dustin Sherwood from obtaining bankruptcy counsel and a bond to comply with Hon. Judge Jerry W. Venter's court order providing the Sherwoods the opportunity to prevent the sale of their home and farm.

167.4 US Attorney John F. Wood later had Dustin Sherwood transferred to a private prison facility owned by Vice President Dick Cheney on the grounds of the Fort Leavenworth Army base where the guards were instructed to prevent Sherwood's attorneys and family members from having eye contact with Dustin Sherwood, his calls were wire tapped and other psychological warfare techniques were employed to destroy his resolve to testify against the defendants and the former Shughart Thomson & Kilroy, P.C. attorneys Joel Pelofsky and Janice Stanton that later became US Trustees.

167.5 The goal of US Attorney John F. Wood was to obtain real estate with high density infra structure improvements on the Northwest side of Smithville Lake that Republican National Committee campaign donor Jim Hasler wanted to acquire for a planned near Trimble, Missouri.

167.6 US Attorney John F. Wood committed Color of Official Right via threats of economic harm described in *U.S. v. Kelley*, 461 F.3d 817 at 826 (6th Cir., 2006) and through the Coercive Nature of Official Office described in *U.S. v. Antico*, 275 F.3d 245 at 256 (3rd Cir., 2001) and to obstruct justice against the petitioner's witness Dustin Sherwood by utilizing the lawful electronic eavesdropping of a prisoner and witness in a federal criminal proceeding and federal bankruptcy proceedings (*In re Dustin Sherwood*) on or about the evening of October 6, 2008 by using information from that personal call between Dustin Sherwood and his family revealing a weakness and inability to stand further incarceration

to coerce Dustin Sherwood to plea to two years imprisonment and guilt of a crime he did not commit and was not committed and to forfeit Sherwood's lawful rights to property obtained fraudulently by Jim Hasler through the defendant law firms or else the US Attorney for the Western District of Missouri, John Wood would go after Dustin Sherwood's wife Jennifer Sherwood and deprive his young children of their mother.

167.7. The US Attorney for the Western District of Missouri, John F. Wood caused this threat to be committed on or about the morning October 7, 2008 through Dustin Sherwood's criminal defense attorney Stephen G. Mirakian of Wyrsch Hobbs Mirakian PC.

167.8 When John F. Wood's failure to be prepared for trial and the absence of any evidence of a crime forced US Attorney John F. Wood to plead away all but one of the manufactured charges against Dustin Sherwood on or about December 17, 2008, Western District Assistant U.S. Attorney Jane Pansing Brown stated US Attorney John F. Wood's office would prosecute the petitioner's witness Sidney Perciful and the family farm public interest organization attorney Bill Christiansen for several articles appearing in the Wisconsin Dairy farmer's newspaper The Milkweed.

167.9 The "federal crime" of causing accurate news stories to be printed referred to by Assistant U.S. Attorney Jane Pansing Brown were based on the false probable cause that the following two articles were printed:

The Dustin Sherwood Case: Bankruptcy Abuse of Process:
How can a Missouri grain farmer with $10 million in assets (vs. $3 million debts) end up broke and in prison as a "menace to society"? That's what's happened to Dustin Sherwood. Financial advisor Sidney Perceful details this incredible, shocking story. The Milkweed August 2008 Issue No. 349 at pg. 10 http://www.themilkweed.com/MW%20Aug-Sep%2008%20Sherwood%20Story.pdf

and

History of the Dustin Sherwood Case by John Bunting The Milkweed December 2008 Issue No. 353 at pg. 10 http://www.themilkweed.com/Sherwood_Update_08_Dec.pdf

v. Hospital Cartel Stops the Federal Grand Jury Over VHA Defendant's Medicare Fraud

168. The petitioner knew of US Attorney Todd Graves' reputation as a supremely competent state prosecutor and had followed Grave's prosecution of the Kansas City pharmacist that had diluted chemotherapy drugs.

(A) USA Todd Graves

169. The petitioner did not know at the time he discovered Todd Graves had also been targeted and wrongfully fired as a US Attorney over an ongoing Medicare Fraud investigation of a Missouri hospital.

170. Just like the Western District of Missouri's US Attorney Todd Graves, the first prosecutor identified as being fired by the Office of the Attorney General was Carol Lam, a U.S. Attorney in San Diego, California.

171. Like Graves, Carol Lam was personally prosecuting Medicare fraud.

(B) USA Carol Lam

172. US Attorney Carol Lam had investigated and then prosecuted the Tenet Healthcare Alvarado hospital when political pressure was brought on the Justice Department to remove her from office.

173. Tenet Healthcare is a member of Novation LLC and the hospital supply cartel.

174. Carol Lam's prosecution caused the U.S. Department of Health and Human Services threatened to cut Medicare and Medicaid funds to Alvarado Hospital over Case # 03CR15870 US Dist. Court Southern California.

175. On May 17, 2006, Alvarado Hospital's parent company Tenet Healthcare, agreed to sell or close the hospital and pay $21 million to settle criminal and civil charges.

(C) Defendant Robert H. Bezanson

176. The defendant Robert H. Bezanson is President & CEO of CoxHealth a hospital system in Springfield, Missouri that also operates a nursing home.

177. CoxHealth, like Tenet Healthcare Alverado is also a member of Texas based Novation LLC which includes the Volunteer Hospital Association ("VHA") and University Health System Consortium ("UHC").

178. The defendant Robert H. Bezanson has participated in the fraudulent reports of Novation, LLC that misrepresent the hospital supply cartel's artificial inflation of hospital supply costs as a savings to CoxHealth.

179. In 2007, the fraud of the "savings" report was continued but under the name of Robert H. Bezanson's other organization, the defendant VHA Mid-America, LLC, a subsidiary of VHA and also a member participant in Novation, LLC.

vi. Federal Grand Jury Investigation of Defendant Bezanson's Hospital For Medicare Fraud

180. On August 26, 2005 the Springfield Missouri News-Leader reported that US Attorney Todd Graves U.S. Attorney Todd Graves names former Cox CEO Larry Wallis and former Cox Chief Financial Officer Larry Pennel as targets. He names former Cox employee David Tapp, Cox corporate compliance officer Betty Breshears and the present action defendant Cox CEO Robert Bezanson as subjects of the government action.

(A) CoxHealth

181. The News-Leader August 26 article also stated under the heading "New Revelations" information about the investigation:

> "Bezanson first publicly acknowledged on April 1 that an "audit" was being conducted by Health and Human Services. Subsequent hospital memos and court documents mentioned an investigation.
>
> Graves' court document reveals for the first time who and what is under scrutiny at Cox.
>
> The document states, "Since at least December 2004, agents from the United States Department of Health and Human Services, Office of Inspector General, Office of Investigations have been investigating allegations that defendant Cox and its agents/employees/corporate officers were and are involved in the commission of criminal health care fraud with respect to the Medicare program."
>
> The document explains that a government attorney told a Cox attorney in January 2005 that investigators were looking into allegations of Medicare fraud and needed to perform an on-site audit at Cox. The Cox lawyer indicated Cox was aware of possible irregularities and was conducting an internal investigation.
>
> One of the matters under investigation is the method by which Cox billed Medicare for dialysis services, Graves said.
>
> "The specific allegation is that the physicians were paid despite not providing a service," he said.
>
> Graves continued: "The government's investigation is wide-ranging and includes numerous additional matters that have nothing to do with Cox's dialysis services program and the physicians who were working in Cox's dialysis services program.
>
> "Numerous Cox agents, employees, or officers have been identified as targets and/or subjects of the government action," it states.

Graves' document names Wallis, Pennel, Bezanson, Breshears and Tapp "by way of illustration and not by way of limitation."

182. Above from August 26, 2005 the Springfield Missouri News-Leader article Federal probe looks at 5 Cox officials Investigation focuses on determining whether Medicare fraud took place. By Kathleen O'Dell.

183. On July 3, 2006 , The News-Leader reported the federal grand jury issued no indictments in the CoxHealth Medicare fraud investigation before ending its term.

184. The News-Leader article stated that "Among the unanswered questions after the grand jury's dismissal Thursday is the status of an overlapping civil suit filed on behalf of two fired Cox employees. Their attorney, Matthew Placzek, declined to comment about the issue Thursday."

185. The News-Leader reported on October 3, 2006 - A U.S. District Court judge has lifted the stay, or delay, he imposed in November 2005 on the lawsuit against CoxHealth (Springfield, MO) filed by two former dialysis administrators.

186. The same article stated Roger Cochran and Dennis Morris claim they were wrongfully fired in 2004 after it became known they cooperated with federal law enforcement officials investigating alleged fraudulent business practices at Cox, court records show.

187. And that CoxHealth has been ordered by a U.S. District Court judge to produce internal files that led to the firing of two dialysis supervisors.

188. The News-Leader reported on September 17, 2007 - CoxHealth officials have confirmed the system has set aside $26 million in a special fund for possible expenses and settlement of an ongoing, wide-ranging federal probe.

189. The article stated; "U.S. attorneys have said in court documents they are investigating whether Cox officials committed Medicare fraud by knowingly overcharging the government program for kidney dialysis services by using a method of billing it was not eligible to use.

190. The article also reported Investigators are also looking at whether Cox officials paid two kidney specialists to serve as medical directors at Ozarks Dialysis Services even though they did not provide a service, according to a court document."

191. CoxHealth's $26 million is five million dollars larger than even the May 17, 2006 agreement of Tenet Healthcare to pay $21 million to settle criminal and civil charges for Tenet Healthcare Alvarado.

vii. Karl Rove Saw Removing US Attorney Todd Graves As Protecting Novation, LLC and VHA

192. Governor Matt Blunt and the Blunt family were strong social conservative Republicans, loyal to the Bush Administration. The Southern part of Missouri had always been key to George W. Bush's success and the destiny of the Republican party relied on the whether the swing state went with the GOP or its traditionally Democrat roots.

(A) Governor Matt Blunt

193. Governor Matt Blunt's hometown is Springfield, Missouri and the financial support of the above living wage population and especially healthcare professionals and the management in the CoxHealth and Freeman healthcare systems has been essential to the Blunt family's political fortunes.

(B) Lathrop & Gage LC

194. The defendant Lathrop & Gage LC employed Mark F. "Thor" Hearne, a high-level GOP operative, friend of Karl Rove, former national general counsel for the Bush/Cheney '04 political campaign, and co-founder of the American Center for Voting Rights (ACVR) that was used by the Republican National Committee to coordinate voting disenfranchisement.

(C) Mark F. "Thor" Hearne

195. Mark F. "Thor" Hearne, in his capacity at Lathrop & Gage LC, was also Missouri Governor Matt Blunt's long-time legal man counsel.

196. Both Missouri Governor Matt Blunt and Lathrop & Gage LC were being investigated by the Arkansas U.S. Attorney Bud Cummins in association with the privatization of the lucrative state licensing fee offices when Cummins was wrongfully fired by the US Department of Justice at the direction of Karl Rove.

197. U.S. Attorney Bud Cummins was then replaced by Tim Griffin a former assistant and protege of Karl Rove.

viii. Fallout from MSC April 9th Press Release Revealing Todd Graves was the Ninth US Attorney

198. On the day Lathrop & Gage LC was tied to the US Attorney firing scandal, the law firm's CEO Tom Stewart requested a 90-day sabbatical on April 23rd 2007 "for matters having to do with personal and family health."

(A) Lathrop & Gage LC

199. Tom Stewart had previously announced that he would leave his position as chief executive at Lathrop & Gage LC to become chairman, effective July 1, 2007.

200. Instead, he has left Lathrop & Gage LC firm altogether and the KC Star reported that "Stewart held the top job at the firm for 18 years. During his tenure the firm grew from about 60 attorneys to 280."

(B) Uninsurable Risk of Husch & Eppenberger LLC

201. At Husch & Eppenberger LLC, the previous incarnation of the defendant Husch Blackwell Sanders LLP the firm had undertaken the entire representation of the hospital supply cartel co-conspirators General Electric, GE Capital and GE Transportation in addition to the conflicting interest of being local counsel for the defendants Novation LLC, VHA, UHC, Neoforma, Inc., Robert J. Zollars, Curt Nonomaque and Robert J. Baker.

202. John K. Power of Husch Blackwell Sanders LLP had handled the case load by imitating the conduct of the Shughart Thomson & Kilroy P.C. attorneys who consistently obtained outcomes against the petitioner in the Kansas District Court that contradicted the facts and controlling law.

ix Medical Supply Lawsuit Returned to Missouri State Court

203. When the petitioner brought his state law claims to the 16th Circuit and this court, John K. Power of Husch Blackwell Sanders LLP would fail to show up for the court's hearings or participate in court ordered mediation, prompting the petitioner to finally press release John K. Power of Husch & Eppenberger LLC's absences:

"$450 Million Dollar Medical Supply Lawsuit Returned to Missouri State Court

Samuel Lipari wins remand order following an untimely removal of state contract claims that exposed Health Care Corruption

Independence, MO (PRWEB) December 12, 2006 -- Medical Supply Chain founder Samuel Lipari's lawsuit for $450 million dollars in damages over a contract with General Electric (GE) to finance the Independence Missouri firm's entry into the hospital supply market in June 2003 was returned to Jackson County 16th Circuit Court at Independence by the US District Court for the Western District of Missouri. The GE defendants attempted to remove the case to US District Court on July 17, 2006 after General Electric lost a motion to dismiss the lawsuit on May 31, 2006 and failed to attend two Jackson County Circuit Court hearings or participate in court ordered mediation since the lawsuit was filed March 22, 2006. The lawsuit is *Lipari v General Electric, et al*, Case # 0616-CV07421

United States District Judge Hon. Fernando J. Gaitan, Jr. ordered the lawsuit remanded back to Jackson County 16th Circuit Court of the State of Missouri on November 29, 2006 because the federal court lacked jurisdiction.

The lawsuit defendants General Electric Company, General Electric Capital Business Asset Funding Corporation and GE Transportation System Global Signaling, LLC are represented by the St. Louis, Missouri law firm Husch & Eppenberger, LLC through their Kansas City, Missouri attorney John K. Power. John K. Power, Husch & Eppenberger, LLC 1200 Main Street Suite 2300 Kansas City, MO 64105, (816) 283-4651.

Samuel Lipari is the founder of Medical Supply Chain and is currently launching a consumer oriented discount medical supply business based in Independence, Missouri: http://MedicalSupplyLine.com Mr. Lipari is representing himself in the lawsuit.

About Medical Supply Chain:

Medical Supply Chain (MSC) is a worldwide provider of web-based supply chain collaboration solutions with an electronic marketplace serving health care communities and their trading partners. Medical Supply Chain was founded in May of 2000 with a mission to deliver enabling supply chain technology in health care. To learn more visit: http://www.MedicalSupplyChain.com"

Above from Medical Supply Chain press release dated December 12, 2006.

204. The press releases and the fact that the petitioner maintains all his documents openly on the www.medicalsupplychain.com/news web site caused MedicalSupplyChain.com information to show up earlier in Google searches than the Husch & Eppenberger, LLC web site

205. The bad public relations image caused Husch & Eppenberger, LLC' senior successful partners with business to start leaving or considering leaving for their own practice or to form small boutique firms competing with Husch & Eppenberger, LLC.

206. After the April 9th 2007 press release identifying Todd Graves as the 9th US Attorney wrongfully fired caused attention to be directed toward Husch & Eppenberger, LLC's conduct in the petitioner's litigation against the General Electric hospital supply cartel defendants.

207. Without even shame or embarrassment, John K. Power of Husch & Eppenberger LLC caused General Electric's CEO to become a RICO (18 U.S.C. § 1962 *et seq.*) defendant as federal claims were added to the petitioner's action against General Electric.

(A) Husch Blackwell Sanders LLP

208. Husch & Eppenberger, LLC's senior partners who had ignored discrete notice by the petitioner of John K. Power's conduct eventually became aware of the problems for the firm and began a desperate campaign to merge into another Missouri regional firm.

209. The firm eventually agreeing to take Husch & Eppenberger, LLC's three hundred attorneys was Blackwell Sanders LLP.

210. Recently the two firms announced that their common enterprise will be named Husch Blackwell Sanders LLP and Husch & Eppenberger, LLC's web site has stated that its name has changed to Husch Blackwell Sanders LLP.

210.1 Husch Blackwell Sanders LLP co chairmen Joseph P. Conran and David A. Fenley decided to adopt the efficiency of Husch & Eppenberger, LLC's lying to courts by misrepresenting controlling case law, the contents of their adversaries pleadings and whether or not the firm had complied with mediation or discovery orders by simply making false written statements.

210.2 Joseph P. Conran and David A. Fenley evidenced this policy adopted by Husch Blackwell Sanders LLP giving a partnership to John K. Power who committed these acts repeatedly befor Hon. Judge Michael W. Manners, Hon. Judge Carlos Murguia and Hon. Judge Fernando Gaitan, Jr. while chosing not to have a place in Husch Blackwell Sanders LLP for the honest, ethical and accurate Leonard L. Wagner.

(B) Kansas City Business Journal

211. The Kansas City Business Journal reported that the merger had to take place by December 31st 2007 and speculated that this was do to a conflict of interest between Blackwell Sanders LLP and Husch & Eppenberger, LLC's clients.

212. What the Kansas City Business Journal was unaware of was the liability created from the management of the legal defense of the General Electric clients in the litigation with the petitioner.

213. The Kansas City Business Journal was also unaware that Husch & Eppenberger, LLC had replaced Washington DC based Arnold & Porter as the sole counsel for the General Electric defendants.

214. Husch & Eppenberger, LLC had been put first into the role of local counsel in the Kansas District court antitrust litigation and then into sole counsel on the 16th Circuit Independence Missouri

contract claims because of Husch & Eppenberger, LLC's billion dollar municipal bond underwriting malpractice coverage.

215. On information and belief the petitioner avers that the December 31st, 2007 deadline was the expiration of Husch & Eppenberger, LLC's malpractice liability and that liability insurance has been transferred under false representations to the insurers of Husch Blackwell Sanders LLP or in the alternative has ceased to be in force.

x. The Defendants' Need To Change Their Revenue Model

216. The defendants CoxHealth, Stormont-Vail Healthcare, Inc.,and Saint Luke's Health System, Inc., needed to change their revenue model.

217. While organized as Missouri nonprofit corporations, CoxHealth and Saint Luke's Health System, Inc. have the goal of increasing payments for services and goods sold through their institutions.

(A) Loss of Preferential Medicare Reimbursement through Blue Cross Blue Shield Of Kansas, Inc.

218. Previously, this increased revenue was achieved through favorable treatment by Blue Cross Blue Shield Of Kansas, Inc., located in Topeka, Kansas.

219. An African American whistle blower named Rosalind Wynne reported to the federal government in the early 1990's that Medicare coding procedures were not being followed in the Medicare and Medicaid administration contract held by Blue Cross for Kansas, Missouri and Nebraska.

220. The action, eventually styled *US ex rel, Rosalind L. Wynne v. Blue Cross Blue Shield Of Kansas, Inc.*, KS District Court Case No. 05-4035-RDR was held under seal for over six years.

221. The federal government however acted on the information furnished by Wynne and unknown to her, reached a settlement with Blue Cross Blue Shield Of Kansas, Inc. and the State of Kansas which had regulatory control over the insurer while Governor Kathleen Sebelius was the Insurance Commissioner for Kansas from 1994-2002.

(B) USA Eric F. Melgren

222. The United States Attorney for the District of Kansas Eric F. Melgren was on the purge list in January 2006 but was removed from the targeting list by demonstrating his loyalty to Karl Rove and

Attorney General Alberto Gonzales and did not intervene in the False Claims Act case against Blue Cross Blue Shield of Kansas for the fraud in processing Medicare claims for Missouri, Kansas and Nebraska.

223.. The hospital supply cartel defendants were still able to receive favorable treatment from Blue Cross Blue Shield Of Kansas, Inc. which resulted in approval of inappropriate up-coding and elimination of audits until 2007 when the contract was awarded to Wisconsin Physicians Service Health Insurance Corp., of Madison, Wis. a legitimate Medicare Administrator.

224. In May 2007, the Centers for Medicare and Medicaid Services, a branch of the U.S. Department of Health & Human Services, told Blue Cross Blue Shield of Kansas it wasn't in the running any longer for a major Medicare contract to cover Kansas, Nebraska, Iowa and Missouri in Medicare Part A (inpatient) and Medicare Part B (outpatient).

225. The intervention of Karl Rove in continuing the suppression of enforcement against Blue Cross Blue Shield Of Kansas, Inc. had caused Blue Cross management to mistakenly believe it could continue to destroy and delay valid claims for some regional healthcare providers while giving preferential treatment to the hospital supply cartel members to advance the anticompetitive interests over the healthcare marketplace of Missouri, Kansas and Nebraska.

226. In May 2007, the Centers for Medicare and Medicaid Services, a branch of the U.S. Department of Health & Human Services, told BCBS it wasn't in the running any longer for a major Medicare contract to cover Kansas, Nebraska, Iowa and Missouri in Medicare Part A (inpatient) and Medicare Part B (outpatient).

227. The continuation of these practices which resulted in substandard performance of the Medicare and Medicaid administration contracts resulted in Blue Cross Blue Shield Of Kansas, Inc.'s management losing the contract and 350 living wage jobs in Topeka, Kansas by February 29, 2008.

(C) Insure-Missouri

228. Governor Matt Blunt had followed the RNC template of "hurt 'em and heal 'em" to accomplish the hospital supply cartel's plan to break Medicaid and lead an end run around the US Congress with a replacement program that opted out of Medicare's controls and safe guards and awarded the funds to the State of Missouri in a pilot program.

229. The defendant Husch Blackwell Sanders LLP through the influence of the hospital supply cartel installed a former Husch Eppenberger LLC attorney as Jane Drummond to serve as the Director of the Department of Health and Senior Services (DHSS) where she directs Missouri's healthcare purchasing.

230. The Insure-Missouri scheme attempts to source vendors through a request for proposal process that was secretive and quickly concluded.

231. The vendors that knew of the RFP and the meetings required to submit a proposal also participated in Governor Matt Blunt's creation of Insure-Missouri and in determining the ¼ billion dollar budget for the first phase.

232. The exploratory meetings, exchange of studies, emails and phone records were all to be maintained as Missouri state documents, even the schema of the software for the portal or electronic marketplace.

233. The portal utilizing Cerner's software creates a digital version of the Alabama Certificate of Need Board, allocating market share between insurance providers and hospital supplies to VHA /Novation LLC.

