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

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

SAMUEL K. LIPARI
Appellant

v.

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

BRIEF OF RESPONDENTS

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JURISDICTIONAL STATEMENT

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

STATEMENT OF FACTS

On February 25, 2008, Appellant filed his Petition in this case in the Circuit Court of Jackson County at Independence, Missouri. Respondents Novation, LLC, VHA Inc., University Healthsystem Consortium, VHA Mid-America LLC, Curt Nonomaque, Robert J. Baker, Thomas Spindler, Robert Bezanson, Gary Duncan, Maynard Oliverius, Sandra Van Trease, Charles Robb, Michael Terry, Cox Health Care Services of the Ozarks Inc., Saint Luke's Health System Inc. and Stormont-Vail Healthcare Inc. moved to dismiss the Petition for failure to state a claim and, on August 8, 2008, the trial court granted that motion and dismissed Appellant's claims with prejudice. Appellant brings his appeal to seek reversal of that dismissal.

Appellant's Petition contends that various health care supply related entities, venture capital, real estate and banking firms, law firms, hospitals, and individuals have conspired to inflate prices for medical supplies and to prevent Appellant's now-dissolved corporation, Medical Supply Chain ("MSC"), from entering the health care supply market. Appellant alleges that the steps Respondents and the other defendants in the case took to prevent him from selling health care supplies involved money laundering, extortion, using fraudulent means to persuade federal courts to dismiss MSC's prior antitrust claims and even murder (including an alleged attempt to lure Appellant to his

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

This lawsuit is not the first time Appellant has brought suit on these bizarre allegations. Appellant has repeatedly tried and failed to prosecute claims under various federal law theories in federal court in Kansas. MSC sued many of these same parties in the U.S. District Court for the District of Kansas in 2002 ("*Medical Supply Chain I*"). In that case, which contained many of the same allegations made in this case, the district court dismissed the case and warned MSC's counsel "to take greater care in ensuring that the claims he brings on his clients' behalf are supported by the law and the facts." *Medical Supply Chain, Inc. v. US Bancorp, NA*, No. 02-2539-CM, 2003 WL 21479192, *6 (D. Kan. June 16, 2003). The Tenth Circuit affirmed the District Court's dismissal and held that MSC's appeal was frivolous. *Medical Supply Chain, Inc. v. US Bancorp, NA*, 112 Fed. Appx. 730 (10th Cir. 2004).

In June of 2003, Appellant filed suit in the U.S. District Court for the District of Kansas against General Electric and certain related parties (the "GE Defendants") alleged to be co-conspirators in this action ("*Medical Supply Chain II"*). That case involved

many of the same factual and legal allegations as alleged here. In the district court's order dismissing that suit, the Court noted that the federal antitrust claims failed "at the most fundamental level." *Medical Supply Chain, Inc. v. General Elec. Co*., 03-2324-CM, 2004 WL 956100, *3 (D. Kan. Jan 29, 2004). The 10th Circuit affirmed the dismissal of that complaint and upheld the district court's award of sanctions against MSC. *Medical Supply Chain, Inc. v. General Elec. Co.*, 144 Fed. Appx. 708 (10th Cir. 2005).

In yet a third case ("*Medical Supply Chain III*"), MSC sued Novation, VHA, UHC and others in the U.S. District Court for the District Of Kansas in March 2005. The court dismissed MSC's federal antitrust, RICO and USA Patriot Act claims, finding that the complaint "fails at the most basic level to allege sufficient facts to support cognizable legal claims." *Medical Supply Chain, Inc. v. Neoforma, Inc.*, 419 F.Supp.2d 1316 (D. Kan. 2006). MSC and its counsel were again sanctioned for asserting frivolous claims. MSC had also asserted claims under the state law theories Appellant asserts in this case, but the court declined to exercise supplemental jurisdiction over the claims and dismissed them without prejudice. *Id.* Appellant attempted to join the case as a substitute plaintiff and appealed the dismissal, but the Tenth Circuit held that the Notice of Appeal was untimely filed. *Medical Supply Chain, Inc. v. Neoforma, Inc*., 508 F.3d 572 (10th Cir. 2007). Appellant attempted a subsequent appeal from the denial of a Motion for Rehearing and the Tenth Circuit affirmed the District Court's refusal to re-open the case. *Medical Supply Chain, Inc. v. Neoforma, Inc.*, 322 Fed. Appx. 630, 2009 WL 1090070 (10th Cir. 2009).

ARGUMENT

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

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

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

In addition to Appellant's failure to comply with Rule 84.04(d), his Point 1 suffers from several fatal substantive defects. In Point 1, Appellant argues that the trial court erroneously applied claim preclusion to bar Appellant's state court claims. However, Point 1 is based on Appellant's misunderstanding of the arguments in the Respondent's Motion to Dismiss and, therefore, the basis for the trial court's dismissal of Appellant's Petition. Respondents did not rely upon claim preclusion, but rather asserted only that issue preclusion applied to bar Appellant's Missouri antitrust claims.

Thus, Appellant's Point 1 provides no basis for reversal of the trial court's order of dismissal. Indeed, Point 1 is completely beside the point as it attacks an argument not

made by Respondents in the court below. The Motion to Dismiss filed by Respondents in the trial court clearly invokes "issue preclusion" and sets forth the requirements for that doctrine. Respondents' Motion to Dismiss stated, in relevant part:

> Collateral estoppel, or issue preclusion, bars the relitigation of an issue by the same parties or those in privity with them. *Kansas City Area Transp. Auth. v. 4550 Main Assocs., Inc*., 742 S.W.2d 182, 188 (Mo. App. 1987). In *City of Ste. Genevieve v. Ste. Genevieve Ready Mix, Inc.*, 765 S.W.2d 361 (Mo. App. 1989), the court identified the following factors to be considered when determining whether collateral estoppel applies:
>
> > (1) Whether the issue decided in the prior adjudication was identical with the issue presented in the present action; (2) whether the prior adjudication resulted in a judgment upon the merits; (3) whether the party against whom collateral estoppel is asserted is a party or in privity with a party to the prior adjudication; and (4) whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue.
>
> *Id*. at 364.

Legal File, at pp. 254-255.

The source of Appellant's confusion appears to be that Respondents sought dismissal of Appellant's "claims" based on collateral estoppel. *See* Brief of Appellant at 12-13 (arguing that seeking dismissal of "claims" based on collateral estoppel was an

invocation of claim preclusion, rather than issue preclusion). However, dismissal of the claims was the correct consequence of the application of issue preclusion in this case. As will be discussed in Section II, *infra*, issues concerning the legal viability of antitrust claims were decided against MSC (Appellant's assignor) in a prior federal case under federal law. Because those issues were the same under Missouri state law and were relevant to the legal viability of Appellant's Missouri antitrust claims asserted in this case, dismissal of the claims was the correct result and should be affirmed by this Court.

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

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

In Point 2, Appellant argues that issue preclusion was improperly applied by the trial court to dismiss Appellant's Petition. In the trial court, Respondents argued that Appellant's Petition was deficient with regard to pleading conspiracy and relevant markets and that, because these deficiencies had been established under federal law in the prior action, the trial court could dismiss the state law claims under the doctrine of collateral estoppel. Although it is not entirely clear, Appellant appears to argue that collateral estoppel did not apply because: (i) the issues relevant to his claims in this proceeding are not the same as in the prior case; and, (ii) the relevant issues were not

sufficiently developed in the prior case because the case was dismissed prior to discovery. As discussed below, neither of these arguments have merit. In any event, even if the trial court did not rely on the federal court's determination of these issues, it could have dismissed the claims due to the pleading deficiencies in the first instance. Appellant's Point 2 does not provide any basis for a determination that Appellant's Petition meets the requirements of the Missouri Antitrust Act. Thus, Appellant's claims were properly dismissed even if collateral estoppel were not applied.

A. The Trial Court Properly Applied Collateral Estoppel

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

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

that the relevant market consists of the hospital supply market, the e-commerce hospital supply market, and the healthcare capitalization market. *See Medical Supply Chain III*, 419 F.Supp.2d at 1327.

