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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 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 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 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 a 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 and 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 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 targeted by Karl Rove and former US Attorney General Alberto Gonzales for Graves' investigation of Medicare fraud at CoxHealth.

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 tortious 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 tortious 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.

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.:

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 occurred 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.

(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.

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:

(B) "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.

(B) Special Counsel Scott J. Bloch

153. Scott J. Bloch was supposed to be investigating Karl Rove, warrantless surveillance and the Hatch Act employment violations of the defendant Bradley J. Schlozman (also from Kansas) and Schlozman's conduct in Missouri to protect the hospital supply cartel defendants from the petitioner but identified more strongly with his role protecting hospital supply cartel members than his government job as Special Counsel.

154. Scott J. Bloch's real direction and actions were not from the mandate of his government office but instead communicated to him through the Republican National Committee ("RNC") email system from his hospital supply cartel protector associates in the conspiracy hub of Rove's USDOJ protection scheme.

155. An investigation of Scott J. Bloch however, by the federal Office of Personnel Management's inspector general looking into claims that Mr. Bloch improperly retaliated against employees and dismissed whistleblower cases without adequate examination, threatened to expose the USDOJ's protection selling conspiracy hub's use of RNC email to control the US Department of Justice.

156. To protect the conspiracy, Scott J. Bloch destroyed evidence including the RNC email on Dec. 18 and Dec. 21, 2006 by having his drive and two others used by departed aides subjected to a level seven wipe. The wipe eliminates the possibility of the hard drives being forensically reconstructed.

iv. The Attempt to Interfere With CoxHealth Investigation

157. Staffers for Missouri's US Senator Christopher S. "Kit" Bond approached the Bush administration in 2005 and suggested that it might be wise to remove Graves from his post after his four year term expired because of his wife's involvement in a controversial 'fee office' patronage scheme in Missouri.

(A) Senator Kit Bond

158. Later Senator Kit Bond did become directly involved in Graves' termination in early 2006.

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.

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 & Eppengerger LLC

201. At Husch & Eppengerger 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.

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:

ix "\$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.

(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 Eppenger 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 Bolivar 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 2007 speech 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.

(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 solely 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 occurred 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's 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 Clean 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, UHC, Curt Nonomaque, VHA and Novation LLC actively prevented Neoforma.com, an electronic marketplace that enabled hospital supplies to be purchased on the web from having access UHC and VHA's member hospital market and from carrying the products of Novation's suppliers.

372. Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC's power to exclude entrants from their market with long term anticompetitive contracts and a centralizing price controlling joint venture, allowed Neoforma.com to be taken over in a scheme to utilize the new web based electronic marketplace as a mere "storefront" for the existing inefficient bricks and mortar group purchasing organization Novation LLC and therefore secure UHC and VHA's price inflation scheme.

373. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff participated in a syndicate to make a market in an initial offering of publicly traded shares for Neoforma, LLC and to manipulate the stock prices in an illicit "laddering" scheme of prearranged market

purchases to deceive stock investors into buying the shares at rapidly increasing share prices. US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray and Andrew S. Duff profited from this deceptive manipulation by receiving blocks of shares in Neoforma.com which they inflated in a “pump and dump scheme” through Piper Jaffray’s false recommendations to institutional fund managers and individual investors in reports about the bright future for the company without disclosing the brokerage’s conflict of interest and participation in the prior arranged scheme to keep Neoform.com from reaching its potential to increase hospital supply efficiency. Instead, the Defendants planned to suppress Neoforma.com’s technology to preserve Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC’s corrupt inefficiencies. US Bancorp and Piper Jaffray were fined and paid \$32.5 million fine to settle these securities fraud charges brought by with the SEC, NASD, NYSE, NASAA, and the New York Attorney General for the fraudulent research.