234. The central utility of Insure-Missouri to the hospital supply cartel defendants however is the scheme's liberation of Medicare dollars to replace Medicaid with payments that did not have Congress' audits and controls.

235. Insure-Missouri was intended to replace Blue Cross Blue Shield Of Kansas, Inc.'s liberal preferential allocation of Medicare dollars so the artificial inflation could continue.

xi. Phase I of the Plan To Eliminate Missouri Medicaid And Effective Cost Auditing

236. February 29, 2008 is judgment day for the hospital supply cartel defendant hospitals CoxHealth, Stormont-Vail Healthcare, Inc.,and Saint Luke's Health System, Inc. who would lose the backroom practices of trusted Blue Cross Blue Shield Of Kansas, Inc. employees and the mysterious suspense audits and bulk audit free Medicare claims administration frequently enjoyed by the defendants and their bottom line.

237. The hospital supply cartel defendants CoxHealth and Saint Luke's Health System, Inc. along with the 39 other "nonprofit" Missouri hospital members of the defendants Volunteer Hospital Association of America, Inc. (VHA), VHA Mid-America, LLC, Novation LLC and Neoforma, Inc. now GHX, LLC,

including BJC HealthCare, Freeman Health System in Joplin, St. Luke's Health System in Kansas City, Liberty Hospital, Skaggs Medical Center in Branson, St. Francis Medical Center in Cape Girardeau, and Citizens Memorial Hospital in Boliver all were depending on the defendant hospital supply cartel's scheme to eliminate Medicaid and replace the coverage with a new federal and state funded health insurance plan designed by the Republican National Committee to be piloted in Missouri.

238. The name of the new program was to be called "Insure Missouri". www.insuremissouri.org

239. The plan calls for opting out of the federal Medicaid system and replacing it with a Missouri state pilot program that controlled and administered federal Medicare funds in a block grant, free of the audits and requirements of the federal Medicaid and Medicare programs.

240. The lifting of federal controls is specifically required by the defendants CoxHealth and Saint Luke's Health System, Inc. to replace the favorable preferential treatment enjoyed under

241. The "Insure Missouri" program was to be the centerpiece of Governor Matt Blunt's re-election campaign and was promoted by Blunt in his 2008 State of the State Address.

242. In 2005, to make way for the initiative that would eliminate federal oversight of Medicare and Medicaid expenditures required by the defendant cartel to artificially inflate hospital supply costs, Governor Matt Blunt cut 162,000 Missouri citizens off Medicaid.

243. The hospital supply cartel defendants, Karl Rove the former deputy chief of staff to the Bush administration and the Republican National Committee had worked extensively with Governor Matt Blunt, Henry Herschel and Ed Martin in secret meetings and utilizing email and "Blackberry" text messaging to determine state policy and administration rulemaking.

244. The Missouri House of Representatives were left out of the decision making process by Governor Matt Blunt's administration, even key representatives from his own party.

KOMU TV in Jefferson City, Missouri reported the dissension:

> "Republican Rob Schaaf from St. Joseph says he wants to scrutinize Gov. Matt Blunt's Insure Missouri program. Blunt wants to sign up thousands of working parents by this spring, but that could be delayed by the study. Schaaf plans to finish before the state budget is approved. He says he wants to be sure the plan works before it gets money. Some lawmakers are annoyed that Blunt has already begun to seek bids from insurance companies. He plans to ask for $43 million to pay for the program."

KOMU House Republicans Study New Health Plan Published: Friday, January 11, 2008 at 12:38 PM.

245. The Democrat House Minority leader, Representative Paul LeVota stated:

> "If the governor is serious about improving health care in this state, he should start by reversing the disastrous cuts he imposed three years ago that resulted in 180,000 Missourians losing access to health-care services," House Minority Leader Paul LeVota, D-Independence, said. "This is something we can do now - without a tax increase and without resorting to questionable schemes that leave many Missourians behind."

246. Blunt stalls insurance plan kickoff, Governor wants time to sway legislators. By Jason Rosenbaum, Columbia Tribune, February 23, 2008.

247. On information and belief, the actual reason the Governor of Missouri Matt Blunt halted the registration of Missourians into the Insure-Missouri plan was due to the unplanned visit by Mike Leavitt, Secretary of the U.S. Department of Health and Human Services to Kansas City on February 20 , 2008.

248. On information and belief, Secretary Mike Leavitt communicated to the hospital supply cartel and Governor Matt Blunt that the U.S. Department of Health and Human Services could no longer endorse Missouri opting out of the administration of Medicaid and Medicare funds by federal contractors as had been earlier planned by the Bush administration under Karl Rove.

249. On information and belief, Secretary Mike Leavitt halted the plan because of renewed investigations of Governor Matt Blunt by the USDOJ as a result of the US Attorney firing scandal and Karl Rove's use of the US attorneys in a protection selling scheme.

xii. Destroying Evidence in Covering Up Missouri Governor Matt Blunt's Work With the Cartel

250. The defendant conspirators through the State of Missouri administrative branch have acted to conceal Governor Matt Blunt's involvement in furthering the interests of the hospital supply cartel.

251. In November 2007, the State of Missouri Office of Administration filed an ethics complaint against Scott Eckersley for acting ethically in his service to the State of Missouri and to Governor Matt Blunt.

252. Scott Eckersley, a Springfield attorney was deputy counsel to Missouri State Governor Matt Blunt but was fired on Sept. 28 because he had been raising questions about whether Blunt and his staff were handling e-mails in compliance with state record-retention and open-records laws.

253. Scott Eckersley was fired and defamed in retaliation for pointing out that Blunt's administration was destroying e-mails in violation of Missouri's open-records law.

254. The lawsuit by former Governor Blunt attorney Scott Eckersley alleges that Blunt's top aides ordered staff to delete e-mails to avoid having to provide information to the media and public under Missouri's Sunshine Law.

255. Scott Eckersley's former supervisor, Governor Blunt's Chief Counsel Henry Herschel, has been replaced and moved into another state job as retribution for allowing the Scott Eckersley's criticism of destroying email and records to become public.

256. Attorney Rich AuBuchon, General Counsel of the Office of Administration has fraudulently mislead the public in order to continue the concealment of illegal destruction of email, electronic text messages and other state records some of which are connected to the hospital supply cartel's scheme to switch Missouri off of Medicaid where their artificial inflation of hospital supply costs would go unchecked:

> "Mr. Eckersley never once voiced a concern, never once wrote an e-mail, never once talked to other employees in the office evidencing any concern that the governor's office was not complying with the Sunshine Law or any record-retention policies."

257. Rich AuBuchon's misrepresentation contradicts the fact that Scott Eckersley sent emails to Rich Chrismer, Governor Blunt's Chief Counsel Henry Herschel and Ed Martin before September 20, 2007 advising Administration officials about the email retention policy that was being deliberately violated.

258. On or about October 25, 2007 Rich Aubuchon made the following intentional and written misrepresentation of facts to to the editorial page editor of the Springfield News-Leader, Tony Messenger:

> "On Friday, September 28, 2007, Martin and Pryor met with Eckersley to discuss his departure. [...] He spoke about his role in the General Counsel's office and asserted for the first time his views about the policy of record retention."

259. Rich AuBuchon is assertions in the letter were known by AuBuchon to be false.

260. Aubuchon's letter makes clear, he had by that time made an exhaustive search through all Eckersley's emails and would therefore have been fully aware of the emails sent before September 28 from Eckersley to others in the governor's office stating his views about the violation of the record retention policy.

261. Governor Matt Blunt and the governor's office attorney Ed Martin had instructed Rich AuBuchon, the General Counsel of the Office of Administration to go forth and make misrepresentations to defend Governor Blunt against Scott Eckersley's public exposure of the violation of records retention laws

and the intentional destruction or spoliation of email records because by early fall of 2007, the Missouri Governor knew he was a person of interest in the US Attorney firing investigations.

262. The petitioner's revelation on April 9, 2007 that former Western District of Missouri US Attorney Todd Graves had been fired caused the US Senate and House of Representatives Judiciary Committees to expand their respective investigations and Governor Matt Blunt and Ed Martin knew they had created an unlawful policy of destroying records to conceal Governor Matt Blunt's work in the hospital supply cartel scheme to switch Missouri off of Medicaid.

263. Governor Matt Blunt and Ed Martin knew that their direct misrepresentations regarding why Scott Eckersley would lead to federal felony indictments while Governor Matt Blunt still held office.

264. While Missouri newspapers were covering the controversy over the firing of Scott Eckersley and the failure of Governor Matt Blunt and Ed Martin to have a lawful policy regarding the retention of email and other electronic records, Missouri Attorney General Jay Nixon received information from a whistleblower in the administration that the back up tapes had been tampered with to eliminate evidence.

265. On January 22, 2008 Governor Matt Blunt announced he would not be running for re-election.

xiii. The Defendants Scheme To Fraudulently Obtain Federal Cancer Research Funds

266. The Hall Family Foundation has been a central supporter of the Kansas City Area Life Sciences Institute, Inc. ("KCALSI") chaired by Irvine O. Hockaday Jr.

267. The Hall Family Foundation contributed over $800,000.00 to KCALSI.

(A) Irvine O. Hockaday Jr.

268. Irvine O. Hockaday, Jr., is the retired president and chief executive officer of Hallmark Cards, Inc.

269. Mr. Hockaday is a celebrated Republican Party contributor:

> "I believe that the way President Clinton has conducted himself in office is wanting," said Irvine O. Hockaday, the chief executive of Hallmark Cards, who said he was not thrilled by the choice but planned to vote for Mr. Dole.
> "We're at a stage in the evolution of our democracy where the power of example has become disproportionately important," Mr. Hockaday said. "The inconsistencies in delivering on his word and the way the White House has handled Whitewater and Filegate issues all add up to a counterproductive behavioral example."

Above from "Executives Back Dole Despite Clinton Record" By Judith H. Dobrzynski, New York Times, October 18, 1996.

(B) Kansas City Area Life Sciences Institute, Inc.

270. The Kansas City Area Life Sciences Institute, Inc. is located at Kansas City 2405 Grand Blvd Suite 500, Kansas City, MO 64108, in the Hallmark, Crown Center area.

271. KCALSI became the coordinating entity for the larger effort to obtain a Kansas City Missouri National Cancer Center in the Plaza area Hospital facility of the defendant Saint Luke's Health System, Inc. a Novation LLC, VHA hospital.

272. Primarily seeing KCALSI as a lobbying organization to promote government life sciences research investment in the greater Kansas City area, Irvine O. Hockaday Jr. saw Saint Luke's Health System, Inc. as a more agile, entrepreneurial entity than the UMKC School of Medicine to develop into a National Cancer Center.

273. Other stakeholders in KCALSI like principals in the Kansas City Star have criticized UMKC's unwillingness to expand its innovative Doctor education program to include more students to meet the emergency shortage of medical doctors nationwide.

274. KCALSI promoted a scheme to staff their vision of a national Cancer research program at Saint Luke's with resident Doctors from the University of Kansas.

275. KCALSI called the project "The National Cancer Institute (NCI) Comprehensive Cancer Center Designation for KUMC."

276. This vision failed to account for the needs of Kansas hospitals and communities, especially in Wichita and the Western half of the state that depended on those same residents.

(C) KU Medical School

277. Instead KCALSI focused on the advantages to be gained from leveraging KU Medical School's academic credentials for the bountiful research dollars a designated National Cancer Center would qualify to receive, even as much as two billion dollars a year.

278. To secure the unusual arrangements of obtaining the KU Medical School students, researchers and residents for work across the state line into Missouri, KCALSI had to bring Kansas

Governor Kathleen Sebelius on board and to also pry KU Medical School free of the KU Hospital Authority in Kansas City, Kansas which was created to protect the state teaching hospital known popularly as KU Medical Center from Saint Luke's Health System, Inc.'s competition.

(D) KU Hospital CEO Irene Cumming

279. Irene Cumming, CEO of the University of Kansas Hospital was given a job by the hospital supply cartel defendant University Health System Consortium (UHC) on March 19, 2007 to help KCALSI take control of KU medical School.

280. Irvine O. Hockaday Jr. openly expressed his involvement in trying to merge KU Medical School with the defendant Saint Luke's Health System, Inc. a Novation LLC hospital chain to create a federally funded National Cancer Center:

> "Much has been written about the affiliation discussions that have been going on between KUMC, KUH and SLH.
> I can report that Letters of Intent have been signed between these institutions to affiliate for purposes of teaching and research.
> These letters will be submitted to the Boards of both hospitals at their February meetings.
> The signed agreements describe a collaboration around teaching and research which would leverage the complimentary strengths of each institution.
> There is enormous promise in this.
> But, not all issues have been resolved—as they must be for a master affiliation agreement to be concluded. Gaps exist between KUMC and KUH on key issues.
> Importantly, however, the Chancellor of the University of Kansas unequivocally assured me and asked me to assure you that resolving these remaining issues will be top priority for KU. He will dedicate his full effort to that end.
> He further advised that the clear goal of the University is to complete this process and fulfill our vision of a national recognized life sciences center.
> This clear and unequivocal commitment by Chancellor Hemenway recognizes a central reality: there is one purpose of these affiliations and only one.
> And that is to accelerate and elevate medical research and patient care in our region...to the benefit of our residents and beyond.
> That is the only reason for affiliation.
> And it is every reason.
> To let parochial institutional interests, bureaucratic complexities or individual agendas to supersede our regional opportunity—even our obligation—would subvert the very purpose and hope of this conference.
> The Chancellor has said he will not let that happen.
> In a remarkable statement of support for the affiliation concept, a combination of foundations and businesses have committed a pool of approximately $150M—and that could grow—to this effort...so long as the institutional leadership pursues a truly collaborative effort.
> You should know the names of those who have stepped forward in such unprecedented fashion.
> Cerner, DST, Embarq, GKCCF, Great Plains Energy, H&R Block, Hall Family Foundation, Hallmark
> Kansas City Southern, Sprint, YRC, Three anonymous
> Hopefully their leadership will be mirrored by that of University of Kansas and KU Hospital.
> This has not been easy...nor will the execution of such an undertaking be easy.
> Truman and UMKC have legitimate questions that will need to be addressed."

Above from Hockaday 2007speech to the Kansas City Chamber of Commerce.

xiv. Novation LLC Plan To Launder Federal Cancer Research Funds Replacing Neoforma

281. The defendants Novation LLC, VHA, VHA Mid-America, LLC, Thomas F. Spindler, Robert H. Bezanson, UHC, GHX LLC and Curt Nonomaque acted through Karl Rove who made repeated visits to Kansas City, Missouri gave assurances that the National Cancer Center revenue would be legitimately accounted for and used to fund research.

(A) Novation LLC, VHA, VHA Mid-America, LLC

282. The defendants Novation LLC, VHA, VHA Mid-America, LLC, Thomas F. Spindler, Robert H. Bezanson, UHC, GHX LLC and Curt Nonomaque omitted telling Missouri and Kansas State officials that the research dollars would replace the money the hospital supply cartel had previously laundered through Bob Zollars and Neoforma, Inc. to pay kickbacks to hospital administrators in exchange for acting contrary to their institutional interest and maintaining long term artificially inflated hospital supply contracts with Novation LLC.

283. The defendants Novation LLC, VHA, VHA Mid-America, LLC, Thomas F. Spindler, Robert H. Bezanson, UHC, GHX LLC and Curt Nonomaque acting through Karl Rove assured Missouri Governor Matt Blunt and Kansas Governor Kathleen Sebelius that Elias A. Zerhouni, M.D, director of The National Institutes of Health (NIH), a part of the U.S. Department of Health and Human Services would be able to cause John E. Niederhuber, M.D., the Director of the National Cancer Institute (NCI) to compromise its cancer research center standards and make the combination of the Novation LLC hospital Saint Luke's and the University of Kansas Medical School a National Cancer Institute (NCI)-designated Comprehensive Cancer Center.

(B) Saint Luke's

284. The defendant Saint Luke's, the University of Kansas Medical School and KCALI made representations of eligibility to the National Institute of Health when the Saint Luke's Plaza hospital and the KU Medical School did not have the research faculty, protocols or instructional curriculum to qualify and that the newly created institution would reasonably take as long as a decade to legitimately qualify.

(C) USA Todd Graves Revealed to be Ninth US Attorney Wrongly Fired

285. The petitioner being faced with his competitors' Novation LLC, Neoforma, Inc. VHA and UHC openly committing antitrust felonies and tens of thousands dying from loss of health insurance in the cartel's increasingly unaffordable healthcare, could not understand the federal subsidization of the monopoly with National Cancer funds given to Novation LLC.

286. Earlier, the Bush Administration had privatized the Veteran's Administration system into using the hospital supply cartel Novation, LLC for procurement.

287. The petitioner's April 9, 2007 press release stated:

"The Western District of Missouri US Attorney office under Todd P. Graves had been active in prosecuting Medicare fraud. Medical Supply Chain, Inc.'s civil antitrust suit against Texas based Novation LLC, Volunteer Hospital Association (VHA), University Health System Consortium (UHC) and Neoforma, Inc. alleges the companies formed a cartel and were involved in a scheme to monopolize hospital supplies to defraud Medicare through payments to administrators and kickbacks. The scheme resulted in almost all of Kansas City, Missouri St. Luke's hospital's one hundred million dollar supply budget being purchased through Novation LLC. St. Luke's merged with University of Kansas Hospital after Irene Cumming, CEO of the University of Kansas Hospital was given a job by University Health System Consortium (UHC) on March 19, 2007."

Above from MSC press release dated April 9, 2007. The press release had the effect of putting State of Kansas officials on notice of what was happening.

288. A public relations representative for KU Hospital called the petitioner that afternoon to demand the retraction of the release. Then in the evening called again withdrawing the request for retraction and merely pointing out details about the differences between KU Hospital and KU medical School.

(D) Kansas State Legislature

289. The Kansas State Legislature had some renewed questions however about the proposed merger.

290. As a net loser like Truman Medical Center and UMKC School of Medicine, the Kansas State Legislature's questions were about how the merger could go through without harming the significant public investment in KU School of Medicine to serve communities around Kansas with Doctors and Residents that would otherwise not be there for citizens of Kansas.

(E) Governor Kathleen Sebelius

291. Governor Kathleen Sebelius had recruited the Johnson County moderate Republican District Attorney Paul Morrison to run as a Democrat for Attorney General of Kansas, despite his repeated human rights violations in the Karbino Kuel matter and participation in the City of Topeka Housing and Urban Development ("HUD") corruption scheme by attempting to prosecute the Kansas Army National Guardsman Mark Hunt and prevent his deployment to Iraq where he had volunteered to go and needed the income to support his family.

291.1 Governor Kathleen Sebelius had instituted a bipartisan panel to examine and recommend measures to cope with the increasing costs to the State of Kansas for healthcare, however since the petitioner had been discredited by the defendants' hospital supply cartel and his counsel had disbarred by the defendants through the conduct described in this complaint that the defendants would later use against the Missouri state attorney Scott Eckersley for his memo stating retention of emails by Governor Matt Blunt's staff (including emails related to the defendants Insure Missouri scheme); Governor Kathleen Sebelius' panel was deterred from examining the largest single factor in Kansas' healthcare costs, the artificial inflation of hospital supplies including pharmaceuticals by members of the Novation LLC cartel.

291.2 On October 24, 2008 the current Kansas Attorney General Steve Six announced that he has sued twelve of the Novation LLC cartel members including Abbott Labs, Wyeth, TAP Pharmaceutical Products, Inc., Schering Plough, Purdue Pharma LLP, Mylan Labs, Forest Labs, Boehringer, GlaxoSmithKline, Johnson & Johnson, Alza Corporation, Janssen Pharmaceutica Products, LP, McNeil-PPC, Inc., Ortho Biotech Products, LP, Ortho-McNeil Pharmaceutical, Inc., DEY, Inc., and Elisai for overcharging the State of Kansas during the time period of the petitioner's concurrent federal antitrust complaint LLC in *Medical Supply Chain, Inc. v. Neoforma et al.*, W. D. of MO Dist Court Case No. 05-0210- CV-W- ODS (later KS Dist. Court Case No.: 05-2299) alleged the Novation LLC cartel had overcharged Kansas and Missouri. See **Appendix Seven** Excerpts related to overcharging of Kansas in *Medical Supply Chain, Inc. v. Neoforma et al.*, W. D. of MO Dist Court Case No. 05-0210- CV-W- ODS.

291.3 The October 24, 2008 press release by Kansas Attorney General Steve Six stated the Novation LLC cartel members had:

companies deliberately misreported drug price information in order to increase reimbursements made by the Kansas Medicaid program. Medicaid is the state-federal health care program for the poor.
"We believe Kansas has lost millions of dollars as a result of these drug companies' fraudulent pricing schemes," Six said.
"We allege that the drug manufacturers deliberately inflated the reported Average Wholesale Price-or AWP-and other wholesale prices for their drugs in order to increase market share for their products," he said. "This is a disturbing abuse of the Medicaid reimbursement system."
Six said the fraudulent pricing and marketing of prescriptions to the Medicaid program has impacted Kansas taxpayers by causing the Kansas Medicaid program to grossly over-pay for prescriptions.
"Because of the drug companies' inaccurate pricing, the Kansas's Medicaid program has spent millions of dollars more for prescription drugs than it should have," Six said. "The companies' false price reporting is all the more offensive because it undercuts Medicaid, the publicly-funded health program created to assist our state's most vulnerable citizens."
According to Kansas's lawsuit, the Kansas Medicaid program spent over $160 million on prescriptions drugs in the past year alone. The lawsuit alleges that the price for a drug paid by the state, based on a fraudulently-reported Average Wholesale Price (AWP) and other price indicators, often bears no relationship to the true price and can exceed 100%, 200% or even more of the true price.
The difference between the reimbursement amount and the acquisition cost is the "spread." Six explained that one of the reasons drug companies report false and inflated AWPs and other wholesale prices is to create a "spread" between the reimbursement amount Medicaid pays (which is based on these reported prices) and the actual acquisition cost the pharmacy-provider pays to obtain the drug. The suit alleges that the defendant companies encourage Medicaid providers (and others in the private sector) to buy or give preferential treatment to their products based on the size of this "spread"-increasing the drug companies' market share.
For example, DEY, Inc., reported an AWP of $44.10 for the drug Ipratropium Bromide, yet they sold the same drug to retail pharmacists for $8.35-a "spread" of 355%.
In another example, GlaxoSmithKline reported an AWP of $128.24 for Zofran, yet it was determined that the price was actually $22.61-a "spread" of 450%.
Six said that other states have brought similar lawsuits and the federal government has also been investigating drug manufacturer pricing practices.
Kansas's Complaint was filed Friday, October 24, in Wyandotte County District Court. It accuses the defendants of violating the federal Medicaid statute, breach of contract, violating the Kansas Consumer Protection Act, fraud, and unjust enrichment. The suit asks the court to permanently prohibit the alleged illegal practices, and it seeks recovery of damages, penalties, and costs.

