

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MISSOURI**

**SAMUEL K. LIPARI** )  
**(Statutory Trustee of Dissolved** )  
**Medical Supply Chain, Inc.)** )  
**Plaintiff,** )  
**v.** ) **Case No. 06-0573-CV-W-FJG**  
**GENERAL ELECTRIC COMPANY, et al.,** )  
**Defendants.** )

## PROPOSED SCHEDULING ORDER AND DISCOVERY PLAN

Pursuant to Fed.R. Civ.P. 26(f) and Local Rule 16.1, a conference was held on September 12, 2006, with Samuel Lipari, plaintiff pro se, and John K. Power, attorney for General Electric Company (“GE”), General Electric Capital Business Asset Funding Corporation (“GE Capital”), and GE Transportation Systems Global Signaling, LLC (“GE Transportation”) (collectively the “GE defendants”). Subject to plaintiff’s objections, the parties agree on the following proposed dates:

1. Pretrial discovery disclosures: The parties will exchange the information required under Fed.R.Civ.P. 26(a)(1) on or before September 26, 2006.
2. Amend Claims or Add Parties: Parties will add parties or Amend their claims by November 1, 2006.
3. Discovery Plan. Plaintiff objects to the discovery plan because he believes that the Court does not have jurisdiction over him or his claims. Plaintiff does not want his participation in the discovery plan to be construed as his acquiescence to the court's jurisdiction. Plaintiff contends and recognizes that the court may remand the action but to comply with the court's order the parties jointly propose to the Court the following

discovery plan:

a. Discovery will be needed on the following subjects:

Plaintiff wants discovery on the following subjects:

- The contract
- General Electric's acquisition of Neoforma
- Why General Electric allegedly repudiated
- Factual allegations of each paragraph in complaint
- Conduct of GE through its agents against Michael Lynch Partners for Michael Lynch's court testimony against GE's use of GE Capital to monopolize an aluminum products market, defeating plaintiff's 3<sup>rd</sup> financing attempt

The GE Defendants disagree with plaintiff's statement of discovery because the topics regarding Neoforma and GE Capital's attempt to monopolize an aluminum products market are beyond the scope of plaintiff's allegations in the complaint.

The Plaintiff disagrees with the defendants' characterization of the scope. The complaint identifies GE funding the acquisition of Lipari's competitor Neoforma to monopolize the on line market for *hospital supplies* and the plaintiff will exert its right to present relevant evidence to a jury on how the GE defendants including GE Capital break financing contracts to monopolize a market with a cartel member. This same evidence is relevant to refuting the defendants' defense of failure to find alternative capital.

Defendants want discovery on the following subjects:

- The alleged contract between General Electric and plaintiff

- Plaintiff's failure to perform its conditions under the alleged contract
- What damages, if any, did plaintiff suffer
- What plaintiff claims to be the conduct of others that contributed or lead to plaintiff's damages
- The factual allegations in plaintiff's complaint
- Whether plaintiff is the real party in interest
- Whether plaintiff has legal standing to bring this suit

The plaintiff objects to discovery on whether he is the real party in interest or whether he has standing, both of these issues were raised in the defendants dismissal motion in state court and the defendants were overruled. The plaintiff asserts the removal made this the final determination of the state court on Missouri state law ( the source for determining standing as the proper party under FRCP Rule 17) that must be now given full faith and credit. The plaintiff asserts that the only way to change this ruling is for the defendant to seek to reopen the state case.

- b. All discovery commenced in time to be completed by September 26, 2007.
- c. Joint Protective Order, if agreed, submitted to the Court: Defendant wants a protective order, plaintiff objects. Defendant will submit a proposed protective order by September 29, 2006.
- d. Maximum of 25 interrogatories by each party.
- e. Maximum of 10 depositions by each party.

(1) Deposition time limited to seven hours for all depositions.

(2) Deposition time limited to seven hours for all other fact witnesses.

f. Reports from experts under Rule 26(a)(2) due:

(1) From plaintiff, 90 days before the close of discovery.

(2) From defendants, 45 days before the close of discovery.

g. Supplementation of Rule 26 disclosures: 30 days before close of discovery.

4. Pre-trial conference: The parties request a pre-trial conference.

5. Dispositive motions: Plaintiff objects to the dispositive motion schedule because defendants have used their one allowed 12 (b) 6 motion ( See Palermo, Federal Pretrial Practice: Basic Procedure & Strategy 2001 states at page 21; “Rules 12(g) and 12(h), read together, provide in general, there shall not be more than one Rule 12 motion to dismiss....All defenses and grounds “then available” shall be asserted in the one motion; certain defenses shall be asserted in the Rule 12 motion, or in the initial responsive pleading (or amendment thereof) under threat of waiver”) and plaintiff maintains the defendants converted it into a summary judgment motion by including outside matters. The GE defendants disagree with plaintiff’s characterization of its state court motion. The GE defendants further contend that even if its state court motion was a motion for summary judgment, which it was not, the GE defendants are still entitled to file additional or new dispositive motions with this Court. Dispositive motions in this case shall be filed by October 26, 2007. Plaintiff believes that no dispositive motions should be filed unless permitted by the Court or if plaintiff’s claims are supplemented. If

either event transpires, plaintiff agrees that dispositive motions are to be filed by October 26, 2007.

6. Ready for trial: The parties will be ready for trial in 15 months.

7. Length of trial: Plaintiff estimates the trial will take 20 days. Defendant estimates the trial will take 5-7 days.

Approved and Submitted by:

Sincerely,

/s/ Samuel K. Lipari

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/s/ John K. Power

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