374. In March, 2000, Robert J. Baker, UHC, Curt Nonomaque, VHA, Novation LLC, Bob Zollars And Neoforma into deceiving the board of directors of Eclipsys, a software application company with superior technology to Neoforma.com and a positive cash flow into merging with Neoforma.com based on a long term contract to pay Neoforma.com a quarterly payment for providing an electronic marketplace on the web that Robert J. Baker, UHC, Curt Nonomaque, VHA and Novation LLC could control.

375. Neoforma, Inc.’s acquisition of Eclipsys and its stream of income was a threat to US Bancorp, US Bank, Andrew Cesere, Jerry Grundhoffer, Piper Jaffray And Andrew S. Duff’s substantial interests in the hospital supply and hospital supply in e-commerce markets. With Eclipsys, Robert Zollar had the potential to compete with GPO’s and bypass US Bancorp and Piper Jaffray’s ability to extort equity from new market entries trying to supply hospitals.

376. A negative analyst report on the merger by Piper Jaffray was used to control Robert Zollars and Neoforma, Inc. Investors did not understand that Novation LLC controlled what companies had access to thousands of hospitals and that Eclipsys superior technology was not as valuable to its directors as the ability to gain access to the monopolized hospital supply market. Investors expressed dismay concerning the Merger Agreement as follows:

“Investors may be unsettled by combining Eclipsys’ relatively high-margin software and services business with Neoforma’s extremely low-margin online [business-to-business] exchange. Furthermore, ECLP shareholders are frustrated about the ownership split between [Neoforma] and

[Eclipsys]. Neoforma and Eclipsys are getting 37% and 28% of the combined company, respectively.”

377. Similarly, a March 30,2000 report issued by analyst Caren Taylor, of E-Offering entitled “Neoforma to Acquire Eclipsys and Healthvision - - What’s Wrong With This Picture?” stated:

“As we take a step back and look at the big picture, we think there is something fundamentally wrong with this deal. We understand that Neoforma has had a difficult time accessing the buyer market, and we had heard recently that the company might miss their earnings target this quarter. In addition, we are somewhat dismayed by the behavior of Eclipsys - - first its initiation of a takeover bid of Shared Medical Systems Corp., which was dropped as of today, and now this sudden agreement to be acquired by Neoforma.com. This has left us wondering about the underlying issues within the Eclipsys organization. We would certainly not want to be the owners of these two stocks.”

378. The detriment to Eclipsys shareholders was also recognized in a March 30,2000 analyst report issued by Pacific Growth Equities, in which Eclipsys was lowered to a “Neutral” rating from its previous “Buy” rating. In a paragraph entitled “Terms are disappointing for Eclipsys shareholders”, the report stated:

“The terms of the deal call for Eclipsys to receive 1.34 shares of the new Company for each of its 37.5 million shares (50.25 million shares), Novation to receive 69.3 million shares, Healthvision (excluding the amounts attributable to Eclipsys and the VHA) to receive 0.444 shares for each share and Neoforma.com to control the rest for a total share count of 2 10 million shares. Because these companies are all valued very differently - a classic old economy and new economy merger - attributing relative value is tricky. However, Neoforma.com, a leader among the emerging online marketplaces, was essentially still in “show me” mode and had little revenue. On the other hand, Eclipsys was a profitable company with one of the strongest franchises at \$250 million in 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 enjoyed by hospitals. The founders recruited Samuel Lipari, who would later found the plaintiff Medical Supply for his expertise in mass merchandising, grocery and automotive distribution.

384. Samuel Lipari recognized that the volume pricing in even large group purchasing organizations failed to provide significant cost savings and Physicians Management Group was able to profit by splitting the savings its customers realized over volume pricing.

385. Samuel Lipari discovered that for every product line and from almost every vendor in the broad spectrum of hospital supplies from bedding, to pharmaceuticals, to instruments and even including food and janitorial supplies, the price of goods sold through hospital group purchasing organizations and even their contract suppliers and manufacturer's catalog price was substantially higher than the discounts he could obtain. Samuel Lipari found it easy to beat the "volume discounts" on even very small quantity purchases for widely dispersed customers with disproportionately high handling and transportation costs.