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

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

Appellant's argument that the federal court's dismissal of the federal claims cannot serve as a basis for collateral estoppel because the case did not proceed to

discovery and trial is wholly without merit. It is well established that a dismissal for failure to state a claim is a judgment that is fully and fairly litigated for purposes of the collateral estoppel doctrine. The Restatement (Second) of Judgments, makes it clear that an issue can be fully and fairly litigated for collateral estoppel purposes "on a motion to dismiss for failure to state a claim, a motion for judgment on the pleadings, a motion for summary judgment . . . or their equivalents, as well as on a judgment entered on a verdict. A determination may be based on a failure of pleading or of proof as well as on the sustaining of the burden of proof." RESTATEMENT (SECOND) OF JUDGMENTS, § 27, cmt d (1982). Missouri courts follow this rule. In *Bachman v. Bachman*, 997 S.W.2d 23 (Mo. App. 1999), the court cited this section of the Restatement and held that a dismissal for failure to state a claim could be the basis for collateral estoppel. *Id.* at 25.

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

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

In Count I of Appellant's Petition, he asserts that Defendants violated Section 416.031(1) of the Missouri Antitrust Statute. In order to establish a violation of that statute, Appellant must demonstrate that "(1) that there was a contract, combination, or conspiracy; (2) that the agreement unreasonably restrained trade under either a per se rule

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

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

"[A] plaintiff must do more than cite relevant antitrust language to state a claim for relief." *TV Communications Network, Inc. v. Turner Network*, 964 F.2d 1022, 1027 (10th Cir. 1992). A complaint must "provide, whenever possible, some details of the time, place and alleged effect of the conspiracy; it is not enough merely to state that a

conspiracy has taken place." *Estate Constr. Co. v. Miller & Smith Holding Co.*, 14 F.3d 213, 221 (4th Cir. 1994). The U.S. Supreme Court recently emphasized that a cognizable claim under Section 1 of the Sherman Act requires "a complaint with enough factual matter (taken as true) to suggest that an agreement was made." *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007). In other words, there must be "plausible grounds to infer an agreement" in order to "raise a reasonable expectation that discovery will reveal evidence of illegal agreement." *Id.*

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

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

Appellant's alleged relevant markets (*i.e.* the Missouri hospital supply market, the Missouri e-commerce hospital supply market, and the upstream healthcare technology company capitalization market) are legally deficient and cannot provide a basis for a claim under Section 416.031(2) of the Missouri Antitrust Act. A plaintiff is required to establish a relevant market to prevail on a monopolization or attempted monopolization claim. *Lantec, Inc. v. Novell, Inc.*, 306 F.3d 1003, 1024 (10th Cir. 2002). *See generally*

Walker Process Equip., Inc. v. Food Mach. & Chem. Corp., 382 U.S. 172, 177 (1965) ("Without a definition of that market there is no way to measure [a defendant's] ability to lessen or destroy competition.").

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

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

> 'Where [an antitrust] plaintiff fails to define its proposed relevant market with reference to the rule of reasonable interchangeability and cross-elasticity of demand, or alleges a proposed relevant market that clearly does

> not encompass all interchangeable substitute products even when all factual inferences are granted in plaintiff's favor, the relevant market is legally insufficient and a motion to dismiss may be granted.'

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

Second, hospital supplies, defined as such, are not reasonably interchangeable products. *See Community Publishers, Inc. v. Donrey Corp*., 892 F.Supp. 1146, 1153 (W.D. Ark. 1995), *aff'd*, *Community Publishers, Inc. v. DR Partners*, 139 F.3d 1180 (8th Cir. 1998) (noting that "products belong in the same market when they are reasonably interchangeable for the same uses and thus exhibit a high cross-elasticity of demand."). Appellant fails to explain how this test is met in a market definition that includes such different items as CT scanners, sutures, and bandages.

In addition, a plaintiff claiming monopolization must allege that the defendant possesses "monopoly power in the relevant market," and a plaintiff claiming attempted monopolization must allege that the defendant has a "dangerous probability of success in monopolizing the relevant market." *Full Draw Productions v. Easton Sports, Inc*., 182 F.3d 745, 756 (10th Cir. 1999). Specifically, "[i]n order to sustain a charge of monopolization or attempted monopolization, a plaintiff must allege the necessary market domination of a *particular defendant*." *H.L. Hayden Co. of New York, Inc. v. Siemens Med. Sys., Inc.*, 879 F.2d 1005, 1018 (2d Cir. 1989) (emphasis added) (rejecting attempt to show dangerous probability of success by aggregating shares of two defendants). Appellant alleges that Defendants have acquired 80% of the market because he contends

that "VHA Mid-America LLC has over 80% of Missouri's hospital beds" which he claims is the "industry measure of market share for distribution of hospital supplies." Legal File, at p. 22. But this is a fundamentally flawed allegation of market share, because it does not address what percentage of hospital supplies for those beds is purchased through contracts negotiated by Novation (a subsidiary of VHA Mid-America, LLC's parent company, VHA Inc., which permits VHA member hospitals to purchase supplies through contracts it negotiates and administers). Under Appellant's theory, one must assume that VHA members in Missouri purchase 100% of their supplies through the Novation contracts and that 80% of the hospital beds constitute the same percentage of purchases of hospital supplies. Neither of these premises is logical and, in any event, Appellant does not even plead that either is true.

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

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

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

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

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

from agreeing to represent MSC. Appellant alleges that this difficulty in getting replacement counsel led him to dissolve MSC in the hope that he could then continue the litigation *pro se*. *Id.*

First, VHA Mid-America LLC, Thomas Spindler, Robert Bezanson, Gary Duncan, Maynard Oliverius, Sandra Van Trease, Charles Robb, Michael Terry, Cox Health Care Services of the Ozarks Inc., Saint Luke's Health System Inc., and Stormont-Vail Healthcare Inc. were not parties to any of the prior lawsuits and there is no allegation that they had any knowledge or involvement in the defense of any of those suits.

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

Third, the Petition contains absolutely no factual allegation that would connect Respondent to Landrith's disbarment or any efforts by Appellant to obtain additional or different counsel. Moreover, this Court can take judicial notice of the docket of *Medical Supply Chain III* and the fact that MSC was represented by attorney Ira Hawver until after the lawsuit was closed and the first appeal was rejected by the Tenth Circuit. If

Appellant chose to dissolve MSC as a litigation tactic, that was his decision—there are no facts alleged that would support a claim that Respondents forced him to do so or even knew about the dissolution until after it was completed.

In any event, the *Noerr-Pennington* doctrine mandates dismissal of Appellant's claims to the extent that they involve allegations relating to Defendants' defense of the prior lawsuits. The *Noerr-Pennington* doctrine immunizes defendants from liability for their "genuine efforts to seek redress through the judicial process, even if the outcome of such litigation is certain to affect or eliminate competition." *Central Telecommunications, Inc. v. TCI Cablevision, Inc*., 610 F.Supp. 891 (W.D. Mo. 1985), *aff'd*, 800 F.2d 711 (8th Cir. 1986). The inapplicability of the *Noerr-Pennington* doctrine is an essential element of plaintiff's case. *Defino v. Civic Center Corp.*, 780 S.W.2d 665, 668 (Mo. App. 1989). Appellant has failed to overcome that hurdle in this case.

Appellant contends that the defense of the prior lawsuits was a "sham" and, as a result, the *Noerr-Pennington* doctrine is not applicable. Specifically, Appellant contends that the defendants in the prior suit filed briefs "disparaging the plaintiff/appellant with judges and their clerks or by making fraudulent representations to government agencies" in order to "procure outcomes in litigation that deprive the plaintiff/appellant of the ability to enforce contracts or enjoy the privileges and immunities of a business owner under Missouri law." Brief of Appellant at 30-31. Further, Appellant complains that he was "denied equal protection and the privileges of citizenship by the trial court's adoption of the defendants' sham arguments for dismissal." *Id.* at 31. In other words, Appellant complains that Defendants won the prior case and contends it is a "sham"

because Appellant disagrees with the outcome. This argument is frivolous. Making successful legal arguments about the legal defects in Appellant's pleading is not a sham and is not defamatory. The case on which Appellant relies, *In re IBP Confidential Business Documents Litigation*, 755 F.2d 1300, 1313 (8th Cir. 1985), which addressed whether the *Noerr-Pennington* doctrine shielded liability for defamatory statements simply because the statements were contained in a letter to Congressional representatives, does not support Appellant's argument.

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

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

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

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

In addition to Appellant's failure to comply with Rule 84.04(d), Point 5 has other, equally fatal deficiencies. Appellant's argument on Point 5, which discusses the timing of various orders and the fact that the trial court ordered Appellant to cure his failure to file a copy of his proposed first amended petition, is beside the point and fails to raise any reversible error with regard to the trial court's denial of Appellant's motions to amend his Petition. The trial court had entered an order granting Lipari's first motion to amend, but then withdrew that order because it was made in error because Appellant's Notice of Appeal divested the trial court of jurisdiction. *See* Respondents' Appendix, p. 1-2. After the dismissal of the appeal as premature, the trial court permitted Appellant to re-file its motion but instructed Appellant to attach a copy of the proposed amended pleading. *Id.* at p. 3-5. Instead of doing that, Appellant chose to file a second Motion to Amend and attached a second proposed amended Petition. There can be no dispute that the trial court had jurisdiction on March 23, 2009 to consider both of Appellant's Motions for Leave to Amend Petition and that the Court did consider those motions and denied Appellant leave to file. *Id.* at p. 144-145.

The denial of a leave to amend is discretionary with the trial court and "will not be disturbed unless there is a showing that the court palpably and obviously abused its discretion." *Curnutt v. Scott Melvin Transport, Inc*., 903 S.W.2d 184, 193 (Mo. App. 1995). In deciding a motion to amend a pleading, the trial court should consider the following factors: (1) hardship to the moving party if leave to amend is denied; (2) the reasons for failure to include any new matter in the prior pleading; (3) timeliness of the motion to amend; (4) whether the amendment could cure the inadequacy of the prior

pleading; and (5) injustice to the opposing party if amendment is allowed. *Id.* Appellant makes no argument that these factors compel the trial court to grant leave.

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

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

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

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

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

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

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

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

statutory limitations period. *See Boggs v. Farmers State Bank*, 846 S.W.2d 233 (Mo. App. 1993). Thus, the savings statute does not save these time barred claims.

Appellant also argues that the "continuing antitrust conduct" of the Defendants prevented the expiration of the statute of limitation on his claim. Appellant misunderstands the law in this regard. It is true that new antitrust violations which injure the plaintiff start the limitations period for those particular violations and injuries. *Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 190 (1997) (noting that the "commission of a separable, new predicate act within a 4-year limitations period permits a plaintiff to recover for the additional damages caused by that act."). However, Appellant cannot revive long-barred claims on the theory that Defendants' defense of those claims was wrongful and constituted a continuing antitrust conspiracy which, in effect, perpetually re-started the limitations clock on the initial injury. In fact, the law is clear that an antitrust plaintiff "cannot use an independent, new predicate act as a bootstrap to recover for injuries caused by other earlier predicate acts that took place outside the limitations period." *Id.* Appellant does not allege a legally viable antitrust violation and injury within the four years preceding this suit. Instead, Appellant alleges that the Defendants' alleged continuing conduct continued to deprive him of the property right in his antitrust claims and prevented redress for the alleged injury of being foreclosed from the medical supply market in 2002. The trial court properly dismissed the antitrust claims on the basis of statute of limitations.

VII. Point 7 Does Not Support Reversal Because the Trial Court's Enforcement of Missouri Rule of Civil Procedure 43.01(b) Was Proper, Did Not Improperly

Restrict Appellant's Speech and, In Any Event, Is Not Reversible Error Because it Did Not Impact the Dismissal of Appellant's Claims

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

More importantly, the complained of court order was appropriate and, in any event, it would constitute harmless error, at most. On March 23, 2009, the trial court granted Respondents request that Appellant serve papers and pleadings in the case only on counsel for Respondents. *See* Respondents' Appendix, p. 144-145. Prior to that order, Appellant had been sending some documents directly to Respondents or to employees or representatives of Respondents. Appellant now argues that that order impermissibly restricted his speech.

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

The salient point is that the trial court's order requiring service upon counsel was proper. The Missouri Rules of Civil Procedure state, in relevant part, that "[w]henever under these rules . . . service is required or permitted to be made upon a party represented by an attorney of record, the service shall be made upon the attorney unless service upon the party is ordered by the court." MO. R. CIV. P. 43.01(b). Service upon counsel ensures that pleadings and other papers relevant to the lawsuit are appropriately handled by counsel and do not cause undue concern or confusion on the part of the party.

Moreover, Appellant's freedom of speech was not restricted by the order. Appellant remained free to say anything he wished to say—the only restriction was that he was required to serve the communication on counsel for Respondents. For example, Appellant argues that the order restricted his ability to offer to settle the case. However, Appellant was free to communicate a settlement offer to counsel, who would then have communicated it to the Respondents.

The trial court's enforcement of Rule 43.01(b) of the Missouri Rules of Civil Procedure was an entirely appropriate measure, did not restrict Appellant's freedom of speech, and does not constitute reversible error.