Above from Kansas Attorney General Steve Six press release http://www.ksag.org/content/page/id/449

(F) Kansas Attorney General Paul Morrison

292. Governor Kathleen Sebelius had Kansas Attorney General Paul Morrison talk to members of the Kansas legislature and stake holders in the University of Kansas to counter the petitioner's press release.

293. Kansas Attorney General Paul Morrison knew that the petitioner's counsel Bret D. Landrith had been wrongfully disbarred to conceal federal crimes committed by Kansas State judicial branch officials.

(G) KS Department of Revenue Secretary Joan Wagnon

294. Kansas Attorney General Paul Morrison met with David Martin Price and his attorney Craig Collins over the kidnapping of Baby C in retaliation for Price's protected public speech against former Mayor Joan Wagnon (later campaign treasurer for Governor Kathleen Sebelius and currently Secretary of the Kansas Department of Revenue).

295. The petitioner's attorney Bret D. Landrith had represented David Martin Price *pro bono* on the appeal when Price's Kansas State appointed attorney refused to do so.

296. David Martin Price (like Mark Hunt) was a crucial witness to the City of Topeka's theft of HUD funds in the Kansas District Court Civil Rights and Fair Housing Act case *James Bolden v. City of Topeka*, brought by the petitioner's attorney Bret D. Landrith.

297. Kansas Attorney General Paul Morrison before was shocked that the career staff of the Kansas Attorney General's office had kept the matter from him and examined the evidence with Craig Collins concluding the child had been unlawfully taken.

298. Kansas Attorney General Paul Morrison promised to investigate and prosecute those responsible for the kidnapping and cover up.

(H) K.B.I. Director Robert "Bob" E. Blecha

299. Kansas Bureau of Investigation ("K.B.I".) Director Robert "Bob" E. Blecha and his predecessor K.B.I. Director Larry Welch did not investigate the retaliatory kidnapping of Baby C or the cover-up during the court proceedings, though David Martin Price had repeatedly contacted them.

300. The petitioner avers the following six paragraphs on information and belief:

301. In Spring of 2007, Kansas Attorney General Paul Morrison repeatedly misrepresented to members of the Kansas legislature that the petitioner's federal civil case against the defendants Novation LLC, VHA and UHC in *Medical Supply Chain, Inc. v. Novation, et al.*, KS Dist. case number 05-2299-CM (Originally Western District of Missouri case #05-210-CV-W-ODS) had no merit.

302. Kansas Attorney General Paul Morrison repeatedly misrepresented to members of the Kansas legislature that Novation LLC was not being investigated by the USDOJ over Medicare False Claims.

303. Kansas Attorney General Paul Morrison repeatedly misrepresented to members of the Kansas legislature that the petitioner's claims were bogus because the petitioner's attorney Bret D. Landrith had been disbarred by the State of Kansas for incompetence.

xv. AG Paul Morrison's Interference in Petitioner's Antitrust Case To Protect Cancer Funds

304. Kansas Attorney General Paul Morrison did not disclose to members of the Kansas legislature was that as Attorney General, Paul Morrison had directed Kansas Highway Patrol Superintendent Colonel William Seck to target the petitioner through the Kansas Highway Patrol and caused the petitioner's father's logistics business trucks to be stopped on Kansas Highways and his drivers to be arrested.

(A) Kansas Highway Patrol Superintendent Colonel William Seck

305. Kansas Attorney General Paul Morrison was acting on information from the hospital supply cartel defendants that the logistics business run by the petitioner for the petitioner's father Samuel Lipari Sr. who was dying of cancer provided the sole resources for the petitioner to maintain the action *Medical Supply Chain, Inc. v. Novation, et al.*, KS Dist. case number 05-2299-CM.

306. The purpose of Kansas Attorney General Paul Morrison's targeting the Lipari trucks through Kansas Highway Patrol Superintendent Colonel William Seck was to interfere with the petitioner's federal civil litigation *Medical Supply Chain, Inc. v. Novation, et al.*, KS Dist. case number 05-2299-CM against the defendants' hospital supply cartel.

(B) KU Chancellor Robert Hemenway

307. The defendant Saint Luke' at the encouragement of AG Paul Morrison, KCALI, Irvine O. Hockaday Jr. and University of Kansas Chancellor Robert Hemenway went ahead and announced that KU Med School and Saint Luke's had concluded their merger agreement soley for the purpose of obstructing members of the Kansas State Legislature from furthering their investigation of the petitioner's allegations.

xvi. Kansas Officials' Interference In Petitioner's Antitrust Case For Defendants' Cancer Scheme

308. Kansas Attorney Discipline Office officials and their agents including Stanton Hazlett, Gene E. Schroer, John J. Ambrosio, Isaac L. Diel, Rex A. Sharp and Gayle B. Larkin committed misconduct as

detailed elsewhere in this petition to protect the hospital supply cartel's scheme to turn the defendant Novation LLC hospital Saint Luke's into a National Cancer Center.

309. The misconduct in the disbarment of the petitioner's counsel Bret D. Landrith during *Medical Supply Chain, Inc. v. Novation, et al.*, KS Dist. case number 05-2299-CM at the direction of the defendant Shughart, Thomson & Kilroy, P.C. through its senior partner US Magistrate James P. O'Hara and its attorney Andrew DeMarea is detailed in **Appendix Three**.

310. The misconduct of Kansas Highway Patrol officers under the direction of Kansas Highway Patrol Superintendent Colonel William Seck and Kansas Attorney General Paul Morrison in targeting the petitioner's trucks and drivers for the purpose of depriving the petitioner of the means to seek redress occured because of the belief that Kansas would benefit from $2 Billion dollars a year in health science research grants the Novation LLC hospital Saint Luke's at 4401 Wornall in Kansas City, Missouri would start receiving in a cancer research program headed currently by Thomas Jeffery Wieman, M.D.

311. The State of Kansas would benefit because the University of Kansas Medical School which the Novation LLC hospital St. Luke's needed to give the appearance it could qualify as a major research center would share in the research grant revenue.

312. The Kansas officials ignoring the discipline office's misconduct knew though the value of the conspiracy hub's offering.

313. Federal funds to the nation's largest medical research and education facilities had been significantly cut by the current administration.

314. More established and qualified institutions like the University of Missouri at Kansas City Medical School are having difficulty meeting their budgets for legitimate life saving ongoing research.

315. The Kansas officials believed they would benefit from the hospital supply cartel' ability to steer funds away from legitimately established research programs that could be used to build an actual qualifying research program that would meet what they were representing as already in existence.

xvii. The Cover Up of the Failed Scheme to Divert Federal Cancer Research Funds

316. On November 18th, 2007 the NY Times published a feature article by Mary Williams Walsh About an African American Novation LLC manager named Cynthia I. Fitzgerald who witnessed all the forms of conduct of the hospital supply cartel alleged in the plaintiff's federal antitrust complaint.

317. The manager had been the relator in a Medicare False Claims Act case held under seal by the USDOJ to protect Novation LLC, VHA and UHC.

318. When the petitioner finally succeeded in having US Attorney general Alberto Gonzales resign from office, the false claims action was finally released by the USDOJ shortly thereafter.

319. The Medicare False Claims Action is styled *US ex rel Cynthia I. Fitzgerald v. Novation LLC, VHA, University Healthcare Consortium et al*, N. Dist. Of Texas Case 3:03-cv-01589.

320. The Republican National Committee recognized that the hospital supply cartel's scheme to make the defendant hospital Saint Luke's a National Cancer Center and thereby replace Neoforma, Inc. as a vehicle to launder funds to hospital administrators participating in Novation LLC's long term anticompetitive contracts to artificially inflate hospital supplies had blown up.

321. The RNC knew the political fall out in Missouri, an important swing state was again in danger of determining which party controlled the Presidency and Congress after 2008.

322. The RNC lost the majority in the US Senate when US Senator Claire McCaskill prevailed over US Senator Jim Talent as a result of the political fall out from the first phase of the defendant hospital supply cartel's scheme to eliminate Medicaid and pilot state controlled health insurance plans using Medicare funds in Missouri at the beginning of Governor Matt Blunt's election.

(A) President George W. Bush's Return Visit

323. On January 31, 2008 President Bush flew again to Kansas City, Missouri.

324. President Bush went directly to Irvine O. Hockaday Jr.'s Hallmark Cards at Crown Center.

325. There President Bush and his staff cemented the details of a damage control plan for Karl Rove and Irvine O. Hockaday Jr.'s scheme compromising the integrity of Elias A. Zerhouni, M.D, director of The National Institutes of Health (NIH).

(B) Irvine O. Hockaday Jr.

326. Karl Rove and Irvine O. Hockaday Jr.'s exploitation of influence peddling to cause Elias A. Zerhouni, M.D and the U.S. Department of Health and Human Services to make John E. Niederhuber, M.D., the Director of the National Cancer Institute (NCI) compromise his agency's cancer research center standards and make the combination of the Novation LLC hospital Saint Luke's and the University of

Kansas Medical School a National Cancer Institute (NCI)-designated Comprehensive Cancer Center had injured Kansas University and Kansas Governor Kathleen Sebelius' reputations.

(C) Representative Samuel B. 'Sam' Graves

327. After Hallmark Cards, the president's motorcade traveled to the private residence of Missouri US Congress Representative Samuel B. 'Sam' Graves, the brother of former US Attorney Todd Graves to help Representative Sam Graves raise money for re-election.

328. Irvine O. Hockaday Jr. and The Hall Family Foundation announced on February 20, 2008 that the Hall foundation is buying a Fairway office building in Johnson County that could under conditions be given to KU Med Center.

329. On February 21, 2008 Irvine O. Hockaday Jr. and The Hall Family Foundation announced a $43 million gift to fund Children's Mercy expansion, the Kansas City Urban Hospital that with doctors and residents from UMKC School of Medicine serves the Missouri population that would have been most injured by the defendants scheme to divert research funds to a Plaza Saint Luke's hospital without a curriculum or research staff so that Novation LLC could launder the money through the cartel.

4. The Hospital Group Purchasing Enterprise To Artificially Inflate Prices

330. During October 22 thru October 24 in 1979, a little known hospital logistics industry organization called the Group Purchasing Group held a conference in Vacation Village, San Diego California. At that event a seven page document was circulated among representatives of cooperative hospital purchasing groups which originated as buying agents for hospitals that became the blueprint for nationwide fraudulent price collusion in hospital supplies.

331. The recipients of the document were officials in Sun Health, American Medical Systems, HSCA, Cardinal and other precursors to today's two dominant hospital group purchasing organizations (GPO's), Novation and Premier. Eventually the document recipients would become the key officials in the later group purchasing organizations Amerinet, Novation and Premier and in oligarch hospital supply manufacturers including Johnson & Johnson and Baxter.

332. The document itself was presented as the perfect "sales story." Ways to communicate to hospitals that group purchasing cooperatives were creating value for their members. However, the

document was instead employed as a blueprint for fraud. The membership "value" for hospitals being communicated was a deception about the cost of commodities sold through the cooperative.

333. The fraudulent scheme described a method for creating a false baseline for commodity pricing from an average of the purchase price of units of goods by kind taken from a broad sample of the goods as purchased in many hospitals in a variety of locations and in varying quantities. The data would then be used to create a manipulated average well above an easily obtainable volume discount.

334. The victim prospective hospital would also be subjected to the frightening prospects of price increases and shortages that would certainly befall hospitals that did not join the security of the purchasing cooperative.

335. The cooperative would then negotiate a "discounted" price below the false baseline and declare the difference as the "savings" to the hospital. The cooperatives derived the "savings" from manipulated baseline costs of goods distributed and therefore had to disconnect the savings expectations of their member hospitals from an easily comparable commodity price. This "savings" was delivered to the member hospitals in the form of periodic, usually quarterly refunds, rebates and dividends.

336. The secret document described the upward manipulation of their customers' expected costs as price "inflation." The scheme included steadily increasing the baselines used to assist members and prospective members to compare the cooperative's prices. This deception was described as "inflation based savings."

337. The cooperatives exploited the foreseeable effect of this delayed repayment to hospitals. Hospitals billed third party payers including the government's healthcare insurance funds Medicare, Medicaid and Champus the cooperative contract price or even the artificially inflated baseline price instead of the actual cost to the hospital once the delayed rebate was subtracted. The scheme depended upon the hospitals certifying to Medicare that the bills being presented for patient care conformed to the government's accounting safeguards, including the Medicare Antikickback act.

338. To co-opt administrative officials in hospitals, hospital groups and independent distribution networks, the cooperatives and later the dominant GPO's would encourage and facilitate maintaining two sets of books by issuing two different reports. One for the chief executive of the hospital or hospital group

that fully detailed the various refunds, rebates, dividends, cash and cash equivalent payments and another for the materials director showing the units purchased at the cooperative price.

339. The attendees that employed the perfect sales story were able to insert their cooperative between the hospital and its suppliers and extract a membership fee. The precursor group purchasing organizations effectively sold "rebates" rather than price efficiency to their members. The business model was profitable for the cooperatives but had the potential of becoming extremely profitable if competition could be consolidated and the increased control of hospital supply distribution could be used to extract fees from product manufacturers.

340. The firm of Robert Betz Associates was utilized during 1985-86 to obtain a regulatory safe harbor from the Federal Trade Commission and the Department of Justice from the Medicare Antikickback statute to give the appearance of legitimacy to the Vacation Village conference attendees practice of paying periodic refunds, rebates and dividends to member hospitals. Robert Betz was successful and as a direct result of his efforts, Department of Justice False Claims Act prosecutions have never since targeted the GPOs or their supplier cartel members.

341. Once some kickbacks in the form of administrative fees to cooperatives were officially allowed, the original Vacation Village conference attendees were able to use their illegally inflated revenue stream to acquire their law abiding hospital supply competitors and a frenzy of mergers and acquisitions resulted in two dominant group purchasing organizations, Premier and Novation, LLC that control 70% of the national market in hospital supplies.

342. Premier and Novation, LLC are required under the Antikickback safe harbor to disclose administrative fees in excess of 3% that are added to the cost of goods sold through their distribution networks. Premier and Novation, LLC have however expanded the fees charged member hospitals in the price of goods sold to include 12 to 15 separate "non administrative fees." The names of the fees charged include "marketing," "conversion" "stocking" "tracing" and other legitimate sounding supplemental costs and some overtly illegitimate fees including "channel fees" and "patronage fees", however all such charges are outside of the safe harbor.

343. Premier and Novation, LLC use their market power to extract fees from manufacturers to have their products distributed through the monopolized distribution networks. The dominant GPO's have

expanded the Vacation Village "inflation savings" scheme to include managing suppliers to the group purchasing organization with planned price increases. Premier and Novation, LLC choose market leaders, a manufacturer with the largest market share to be the sole providers of each line of products used by their thousands of member hospitals.

344. The market leader is encouraged to set an increased list price for each good distributed by the GPO and to plan periodic increases in the list price. Premier and Novation, LLC then give the market leader a long term exclusive contract designed to eliminate competition for the market of goods used by the member hospitals. The market leader is secretly charged sizable fees by Premier and Novation, LLC for having its products distributed through the group purchasing organization. The market leader's contract price to the member hospitals has been increased to include this fee to Premier and Novation, LLC and by design, the contract price always compares favorably to the manufacturer's list price to further the "savings" deception on GPO members.

345. The "inflation savings" scheme is perpetuated to this day by annual inflation forecasts created and distributed by Premier and Novation, LLC. The documents appear to be legitimate economic forecasts to aid hospital-purchasing directors and include macroeconomic analysis of economic conditions that have the potential to effect product prices. For those uninitiated into the secrets of the fraud, the long-term contracts with the hospital's GPO either Premier or Novation, LLC appear to have protected the hospital against the full effect of projected increases in the manufacturer's list prices.

346. The fraud however is easily verified. The economic forecasts of VHA, Novation LLC and Premier speak for themselves. The lists of products and services and the projected price changes invariably show price increases exceeding the annual inflation index rate for the contract protected hospital supply market leader manufacturers and below annual inflation index price changes for non-hospital supply specialty items, even declining prices in some markets with competition. To offset these glaringly obvious comparisons, Novation LLC and Premier make much use (misuse) of macro inflationary data to project increases in commodities they do not control.

347. As an example, Novation LLC's 2005 projections utilize temporary surges in products like farm produce from fuel cost increases in 2004 to creatively portray large increases in products not under contract providing cover for the fraudulently increased prices of the GPO's participating suppliers.

348. Novation LLC and Premier also utilize a broad range of antitrust prohibited devices to coerce their member hospitals into continuing to be subjected to the artificially inflated healthcare supply costs. Hospitals are deceived into upgrading their dues based memberships into "shareholder" status and a higher rate of refunds, rebates, dividends, cash and cash equivalent payments.

349. Because of this illegal product-tying scheme, hospitals are forced to buy products they would not have otherwise purchased, fearing they will lose their vested interests in what are in actuality fictitious or deceptive rebates and discounts.

350..The hospitals are not given meaningful data regarding the perceived "savings" and are prevented from realizing they are paying their own refunds out of inflated costs at either membership and share holder remuneration rates.

351. Hospitals and hospital groups that achieve shareholder status are deceived into thinking that they will lose an "investment" in the achieved shareholder status if they withdraw from the GPO. However, there is no retainable value in the shares of the GPO. Neither Novation LLC or Premier is publicly held and the "shares" are a Sherman Act prohibited tying device to prevent competition.

352. Another device to prevent competition in the hospital supply markets for Novation LLC and Premier members is the allocation of markets among participating suppliers and the GPO's themselves. As part of their membership agreements Novation LLC and Premier require hospitals to obtain typically 6% of a product from a supplier that is not the GPO's contracted market leader. Other contract requirements include participating in a smaller GPO to a limited share of the hospital's purchases so that no hospital or hospital group is supplied exclusively by Premier or Novation, LLC to deceive the hospitals into thinking they are not monopolized and to provide a much lower volume inferior choice.

353. The contracts utilized by Novation LLC and Premier reward hospitals and hospital groups for increasing the market shares of selected product lines sold through the GPO's. Hospital rebate, refund, dividend cash and cash substitute kickbacks are increased depending on how much use of the targeted products are increased.

354. Finally, Novation LLC and Premier employ contracts with harsh terms including severe discipline for hospitals and hospital groups that obtain products or services from competitive markets

outside of the GPO. The sanctions can include embargo of supplies, stiff financial penalties and probationary periods of adverse financial terms as penalties for participating in a competitive market.

a. The defendants' hospital group purchasing enterprise

355. Robert J. Baker, UHC, Curt Nonomaque and VHA distribute hospital supplies by corrupting administrators in health systems (hospitals, hospital groups and independent distribution networks) that support the provision of services or provide services to Medicare, Medicaid and Champus funded patients. UHC and VHA employ marketing schemes that provide remunerations to healthcare systems under contracts in violation of the federal Anti-Kickback Act, 42 U.S.C. § 1320a-7b.

356. Robert J. Baker, UHC, Curt Nonomaque and VHA encourage health systems to violate § 1320a-7b(b)(1) by receiving unlawful remunerations which are labeled as "rebates" and are paid periodically based on the products used by the health system and its loyalty to the terms of the anticompetitive exclusive agreement with the group purchasing organization, UHC, VHA or Premier which control 70% of the hospital supply market.

357. Robert J. Baker, UHC, Curt Nonomaque and VHA encourage their member hospitals to believe the group purchasing organizations are saving money by communicating the "value" of the rebates they are receiving as contrasted against the constantly increasing prices of hospital supplies allowed into UHC, VHA's distribution system.

358. The corrupting subtext of Robert J. Baker, UHC, Curt Nonomaque and VHA's marketing scheme is knowingly encouraging that third party payers, chiefly Medicare, Medicaid and Champus are billed for the artificially inflated list price, not the actual cost to the health system once the cash and cash substitute remunerations are factored in.

359. Robert J. Baker, UHC, Curt Nonomaque and VHA violate § 1320a-7b(b)(2) because they knowingly and willfully pay and offer to pay the unlawful remunerations. To provide cover for the spiraling prices in the product lists of chosen hospital suppliers who are protected from competition in UHC and VHA's captive market, Robert J. Baker, UHC, Curt Nonomaque and VHA generate flawed studies that extol the discount in the form of rebates as a savings over the monopoly "list" price for healthcare supplies.

360. The constant threat to the corrupt marketing scheme employed by UHC and VHA is access to real data from which to evaluate the actual costs imposed upon member hospitals by the artificially inflated distribution system, which would be destabilized by independent actions of participating hospitals and suppliers.

361. Robert J. Baker, UHC, Curt Nonomaque and VHA have protected against this destabilizing by forcing hospitals and suppliers into long-term anticompetitive exclusive dealing contracts that harshly penalize every violation. Out of a misguided fear of antitrust liability, the contracts typically assign market share limiting each health system to 95% of its purchasing through the dominant group purchasing organization and require a token share of products to be purchased through a "competing" group purchasing organization.

362. Robert J. Baker, UHC, Curt Nonomaque and VHA have also commanded loyalty among member health systems by making cash and cash substitute payments to health system board members and chief administrators in return for participation in the cost inflation scheme.

363. Many forms of the Defendants' cash and cash substitute payments to hospital administrators are concealed as "consulting contracts" and are not reported to Medicare, Medicaid or Champus or subtracted from the costs of hospital supplies transferred to third party payers.

364. Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC have made use of payments to a third party in which hospital CEO's are stakeholders in order to conceal the commercial bribe nature of the payments. An organization called the Healthcare Research and Development Institute (www.hrdi.com) has existed since the late 1990s. HRDI has approximately 35 members who are hospital CEOs (many are heavily involved in supporting GPOs). The Institute's clients are large manufacturers, publishers, and large consulting firms. Each client pays the Institute and the members of the Institute, who are also its shareholders, are paid out of the profits of the organization. For hospital CEOs to personally receive payments from companies that they do business with is a serious conflict of interest and a failure to fulfill their fiduciary responsibility.