386. In order to increase Physicians Management Group's recognizable savings to aid its customers in evaluating value over products sourced from other vendors, Samuel Lipari innovated the use

of separate fees for Physicians Management Group's management, storage and delivery of healthcare supplies to allow customers to directly compare unit costs with other purchasing organizations. This innovation was a great aid to small doctor's practices and rural nursing homes which were empowered to make purchasing decisions on a direct comparison of value in cost per unit of product with the nation's larger volume hospital supply organizations while having the logistics costs of managing contracts, fulfillment, storage and delivery separated out in observable fees that could be tracked and competitively evaluated. Physicians Management Group's logistics services could then be partially or completely substituted with more competitive local alternatives.

387. The demand for Physicians Management Group's business model as an alternative supplier grew faster than the fledgling company with no access to operating capital could sustain. The first 25 independent representatives who had self financed their representation, a practice common among manufacturer's representatives in the automotive and mass merchandizing industries brought in four million dollars in contracts within the first 90 days and Physicians Management Group began shipping products to their clients.

388. Physicians Management Group's hospital group purchasing organization (GPO) supplier was Health Services Corporation of America (HSCA). Despite being one of the largest GPOs at the time with the most volume from which to leverage lowest prices HSCA's contract prices for its member customers were not as good as those Physicians Management Group obtained on purchases outside of the GPO. Even though Physicians Management Group was only fulfilling the requirements of small volume doctor's offices, clinics and nursing homes.

389. Without access to operating capital to sustain the high demand and growth, Physicians Management Group ceased operations and began returning all unshipped products to the appropriate manufacturer. Physicians Management Group Inc. filed for financial relief on October 15, 1996 and that relief was granted and the file closed on April 09, 1997.

390. On October 24, 1995 Samuel Lipari incorporated Medical Supply Management in the State of Missouri, a healthcare supplier that used technology to bundle services to assist hospitals, nursing homes, surgery centers and physician offices purchase track and pay for supplies again innovating and

adopting the role suppliers in the vastly more competitive mass merchandizing industry create value for their customers reducing administrative and product costs.

391. The effect of bundling services to purchase track and pay for supplies, utilizing Samuel Lipari's proprietary software was a revolutionary value adding innovation radically increasing efficiency and reducing costs that rendered group purchasing organizations obsolete. Group purchasing organizations operating without supply chain management software were physically unable to manually offer these value adding services, even with their enormous administrative offices and staff. Hospitals, unlike retail stores where supplier management of purchasing, tracking and paying for supplies as a competition enhancing service to customers originated, do not have the primary function of selling products. When suppliers start to purchase, track and pay for supplies as an included service for hospitals, hospital staffing can concentrate on the primary value creating function of providing healthcare services. The savings realized became exponential.

392. Group purchasing organizations and suppliers began a refusal to deal strategy to foreclose the new supply chain technology from the market for hospital supplies. Although HSCA had indicated a willingness to provide Medical Supply Management a membership in its GPO as they had done earlier for 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. Baker 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. Baker 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. Baker 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 actual 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.

417. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use loyalty rebates as a more sophisticated penalty on noncompliance than that imposed under a traditional illegal exclusive agreement to restrain trade, and one that is far more enforceable to boot.

418. With loyalty rebates, Novation can unilaterally impose a penalty for noncompliance by just withholding the quarterly or annual rebate without even going to court, and can easily prove in court the amount of past rebates that must be returned. In this way courts become the defendants instrument of monopolization.

419. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use a termination penalty making the defendants’ exclusive dealing agreements violate the Sherman Antitrust Act. The defendants add additional penalties that are more enforceable including loyalty rebates that increase the exclusionary effect.

420. Novation, LLC, Neoforma, Inc., Robert J. Zollars, Volunteer Hospital Association, Curt Nonomaque, University Healthsystem Consortium and Robert J. Bake use loyalty rebates that are conditional on the buyer taking all or a high percentage of its purchases from a favored supplier and amount to *de facto* exclusive dealing. IIIA Areeda & Hovenkamp, Antitrust Law ¶768B3, AT 151 (1996); XI Hovenkamp, Antitrust Law ¶1807, at 115-18 (1998).