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

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

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

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

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

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

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

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

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

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

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

Appellant lacks standing to recover damages arising from the alleged anticompetitive actions of the alleged hospital supply cartel he alleges exists to overcharge hospitals for medical supplies. Appellant does not allege that he or his now-dissolved former company is a hospital, so he is not directly injured by the alleged conspiracy to charge high prices. Indeed, as a competitor of the alleged cartel, Appellant would benefit by any agreement to charge high prices, because it could either undercut the price to win business or profit from the cartel's pricing "umbrella." Appellant's allegations affirmatively establish this lack of standing, as he claims that he "found it

easy to beat the 'volume discounts' on even very small quantity purchases for widely dispersed customers . . ." Legal File, p. 66.

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

Moreover, Appellant's Petition alleges several alleged "schemes" that, on their face, have nothing to do with him or with MSC. For example, Appellant complains about the establishment of a National Cancer Institute Certified Research Center at St. Luke's Plaza hospital in Kansas City. There is no allegation that Lipari or MSC was harmed by this. Similarly, Appellant complains about a potential change in health insurance in Missouri. Again, there is nothing which connects this allegation to MSC's alleged inability to compete. Similarly, Appellant has not alleged any antitrust injury resulting from Appellant's myriad allegations of inflated prices, harm to patients, harm to Medicare and Medicaid, and the alleged efforts to foil any investigation of these alleged facts. Consequently, Appellant cannot recover for that alleged conduct as a matter of law and his claims were properly dismissed by the trial court.

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

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

The Court need not go further than the first requirement in order to affirm the dismissal of the fraud claim against Respondents. Nowhere in the Petition is there an allegation that Respondents made any statement, false or otherwise, to Appellant. *See In re Lifecore Biomedical, Inc. Sec. Litig*., 159 F.R.D. 513, 516 (D. Minn. 1993) (noting that "the complaint must allege the time, place, speaker and sometimes even the content of the alleged misrepresentation."). Moreover, Appellant fails to satisfy the other requirements of pleading a fraud claim, as there are no factual allegations regarding Respondents' intent or knowledge of the alleged falsity of any statement made to Appellant, nor are there any factual allegations regarding Appellant's reliance on any statement made by Respondents. Thus, Appellant's fraud claim fails at the threshold and Count V was properly dismissed.

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

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

Even assuming there was a valid contract or business expectancy involved, Appellant wholly fails to allege that Respondents knew about it or intentionally interfered with such contract or business expectancy. Indeed, the Petition is devoid of any facts which would ever justify an inference of knowledge or intention. To fill that gap, Appellant impermissibly relies on its conclusory allegations that Defendants acted in conspiracy with each other with regard to all the conduct in the Petition in order to try to tie these Defendants to banking and real estate transactions they had nothing to do with between Plaintiff and other parties. However, as established above, Appellant's conspiracy allegations are fundamentally defective and insufficient. Thus, the trial court properly dismissed Appellant's tortious interference claim.

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

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

The thrust of a *prima facie* tort claim is the intentional undertaking of an otherwise lawful act, which is done with the intent to cause injury to Appellant, and which is without any recognized justification. Here Appellant failed to allege action by Respondents which is both intentional and lawful. In fact, Appellant specifically alleges the "acts and activities of Respondents are still *unlawful and fraudulent*." Legal File, p. 24 (emphasis added).

CONCLUSION

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

Respectfully Submitted:

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The undersigned certifies a true and correct copy of the above and foregoing was provided, in both paper and electronic format, to the following persons via first-class US mail, on August 19, 2009:

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Respondents Novation, LLC, VHA Inc., University Healthsystem Consortium, VHA Mid-America LLC, Curt Nonomaque, Robert J. Baker, Thomas Spindler, Robert Bezanson, Gary Duncan, Maynard Oliverius, Sandra Van Trease, Charles Robb, Michael Terry, Cox Health Care Services of the Ozarks Inc., Saint Luke's Health System Inc. and Stormont-Vail Healthcare Inc. pursuant to Rule 84.06(c), hereby state that their brief complies with the limitations contained in Rule 84.06(b) and Local Rule XLI(A) in that this brief is comprised of 9,201 words.

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

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

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

SAMUEL K. LIPARI
Appellant

v.

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

RESPONDENTS' APPENDIX

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