365. UHC, VHA and Premier insist that the Antikickback Act provides a safe harbor for marketing programs offering discounts to health care providers and that its program was designed to take advantage of this safe harbor. See 42 U.S.C. § 1320a7b(b)(3)(A); 42 C.F.R. § 1001.952(h).

366. The rewards Robert J. Baker, UHC, Curt Nonomaque, VHA have given to health systems, hospital board members and purchasing managers have been paid in "cash or cash equivalents" and sometimes equity (stock shares) extorted from healthcare technology companies permitted to sell through the distribution system. This appears to be inconsistent with the group purchasing systems' safe harbor theory. See 42 C.F.R. § 1001.952(h)(5)(i) ("The term discount does not include – Cash payment or cash equivalents (except that rebates as defined in [42 C.F.R. § 1001.952(h)(4)] may be in the form of a check).").

367. Robert J. Baker, UHC, Curt Nonomaque and VHA also have protected their monopoly markets by forming a joint venture with each other, acquiring an electronic marketplace that could be co-opted as a false storefront for their illegal marketing scheme and finally by joining a joint venture created by the dominant suppliers with their competitor group purchasing organization, Premier.

368. UHC and VHA knowingly created an antitrust prohibited joint venture limited liability company called Novation, LLC for the purpose of unlawfully setting prices for hospital supplies sold through the formerly competing group purchasing organizations UHC and VHA's 2000 member hospitals.

369. Novation, LLC limited the suppliers whose products could have access to purchasing managers in the 2000 member hospitals. Novation, LLC used its power to determine which products were sold to the member hospitals not to command the best supplier pricing or fulfillment, but instead to guarantee that approved suppliers would participate in planned upward manipulation of list prices so that Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC could sell "discounts" or "rebates" to their member hospitals.

370. Robert J. Baker, UHC, Curt Nonomaque and VHA operated Novation LLC to control transactions between suppliers and member hospitals utilizing facsimile telephony (fax) and Electronic Data Interchange (EDI) ordering and fulfillment to keep track of hospital purchasing data and police supplier fulfillment and product pricing to ensure healthcare product prices were being continually manipulated upwards (artificially inflated).

371. When web based business to business electronic marketplaces showed the potential to dramatically increase hospital supply purchasing efficiency and lower hospital supply prices by facilitating direct communications between hospital groups and many competing product suppliers, Robert J. Baker,

revenue last year...[t]hus we believe with less than 25% in the new company, the terms of the transaction are disappointing for Eclipsys shareholders."

379. In addition, Eclipsys shareholders cannot rely on increased medical supply orders from the Novation agreement to fill in the gaps of the Merger Agreement. As explained in a March 30,2000 Reuters article, it is not clear how much revenue Neoforma can count on from the Novation arrangement. The article added mistakenly that with respect to the Novation deal, "Novation really can't prevent their hospital customers from buying wherever they want to buy"

380. Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC agreed to a plan where Eclipsys would instead partner with Neoforma, Inc. and preserve the Defendants' corrupt inefficiencies in exchange for a long term contract with quarterly payments of member hospital funds through Novation, LLC.

381. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff deceived purchasers of Neoforma.com's stock into thinking the firm's e-commerce technology would provide efficiency in the delivery of hospital supplies while knowing that no measurable difference in efficiency exists in the software technology EDI already employed by Novation LLC and the e-commerce html based software employed by Neoforma.com. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray and Andrew S. Duff knew the only advantage leading to efficiency e-commerce software had over EDI was in facilitating the competition that Novation LLC's control of Neoforma.com was designed to prevent.

382. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff also benefited because 70% of their venture funds were invested in healthcare technology companies and in exchange for their participation in the UHC and VHA scheme to keep hospital supply costs inflated, Piper Jaffray's healthcare technology companies received long term exclusive and anticompetitive contracts with Novation, LLC. This allowed US Bancorp and Piper Jaffray to profit greatly from underwriting the healthcare technology and supply chain management companies' initial public offerings.

5. The Origin of Technology That Made GPO's Obsolete And Eliminated Two Distribution Levels

383. On July 17, 1993 Physicians Management Group was founded to supply doctor's offices, clinics and nursing homes with discounted healthcare supplies at costs rivaling the volume purchasing

Physicians Management Group, HSCA later breached the membership contract with Medical Supply Management, stating the GPO was getting too much pressure from several suppliers.

393. Medical Supply Management replaced HSCA with MedEcon as its GPO, and as a member of MedEcon, Medical Supply Management's clients were entitled to contract pricing according to MedEcon's Manufacturer Agreements to supplement direct purchasing negotiated by Medical Supply Management itself.

394. As a supplier for health systems (hospital chains, hospitals, clinics and nursing homes) Medical Supply Management was what the industry labels an "independent distribution network." However, unlike other suppliers in healthcare, Medical Supply Management did not make exclusive contracts with particular manufacturers extracting profit from the rebate or kick back payment for exclusive access to a market. Medical Supply Management's compensation was driven only by its performance in saving costs for its customers. Consequently, Samuel Lipari's software was engineered as a "clearing house" resembling an insurance claims processing center of the period where many active competitors utilize the center as a neutral utility. This was the first electronic marketplace in healthcare supplies and it was not based on the GPO model of extracting fees for anticompetitive advantage and monopolization. Later in 2001, the defendant US Bancorp and Piper Jaffray did a study authored by their senior analyst Daren Marhula and determined the model would save twenty three billion dollars a year over the current inefficient distribution system.

395. MedEcon like other GPO's had not invested in efficiency creating technologies like Medical Supply Management's supply chain management software due to the lack of competition in the market for hospital supplies. However, MedEcon enlisted Medical Supply Management transaction accounting and reporting data to police their suppliers' contract pricing compliance, giving birth to the current practice of GPOs to use electronic marketplace software to enforce anticompetitive minimum price maintenance in Sherman Act prohibited vertical price fixing between manufacturers, suppliers and vendors selling to hospitals through Neoforma, Inc. or GHX LLC's electronic marketplace.

396. Owen Healthcare, Inc., a wholly owned subsidiary of Cardinal Health, Inc., took a great interest in Medical Supply Management's business model. On the pretense of building a relationship with Medical Supply Management that would allow Samuel Lipari to sell Owen's lines of pharmaceuticals as an

independent distribution network, Owen Healthcare obtained Medical Supply's business plan and proprietary information developed as of 1995.

397. Cardinal Health, Inc. utilized the information in the business plan describing the clearinghouse model and Robert Zollars, a Cardinal employee left Cardinal and later joined Neoforma, Inc. that had started up in 1996 to sell hospital supplies through the internet in an electronic marketplace.

398. A July 29, 1996 letter to Dennis M. Egan of Health Services Corporation of America (HSCA) described Medical Supply Management's use of the Web for customer ordering:

> "The Contract portfolio information MSM clients will receive from HSCA will be utilized as follows:
>
> The contract portfolios will reside on MSM server and will include all product data (Vendor, Product ID, Description, Unit of Measure, etc.). The product information (excluding pricing, terms and conditions) will be accessible on the World Wide Web and only after a client locates products on the World Wide Web, will the client then negotiate EDI with MSM server and MSM server provide pricing. Pricing will be provided via Internet through a (SS) link."

6. The Defendants Foreclosure of Competition In The Market For Hospital Supplies Through Exclusionary Contracts and Loyalty Agreements That Have The Same Exclusionary Effect.

399. Novation and Neoforma create distribution agreements with incumbent and market leading device makers that amount to exclusionary agreements with hospitals given the arrangements between Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker and their member hospitals.

400. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker also enter into explicit exclusionary contracts with incumbent and market leading device manufacturers for a given product with which member hospitals are obliged to comply by agreement and/or coercive threats of expulsion or penalties for deviations.

401. Explicit exclusionary contracts are created when Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker forbid member hospitals from buying outside the cartel, either explicitly or by a practice of imposing penalties if they do.

402. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker exercise their power as exclusive

purchasing agents for hospitals by declining to approve competing devices in a given product market, effectively imposing sole source device contract on member hospitals even when they do not do so explicitly.

403. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker exclude suppliers by agreement by allowing member hospitals to buy from other hospital supply vendors including Medical Supply but only for product categories not covered by the defendants cartel.

404. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker create some exclusionary contracts that are not imposed on member hospitals. Instead these member hospitals are free to accept or reject those exclusionary contracts on a contract-by-contract basis. Even with these "voluntary" exclusionary contracts which often cover multiple products and manufacturers, impose retroactive penalties on deviation, and ban even considering rival products effectively bind member hospitals even when rivals for some products later offer a better and cheaper product.

405. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker in exchange for fees and commercial bribes from manufacturers also use incentives to join exclusionary contracts that anticompetitively exclude device rivals, harm consumers, and harm hospitals as a group.

406. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake get members to accept exclusionary contracts by co-opting hospital system directors and decision makers with cash and cash substitute payments often in the guise of consulting contracts, giving hospitals other compensating benefits, disfavoring hospitals who do not join the exclusionary scheme, and/or giving hospitals who do join a share of the supracompetitive profits earned from downstream consumers.

407. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake overtly illegal forms of exclusive dealing proceed through voluntary agreements with multiple willing hospital buyers even though the long

run result is a reduction of competition harmful to the ultimate consumer and often to the hospital buyers themselves.

408. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake deceive governmental oversight by making anticompetitive agreements that do not require purchasing 100% from one manufacturer, but instead some other high percentage like 90 or 95%.

409. The defendants use a private brand through Novation, LLC called Novaplus. The Novaplus Pulse Oximetry Letter of Commitment (requiring 95% minimum of annual oximetry sensor purchases from Tyco-Nellcor, which had 88% of market); The defendants Novation Opportunity ® Spectrum I Portfolio Participation Agreement (requiring 95% minimum spanning 12 product categories; The Ethicon-Novation Commitment Document (offering different discounts for Novation hospitals buying 90 or 95% of sutures from Ethicon, which had 81% of suture market)

410. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake's exclusive dealing arrangements cause anticompetitive harm by raising costs for Medical Supply, other distributors, suppliers and manufacturers. The defendants accomplish their monopolization scheme by denying rivals the economies of scale they need to compete effectively.

411. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake create exclusive contracts by Volunteer Hospital Association and University Healthsystem Consortium's general terms of the Novation membership or the defendants' contracts for particular product areas also often require the hospital to use Novation as its sole purchasing agent for the covered product categories. In Novation's Opportunity ® Spectrum I Portfolio Participation Agreement it states "Participant declares Novation as its sole supply cost management company for the purchase of products in the OPPORTUNITY product categories. . . . Participant will purchase OPPORTUNITY ® products though Novation purchasing arrangements and will not purchase OPPORTUNITY products or any products that compete with OPPORTUNITY products though any other supply cost management company."

412. Some of Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake's hospital agreements provide that a signing hospital cannot solicit rival bids, examine rival products, or even entertain rival proposals to prevent Medical Supply or other Web based suppliers from providing competing product pricing.

413. Novation's Opportunity ® Spectrum I Portfolio Participation Agreement states "Participant will not . . . participate in competitive product evaluations for OPPORTUNITY products." Novation's Opportunity ® Spectrum II Portfolio Participation Agreement (same); Supply Partner Terms of Participation Opportunity ® Spectrum I Portfolio states **"Health care organization agrees not to cause supply partner to incur defensive selling costs during the term of this Agreement (such as can be caused by entertaining proposals from other vendors or conducting product evaluations) . . ."** [emphasis added].

414. The defendants' Supply Partner Terms of Participation Opportunity ® Spectrum II Portfolio states the same. See, e.g., Letter from James Bradley of Stuart Cardiology Group to Jake Langer of Biotronik, Feb. 26, 2001 ("Hospital has entered into a GPO Novation contract, which provides only a single cardiac rhythm device vendor. The hospital is enforcing a 100% compliance to this vendor even though the actually contract states 95% compliance."

415. The defendants use contracts designed so that a hospital cannot consider rival products, to make it impossible for the hospital to obtain products outside of the agreement made with Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake even though on paper, the market is not restrained for the remaining 5-10%. The defendants' agreements in practice rival devices are often 100% excluded from hospitals despite the nominal right to buy 5-10% from them.

416. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake conceal their exclusionary agreements by not requiring an absolute obligation to buy a high percentage from the favored supplier, but instead provide loyalty rebates if that high percentage is met. The Novaplus Pulse Oximetry Letter of Commitment (discount contingent on 95% compliance). Novation's Opportunity ® Spectrum I Portfolio Participation Agreement also stated the same.

subject to repayment if Participant fails to comply for the full [five-year] term of the OPPORTUNITY portfolio" with a 95% purchase commitment and other requirements; Novation's Opportunity ® Spectrum II Portfolio Participation Agreement states the same.

422. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use the threat to reclaim all those rebates on past purchases to induce their member hospitals not to switch to making future purchases from a rival that is just as efficient and offering a lower price, effectively foreclosing Medical Supply from the market for hospital supplies.

423. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake's exclusionary programs cover multiple products and manufacturers rather than just one. Sometimes the defendants and a given incumbent manufacturer gives rebates or discounts on a whole product line if the buyer commits to making a high percentage of their purchases from that manufacturer through Novation or Neoforma for each product in the line. [Ethicon-Novation Commitment Document (offering highest discount for Novation hospitals that buy 95% of sutures and 85% of endomechanical products from Ethicon, which had 81% of suture market and 61% of endomechanical products]

424. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake even sometimes give rebates or discounts on menu of products from different manufacturers if the hospital commits to buying a high percentage of each product from the corresponding manufacturer on the menu. Novation's Opportunity ® Spectrum I Portfolio Participation Agreement employs a 95% purchase commitment applies for twelve product categories covering five different manufacturers, though with one manufacturer for each product category. Novation's Opportunity ® Spectrum II Portfolio Participation Agreement uses an 85-95% purchase commitment applying to 14 product categories covering 7 manufacturers.

425. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake's market foreclosure agreements applying to multiple products do not differ from a single product exclusive dealing arrangement, but only worsen the anticompetitive consequences. Through these programs, the defendants impose a penalty for a

hospital or health system's failure to meet the threshold for any one product and in a multiple product loyalty agreement includes withholding or reclaiming rebates not only for that product but for all the other products as well. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake can then exacerbate the penalty for noncompliance after the rebates have been earned.

426. The defendants have foreclosed competition in the market for hospital supplies so that even at the very beginning of a rebate period, Medical Supply could not compete by simply offering a price on one of the products that matches or beats the price the incumbent manufacturer and Novation or Neoforma is charging for that product net of the program discount.

427. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use their tremendous market power of over 2000 hospitals and multiple product rebates or package discounts as an illegal tying agreement described in X Areeda, Elhauge & Hovenkamp, Antitrust Law ¶1758b, at 343-346 (1996).

428. The defendants' scheme is designed to keep a more efficient Web based vendor or suppliers from providing products to hospitals at lower prices than the cartel. For the hospital would have to take into account that even if it gets a better price from using the rival for that product, it loses the discount on all the other products in the program. The defendants' multi-product rebates are equivalent to sidepayments given to hospitals and health systems in exchange for agreeing to enhance the manufacturer selling through Novation and Neoforma's market power by excluding other sources in one product, with the sidepayments compensating these hospitals and health systems for the fact that this scheme increases the price they pay for the product whose market power was enhanced.

429. More generally, as noted above, even when a hospital does not formally make a multi-product commitment, Novation and Neoforma pressure or threaten with expulsion any member hospitals who do not comply with the commitment obligations made on any of the defendants' exclusionary agreements with incumbent manufacturers. Every single product exclusionary agreement of the defendants is effectively the same as a multi-product one and violates Sherman 1.

430. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake have inserted themselves between

the manufacturer and consuming hospitals to extract fees from incumbent manufacturers. These fees or commercial bribes are solicited by Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake and are partially forwarded to member hospitals and more efficiently to hospital decision makers for high share commitments that are not volume-based at all, and are in actuality not rebates or discounts but a system of graft.

431. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake and their officers with the assistance of US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have obtained cash and cash equivalents such as stock-options, warrants, or investment interests in the manufacturers favored by Novation and Neoforma's commitment programs.

432. The fees and bribes solicited by the defendants from favored manufacturers includes making monetary investments in the defendants' owned businesses including Neoforma, Inc., and giving Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake, US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff favorable business terms on other unrelated deals.

433. US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff also employed another tactic to extort funds from manufacturers and suppliers to enter the cartel. US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff have hosted annual healthcare conferences where healthcare technology companies seeking capitalization were forced to pay US Bancorp Piper Jaffray for underwriting their public offerings and favorable analyst coverage marketed as "independent" research to create demand for their shares as a pre initial public offering investment for qualified investors and most importantly to obtain an introduction to Novation and Neoforma officials to be favored by Novation's commitment programs.

434. US Bancorp, NA, US Bank, Jerry A. Grundhoffer, Andrew Cesere, The Piper Jaffray Companies and Andrew S. Duff were paid large sums for a private meeting with Novation officials or for a prospective healthcare technology company's membership in a GPO institute for evaluating technologies.

435. Manufacturers and suppliers are forced to pay Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake fixed amounts that are not linked to volume in the form of: (1) fees given to have products considered, (2) annual administration fees, (3) marketing or endorsement fees, and (4) licensing fees for use of the NovaPlus brand name.

436. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake arrange for selected manufacturers and suppliers to pay hospitals fixed fees that are not dependent on the volume of sales in exchange for their commitment to achieving the target market shares. The fact that the payments given for loyalty commitments often are not proportional to volume worsens the anti-competitive effects. The defendants' side-payments that are unrelated to sales volume are used because they are a more effective means of dividing monopoly profits created by seller-buyer collusion designed to enhance Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake's market power.

437. Sometimes Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake make agreements where the *de facto* exclusivity for any given product is granted not to one incumbent manufacturer or supplier, but to two of them. The defendants at times enforce a duopoly in some products to protect those manufacturers from competition by rivals and entrants. Regardless, the motive of the defendants is to restrict output and increase prices just as where the defendants enforce an absolute monopoly in a product or product line."

438. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium, Robert J. Bake have offered to allow rival products from unfavored manufacturers and suppliers to be offered if they would agree to increase their prices dramatically to levels higher than that being charged by the incumbent manufacturers and suppliers who

benefit from the exclusionary agreements. For example, Retractable Technologies reported that Novation finally said it would agree to use safer needle technology from Retractable Technologies, but only if it were sold under Novation's private label for a price 270% higher than Retractable wanted to charge. Thomas Shaw, "Examine the 'questionable' side of GPOs," Commentary, Dallas Business Journal (March 15, 1999) Mark Smith, "Innovative medical products: a clash of blood and money," Houston Chronicle (April 18, 1999).

7. The Monopolization Of The Hospital Supply Industry By The Defendants In Conspiracies And Combinations With Premier, GHX, LLC and Their Predecessor Corporations

439. On September 28, 1998, Richard A. Heard, Senior Vice President, Diversified Services obtained via subterfuge the business plan and model created by Samuel Lipari for Medical Supply Management for the Defendants using a false offer to buy out the company from Samuel Lipari.

440. On November 23 and 24th, 1998, the Defendants obtained a demonstration in Salt Lake City, Utah of Samuel Lipari's software that allowed purchases of hospital supply products to be purchased and managed via pc computers instead of the existing costly mainframes still used by the Defendants and their member hospitals and manufacturers to this day.

441. No agreement was finalized because with the demonstration and intellectual property obtained by the defendants through Richard A. Heard and Owen Health, a subsidiary of Cardinal which would later be part owned by the Defendant Novation, the Defendants had obtained the information they needed to prevent Medical Supply from obtaining capital to enter the marketplace by implementing their own electronic exchanges, diluting the value of Samuel Lipari's innovation with false substitutes that maintained the group purchasing organization enterprise of the Defendants to artificially inflate hospital supply costs.

442. In June 1999, MedAssets was formed, it acquired the two GPO's InSource and Axis Point Health Services and then Health Services Corporation of America (HSCA) that had provided supplies to Samuel Lipari's two earlier companies in May 2001.

443. On June 28, 1999, Neoforma, Inc. announced that it has elected Robert J. Zollars to the position of Chairman, President and Chief Executive Officer. He succeeds Jeff Kleck, Ph.D., co-founder of Neoforma. Zollars joins Neoforma from his position as an E.V.P. and Group President at Cardinal Health,

Inc.

444. On March 7, 2000, Medibuy.com Inc. (Medibuy) a vendor of Internet-based health care supply purchasing software announced it was acquiring Premier Health Exchange LLC, the electronic commerce subsidiary of San Diego-based Premier Inc.

445. On September 1, 2000, Medibuy announced it was acquiring empactHealth.com, a Nashville, Tenn.-based purchasing Web portal started by hospital chain HCA--The Hospital Co. Shareholders of the privately held empactHealth.com, including HCA, will receive approximately 23% of medibuy.com. HCA's ownership interest in medibuy.com will total approximately 16%. Under the agreement, San Diego-based medibuy.com will become the exclusive electronic commerce partner to HCA's 204 hospitals, as well as several members of HCA's group purchasing organization, including LifePoint Hospitals, Triad Hospitals and Health Management Associates.

446. On February 6, 2000, Empacthealth announced that Columbia/HCA Healthcare Corp. is pumping up to $40 million into empactHealth.com, which will charge hospitals and vendors a fee for ordering supplies online. Columbia/HCA, the nation's largest for-profit hospital company, will be the firm's first customer.

447. On March 30, 2000, EmpactHealth announced today that it has signed a founding partner agreement with Health Management Associates (HMA), the premier operator of acute care hospitals in the Southeast and Southwest areas of non-urban America. Under the terms of the agreement, HMA will exclusively implement and use empactHealth's empactBuy solution for the online requisitioning, ordering and purchasing of all medical and non-medical supplies and services for the company's 32 acute care hospitals, and any facilities HMA adds in the future. HMA will also become a founding partner and an equity shareholder in empactHealth.

448. In the same announcement empactHealth stated it is a leading healthcare e-procurement company that synchronizes the business processes of healthcare buyers and suppliers to reduce costs and increase efficiency at both ends of the healthcare supply chain. The company has already signed a large critical mass of committed buyers, including more than 240 Columbia/HCA and Health Management Associates facilities that will use empactBuy, exclusively, as their e-procurement solution. In addition, empactHealth has commitments from Johnson & Johnson, Baxter, and Medline and a number of other

suppliers to integrate their ERP business processes with empactSupply. empactHealth offers healthcare-specific e-procurement solutions based on foundation technology from Commerce One and adds valuable functions such as business intelligence, contract management, and inventory management. The company is Nashville-based and privately funded.