421. The defendants' loyalty payments are used to inflate prices.

(1) Here the rebates or discounts are conditioned on purchasing a high share of the buyer's purchases from the supplier. Thus, this is not a per item price cut that can be met by any equally efficient rival for any future purchases. Because the loyalty rebates are conditioned on getting a high share of the buyer's purchases, they leave rivals with access to only a lower share, which may not sustain economies of scale. When they do so, such loyalty rebates exclude rivals by worsening the rivals' efficiency.

(2) Once the hospital has committed to the arrangement, the rebates on all the hospital's past purchases are contingent on it meeting the loyalty threshold. Because loyalty commitments can last for five to seven years, a failure to comply can result not only in losing any rebate already earned in the current year but a demand for a return of all the rebates paid in all past years too. Novation's Opportunity ® Spectrum I Portfolio Participation Agreement states "all earned incentive payments received by the Participant will be 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 petitioner 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 have 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 by omitting reference or disclosure of US Bancorp's (NYSE USB) liability in the Kansas District Court litigation from US Bancorp's securities filings as required under § 302 of the Sarbanes-Oxley Act, where the extended corporate governance repositied in the US Bancorp Board of Directors would have resulted in the contracts with the petitioner being honored and Medical Supply Chain entering the market for hospital supplies.

539. US Bancorp's President and CEO, Richard K. Davis is also liable for conduct by his agent Shughart Thompson & Kilroy PC to deny the petitioner discovery of evidence through extrinsic fraud to withhold evidence that can be used as exhibits by the petitioner in the present Kansas District Court litigation.

d. Tortious Interference with Business Relationship Between Petitioner and US Senator Claire McCaskill Through Attempted Extortion Over Judy Jewsome Tortious For Helping Petitioner's Witness David Price by Defendants Lathrop & Gage L.C., Husch Blackwell Sanders LLP, and Shughart, Thompson & Kilroy PC

540. The Hospital Supply Market includes highly regulated products and purchasing procedures created by the US Congress and administered through multiple federal agencies.

541. The petitioner's success in entering the hospital supply depends on the ability to obtain information and to seek redress from legislative aids in the offices of Missouri's US Senator, the Hon. Claire McCaskill and the petitioner's senior Congressional Representative, the Hon. Emmanuel Cleaver, II.

542. Tough neutral in the last election cycle, the petitioner's litigation and resulting documentation on www.medicalsupplychain.com/news ended up shaping the debate in the narrow range of issues that shaped the election loss of former Senator Jim Talent as the state's electorate began to become concerned over the hospital supply cartel's artificial inflation of healthcare costs that resulted in the loss of healthcare insurance for many in Missouri's middle class and in the Missouri legislature being forced to cut thousands of Missourians from Medicare coverage. See *MSCI v. Novation et al* pg. 8-24
<http://www.medicalsupplychain.com/pdf/MSC%20vs.%20Novation%20et%20al.pdf>

543. Missouri's US Senator, the Hon. Claire McCaskill and Kansas freshman Congresswoman the Hon. Nancy Boyda because of their surprising and unexpected successes have become influential leaders both in Washinton, D.C, the Democrat Party and in their respective districts.

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 tackedled, 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 officials 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 Ozawie 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.

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://baldridge.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.

**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 Fraud and Deceit

The petitioner avers the defendants have committed numerous frauds and deceptions.

(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.

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.

**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.

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 defendants.

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

VERIFICATION

State of Missouri)
) SS
County of Jackson)

I Samuel K. Lipari being of lawful age and being first duly sworn upon my oath, state that I have read the above and foregoing petition and attachments and find the statements therein to be true and correct to the best of my information, knowledge and belief.

Samuel K. Lipari

Subscribed and sworn to before me on this _____ day of February, 2008

Notary

Commission expires: