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And Interested Party Samuel K. Lipari

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

MEDICAL SUPPLY CHAIN, INC.)	
<i>Plaintiff</i>)	Case No. 05-2299
)	
v.)	
)	
<i>Novation, LLC et al.</i>)	
<i>Defendants</i>)	

**MOTION FOR LEAVE OF THE COURT
TO FILE A MOTION UNDER RULE 60(b)
ON BEHALF OF MEDICAL SUPPLY CHAIN, INC.**

Comes now, the plaintiff Medical Supply Chain, Inc. ("MSC") and interested party Samuel K. Lipari appearing through counsel, Dennis Hawver, Esq., and respectfully makes the following Motion for Leave of the Court to File a Motion Under Rule 60(b).

STATEMENT OF FACTS

1. The court has sanctioned the plaintiff MSC and the interested party LIPARI for seeking to reconsider and reopen this action:

"Consistent with this ruling, the court cautions Mr. Lipari against filing additional motions. Of course, plaintiff may allow Mr. Hawver or other counsel to represent it. But the court reiterates that it dismissed plaintiff's case with prejudice and sanctioned plaintiff for violations of Federal Rule of Civil Procedure 11(b) and 28 U.S.C. § 1927. Plaintiff has a history of filing frivolous lawsuits and motions, for which the court has sanctioned plaintiff

on several occasions. **Future attempts to resurrect this case could result in the court imposing additional sanctions.**” [Emphasis added].

Order Case 2:05-cv-02299-CM-GLR Document 104 Filed 08/07/06 Page 4 -5.

2. The court struck the interested party LIPARI's Rule 60(b) motions in its March 7th, 2006 Memorandum And Order.
3. The nationwide market for hospital supplies is a geographic market for the purpose of defining unlawful restraint of trade and is still monopolized by the defendants to the detriment and injuries of consumers, insurance companies, state and federal governments.
4. In each successive litigation involving any of the named defendants, the defendants have successfully argued that the decision in this case rendered by the Hon. Judge Carlos Murguia on 08/07/06 affirmatively determined their right to commit subsequent anticompetitive acts in restraint of trade against LIPARI where he repeatedly attempted to enter the nationwide market for hospital supplies as a sole proprietor after the dissolution of MEDICAL SUPPLY CHAIN, INC. forced by the defendants through the now dissolved law firms Shughart, Thompson and Kilroy, P.C.; and Husch Blackwell Sanders LLP actively prevented LIPARI from obtaining counsel and interfering with prospective attorney representation for himself and MEDICAL SUPPLY CHAIN, INC.
5. In each subsequent litigation the defendants and the cartel members GENERAL ELECTRIC COMPANY and JEFFRY IMMELT also sought to have the action removed to federal court and transferred to the District of Kansas, citing Order Case 2:05-cv-02299-CM-GLR Document 104.

6. The interested party SAMUEL K. LIPARI and successor in interest to the plaintiff MEDICAL SUPPLY CHAIN, INC. has subsequent claims for violations of federal antitrust statutes against the defendants for their ongoing conduct to keep him out of the hospital supply market and to deprive him of critical inputs required to enter the geographic United States market for hospital supplies that include conduct to deprive him of counsel and to deprive him of business income from his activity outside of the hospital supply market.

MEMORANDUM OF LAW

Rule 60(b) and the controlling case law for this jurisdiction provide relief from judgment in the exceptional circumstances that are apparent from counsel's preliminary investigation into this matter. Both Rule 60(b)(4) and Rule 60(b)(6) are timely remedies in circumstances the plaintiff's counsel has identified in the record of this matter. Additionally, should fraud on the court relief have merit Rule 60(b)(3)'s exception to the clause's one year deadline would apply. See *Zurich North America v. Matrix Service, Inc.*, 426 F.3d 1281 at 1291-2 (Fed. 10th Cir., 2005).

Counsel for the plaintiff had cause to investigate misrepresentations made to this court to procure a dismissal of the plaintiff's claims. See *Landrith v. Bank Of New York Mellon, et al.* KS Dist Court Case No. 12-cv-02352, Answer To The Bank Of America Defendants' Motion To Dismiss (Doc.# 21) at pg. 17-18.

If leave is granted, counsel will investigate the misrepresentations made to the court in this action and the application of extraordinary circumstances under Rule 60(b)(6): "Such extraordinary circumstances exist, for example, when, "after

entry of judgment, events not contemplated by the moving party render enforcement of the judgment inequitable. [*Id.* (citing *Zimmerman v. Quinn*, 744 F.2d 81, 82-83 (10th Cir. 1984) and *State Bank of S. Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1081 (10th Cir. 1996) as illustrative examples).]"

[Emphasis added]*Olson v. A T & T Corp.* (D. Kan., 2010)

CONCLUSION

Whereas for the above stated reasons, the plaintiff respectfully requests that the court grant plaintiff's counsel leave to investigate and file a motion for relief from judgment meeting the Rule 11 pleading standard.

Respectfully submitted,

/s/ Dennis Hawver

Dennis Hawver
Attorney for Defendants

CERTIFICATE OF SERVICE

I do hereby certify that on the 16th of August, 2013 I electronically filed the foregoing Entry of Appearance via the CM/ECF system, which will send a notice of electronic filing to the following:

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/s/ Dennis Hawver

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