449. On March 29, 2000, Global Healthcare Exchange (GHX) was founded as a Limited Liability Company or a trust by five major healthcare manufacturing competitors: Johnson & Johnson Health Care Systems; GE Medical Systems; Baxter Healthcare Corp.; Medtronic USA, Inc. and Abbott Exchange, Inc. Much of the capitalization came from GE, the parent company of GE Medical. The name was also copied from GE's existing internet marketplace for hospital supplies Global Exchange and was part of a plan created by Jeffrey Immelt, then GE Medical president and now CEO of GE to prevent competition from electronic marketplaces that were independent from the manufacturers ability to control hospital supply distribution with kickbacks and commercial bribes.

450. On March 30, 2000 Neoforma announced the merger with Eclipsys Corporation (NASDAQ: ECLP) and HEALTHvision, Inc. In conjunction with the agreements, Neoforma.com announced that it has signed an exclusive 10-year strategic agreement to provide e-commerce services for the 6,500 healthcare organizations participating in the purchasing programs of Novation, LLC, the world's largest buyer of medical supplies and the supply company of national healthcare alliances VHA Inc. and University HealthSystems Consortium (UHC). The companies later decided not to merge and instead to form a combination to jointly control the market for hospital supplies in e-commerce among Novation, LLC's customers.

451. On March 31, 2000 The New Healthcare Exchange was formed as a consortium of four of the US largest health care distributors, which include AmeriSource Health, Cardinal Health, Fisher Scientific International; and McKesson HBOC.

452. On May 25, 2000 Neoforma announced that it has reaffirmed its exclusive 10-year agreement to provide e-commerce procurement services for Novation. Neoforma.com also announced modifications to the structure and terms of its stock and warrant transactions with VHA Inc. and University HealthSystem Consortium (UHC), the national healthcare alliances that own Novation. Much of the public offering was subscribed to or purchased by Novation with funds owned by UHC and VHA member hospitals and

without their knowledge and approval. The capitalization of Neoforma as a direct consequence rose to 1.2 billion dollars.

453. Neoforma also announced on May 25, 2000 that Eclipsys Corporation and HEALTHvision, Inc. agreed by mutual consent to terminate, effective immediately, their proposed mergers announced March 30, 2000. Instead, Neoforma.com, Eclipsys and HEALTHvision have entered into a strategic commercial relationship that will include a co-marketing and distribution arrangement between Neoforma.com and HEALTHvision. The arrangement includes the use of Eclipsys' eWebIT™ enterprise application integration (EAI) technology and professional services to enhance the integration of legacy applications with Neoforma.com's e-commerce platform.

454. Under the terms of the modified Novation agreements, VHA will receive 46.3 million shares, representing approximately 36% of Neoforma.com, and UHC will receive 11.3 million shares, representing approximately 9% of Neoforma.com. In addition, under new warrants to be issued to VHA and UHC, VHA and UHC will have the opportunity to earn up to 30.8 million and 7.5 million additional Neoforma.com shares, respectively, over a four-year period by meeting certain performance targets. These targets are based upon the historical purchasing volume of VHA- and UHC-member healthcare organizations that sign up to use Neoforma.com's e-commerce exchange. The targets increase annually to total healthcare organizations representing approximately $22 billion of combined purchasing volume at the end of the fourth year. The warrants will have a strike price of $0.01. On a pro forma basis, including shares issuable upon the exercise of Neoforma.com's existing options and warrants, and VHA and UHC earning all of the shares underlying the performance-based warrants, Neoforma.com would have approximately 175 million shares outstanding.

455. The May 25, 2000 announcement also revealed the interlocking directors used by the Defendants to restrain trade in hospital supplies. In connection with the new agreements, two of the seven seats on the Neoforma.com Board of Directors will be filled by VHA designees after closing of the transaction. Subject to certain exceptions, VHA has agreed to vote any Neoforma.com shares it owns in excess of 20% of outstanding Neoforma.com stock in the same proportion as all other stockholders. Subject to certain exceptions, UHC has agreed to vote any Neoforma.com shares it owns in excess of 9% of outstanding Neoforma.com stock in the same proportion as all other stockholders. VHA and UHC have

also agreed to certain other restrictions on acquisitions and transfers of Neoforma.com stock.

456. Mark McKenna, Novation's president, said, "We are excited about the advantages and value that our relationship with Neoforma.com offers our members in managing their supply expenses and inventories. We have already made significant progress in our relationship with Neoforma.com, including the establishment of supplier and buyer relationship management teams and a targeted implementation strategy. We anticipate members will be able to begin conducting purchase transactions as early as the third quarter of this year."

457. Curt Nonomaque, VHA executive vice president, noted, "We believe the increased efficiencies, reduced costs and ease-of-use features that Neoforma.com's B2B technology provides will significantly benefit both Novation's member organizations as well as other health care providers. In addition, VHA is creating a separate cooperative pool and will distribute Neoforma.com stock to our members in proportion to their dollar volume of purchases through Neoforma to further align incentives. In addition, the new strategic partnership involving Neoforma.com, HEALTHvision and Eclipsys offers additional benefits for healthcare organizations seeking to integrate and use Internet technology. These agreements build on existing customer relationships with HEALTHvision and Eclipsys that provide the Web-based solutions that enable hospitals to connect with their physicians and communities."

458. Edward Schwartz, executive vice president at UHC, indicated, "We're pleased that the relationship with Neoforma.com is moving forward and that UHC's members will be able to gain value from it. We're also excited to announce that the first organization to sign up for the exchange through Novation is a UHC member, the Medical College of Virginia Hospitals in Richmond, Virginia."

459. Scott Decker, HEALTHvision chief executive officer, said, "We're pleased that through our relationships with Neoforma.com and Eclipsys we will be able to offer customers a comprehensive e-Health solution. HEALTHvision's customers will be able to quickly take advantage of Neoforma.com's expertise in supply chain management because Neoforma.com's contributions will nicely complement our existing services. HEALTHvision currently provides Web-based services to more than 1,200 hospitals, and the potential addition of e-commerce capabilities has already generated a great deal of interest and demand."

460. According to Zollars, the agreement with Novation creates immediate potential scale for

Neoforma.com's e-commerce platform, as Novation represents more than 30% of U.S. procurement in healthcare with a membership that includes many of the nation's largest and most respected healthcare organizations and physicians. Novation also brings an existing base of relationships with a wide range of healthcare suppliers, essential to the success of an e-commerce offering. Novation plans to be active in recruiting other suppliers to the Neoforma.com marketplace. Novation already provides its alliance members with highly regarded and utilized Web-enabled tools, including an online catalog, Web-based tools for cross-referencing and standardization.

461. On September 01, 2000, Medibuy announced that shareholders of the privately held empactHealth.com, including HCA, will receive approximately 23% of medibuy.com. HCA's ownership interest in medibuy.com will total approximately 16%. Under the agreement, San Diego-based medibuy.com will become the exclusive electronic commerce partner to HCA's 204 hospitals, as well as several members of HCA's group purchasing organization, including LifePoint Hospitals, Triad Hospitals and Health Management Associates. medibuy.com will integrate empactHealth.com's technology into its products and services.

462. On April 2001 Broadlane an electronic marketplace that comprises Tenet Healthcare Corp., Community Health Systems, Kaiser Permanente, Iasis Healthcare, Paracelsus Healthcare, Cleveland Clinic Foundation, Universal Health Services, Intermountain Health Care and Continuum Health Partners is formed.

463. On March 26, 2001 Medibuy and Premier announced the launch of Premier Exchange, an Internet portal providing electronic commerce services to Premier's 1,850 alliance members. San Diego-based Premier is a purchasing coalition for health care organizations. Medibuy, also in San Diego, is an electronic procurement vendor offering online supply ordering and management. Medibuy earlier this year acquired Premier's start-up online supply division.

464. On April 30, 2001 HealthNexis is created. Formerly the New Health Exchange, was founded in April 2000 by four of the nation's largest healthcare companies: AmeriSource Health Corporation (NYSE: AAS), Cardinal Health, Inc. (NYSE: CAH), Fisher Scientific International, Inc. (NYSE: FSH), and McKesson HBOC, Inc. (NYSE: MCK).

465. On November 26, 2001 Global Healthcare Exchange and Health Nexis announced they will

combine their operations into a single Internet-based exchange, according to the organizations. Supplier members of both organizations will be connected to GHX's 70 integrated delivery networks (IDNs), which currently represent approximately 600 hospitals. The combined entity will operate as Global Healthcare Exchange LLC and will be headquartered in Westminster, Colorado. The merger announcement follows recent GHX alliances with Neoforma Inc. and AmeriNet Inc. Says GHX president Mike Mahoney, "Connectivity, participation, and cooperation among all members of the supply chain is critical for e-commerce to reach its full potential. HealthNexis and its membership of leading healthcare companies provide considerable e-commerce technology solutions and supply chain expertise. This combination reinforces GHX's commitment to building an open and neutral healthcare exchange to drive supply chain savings."

466. On October 09, 2002 Global Healthcare Exchange, LLC (GHX) and Neoforma, Inc. announced they have signed a definitive agreement to create the first comprehensive, integrated supply chain solution for the healthcare industry. Neoforma and GHX expect the strategic alliance to accelerate the adoption of e-commerce by hospitals and suppliers, accelerating supply chain cost savings. The agreement enables Neoforma's hospital customers, including the 514 hospitals currently contracted to use the Neoforma-powered Marketplace@Novation™, to transact business with GHX's growing network of healthcare supplier members through the integrated solution, without the added cost of implementing and maintaining separate Internet connections. GHX's connected suppliers will be able to sell their products to Neoforma's current and future hospital customers through one Internet-based exchange, reducing implementation costs and simplifying the e-commerce strategy for these suppliers. GHX has signed more than 100 leading supplier members.

467. On December 11, 2002 Global Healthcare Exchange, LLC (GHX) and Medibuy, Inc. announced they have signed a definitive agreement to merge their two companies. The new company will be called Global Healthcare Exchange, LLC (GHX). Owned by many of the world's largest healthcare suppliers and providers, GHX and Medibuy will combine their respective Internet-based trading exchanges to create the largest single exchange in healthcare. More than 1400 hospitals and other healthcare facilities and 100 suppliers have already selected GHX or Medibuy as their preferred solution for purchasing healthcare products and supplies. Through this merger, the newly created exchange will provide a means

for all participants in the healthcare supply chain, including provider organizations, manufacturers, group purchasing organizations (GPOs) and distributors, to benefit from improved efficiencies, cost reductions, process automation, and the adoption of industry standards.

468. The same December 11, 2002 announcement described the owners of GHX: "Originally founded in March 2000 by five major healthcare manufacturers: Johnson & Johnson Health Care Systems; GE Medical Systems; Baxter Healthcare Corp.; Medtronic USA, Inc.; Abbott Exchange, Inc., GHX has since realized its vision of being owned by representatives of the entire supply chain, including manufacturers, distributors, providers and group purchasing organizations. In addition to the founders, the original equity owners included: Siemens; Becton, Dickinson & Co.; Boston Scientific Corp., Tyco Healthcare Group, LP; Guidant Corp.; C.R. Bard, Inc.; B Braun Medical Inc. In December 2001, GHX combined business operations with the distributor-created exchange, HealthNexis, adding AmerisourceBergen Corp.; Cardinal Health, Inc.; Fisher Scientific International, Inc.; and McKesson Corp. to its list of owners. A year later, a merger with Medibuy Inc. rounded out the current ownership roster with the addition of Premier, Inc., one of the nation's largest group purchasing organizations, and HCA, a national integrated delivery network (IDN).

469. While adopting Medical Supply's neutral marketplace concept, the same announcement reveals that GHX still maintains and is an instrument for enforcing the Defendant Novation and the unnamed coconspirator Premier's anticompetitive pricing achieved through contracts that horizontally and vertically fix prices:

> "How does GHX benefit group purchasing organizations (GPOs)? GPOs are working with GHX to develop integrated contract management and other e-commerce services that enable their hospital members to more easily and efficiently **purchase contracted products at the *agreed upon price*.**" [Emphasis added]

470. On April 11, 2003, GHX, MedAssets HSCA announced that they have formed a Strategic Alliance. Global Healthcare Exchange and MedAssets HSCA, the St. Louis-based group purchasing organization, announced they have formed a strategic alliance they say will make e-commerce services available to more than 16,000 healthcare providers. Under the terms of the agreement, MedAssets has selected GHX as an integrated e-commerce solution for members of its GPO. As a result, MedAssets members will be able to purchase products via GHX's Internet-based trading exchange using pricing data contained in the CDQuick E-Catalog, supplemented by the accurate product data in the GHX AllSource

catalog.

a. US Bancorp's current President and CEO, Richard K. Davis

471. Samuel Lipari, founder of Medical Supply Chain, has discovered US Bancorp's current President and CEO, Richard K. Davis continued the extortion of healthcare supplier companies that caused US Bank's parent company to jettison its investment-banking unit US Bancorp Piper Jaffray. Samuel Lipari's lawsuit against US Bank has been in federal court since October 2002.

472. The National Association of Securities Dealers in 2002 found a US Bancorp managing director, Scott Beardsley, threatened to discontinue coverage of Antigenics Inc., a biotechnology company that develops treatments for cancers and infectious diseases, if Antigenics did not select US Bancorp Piper Jaffray as a lead underwriter for a planned secondary stock offering. Antigenics required the capital to enter the hospital supply market controlled by Novation LLC. As part of a settlement with the NASD, US Bancorp was censured and fined $250,000.

473. US Bancorp accepted liability for $12.5 million in disgorgement and an additional $12.5 million in penalties over US Bancorp Piper Jaffray's actions in falsely representing investment research related to capitalizing technology companies in IPO's on the NASDAQ stock exchange in 2003 as a result of Securities and Exchange Commission v. U.S. Bancorp Piper Jaffray Inc., 03 CV 2942 (WHP) (S.D.N.Y.).

474. US Bancorp underwrote the IPO for Neoforma, Inc.

475. Neoforma was taken private in 2007 by Novation LLC to conceal member hospital kickbacks laundered through the publicly traded company from the Ft. Worth, Texas US Department of Justice's False Claims Act investigation of Novation LLC for Medicare Fraud involving over 2500 Novation LLC hospitals.

476. The whistleblower case continues on as *United States ex rel. Cynthia I. Fitzgerald v. Novation LLC et al* N. Dist of TX Case no. 3:03-cv-01589 (2.) and has been covered by the New York Times (3.).

477. Jerry A. Grundhofer, the former CEO of US Bancorp attempted to disassociate US Bank from the notorious US Bancorp unit Piper Jaffray while Richard K. Davis was president by giving away Piper Jaffray to shareholders in a desperate spin off after two attempts to sell the investment unit at a

hundred million dollar loss fell through in 2003.

478. However, Richard K. Davis continued a policy of using US Bank to interfere with healthcare technology companies attempting to enter the hospital supply market controlled by Novation LLC.

479. Samuel Lipari discovered US Bancorp's agents while under the control of CEO Richard K. Davis continued to obstruct Lipari's Medical Supply Chain's entry into the market for hospital supplies as recently as January 2008. Emails and court records now show that Shughart Thomson & Kilroy, P.C. acting at the direction of US Bancorp CEO Richard K. Davis repeatedly interfered with Lipari's efforts to obtain trial counsel in Medical Supply's Missouri litigation against General Electric (exchange symbol GE).

480. GE provided the $600 million dollars to take Neoforma, Inc. private and prevent the USDOJ from obtaining access to hospital kickback records in the Medicare False Claims Act investigation. US Bancorp CEO Richard K. Davis attempted to conceal the fraud by omitting disclosure of the potential litigation liability in Securities and Exchange Commission filings as required under § 302 of the Sarbanes-Oxley Act. KPMG LLP also endorsed the filings omitting the disclosures required under § 302 of the Sarbanes-Oxley Act.

8. Defendants' Tortious Interference with the Petitioner's Business Relations

481. The petitioner has been injured by various combinations of the defendants tortiously interfering with the petitioner's business relationships and business expectancies.

a. Tortious Interference with Business Relations by Defendants Lathrop & Gage L.C.

482. On or about April 11, 2005, the defendant Lathrop & Gage L.C. took advantage of its confidential attorney counsel relationship with McClatchey papers to advance Lathrop & Gage L.C.'s agenda of supporting Karl Rove's influence peddling scheme through the Republican National Committee that included the selling of USDOJ protection.

483. Lathrop & Gage L.C. caused the Independence Missouri newspaper the Examiner to confront its investigative reporter James Dornbrook over the first of a planned series of articles dealing with the state cuts in Medicaid brought by Governor Matt Blunt.

484. The immediate purpose of Lathrop & Gage L.C. was to prevent the petitioner from obtaining redress for General Electric's real estate obligations to the petitioner and thereby tortiously interfere in the

petitioner's business expectancies and relationships with General Electric, General Electric Transportation and GE Capital.

485. Lathrop & Gage L.C. knew that the petitioner was relying on these expectancies to capitalize Medical Supply Chain, Inc.'s entry into the hospital supply market controlled by Novation LLC. and that the USDOJ was protecting Novation LLC.

486. The article featured the petitioner and his company Medical Supply Chain, Inc. and described his experience in federal court and his efforts to get redress and provide competition to lower costs in hospital supplies and increase access to affordable healthcare.

487. James Dornbrook and his paper the Examiner were subjected to Governor Matt Blunt and the Republican National Committee associated law firm Lathrop & Gage L.C.'s "fear counseling" to discourage news media from reporting on challenges to the healthcare interests of the defendant cartel members with false threats of publishing liability.

488. Missouri attorney Mark F. "Thor" Hearne who was the president of Lathrop & Gage L.C. coordinated Karl Rove and the Republican National Committee's schemes to deprive African Americans of their vote with state legislators, secretaries of state and even county voting officials.

489. The schemes were so effective that even the petitioner's witness, Bret D. Landrith, a Republican who had registered with the State of Kansas upon renewing his driver's license for his new address in a traditionally African American Topeka Kansas neighborhood two blocks down from the Brown vs. Board of Education Memorial was challenged and no record of his change reached the Shawnee County polling station.

490. Mark F. "Thor" Hearne of Lathrop & Gage founded the National Republican Committee front group known as American Center for Voting Rights ("ACVR").

491. The May 3rd, 2007 McClatchy was the story breaking the news that the Western District of Missouri US Attorney Todd Graves was the Ninth US Attorney improperly fired released by the petitioner on April 9th, 2007.

492. Missouri's Governor Matt Blunt is also a client of Lathrop & Gage L.C., and has been represented for years by Hearne. Blunt, Hearne, and the ACVR were all central to the McClatchy(the conglomerate that owns and runs the Kansas City Star) piece as originally filed by Greg Gordon and the

role of each of them in the Kansas City Star's May 3rd, 2007 altered version of the story was subsequently removed or otherwise greatly watered down.

493. The McClatchy reporter called the petitioner on April 9th and verified the story with US Senate staffers permitted to see the unredacted US Justice Department emails.

494. The defendant Lathrop & Gage L.C. participated in the scheme by US Bancorp CEO, Richard K. Davis, Chairman Jerry Grundhofer and Shughart, Thompson & Kilroy PC to deprive the petitoner of the representation services of the petitioner's original attorney Bret D. Landrith.

495. The petitioner's witness David Price was an activist for judicial reform in Kansas and had successfully raised enough signatures to get the issue of returning to the election of judges on the Shawnee County ballot during an election.

496. The petitioner's attorney Bret D. Landrith fulfilled his annual Kansas Bar obligation by representing David Price *pro bono* in a parental rights termination for adoption case on appeal.

497. Kansas State Republican Senator John L. Vratil is a managing partner of Lathrop & Gage L.C. and in his capacity as a member of the Kansas Judicial Council prepared a substitute reform of performance reporting in retention elections announced on December 26, 2005 to counter legislative efforts to change the selection process for judges.

498. The head of the Kansas Supreme Court panel hearing the disbarment case against the petitioner's attorney, Hon. Justice Donald L. Allegrucci chaired the Judicial Council, but did not disclose his participation in it. See "Judicial panel suggests reviews", Topeka Capital Journal December 26, 2005.

499. The face of the disbarment of the petitioner's attorney expressly finds Landrith should be disbarred for his association with David Price and David Price's protected speech unrelated to Landrith's representation of Price in violation of the Fourteenth Amendment's protection of the rights to Free Speech, Association and Redress.

500. Additionally the disbarment of Landrith is expressly for taking James Bolden's action to federal court where the Tenth Circuit overturned the dismissal on the brief written by Bret D. Landrith for James Bolden.

501. The direct goal of the hospital supply cartel acting through the defendant Lathrop & Gage L.C. in having further articles about the petitioner's litigation censored in the Independence Examiner,

Kansas City Star, and the Topeka Capital Journal was to make it possible to influence the outcome of the petitioner's litigation in Kansas District Court to take a business expectancies and property rights from the petitioner without the possibility of a broader civic involvement causing the petitioner's claims to be taken seriously.

502. Later, Lathrop & Gage L.C. as advisor and counsel to other regional newspapers would help to cause the information on Bradley J. Schlozman's misconduct and the wrongful dismissal of US Attorney Todd Graves discovered by the petitioner to be under reported or excluded from coverage to further the hospital supply's protection from enforcement by the USDOJ or from Federal Trade Commission chairwoman, Deborah Platt Majoras and in maintaining Karl Rove and the Republican National's political control of US Department of Justice law enforcement for the purpose of protecting the enterprises' taking of property rights and market share from the petitioner.

b. Tortious Interference with Business Relations by Defendants Husch Blackwell Sanders LLP

503. The defendant Husch Blackwell Sanders LLP (formerly Husch Eppenger LLC) tortiously interfered with several business relationships and expectancies of the petitioner.

