

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
KANSAS CITY, KANSAS**

|                                    |   |                                    |
|------------------------------------|---|------------------------------------|
| MEDICAL SUPPLY CHAIN, INC.,        | ) |                                    |
| <i>Plaintiff,</i>                  | ) |                                    |
| v.                                 | ) | Case No. 05-2299-KHV               |
| NOVATION, LLC                      | ) | Formerly W.D. MO. Case No. 05-0210 |
| NEOFORMA, INC.                     | ) | Attorney Lien                      |
| ROBERT J. ZOLLARS                  | ) |                                    |
| VOLUNTEER HOSPITAL ASSOCIATION     | ) |                                    |
| CURT NONOMAQUE                     | ) |                                    |
| UNIVERSITY HEALTHSYSTEM CONSORTIUM | ) |                                    |
| ROBERT J. BAKER                    | ) |                                    |
| US BANCORP, NA                     | ) |                                    |
| US BANK                            | ) |                                    |
| JERRY A. GRUNDHOFFER               | ) |                                    |
| ANDREW CESERE                      | ) |                                    |
| THE PIPER JAFFRAY COMPANIES        | ) |                                    |
| ANDREW S. DUFF                     | ) |                                    |
| SHUGHART THOMSON & KILROY          | ) |                                    |
| WATKINS BOULWARE, P.C.             | ) |                                    |
| <i>Defendants.</i>                 | ) |                                    |

**FIRST PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT  
UNDER F. R. CIV. P. LOCAL RULE 56.1**

Comes now the plaintiff Medical Supply Chain, Inc., through its counsel Bret D. Landrith and makes the above captioned first motion for partial summary judgment that each defendant is distinct from the RICO enterprise, that a defendant's liability for RICO conspiracy does not require that defendant to participate in the operation or management of the enterprise, that RICO liability extends to aiders and abettors and that the law firm Shughart, Thomson & Kilroy, Watkins, Boulware, P.C. (Shughart, Thomson & Kilroy) is properly a RICO Defendant. The plaintiff's suggestion that summary judgment motions be bifurcated was not controverted and the plaintiff expects to file fact based summary judgment motions based on the defendants' *per se* antitrust violations. Medical Supply respects the court grant this pure legal question summary judgment for the following reasons:

Summary judgment is appropriate for purely legal questions. See generally Moore's Federal Practice, P56.20(3.-2)(2ded. 1976). A determination on a strict legal issue can "narrow the issues in [a] case, advance the progress of the litigation, and provide the parties with some guidance as to how they proceed with the case." *Warner v. United States*, 698 F. Supp. 877, 879 (S.D. Fla. 1988). "Summary judgment can thus serve to set the issues for trial .... The outcome of [the] dispute will have an immediate impact on the proofs to be offered at trial in support of the elements of the statutory causes of action."

*Disandro v. Makahuena Corp.*, 588 F. Supp. 889, 892 (D. Haw. 1984); see also *Lies v. Farrell Lines, Inc.*, 641 F.2d 765, 768-69 (9th Cir. 1981).

In the present Motion, Medical Supply seeks partial summary judgment striking certain affirmative defenses of Defendants and on particular issues of law relating to proof of liability. Medical Supply argues:

**Requirements to prove violations of Sections 1962(c) and (d) of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961, et seq..**

To demonstrate violations of Section 1962(d), Medical Supply must prove: (1) that two more people agreed to violate Section 1962(c), and (2) that the defendant knew of and agreed to the overall goal of the violation. *United States v. Philip Morris Inc.*, 130 F.Supp.2d 96 (D.D.C. 2001).

**Issues Over Assertions Of Law Sought To Be Summarily Resolved**

First that, as a matter of law, each Defendant is distinct from the alleged RICO enterprise.

Second, Medical Supply argues that, as a matter of law, a Defendant's liability for RICO conspiracy under Section 1962(d) does not require proof that such Defendant participated in the operation or management of the alleged enterprise.

Third, Medical Supply argues that, as a matter of law, liability for committing a racketeering act under Section 1962(c) extends to those Defendants who aided and abetted the commission of that act.

Finally, Medical Supply argues that, as a matter of law, a law firm including Shughart, Thomson & Kilroy can be a RICO "person" with liability for committing or conspiring to commit racketeering acts.

**CONCLUSION**

Whereas the plaintiff has in its supporting memorandum shown that the controlling authority for our jurisdiction defines each defendant under the facts averred in the complaint to be distinct from the RICO enterprise, that a defendant's liability for RICO conspiracy does not require that defendant to participate in the operation or management of the enterprise, that RICO liability extends to aiders and abettors and that the law firm Shughart, Thomson & Kilroy, Watkins, Boulware, P.C. (Shughart, Thomson & Kilroy) is properly a RICO Defendant, the plaintiff Medical Supply respectfully requests the court grant this partial summary judgment.

Respectfully Submitted

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**Certificate of Service**

I certify that on September 6<sup>th</sup>, 2005 I have served the foregoing with the clerk of the court by using the CM/ECF system which will send a notice of electronic filing to the following:

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