504. On Wednesday, August 24th, 2005, the defendant Husch Blackwell Sanders LLP acting through its *pro hac vice* agent Jonathan L. Glecken of Arnold & Porter, LLP, lead counsel for the defendants Jeffrey R. Immelt, General Electric Company, General Electric Capital Business Asset Funding Corporation, GE Transportation Systems Global Signaling, LLC , threatened Medical Supply's counsel with the loss of his home if he did not withdraw Medical Supply's Missouri state law contract based claims.

i. Interference with Business Relationship with Bret D. Landrith

505. The defendant Husch Blackwell Sanders LLP acting through its *pro hac vice* agent Jonathan L. Glecken tortiously interfered with the business relationship between the petitioner and his legal counsel when Jonathan L. Glecken told the petitioner's counsel Bret D. Landrith that Landrith would have his house taken from him and all his property if he did not stop seeking redress for the petitioner even on the Missouri state law claims, which were not in dispute or subject to sanction.

506. Jonathan L. Glecken of Arnold & Porter, LLP, and John K. Power as agents of the defendant the defendant Husch Blackwell Sanders LLP and the hospital supply cartel members acting through Jeffrey

R. Immelt, General Electric Company, General Electric Capital Business Asset Funding Corporation, GE Transportation Systems Global Signaling, LLC in *ex parte* communications with judicial branch officials and officials of the City of Blue Springs caused prejudice against the petitioner and his counsel to extort from them their property rights and the right to vindicate the petitioner's contract claims by representing GE as rich and powerful with the ability to control court outcomes and that the petitioner because he did not have money was not entitled to have his contract rights enforced.

ii. Interference with Business Relationship with David Sperry

507. Before filing the initial petition against the General Electric hospital supply cartel members in this court, the petitioner sought out Missouri licensed counsel experienced in commercial torts and contract law.

508. The only attorney the petitioner could find to visit with him about the claims was David Sperry of Independence, Missouri who had both experience in complex commercial litigation and the discovery disputes the petitioner anticipated would be the deciding issue in his claims.

509. After interviewing the petitioner, David Sperry was incredulous and shocked that the petitioner's prior counsel had been disbarred.

510. The defendant Husch Blackwell Sanders LLP succeeded in interfering with the business expectancy of legal representation and interfered with the petitioner's business relationship with David Sperry when Sperry declined to take the case because the power of the GE defendants over the court system as exercised by Husch Blackwell Sanders LLP and its *pro hac vice* agent Jonathan L. Glecken of Arnold & Porter, LLP would likely result in ethics complaints and in the case being transferred to a distant venue where it would be impossible for him to economically prosecute the case and his property rights in the contingent fee representation of the petitioner would be forfeited.

iii. Interference with Business Relationship with James C. Wirken and the Wirken Group

511. After his Missouri state claims copied and pasted from the Kansas District Court complaint against the GE defendants where they were dismissed without prejudice survived a GE dismissal motion, the petitioner was referred to Mr. James C. Wirken founder and Chairman of the Wirkin Law Group in Kansas City, Missouri.

512. Mr. James C. Wirken graciously agreed to schedule an appointment to interview the petitioner on the possibility of representing his claims against GE.

513. However, before the actual meeting could take place, the present action defendant Husch Blackwell Sanders LLP through its employee John K. Power, MO Lic # 70448 had contacted James C. Wirken and his son who also was counsel at Wirkin Law Group to conduct several conversations to discourage the Wirkens from representing the petitioner.

514. During the conversations, Husch Blackwell Sanders LLP through John K. Power placed the Wirkens in fear of associating with the petitioner, falsely stating that the petitioner had been repeatedly sanctioned for baseless claims, that Husch Blackwell Sanders LLP's clients, the GE defendants were so powerful that no law firm could stand up to them and placing the Wirkens in fear that all the services provided the petitioner would go uncompensated because the GE defendants would prevail no matter what in court.

515. Mr. James C. Wirken did politely interview the petitioner and charitably offered some constructive criticisms regarding the presentation of the case but strongly urged the petitioner to continue on *pro se*.

516. Mr. James C. Wirken stated that the Wirkin Group would hve to charge $7,500.00 to just read the complaint and would have to have a very sizeable retainer to cover any further research or meetings to just determine whether they would represent the petitioner.

517. The petitioner believed this was unusual for a cut and dried contract case that had already survived dismissal intact and where the petitioner had prevailed in obtaining a remand and understood that his business expectancy in the Wirkin Group's legal representation had been tortiously interfered with.

518. In January 2008, Mr. James C. Wirken did offer to visit with the petitioner about representing him in his GE litigation.

519. The petitioner is currently trying to overcome the additional economic injuries inflicted upon him by the defendants subsequent to the filing of the amended GE RICO petition in federal court, to be in a position again to pay for Wirkin Group's legal representation should it be offered.

c. Tortious Interference with Business Relations
by Defendants Jerry Grundhofer, Richard K. Davis,
Husch Blackwell Sanders LLP, Shughart Thomson & Kilroy PC

520. The defendants US Bancorp CEO, Richard K. Davis and Chairman Jerry Grundhofer through their defense counsel's detailed sworn affidavits for attorney's fees admit time spent with John K. Power and other attorneys of Husch Eppenger LLC now Husch Blackwell Sanders LLP met with Shughart Thomson & Kilroy PC attorneys for the purpose of coordinating General Electric's defense of contract and antitrust claims brought by the petitioner in *Medical Supply Chain, Inc. v. General Electric Company, et al.*, KS Dist. case number 03-2324-CM and where US Bancorp had no interest in the sale of lease contract between Medical Supply Chain, Inc. and General Electric.

521. The defendants Husch Blackwell Sanders LLP met with Shughart Thomson & Kilroy PC have repeatedly failed to produce these documents in the petitioner's discovery requests in this court and the Kansas District Court.

522. The petitioner has evidence that includes emails between the petitioner and Norman E. Siegel of Stueve Siegel Hanson, LLP that support a business relationship or expectancy was formed between himself and Stueve Siegel Hanson, LLP.

523. The petitioner sought to retain Norman E. Siegel to represent the petitioner's contract related claims against General Electric and state antitrust claims against General Electric's hospital supply co-conspirator Novation LLC in the 16th Circuit State of Missouri Court at Independence, Missouri.

524. The petitioner's cause was likely to return to federal court in the US District Court for the Western District of Missouri if the state representation could not be obtained in time.

525. During the course of communications about representation, the petitioner's claims against General Electric were removed to the Western District court. Seigel was one of only a handful of attorneys in the region that had the skills set required to replace the petitioner's original counsel in the General Electric and Novation LLC litigation whom the defendants had caused to be disbarred.

526. The defendant US Bancorp CEO, Richard K. Davis and Chairman Jerry Grundhofer through their agent Shughart, Thompson & Kilroy PC delegated the conduct of the litigation to Shughart, Thompson & Kilroy PC without controls in place to prevent fraud and racketeering as required under § 302 of the Sarbanes-Oxley Act and caused the petitioner's federal court litigation with General Electric in

Missouri to be obstructed and interfered by depriving the petitioner of the representation of Stueve Siegel Hanson, LLP. during September to December of 2007.

527. The defendant US Bancorp CEO, Richard K. Davis and Chairman Jerry Grundhofer through their agent Shughart, Thompson & Kilroy PC caused the petitioner to be denied counsel and a prosecuting witness in the body of Norman E. Siegel and deprived the petitioner of the business expectancy of the legal representation of Stueve Siegel Hanson, LLP to prevent the petitioner from mitigating or covering for his damages from the defendants US Bank and US Bancorp's breach of the contract for escrow accounts and to prevent the petitioner from realizing the benefit from the contract or business expectancy with General Electric.

528. The defendants US Bank and US Bancorp interfered with and caused the petitioner to lose his business expectancy in the representation by Stueve Siegel Hanson, LLP and supplemented their continuing interference with the petitioner's business expectancy with General Electric by having their agent Shughart Thompson & Kilroy, PC and the person Mark A. Olthoff, KS # 70339 fraudulently misrepresent the reputation of the petitioner and the petitioner's business and legal claims to Norman E. Siegel in the period from November 20th to December 8, 2007.

529. On December 7, 2008 the petitioner heard from Norman E. Siegel numerous misrepresentations about the viability of his claims that did not originate from case law or the documentation.

530. Some of the misrepresentations were clear "whoppers" like the litigation against the defendant conglomerate US Bancorp with banking and non-banking subsidiaries was not viable because banks cannot be liable for antitrust.

531. Notwithstanding the obvious, that US Bancorp is not a bank, Congress has specifically created policy specifically prohibiting banks anticompetitive acts in their client's market, creating a specific bank antitrust act The anti-tying section (Sec. 106) of the Bank Holding Company Act (BHCA) of 1970, and including banks in provisions of the Sherman and Clayton Antitrust Acts.

532. The overwhelming weight of American antitrust law reveals banks are not immune.

533. This misrepresentation of the law was communicated to Norman E. Siegel by the defendants US Bancorp President and CEO Richard K. Davis; Chairman Jerry Grundhofer; and Shughart Thomson & Kilroy PC through Mark A. Olthoff, KS # 70339 in the week preceding December 7, 2007.

534. The defendants US Bancorp President and CEO Richard K. Davis; Chairman Jerry Grundhofer; and Shughart Thomson & Kilroy PC through Mark A. Olthoff, KS # 70339 also communicated to Norman E. Siegel in the week preceding December 7, 2007 the intentional factual misrepresentation that the petitioner had claimed US Bank and US Bancorp monopolized banking services when the defendants and Mark A. Olthoff, KS # 70339 knew the petitioner had claimed that US Bank, US Bancorp and US Bancorp Piper Jaffray were in an anticompetitive agreement with Novation LLC to deprive healthcare technology companies of capital to enter the national hospital supply market and the national hospital supply market for supplies delivered through the internet by preventing new entrants from getting capitalized through the cartel's misconduct and group boycott.

535. The petitioner had also repeatedly supplied Mark A. Olthoff, KS # 70339 with the US Senate Judiciary Committee's Sub-Committee on Antitrust Business Rights and Competition's April 30, 2002, on "Hospital Group Purchasing: Lowering Costs at the Expense of Patient Health and Medical Innovation?" and specifically the hearing testimony of Ms. Elizabeth A. Weatherman, Managing Director Warburg Pincus, LLC. See Weatherman testimony about suppression of healthcare venture capital. http://judiciary.senate.gov/testimony.cfm?id=859&wit_id=2403

536. See also video of Ms. Elizabeth A. Weatherman's testimony and questioning in US Senate Holds Hearing to Review GPO Practices (Selected Testimony) http//64.58.153.9/senatehearing2.wmv

537. US Bancorp's current President and CEO, Richard K. Davis and Chairman Jerry Grundhofer are liable in their individual capacities for acting in excess of their corporate authority for tortious interference with the petitioner's General Electric lease sale contract on the conduct of their agent Shughart Thompson & Kilroy, PC to deprive the petitioner of counsel and interfere in the petitioner's representation of claims against the GE defendants in the State of Missouri 16th Circuit Court at Independence, Missouri and the US District Court for the Western District of Missouri.

538. US Bancorp's President and CEO, Richard K. Davis President and Chairman Jerry Grundhofer committed tortious interference with US Bank's contracts and relationship with the petitioner

544. The Hon. Nancy Boyda was elected in a close race with her popular Republican predecessor Jim Ryan when the petitioner's Kansas replacement attorney Dennis Hawver was tackeled, pinned to the floor and arrested in front of President George W. Bush by US Secret Service men coordinating City of Topeka Police Department plain clothes detectives at a Ryan rally.

545. The television coverage of Hawver, a Republican candidate for Governor of Kansas being arrested and held over night for writing stop the war on the back of a paper sign given to all Ryan supporters was such a shocking repudiation of the US Constitution to Kansas voters that even some of Congressman Jim Ryan's Social Conservative Republican base stayed home or felt duty bound to respond to the event by voting for Boyda.

546. The petitioner sought out Missouri's US Senator, the Hon. Claire McCaskill immediately because of the effect of the warrantless wire tapping impeding the petitioner's use of Sprint Nextel cell phones and blocking the maintenance of the petitioner's web sites and email communications through SBC's internet service provider hosting as a result of the hospital supply cartel defendants' USDOJ protection under US Attorney General Alberto Gonzales.

547. The hospital supply cartel defendants through the deliberate networking with State of Kansas officials willing to disregard their oaths of office and violate clearly established rights of citizens to further the interests of Novation LLC and their agents directed Kansas state judicial branch employees acting in an investigative role to misuse their office injuring the petitioner a citizen of Missouri and his Missouri business.

i. The defendants' retaliation against Judy Jewsome

548. The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC through their networking with Kansas State Judicial Branch officals caused US Congresswoman' Nancy Boyda's sole African American staff member Judy Jewsome in the Democrat congresswoman's Topeka Kansas office to be attacked as unfit to be admitted to the Kansas Bar.

549. Judy Jewsome was targeted by the defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC because she had handled Congresswoman's Nancy Boyda's constituent services case for David Price seeking to have his kidnapped son returned.

550. David Price is a witness and associate of the petitioner who was a plaintiff in *United States ex rel Michael W. Lynch v Seyfarth Shaw et al.* Case no. 06-0316-CV-W- SOW in the Western District of Missouri and in injunction actions against the RICO defendant Seyfarth Shaw in Illinois and Kansas seeking to prevent Seyfarth Shaw from injuring the petitioner's associate Michael Lynch.

551. The defendant Missouri law firm Husch & Eppenger LLC represented the RICO defendant Seyfarth Shaw in Kansas District court against David Price.

552. Judy Jewsome was targeted by the defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC because she set up a meeting between David Price and his counsel, Kansas attorney Craig Collins and Governor Kathleen Sebelius of Kansas and Kansas Attorney General Paul Morrison to hear the evidence of the kidnapping.

553. The meeting was then canceled at the last minute due to the influence of the defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC.

554. The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC through staff members of the Kansas Attorney General's Office tried two more times to keep David Price and his attorney Craig Collins from meeting with the Kansas Attorney General Paul Morrison before Price and Collins succeeded.

555. Kansas Attorney General Paul Morrison was shocked that the career staff of the Kansas Attorney General's office had kept the matter from him and examined the evidence concluding the child had been unlawfully taken and promising to investigate and prosecute those responsible for the kidnapping and cover up.

556. Fran Acree of the Kansas Attorney Admissions office used the false probable cause pretext that a private or personal email written by Judy Jewsome describing a policy of complete disclosure by applicants as unfair was a basis to investigate Judy Jewsome as unfit and to bring a complaint to prevent her from sitting for the July 2007 Kansas Bar examination.

557. Fran Acree is an attorney and in her capacity as head of the State of Kansas Office of Attorney Admissions was sworn to uphold the Constitution and knew she was violating the trust of the people of Kansas when she took the pretextual based action against Judy Jewsome on behalf of the Kansas Attorney Disciplinary Administrator Stanton Hazlett.

558. US Congresswoman' Nancy Boyda's husband who is also a Kansas attorney, defended Judy Jewsome during the proceedings but had substantial reason to doubt they would prevail in the admission's hearing and even had cause to suggest that if Judy Jewsome would be allowed to sit for the examination, she should not count on being allowed to pass it, though Miss Jewsome was a good student and prior to attending law school worked in the Kansas Attorney General's office.

559. The effect of the attack on Judy Jewsome for performing protected constituent services, even though she was a federal employee and working in a US Congressional Office and additionally as an African American, a member of a protected class was so brazen a display of extral legal power by Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC that it has chilled and made ineffective the petitioner's business relationship with the staff of Missouri's US Senator, the Hon. Claire McCaskill.

560. In fact, the spreading fear from Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC's power has prevented even associates of the petitioner from obtaining redress through Congressional offices.

561. Kansas City, Missouri's senior Congressional Representative, the Hon. Emmanuel Cleaver did not respond to the petitioner's former attorney Bret D. Landrith's request for assistance as a new resident of Jackson County, MO and constituent of Cleaver's seeking help in ending retaliation based on Landrith's representation of the African American James Bolden in a federal Civil Rights action.

e. Tortious Interference with Business Relationship Between Petitioner and Donna Huffman, the Petitioner's Trusted Advisor, Real Estate finance Expert and Potential Replacement Counsel by Defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC

562. The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC through their networking with State of Kansas officials willing to disregard their oaths of office and violate clearly established rights of citizens to further the interests of the named defendants and their agents directed Kansas state judicial branch employees acting in an investigative role to misuse their office injuring the petitioner a citizen of Missouri and his Missouri business.

i. The defendants' retaliation against Donna Huffman

563. The petitioner sought out the real estate financial help of Donna Huffman, a mortgage broker licensed by the states of Kansas and Missouri and by the United States Department of Housing and Urban Development (H.U.D.) in January 2007 while considering a sale or purchase of his father's Lee's Summit town home to continue the stability of his father's trucking business while his father made arrangements to undergo extensive chemotherapy in treatment of bone cancer.

564. The defendants caused Donna Huffman to be retaliated against for her association with the petitioner and his witness Bret D. Landrith.

565. Two investigators from the Kansas Attorney Disciplinary Administrator Stanton Hazlett's office came to the petitioner' s attorney Dennis Hawver's Ozawkie Kansas office around 8:30 am, Tuesday morning, November 27, 2007.

566. While there, the investigators and Dennis Hawver telephoned the petitioner's witness Bret D. Landrith in Lee's Summit, Missouri and revealed to Landrith that the Kansas Attorney Disciplinary Administrator was investigating Donna Huffman for fitness to be admitted to the Kansas Bar.

567. An investigator questioned Landrith about the Western District of Missouri case *Huffman v. ADP, Fidelity et al*, Case No. 05-CV-01205.

568. The Kansas Attorney Disciplinary Administrator investigators from Stanton Hazlett's office wanted to know if Landrith had represented Donna Huffman and if he had been paid by her.

569. The *Huffman v. ADP, Fidelity* action is available on Stanford Law School's class action website at http://securities.stanford.edu/1035/ADP05_01

570. Landrith informed the two investigators that he had represented Donna Huffman on the Western District of Missouri case and that he never received a fee or payment for the case because he was disbarred and no longer was entitled to the property right of contingent fees for his representation but that he thought it had settled because Huffman later gave him gratuitously $2,000.00.

571. Landrith also informed the investigators that 100,000 to 300,000 members of the prospective class had been screwed out of their retirement because Donna Huffman could not find a replacement attorney after he had been disbarred.

572. Landrith reminded Kansas Attorney Disciplinary Administrator Stanton Hazlett's investigators that their office had disbarred him for bringing the Civil Rights claims of the African American James Bolden against the city of Topeka to federal court which Landrith had prevailed on in the Tenth Circuit Court of Appeals following disbarment and for representing James Bolden's witness against the City of Topeka theft of H.U.D. funds in an adoption appeal where David Price's infant son had been kidnapped.

573. The F.B.I. raided the City of Topeka front company Topeka City Homes which had been set up and controlled by the city after the Kansas District court erroneously dismissed Bolden's case and seized the records for violation of H.U.D. financial requirements.

574. As a result of Bret D. Landrith notifying the petitioner on November 27, 2007 of this meeting, the petitioner learned that his business associate Donna Huffman, an intelligent, capable woman who he trusts had been prevented from taking the July 2007 bar examination and was in danger of being found unfit by the influence of Kansas Attorney Disciplinary Administrator Stanton Hazlett's office over whether she is admitted in her home state and likely any other state to practice law on the false probable cause of being a plaintiff in the Western District of Missouri case *Huffman v. ADP, Fidelity et al*, Case No. 05-CV-01205 which was not frivolous and where the defendant Fidelity admitted to the claim impermissible fees on some of the subject Simple IRA mutual funds in a mailing to the prospective ADP class members after the complaint was filed.

575. The defendant Husch Blackwell Sanders LLP represented the wrong doers in *ADP, Fidelity et al* and attempted to exploit both the disbarment of Huffman's counsel Bret D. Landrith by extrinsic fraud perpetrated by the defendant Shughart, Thompson & Kilroy PC.

576. While Huffman was unrepresented by counsel, Husch Blackwell Sanders LLP misrepresented to Huffman the current state of federal antitrust statutes to securities dealers and threatened Huffman with sanctions disparaging Landrith's representation of the petitioner and the antitrust outcomes obtained by the defendant Shughart, Thompson & Kilroy PC solely through extrinsic fraud on the Kansas District Court.

577. In a direct response to the above averment stated in the petitioner's action against GE, The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC

through their networking with State of Kansas officials willing to disregard their oaths of office and violate federal law, caused Donna Huffman to be again denied the opportunity to take the Kansas Bar Exam.

578. Donna Huffman was prevented from representing the petitioner with the false assertion that she is mentally unfit based merely on the unconstitutional pretext that she asserted her individual legal rights *pro se* in protecting her child and won against the State of Kansas that was found to be abusing Huffman's rights in *Huffman v. State of Kansas Social & Rehabilitation Services*, Shawnee County Kansas District Court case.

579. The Kansas SRS had failed to protect Donna Huffman's child from documented physical abuse and continuing endangerment by Huffman's ex-husband, Chris W. Huffman a State Corridor Engineer for the Kansas Department of Transportation who's connections to the US Department of Transportation make him an important source and facilitator of million of dollars in federal highway funds for Governor Kathleen Sebelius.

580. The agents of the hospital supply cartel were aided by the noblesse oblige the State of Kansas extends higher level officials including Kansas Department of Transportation State Corridor Engineer Chris W. Huffman.

581. The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC caused the Kansas State Office of Attorney Admissions to make a determination that Huffman was mentally unfit to be an attorney despite the State of Kansas own expert witness testimony to the contrary.

582. The defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC caused the Kansas State Office of Attorney Admissions and Gayle B. Larkin to seek a penalty against Donna Huffman that violates the Americans With Disabilities Act according to the Kansas State Office of Attorney Admissions and Gayle B. Larkin's own brief in another action against another Kansas law school graduate: *In the Matter of the Application of Ian Bruce Johnson For Admission to the Kansas Bar* Application No. 12320 Admissions Attorney's Hearing Brief, pp. 22-23 and thereby compromise the legitimacy of the Office of Attorney Admissions and the Judicial Branch of the State of Kansas which publicly states it conforms to:

> "It is the policy of the Kansas Judicial Branch to comply with the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, *et seq*. The ADA prohibits discrimination against

qualified individuals with disabilities on the basis of disability. Under the ADA, qualified individuals with disabilities shall not be excluded from participating in, or be denied the benefits of, the Kansas judicial system.

If you believe you have been excluded from participating in, or denied the benefits of, any court system function or program because of a disability, you may file a grievance with the judicial district's ADA officer or with Elizabeth Reimer, Office of Judicial Administration, 301 SW 10th, (785) 296-5309, TDD number 711, reimere@kscourts.org"

Kansas Court Administration ADA home page.

582.1 The defendants caused the potential replacement counsel Donna Huffman to be again prevented from taking the Kansas Bar exam and for this exclusion to prevent her from being able to instead sit for the Missouri State Bar Exam because the Missouri Board of Bar Governors would follow or yield to evidentiary findings by the Kansas Attorney licensing panel that includes Kevin F. Mitchelson.

582.2 Kevin F. Mitchelson however knew by delaying the second scheduled hearing, any result would still deprive Donna Huffman of her livelihood and a property right in her license as retaliation for having been willing to assist the petitioner.

582.3 Kevin F. Mitchelson knew also that he had to cause Donna Huffman to be deprived of Due Process through the delay because the Kansas Licensing panel's expert witness had determined that there was nothing wrong with Donna Huffman that would keep her from practicing law and Donna Huffman was exceptionally capable in comparison to the over one hundred Kansas Attorneys that she had evaluated psychologically.

f. Tortious Interference with Business Relations by Defendants Novation LLC, Neoforma Inc., GHX, LLC, Robert J. Zollars, Volunteer Hospital Association of America, Inc., Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, Jerry A. Grundhofer, Richard K. Davis, Andrew Cecere, The Piper Jaffray Companies, and Andrew S. Duff with petitioner's relationships and business expectancies with US Bank NA and US Bancorp, Inc.

583. The petitioner had business relationships and business expectancies with US Bank NA and US Bancorp, Inc. See averments of relationships and expectancies incorporated herein from **Appendix Four**.

g. Tortious Interference with Business Relations by Defendants Novation LLC, Neoforma Inc., GHX, LLC, Robert J. Zollars, Volunteer Hospital Association of America, Inc., Curt Nonomaque, University Healthsystem Consortium, Robert J. Baker, Jerry A. Grundhofer, Richard K. Davis, Andrew Cecere, The Piper Jaffray Companies, and Andrew S. Duff with petitioner's relationships and business expectancies with The General Electric Company

584. The petitioner had business relationships and business expectancies with GE, GE Capital And GE Transportation See averments of relationships and expectancies incorporated herein from **Appendix Five.**

III. Claims

The petitioner respectfully requests the court finds the defendants have violated the following counts:

Count I
§ 416.031.1 RSMo

The petitioner avers the following *per se* antitrust violations under the Missouri Antitrust Laws:

(1) the defendants contracted, combined or conspired among each other;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The petitioner avers that the defendants contracted with each other, combined together and or conspired to form a trust restraining commerce in hospital supplies, services related to managing hospital supplies and hospital supplies distributed through electronic marketplaces.

The petitioner avers VHA Mid-America, LLC has over 80% of Missouri's hospital beds (the industry measure of market share for distribution of hospital supplies)

The petitioner avers that GHX, LLC has 100% of the market for hospital supplies sold to hospitals in Missouri through electronic marketplaces.

The petitioner avers that VHA Mid-America, LLC and GHX, LLC have participated in a group boycott to prevent the petitioner from entering the subject relevant markets in the geographic area of the State of Missouri through the creation of long term exclusionary contracts that prevent competition from the petitioner and/or allocate market share in a misguided scheme to evade the effect of antitrust laws.

a. existence of a trust, contract, combination or conspiracy

The defendant Saint Luke's Health System has an anticompetitive or exclusive dealing contract with the hospital supply cartel and with VHA/Novation LLC and is in combination with VHA/Novation LLC.

The defendant Saint Luke's Health System currently does over $97 million dollars of business with VHA/Novation LLC

> "SLHS is a shareholder and owner of VHA/Novation, the largest Group Purchasing Organization (GPO) in the nation. SLHS accessed 885 VHA/Novation contracts with a total spending of $97 million in 2002. VHA/Novation validates the quality, market share, and availability of the various vendors, and provides SLHS as much as a 6% increase in discounts plus an average 2% rebate for every contract dollar spent, thereby supporting the achievement of SLH objectives. Most key suppliers are accessed through VHA/Novation."

http://baldrige.nist.gov/PDF_files/Saint_Lukes_Application_Summary.pdf at page 7

On information and belief, the VHA Mid-America, LLC hospital defendants Cox Health Care Services Of The Ozarks, Inc. (CoxHealth), and Stormont-Vail Healthcare, Inc. are members of VHA and believe themselves to be "owners" of Novation LLC, receiving 2% in kickbacks on purchases made providing they honor the group boycott agreement of purchasing over 90% of their hospital supplies through Novation, LLC.

b. identification of co-conspirators who agreed with Novation LLC to injure the plaintiff

The petitioner avers the following defendants have agreed with Novation LLC to injure the petitioner:

Neoforma Inc., GHX, LLC, Robert J. Zollars, Volunteer Hospital Association of America, Inc.(VHA), VHA Mid-America, LLC, Curt Nonomaque, Thomas F. Spindler, Robert H. Bezanson, Gary Duncan, Charles V. Robb, Sandra Van Trease, Micheal Terry, University Healthsystem Consortium (UHC), Robert J. Baker, Jerry A. Grundhofer, Richard K. Davis, Andrew Cecere, The Piper Jaffray Companies, Andrew S. Duff, Cox Health Care Services Of The Ozarks, Inc. (CoxHealth), Saint Luke's Health System, Inc., Stormont-Vail Healthcare, Inc., Shughart Thomson & Kilroy P.C., Husch Blackwell Sanders LLP, Lathrop & Gage L.C.

c. business entity co-conspirators were separately incorporated

The petitioner avers that Neoforma Inc., GHX, LLC, Volunteer Hospital Association of America, Inc.(VHA), VHA Mid-America, LLC, University Healthsystem Consortium (UHC), Cox Health Care Services Of The Ozarks, Inc. (CoxHealth), Saint Luke's Health System, Inc., Stormont-Vail Healthcare, Inc., Shughart Thomson & Kilroy P.C., Husch Blackwell Sanders LLP, and Lathrop & Gage L.C. are separately incorporated legally distinct entities.

d. Officer and agent co-conspirators

The petitioner avers that the named individual persons are properly defendants in this antitrust action for the following reasons:

i. independent stake in achieving the object of the alleged conspiracy

The petitioner avers that Robert J. Zollars, Thomas F. Spindler, Robert H. Bezanson, Gary Duncan, Charles V. Robb, Sandra Van Trease, Micheal Terry, Robert J. Baker, Jerry A. Grundhofer, Richard K. Davis, Andrew Cecere, and Andrew S. Duff each had or have a personal stake in restraining competition in hospital supplies in the subject relevant markets.

ii. personal stake in achieving the object of the alleged conspiracy

The petitioner avers that the defendant Robert J. Zollars was CEO of the defendant Neoforma, Inc and is the CEO of a hands free communication device manufacturer that is a healthcare supplier.

The petitioner avers that the defendant Thomas F. Spindler is an officer of both of the defendants Volunteer Hospital Association of America, Inc.(VHA), VHA Mid-America, LLC and is an agent of Novation, LLC and was an agent of Neoforma, Inc.

The petitioner avers that the defendant Robert H. Bezanson is both a Director of VHA Mid-America, LLC and CEO of Cox Health Care Services Of The Ozarks, Inc. (CoxHealth).

The petitioner avers that the defendant Gary Duncan is both a Director of VHA Mid-America, LLC and CEO of Freeman Health System.

The petitioner avers that the defendant Charles V. Robb is both a Director of VHA Mid-America, LLC and CFO of Saint Luke's Health System.

The petitioner avers that the defendant Sandra Van Trease is both a Director of VHA Mid-America, LLC and President of BJC HealthCare.

The petitioner avers that the defendant Micheal Terry is both a Director of VHA Mid-America, LLC and President/Chief Executive Officer of Salina Regional Health Center.

(A) acting beyond the scope of their authority

The petitioner avers that the defendants acted beyond the scope of their authority.

(B) or for their own benefit.

The petitioner avers that the defendants in the alternative acted for their own benefit.

iii. co-conspirator officers

The petitioner avers that the defendant co-conspirators' officers had or did the following:

(A) actual knowledge

The petitioner avers that the defendant co-conspirators' officers had actual knowledge of the complained of conduct.

(B) or constructive knowledge of,

The petitioner avers that the defendant co-conspirators' officers in the alternative had constructive knowledge of the complained of conduct.

(C) and participated in, actionable wrongs

The petitioner avers that the defendant co-conspirators' officers in the alternative had constructive knowledge of the complained of conduct.

iv. co-conspirator agent law firms

The petitioner avers that the defendants Shughart Thomson & Kilroy P.C., and Husch Blackwell Sanders LLP represented clients with conflicting interests against the petitioner.

The petitioner avers that the defendants Shughart Thomson & Kilroy P.C., and Husch Blackwell Sanders LLP represented their own respective organizational interests instead of the interests of their clients.

The petitioner avers that the defendants Shughart Thomson & Kilroy P.C. injured the petitioner instead of counseling US Bancorp, Inc. to settle with the petitioner paying US Bank.

The petitioner avers that the defendants Shughart Thomson & Kilroy P.C. counseled US Bank to not accept a settlement in February 2008 that was neutral and without financial loss for US Bancorp.

The petitioner avers that the defendants Husch Blackwell Sanders LLP counseled clients to act contrary to their respective interests to instead advance the interests of Husch Blackwell Sanders LLP in the State of Missouri.

The petitioner avers that the defendants Shughart Thomson & Kilroy P.C., and Husch Blackwell Sanders LLP elected not to perform professional services for or bill their clients in the hospital supply cartel for legally defending the petitioner's antitrust claims and never deposed witnesses or the petitioner.

Instead the defendants Shughart Thomson & Kilroy P.C., and Husch Blackwell Sanders LLP acted outside the authorization of their clients, outside of the scope of lawful conduct, risking the reputational interests, insurability and licensibility without proportional compensation solely to acquire narrow and hidden political power in the administration of the State of Missouri and within the Kansas District Court.

The petitioner avers that the defendant Lathrop & Gage L.C. used its representation of McClatchey newspapers to prevent the petitioner from obtaining redress in court.

The petitioner avers that the defendant Lathrop & Gage L.C. used Senator Vratil's position on the Kansas Judicial Commission in 2005 and 2006 to deprive the petitioner of counsel and to injure the petitioner's witness David Martin Price.

The petitioner avers that the defendant Lathrop & Gage L.C. acted out of the scope of their authority and in violation of law to advance the firm's Republican National Committee agenda and for the firm's profit and acquisition of power.

(2) the combination or conspiracy produced adverse, anticompetitive effects within relevant product and geographic markets;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

a. defendants' anti-competitive behavior injured consumers

The petitioner avers the defendants' anti-competitive behavior injured consumers.

b. defendants' anti-competitive behavior injured competition in the relevant market

The petitioner avers the defendants' anti-competitive behavior injured competition in the relevant market.

(3) that the objects of and the conduct pursuant to that contract or conspiracy were illegal;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The petitioner avers that the goal of the defendants was the illegal monopolization of the relevant subject markets.

The petitioner avers that the defendants worked to accomplish their goal by committing felonies, interfering with the petitioner's contract property rights and rights to access to the courts, by committing fraud and prima facie tort in a manner that is civilly actionable.

(4) that the plaintiff was injured as a proximate result of that conspiracy.

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

a. plaintiff was a competitor who suffered a direct antitrust injury

The petitioner avers the petitioner was and is a competitor to the defendants and has suffered direct antitrust injuries.

b. plaintiff's injury of the type the antitrust laws were intended to prevent

The petitioner avers the petitioner's injuries were of the type and nature the antitrust laws were intended to prevent.

Count II
§ 416.031.2 RSMo

The petitioner avers the defendants have a monopoly or have attempted to monopolize the subject relevant markets.

A. Monopoly

The petitioner avers that the defendants contracted with each other, combined together and or conspired and thereby enjoy a monopoly restraining commerce in hospital supplies, services related to managing hospital supplies and hospital supplies distributed through electronic marketplaces.

26 Mo. § 416.031(2) provides that "It is unlawful to monopolize, attempt to monopolize, or conspire to monopolize trade or commerce in this state."

Defendants collectively have at all times material to this complaint maintained, attempted to achieve and maintain, or combined or conspired to achieve and maintain, a monopoly over the sale of hospital supplies, the sale of hospital supplies sold in e-commerce and the capitalization of healthcare technology companies and supply chain management companies.

(1) the possession of monopoly power in the relevant market;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

a. defendants have monopoly market share

The petitioner avers the defendants have a monopoly market share of the subject relevant markets.

i. defendants have acquired 80% of the hospital supply market

The petitioner avers the defendants have acquired 80% of the market for hospital supplies in the relevant market.

ii. defendants acquired 100% of the hospital supplies distributed through electronic marketplaces

The petitioner avers the defendants have acquired 100% of the market for hospital supplies distributed through electronic marketplaces in the relevant market.

iii. defendants acquired near exclusive distribution to VHA, UHC and member hospitals

The petitioner avers the defendants have acquired near exclusive distribution to the VHA and UHC member hospitals and that any remainder is controlled by the defendants in a misguided belief that anticompetitive contracts mandating a small percentage purchased outside of Novation LLC , Neoforma, Inc. or GHX LLC evaded Missouri's antitrust statutes.

b. defendants possess Monopoly power

The petitioner avers the defendants possess monopoly power in the subject relevant markets.

i. defendants have power to fix prices

The petitioner avers the defendants have the power to fix prices in the subject relevant markets.

ii. defendants have power to exclude competition

The petitioner avers the defendants have the power to exclude competition.

iii. defendants have the power to extort fees from the manufacturers whose products they distribute

The petitioner avers the defendants have the power to extort fees from the manufacturers and distributors of the products the defendants distribute or allow to be purchased by their member hospitals.

The petitioner hereby incorporates by reference the averments in *US ex rel Cynthia I. Fitzgerald v. Novation LLC, VHA, University Healthcare Consortium et al*, N. Dist. Of Texas Case 3:03-cv-01589. See **Appendix Six**

(2) defendants willfully acquired and maintain their market power

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The petitioner avers the defendants have acted intentionally and willfully to acquire and maintain their market power in the subject relevant markets.

a. the defendants did not enjoy market power growth or development as a consequence of

The petitioner avers the defendants did not enjoy market power growth or development as a consequence of any of the following reasons:

i. a superior product,

The petitioner avers the defendants did not enjoy market power growth or development as a consequence of a superior product.

ii. business acumen

The petitioner avers the defendants did not enjoy market power growth or development as a consequence of business acumen.

iii. or historic accident

The petitioner avers the defendants did not enjoy market power growth or development as a consequence of historic accident.

b. defendants monopoly power was not obtained for

The petitioner avers the defendants monopoly power was not obtained for the following reasons:

i. a valid business reason

The petitioner avers the defendants monopoly power has not resulted or been created out of a valid business reason.

ii. or concern for efficiency

The petitioner avers the defendants monopoly power has not resulted or been created out of a concern for efficiency.

B. Attempted Monopoly

The petitioner avers the defendants have attempted to monopolize the subject relevant markets.

(1) defendants have a specific intent to accomplish the illegal result;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The defendants intentionally have worked to establish an illegal monopoly.

(2) defendants have a dangerous probability of success.

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The defendants have a dangerous probability of monopolizing the subject relevant markets.

i. relevant markets

The petitioner avers the following relevant markets:

(A) product market

The petitioner avers that the markets for hospital supplies and the market for managing hospital supplies was subjected to the defendants prohibited anticompetitive conduct.

Attitudes of hospital consumers

The petitioner required market entry capitalization to train hospital customers to adopt an open electronic marketplace.

The defendants required or forced Missouri hospitals and nursing homes to sign longterm contracts with Neoforma, Inc. and later GHX LLC to continue to receive the "savings" Novation LLC was represented as benefiting hospitals.

Missouri hospitals and nursing homes were deceived into believing GHX LLC standardization of suppliers through xml tags prevented doing business with competing online distributors.

reactions of hospital consumers

Missouri hospitals and nursing homes were deceived into believing purchasing through the petitioner or another electronic marketplace would cause their institution to lose substantial and legitimate kickbacks from Novation LLC and the hospital supply cartel.

(B) geographic market

The geographic area of the subject relevant markets is the State of Missouri.

ii. relative submarket

The relevant submarket is hospital supplies distributed through electronic marketplaces.

(A) product market

The relevant submarket is hospital supplies distributed through electronic marketplaces was created in the early 1990's by the petitioner in a business model that was stolen by Cardinal Health and became Neoforma, Inc.

Attitudes of hospital consumers

The petitioner required market entry capitalization to train hospital customers to adopt an open electronic marketplace.

The defendants required or forced Missouri hospitals and nursing homes to sign longterm contracts with Neoforma, Inc. and later GHX LLC to continue to receive the "savings" Novation LLC was represented as benefiting hospitals.

Missouri hospitals and nursing homes were deceived into believing GHX LLC standardization of suppliers through xml tags prevented doing business with competing online distributors.

Reactions of hospital consumers

Missouri hospitals and nursing homes were deceived into believing purchasing through the petitioner or another electronic marketplace would cause their institution to lose substantial and legitimate kickbacks from Novation LLC and the hospital supply cartel.

(B) geographic market

The geographic area of the subject relevant markets is the State of Missouri.

C. Damages from Monopoly and Attempted Monopoly

As a direct result defendants' unlawful activities, petitioner has suffered and will continue to suffer substantial injuries and damages to their businesses and property.

Petitioner is entitled to recover actual damages in the amount of approximately $500,000,000.00, multiplied by three for total damages of approximately $1,500,000,000.00, and the cost of suit including a reasonable attorney's fee.

D. Supplemental Matter in Support of Petitioner's Antitrust Causes of Action

1. On November 6, 2008 William G. Beck (Mo. Lic. # 26849); Peter F. Daniel (Mo. Lic.# 33798); and J. Alison Auxter (Mo. Lic. # 59079) of Lathrop & Gage L.C. effected the amendment of the plaintiff's petition through Lathrop & Gage L.C.'s implied consent to include a later act to injure the petitioner by continuing the deprivation of the right to incorporate or to enforce his contractual agreements and to capitalize his entry into the market for hospital supplies.

2. This subsequent antitrust act is contained in Lathrop & Gage L.C.'s Motion for Security Costs. The previously dismissed cartel members falsely asserted a right to dismissal based on the petitioner's ongoing federal litigation that had not concluded, inviting Hon. Judge Michael W. Manners to make his ruling on a prohibited extrajudicial basis.

3. The conduct is evidenced by the Novation LLC Defendants' First Motion to Dismiss (pgs. 1-2); Novation LLC Defendants' First Suggestion in Support of Dismissal (pgs. 3-5, 7,9, 10, 11, 13, 14, 18).

4. Shughart Thomson & Kilroy P.C. now being succeeded in interest by Polsinelli Shalton Flanigan Suelthaus P.C. and repeatedly in their lengthy suggestion supporting dismissal.

5. The previously dismissed cartel members disparaged the petitioner for adverse outcomes in Kansas District court and the Tenth Circuit Court of Appeals that the previously dismissed cartel members were obtained by the repeated extrinsic frauds of John K. Power, Olthoff (Mo lic. #70448) the attorney employed by Husch Blackwell Sanders LLP to represent the Novation LLC, General Electric and GHX, LLC defendant members of the hospital supply cartel in the concurrent federal litigation and Mark A. Olthoff (Mo lic. #38572) of Shughart Thomson & Kilroy, P.C. who represented the US Bancorp defendant members of the hospital supply cartel.

6. The Hon. Judge Michael Manners and William G. Beck (Mo. Lic. # 26849); Peter F. Daniel (Mo. Lic.# 33798); and J. Alison Auxter (Mo. Lic. # 59079) of Lathrop & Gage L.C. had notice of the ongoing federal proceedings and contrary to controlling law interim rulings in **Appendix One** of the petition (apdx. pgs. 1-6) delineating the procedural history of the petitioner's litigation.

7. The Hon. Judge Michael Manners and William G. Beck (Mo. Lic. # 26849); Peter F. Daniel (Mo. Lic.# 33798); and J. Alison Auxter (Mo. Lic. # 59079) of Lathrop & Gage L.C. had notice of the extrinsic frauds by John K. Power, Olthoff (Mo lic. #70448) and Mark A. Olthoff (Mo lic. #38572) in the petitioner's opposition to dismissal and its attached answer to former US Attorney Bradley Schlozman's motion to dismiss from the concurrent Western District of Missouri federal litigation where many of the same defenses were raised:

> "2. The defendants are incorrect over the styling of the concurrent Missouri federal case *Lipari, et al. v. General Electric, et al.* Circuit Court of Jackson County, Missouri, Case No. 0616-CV07421 is now styled *Lipari, et al. v. General Electric, et al.* Western District of Missouri Case No. 07-0849-CV-W-FJG previously the same case or controversy was in this court and styled as *Medical Supply Chain, Inc. v. General Electric Company, et al.*, case no. 03-2324-CM.
> 3. An interim order merely dismissing the original federal claims was fraudulently procured in *Medical Supply Chain, Inc. v. General Electric Company, et al.*, case no. 03-2324-CM by the GE defendants with the help of US Bank and US Bancorp through their agent Shughart Thomson & Kilroy as revealed in attorney billing records filed with this court and sought in discovery by the plaintiff.
> 4. The federal antitrust claims in *Medical Supply Chain, Inc. v. General Electric Company, et al.*, case no. 03-2324-CM were dismissed by misrepresenting to this court that the plaintiff had not pled a conspiracy between two legally separate actors when the plaintiff had pled a conspiracy and agreement between the GE defendants and GHX LLC and the US Bank and US Bancorp partner Neoforma LLC and had cited the controlling legal authority that the plaintiff was not required to name as defendants the other co-conspirators identified in the complaint. See Exb. 1 GE Amended Complaint.
> GE agreement with GHX and Novation assigning hospital market share ¶10 pg. 6, Novation acquiring control over Neoforma and partnering it with its hospital supply competitor GHX creating a monopoly of 80% of the hospital supply market ¶ 15 at pg. 9; GE and "cartel members including Premier, Inc. and Novation, Inc." conspired to increase hospital supply prices in the North

American Hospital Supply market injuring US hospitals ¶36 pg. 19. See Exb. 1 GE Amended Complaint.

5. The GE complaint in 03-2324-CM stated at ¶37 pg. 20 and 21 that the GE defendants in a cartel with Novation "... preserve their inflated cost structures (the cartel has prevented the annual $23 billion dollar savings identified by US Bancorp Piper Jaffray's 2001 study by maintaining prices regardless of internal efficiencies) and by preventing the entry of competitors to the relevant market. The defendants willfully acquired and maintained that power by forming the cartel GHX, Inc. to buy an inferior electronic marketplace and exchanging ownership interests with suppliers and distributors that previously were competitors. The defendants further acted to maintain that monopoly by repudiating Medical Supply's financing and lease buy out agreement with full knowledge that Medical Supply had been previously
prevented from entering the hospital supply e-commerce market by other cartel members of GHX, Inc." See Exb. 1, ¶37 pg. 20 and 21 GE Amended Complaint

6. The GE complaint in 03-2324-CM describes the conduct of US Bank and US Bancorp breaching the presently litigated contracts with the plaintiff and stated at ¶3 pg. 4 that:
"GE appeared to be acting independently of Neoforma, when it accepted Medical Supply's proposal for a lease buy out and financing, but similarly repudiated a contract for essential facilities, preventing entry into the hospital supply market at great sacrifice when Medical Supply was not in a position to find an alternative. (Neoforma's financial partner, **US Bancorp** Piper Jaffray, has attested to a threat of filing a Suspicious Activity Report or "SAR," against Medical Supply under the USA PATRIOT Act, which would destroy Medical Supply's ability to process hospital and supplier purchasing transactions. In an affidavit by Piper Jaffray Vice President and Chief Counsel submitted in Medical Supply vs. **US Bancorp** et al No. 02-3443 (10th Cir.), Piper Jaffray argues to file a "SAR" at any time it sees fit. Medical Supply is seeking to be protected from Piper Jaffray's extortion and any malicious use of the USA PATRIOT Act. The October 2002 and June 2003, distinct antitrust injuries to Medical Supply prevented it from beginning its operations each time and realizing the expectations of its investors and stakeholders." [Emphasis added]

7. The GE complaint in 03-2324-CM stated at ¶15 pg. 9
"US Bancorp helped Novation acquire control of Neoforma and partner it with GHX, L.L.C. creating a monopoly of over 80% of healthcare e-commerce market). GE repudiated a 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. The healthcare market is worth 1.3 trillion dollars. GE acted on the tremendous windfall to preserve its monopoly." [Emphasis added]"

From exb. 11 attached suggestion opposing Schlozman's Motion to dismiss (pgs. 3-4).

Count III
Conspiracy to Violate § 416.031(2)

(1) defendants have an agreement or understanding;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

(2) between two or more persons;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

(3) to do unlawful acts prohibited by §§ 416.011 to 416.161, RSMo or to do a lawful act by unlawful means.

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Count IV
Tortious Interference with Business Relations

The petitioner avers the defendants have caused and conspired to cause tortuous interference with the petitioner's agreements, contracts, and business relationships.

(1) Plaintiff had established a contract or valid business relationship or expectancy (not necessarily a contract) to obtain the capital to enter the market for hospital supplies;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Petitioner's individual representative candidate trust accounts with US Bank and its contract to sale the office building lease to GE and General Electric Transportation Co. were required for Medical Supply to enter the markets for hospital supplies and hospital supplies for e-commerce and were contracts or business expectancies said activities were intended by defendants and performed by defendants.

Petitioner's counsel and potential legal representatives were required to obtain petitioner's property rights and benefits from bargains.

Petitioner's counsel and potential legal representatives are required to obtain capital and other inputs to compete with the defendants.

(2) defendants' knowledge of the contract or relationship;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Defendants knew of said contracts or business expectancies.

(3) intentional interference by the defendant inducing or causing a breach of contract or relationship;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Having such knowledge of the petitioner's agreements and relationships, defendants intentionally conspired to interfere and did interfere with such contracts or business expectancies, so as to cause breach of the same.

(4) absence of justification;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Defendants intentionally conspired to interfere and did interfere with petitioner's agreements contracts or business expectancies, and did so without justification and stated pretextual reasons for their actions.

Defendants did not have an interest in the petitioner's agreements contracts or business expectancies.

(5) damages resulting from defendants' conduct.

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

As a direct and proximate result of said actions of defendants, plaintiff has suffered and will continue to suffer injuries and damages to its business and properties.

Petitioner is entitled to recover their actual damages in the amount of in excess of $500,000,000.00 for their actions resulting in the loss of trust accounts, and actual damages in the amount of in excess of $500,000,000.00 for their actions resulting in the loss of the lease sale together with the costs of suit, and attorney fees.

Defendants' actions were willful, wanton, malicious and oppressive.

Petitioner is also entitled to recover punitive damages in an amount in excess of $10,000.00.

Count V
Civil Conspiracy to Commit Fraud and Deceit

The petitioner avers the defendants have committed numerous frauds and deceits.

(1) a representation;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Defendants were engaged in concealed fraudulent conduct.

(2) its falsity;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The defendants representations regarding their savings to hospitals identified above are false.

The defendants representations regarding the validity of the petitioners claims, merits of his past litigation and quality of his legal representation are false.

(3) its materiality;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Said activities were intended by defendants to cause injury to petitioner by and through intentional misrepresentations to petitioner and third parties concerning petitioner.

(4) the speaker's knowledge of its falsity or ignorance of the truth;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Each of the acts, practices, misrepresentations, violations and other wrongs complained of above have been engaged in by defendants with malice and with specific and deliberate intent to oppress, defraud, deceive and injure petitioner.

(5) the speaker's intent that the representation should be acted on by the hearer in the manner reasonably contemplated;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Each of the acts, practices, misrepresentations, violations and other wrongs complained of above have been engaged in by defendants with malice and with specific and deliberate intent to oppress, defraud, deceive and injure petitioner .

Said activities aforementioned by defendants were done in concert and in secret with the intention to injure petitioner all the while knowing that the lack of candor and disclosure of the true acts and activities by defendants would give defendants an economic advantage over petitioner .

(6) the hearer's ignorance of the falsity of the representation;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The petitioner and third parties targeted by the defendants were unaware of the falsehood of the defendant representations.

(7) the hearer's reliance on the representation being true;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

The petitioner, the petitioner associates and customers rely on the truth of the defendants' misrepresentations.

(8) his right to rely thereon;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

(9) the hearer's consequent and proximately-caused injuries.

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

(10) the hearer's reaction to the fraudulent misrepresentations injured the petitioner

Said activities were intended by defendants to cause injury to petitioner by and through intentional misrepresentations to petitioner and third parties concerning petitioner and did injure the petitioner directly and proximately.

(11) the misrepresentations were part of the defendant cartel members' scheme to monopolize the market for hospital supplies in Missouri by unlawfully injuring the petitioner for the purpose of excluding him from the market.

Said misrepresentations were part of the defendant cartel members' scheme to monopolize the market for hospital supplies in Missouri by unlawfully injuring the petitioner for the purpose of excluding him from the market.

(12) the injuries have kept the petitioner out of the Missouri market for hospital supplies

Said injuries inflicted by the defendant cartel members have kept the petitioner from inputs, privileges of citizenship of Missouri including the right to incorporate and to enforce contracts which have prevented the petitioner from entering the market for hospital supplies in Missouri.

Supplemental Matter in Support of Petitioner's Fraud Based Causes of Action

The petitioner amends his complaint to include Gene E Schroer, Rex A. Sharp, and Isaac L. Diel who caused misrepresentations to be fraudulently made in concert with Kansas Attorney Discipline Administrator Stanton Hazlett and the defendant hospital supply cartel members to deprive the petitioner of representation throughout his litigation in Kansas and Missouri courts. See Appendix Eight Affidavit of Samuel K. Lipari.

Gene E Schroer, and Rex A. Sharp misled the petitioner to think they were going to represent the petitioner when in reality they were receiving pay or other benefits from the State of Kansas to elicit confidential information related to the petitioner's prosecution of his claims.

Rex A. Sharp was recorded by the petitioner after it seemed Sharp had dishonestly stated he was considering representing the petitioner at the time the petitioner's father had died and an extension in the

General Electric hospital supply cartel members case before this court was sought on the basis of Sharp's representations. The audio tape is online at

http://www.medicalsupplychain.com/pdf/Rex%20Sharp%20Conversion.wav

Rex A. Sharp and Isaac L. Diel were jointly working on an unrelated tire compound antitrust action when Rex A. Sharp on behalf of the Kansas Office of Attorney Discipline caused misrepresentations to be made during the first week of April 2007 to Michelle Hersh, Justin West and the Missouri office of Accountemps where the petitioner's former counsel Bret D. Landrith was registered for work. The misrepresentations were that Diel had a temporary job reviewing scientific articles related to the chemical compounds and that he was qualified even though he was not a licensed attorney. Landrith doubted their client's requirements and wrote a letter on April 11, 2007 to Justin West at Accountemps informing them that they had likely misunderstood their client's requirements.

The scheme was for Isaac L. Diel to trick Landrith into saying he was an attorney in the Overland Park office of Diel and thereby criminally prosecute the petitioner's witness to further the obstruction of the petitioner's litigation.

Craig E. Collins contacted the petitioner in or about the first week of February 2008 in an unsolicited telephone call to try to represent the petitioner in his Kansas antitrust litigation where the petitioner was considering seeking to reopen the case. The petitioner declined believing he was still represented by Dennis Hawver. The petitioner did however refer Dustin Sherwood to Craig E. Collins when Sherwood and Sidney Peaceful met at a restaurant on Noland Avenue where Hon. Judge Manners also showed up to dine. Sherwood stated he had contacted well over 26 Missouri attorneys and no one would represent him in the bankruptcy case. The petitioner had heard Collins was representing Donna Huffman and David Price, the petitioner's witnesses in this action.

On information and belief Collins was at the time without the knowledge of the petitioner intentionally sabotaging Huffman and Collins proceedings in Kansas by missing deadlines and discouraging them from effective redress.

Craig E. Collins on information and belief undertook to represent Sherwood only after Sherwood had been set up and jailed to prevent him from saving the farm sought by Lathrop & Gage and Husch Blackwell Sanders.

Collins' entry of appearance and actions in pleadings for Huffman, Price and Sherwood are on information and belief fraudulent and that at all times Collins was in reality representing the defendant law firm conspirators in this action and their co-conspirator Kansas state attorney discipline officials to continue to deprive the petitioner of counsel in Missouri including the representation of the petitioner's associates Huffman and Landrith.

Lathrop & Gage L.C. is liable for fraud and deceit, not only for William G. Beck (Mo. Lic. # 26849); Peter F. Daniel (Mo. Lic.# 33798); and J. Alison Auxter's (Mo. Lic. # 59079) misrepresentation to this court that the petition did not aver injury and claims of the petitioner as an unincorporated individual in Lathrop & Gage L.C.'s present motion in support of judgment on the pleadings; The petition describes many misrepresentations related to the Insure Missouri scheme to first cut off Medicaid to what became 90,000 Missouri citizens then to supply the Missouri hospitals through electronic marketplace for hospital supplies.

The defendant Shughart, Thomson & Kilroy, P.C.'s frauds against the petitioner include fraudulent removal of the petitioner's contract based claims against US Bank and US Bancorp to federal court; fraudulent transfer of the US Bank and US Bancorp contract claims to Kansas District Court; fraudulent participation in a Kansas District Court joint case management order without any intent to produce discoverable documents to the petitioner; fraudulent destruction of discoverable electronic documents by in the possession of US Bank of US Bancorp despite notice to their agent Shughart, Thomson & Kilroy, P.C. to preserve them; fraudulent representation that the petitioner had failed to produce requested discovery documents by Shughart, Thomson & Kilroy, P.C..; fraudulent representation to the Hon. Judge Michael W. Manners to procure dismissal by unlawfully using the Kansas District Court interim decisions that were not final judgments with knowledge that they had been procured with John K. Power of Hush Blackwell Sanders, through the cartel's own fraud.

The fraud on the court by Shughart, Thomson & Kilroy, P.C. to Magistrate Waxse in communications transferred by wire and by the US Mail on May 22, 2008 misrepresenting that the petitioner had not provided discovery responses and that US Bank and US Bancorp had acted in good faith resulted in the petitioner being denied his Missouri contract claims and in the petitioner having to forfeit his Missouri trade secret based claims.

Extra-Judicial Influence Through Communications between Courts

The defendant hospital supply cartel members have been aided by non-defendant conspirators communicating extra-judicially to judges including the trial judge in this action.

Temporal Relationship of Hon. Judge Michael Manners's Dismissal with other courts

The Hon. Judge Michael Manners's adoption of the previously dismissed cartel members' motions for dismissal violated the controlling law of this jurisdiction on claim and issue preclusion and the other legal basis advocated by the defendants including *Noerr-Pennington* based Immunity and the statute of limitations.

The Hon. Judge Michael Manners's Order dismissing with prejudice the previously dismissed cartel members was temporally related to similar decisions contradicting the controlling precedent of the respective jurisdictions by the Hon. Judge Carlos Murguia and the Hon. Magistrate David Waxse of Kansas District Court and the Hon. Fernando J. Gaitan, Jr. of the Western District of Missouri. See KS. Dist. Court case No. 2007cv02146; KS. Dist. Court case No. 2005cv02299 and W.D. of MO. Dist. Court case No. 2007cv00849.

Hon. Fernando J. Gaitan, Jr. and St. Luke's Health System, Novation LLC

Before being appointed the federal bench by President George H.W. Bush, the Hon. Fernando J. Gaitan, Jr. was on the bench of the 16th Circuit Court.

The appearance of a fiduciary interest of the Hon. Fernando J. Gaitan, Jr. in the defendants St. Luke's Health System and Novation LLC as a director or corporate officer of St. Luke's Health System is given by the Hon. Fernando J. Gaitan, Jr.'s disclosure to the Judicial Conference.

The defendant St. Luke's Health System asserts it is an owner of the defendant Novation LLC and does over $90,000,000.00 (ninety million dollars) of purchases exclusively through Novation LLC each year.

The Hon. Judge Carlos Murguia and the District of Kansas

The Hon. Judge Carlos Murguia has repeatedly made adverse rulings contrary to controlling precedent and against only the plaintiff in the present action that are temporally related with adverse rulings against the plaintiff made by Hon. Judge Fernando J. Gaitan, Jr. and Hon. Judge Michael W. Manners contrary to the controlling precedents of the Western District of Missouri and the State of

Missouri respectively. See *Lipari v. General Electric Company, et al* W. D. of MO Case no 07-0849 and Appearance Docket of *Lipari v. Novation LLC, et al* 16th Cir. Missouri State Court Case No. 0816-04217.

On July 8, 2008 the Kansas District Court made a show cause order initiating the scheme to fraudulently procure dismissal of the plaintiff's claims on the false accusation by US Bank NA and US Bancorp that the plaintiff failed to produce documents and answers requested by the defendants that led instead to the partial dismissal on September 4, 2008 of the plaintiff's contract, tortuous interference and fiduciary duty claims against US Bancorp.

The temporal relationship of rulings adverse to the plaintiff and involving adoption of extrajudicial interim orders and communications includes the dismissal of racketeering claims against the cartel members involved in extrinsic fraud to interfere in the plaintiff's ongoing antitrust litigation by Hon. Judge Fernando J. Gaitan, Jr. (a case Hon. Judge Gaitan had assigned to himself even though an open § 455 Motion for recusal based on his directorship of a defendant was on the record in the previous removal of the same action W. D. of MO Case no. 06-0573) on July 30, 2008. See *Lipari v. General Electric Company, et al* W. D. of MO Case no 07-0849.The July 7, 2008 order of the Kansas District court in the same case or controversy dismissing the plaintiff's motion to reopen his federal antitrust and racketeering claims in KS Dist. Court case no. 05-2299-CM. And also, the partial dismissal of August 8, 2008 Hon. Judge Michael W. Manners that Hon. Judge Michael W. Manners had in error requested on July 3, 2008. See *Lipari v. Novation LLC, et al* 16th Cir. Missouri State Court Case No. 0816-04217.

Count VI
Prima Facie Tort

(1) an intentional lawful act by the defendant;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

To whatever extent said activities of Defendants including procuring the disbarment and interference with the petitioner's potential may not violate antitrust laws or tortuously interfere with contract or business expectancy, said acts and activities of Defendants are still unlawful and fraudulent.

Said activities were intended by Defendants and performed by Defendants.

Defendants' actions were willful, wanton, malicious and oppressive.

(2) an intent to cause injury to the plaintiff;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Said activities were intended by Defendants to cause injury to the petitioner.

(3) injury to the plaintiff;

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Said activities did directly and proximately cause injury to the petitioner.

Petitioner is entitled to recover their actual damages in the amount of in excess of $500,000,000.00 for their actions resulting in the loss of trust accounts, and actual damages in the amount of in excess of $500,000,000.00 for their actions resulting in the loss of the lease sale together with the costs of suit, and attorney fees.

(4) an absence of any justification or an insufficient justification for defendant's act.

The petitioner hereby re-alleges the averments of facts in this complaint and its attachments.

Said activities were and are unjustified.

Count VII
Injunctive Relief Over the Missouri Board of Bar Governors Against Accepting Findings of Fact or Determinations From Future Kansas Attorney Discipline Proceedings

The petitioner amends his complaint to include a claim for injunctive relief against Thomas M. Burke *in his official capacity as President of the Board of Bar Governors*; Keith A. Birkes *in his official capacity as Secretary of the Board of Bar Governors*;William R. Bay;Erik A. Bergmanis; Stephen R. Bough; Suzanne B. Bradley; P. John Brady; Hon. Richard C. Bresnahan; Thomas J. Casey; Carol Hazen Friedman; Mark W. Comley; Tippin Cutler; Brian Francka; Alan B. Gallas; Tracy Hunsaker Gilroy; John R. Gunn; Richard F. Halliburton; Charlie J. Harris, Jr.; Paul G. Henry; Edward J. Hershewe; Vincent F. Igoe, Jr.; John S. Johnston; Jennifer M. Joyce; Hon. John F. Kintz; William J. Lasley; Neil F. Maune, Jr.; Mark H. Levison; Karen King Mitchell; Max E. Mitchell; Matthew M. Mocherman; Douglass F. Noland; Megan E. Phillips; W. Edward Reeves; Brett W. Roubal; Deanna K. Scott; Allan D. Seidel; Patricia A. Sexton; Reuben A. Shelton; Walter R. Simpson; Wallace S. Squibb; Patrick B. Starke; Hon. David Lee

Vincent; Lynn Ann Vogel; H. A. "Skip" Walther; Raymond E. Williams; Eric Joseph Wulff, *in their official capacities as Members of the Board of Bar Governors; Defendants.*

(1) the petitioner has suffered "the wrongful and injurious invasion of legal rights existing in him

This court has deviated from controlling case law of this jurisdiction and the Missouri Rules of Civil Procedure despite the petitioner's pleadings briefing him on the applicable legal authority.

This unjust violation of the petitioner's rights to Due Process and Equal Protection under the Missouri State Constitution is because the petitioner is unable to obtain an attorney in light of the extortionate power of the Kansas Disciplinary Attorney to retaliate against Missouri licensed attorneys practicing in Kansas and prospective attorneys that are Kansas citizens who wish to take their initial bar examination in Missouri.

The injunctive relief defendants as governors of the Missouri Bar are responsible for the fitness standards of Missouri Attorneys including the licensed Missouri attorneys identified in this petition as having been willing to represent the petitioner and the Kansas licensed attorney Craig Collins who has already been threatened with disbarment for representing the Missouri farmer Dustin Sherwood who is the petitioner's witness when no Missouri attorney had the courage to assist Dustin and Jennifer Sherwood in the face of the cartel defendants' law firms.

(2) the petitioner has no adequate remedy at law.

The petitioner is not an attorney and cannot exercise in remedy in Missouri attorney disciplinary proceedings and as the present complaint gives witness, the petitioner is without any practical possibility of remedy in a Missouri State court without an attorney.

Count VII
Declaratory Relief That The Petitioner Has the Right To Own Property And Sell Hospital Supplies In Missouri And May Enforce Contracts

(1) the petitioner's justiciable controversy exists presenting a real, substantial, and presently-existing controversy as to which specific relief is sought

(2) the petitioner's demonstration of a legally protected interest consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief;

(3) the petitioner's questions are ripe for judicial determination

(4) the petitioner does not have an adequate remedy at law

a. No action has begun or is imminent for future restraint of trade against the petitioner

VII. Prayer For Relief

The plaintiff seeks his property expectation damages that would have resulted from his business relations with US Bank, US Bancorp, Inc. and separately from General Electric but for the anticompetitive conduct of the hospital supply cartel defendants and their agents.

The plaintiff seeks treble his above property expectation damages under § 416.121. 1(1) RSMo.

The plaintiff seeks a total after trebling of the above property expectation damages of three billion, two hundred million dollars ($3,200,000,000.00) in damages.

The plaintiff seeks that the court grant appropriate injunctions under § 416.121. 1(2) RSMO to enjoin the unlawful practices complained of in this petition.

Respectfully Submitted,

S/ Samuel K. Lipari

Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064
816-365-1306
saml@medicalsupplychain.com
Pro se

DEMAND FOR TRIAL BY JURY

The plaintiff respectfully requests a jury decide all questions of fact.

S/Samuel K. Lipari

Samuel K. Lipari

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

SAMUEL K. LIPARI,

Plaintiff,

v. Case Number 0816-CV04217

NOVATION, LLC, et al., Division 2

Defendants.

ORDER

On March 11, 2009, Defendants, Novation, LLC, et al., filed their Motion to Require Plaintiff to Serve Papers on Counsel in Accordance with Supreme Court Rule 43.01(b). On March 17, 2009, Plaintiff filed his Suggestions in Opposition thereto.

Defendants' Motion is SUSTAINED. Any pleadings or correspondence from Plaintiff to the Defendants identified in the March 11 Motion shall be directed to counsel for said Defendants.

IT IS SO ORDERED.

/ Michael W. Manners
MICHAEL W. MANNERS
JUDGE, DIVISION 2

Dated: March 23, 2009

I certify a copy of the above was faxed or mailed this 23rd day of March, 2009, to:

Samuel K. Lipari,
Medical Supply Chain,
3520 Akin Boulevard, # 918
Lee's Summit, MO 64064

Peter F. Daniel, Attorney for Defendant Lathrop and Gage, L.C.
Fax # (816) 292-2001

Michael S. Hargens, Attorney for Defendant Novation, et al.
Fax # (816) 421-0596

Jay E. Heidrick, Attorney for Defendants Grundhofer, David and Cecere
Fax # (913) 451-3361

Brennan B. Delaney, Law Clerk, Division 2