

“Johnson & Johnson, GE Medical Systems, Baxter International Inc., Abbott Laboratories and Medtronic, Inc. announced today that they are creating a global healthcare exchange that will be an independent Internet-based company.” See Exb 6 Medical Supply Brief Statement of Facts.

18. After the interim order of dismissal cited by the defendants in *Medical Supply Chain, Inc. v. General Electric Company, et al.*, KS Dist. case no. 03-2324-CM sought to consolidate the action with *Medical Supply Chain, Inc. v. Neoforma, et al.*, case number 05-2299 under Rule 42 so the plaintiff could pursue claims on subsequent conduct General Electric had become liable for: See Exb. 7 Medical Supply Motion to Consolidate.

19. The plaintiff sought to remind the court and the defendant Jeffrey Immelt that it would be more efficient to litigate the new claims in the continuing action, which the GE Defendants did not oppose. See Exb 8 Motion to Require Pleadings on the Record.

20. *Medical Supply Chain, Inc. v. Neoforma, et al.*, case number 05-2299 was still proceeding when *Lipari v. General Electric et al*, 16<sup>th</sup> Circuit Missouri Case No.0616- CV07421 was filed on March 22, 2006, the plaintiff went ahead and refilled his state law claims against the GE defendants that had been dismissed without prejudice in Missouri State Court at Independence.

21. Subsequent to the state court filing, the Tenth Circuit Court took the extraordinary measure of ordering Jeffrey Immelt personally on January 9, 2007 to show cause why he had not filed for sanctions. See Exb 9 Tenth Circuit Order to Immelt.

22. The conduct plaintiff averred in *Medical Supply Chain, Inc. v. Neoforma, et al.*, became a New York Times November 18, 2007 feature story of the African American Novation LLC manager Cynthia Fitzgerald who witnessed the defendant cartel’s artificial inflation of hospital supplies.

23. Cynthia Fitzgerald’s false claims action was released from under seal and The New York Times which had been covering Novation LLC in the wake of the petitioner’s litigation printed a feature story interviewing Cynthia Fitzgerald who had witnessed the conduct described in the Neoforma complaint against Novation LLC by the petitioner. See Exb 10 Cynthia Fitzgerald Interview.

24. The Plaintiff is seeking recall of the mandate in *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 03-3342 due to US Supreme Court decision overturning Tenth Circuit on Rule 12(b)(6) pleading sufficiency in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007) (2007).

25. The plaintiff is filing the requisite motions with instructions from the Clerk of the Tenth Circuit to seek the recall of the mandate in *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 03-3342

26. The plaintiff is seeking a Rule 60b New Trial in *Medical Supply Chain, Inc. v. Neoforma, et al.*, case no. 05-2299 due to the US Supreme Court decision overturning Tenth Circuit on Rule 12(b)(6) pleading sufficiency in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007) (2007).

27. The district court has struck the motion and is proceeding to sanction the petitioner; however the plaintiff has filed a reconsideration with the Kansas District Court and a mandamus filing with the Tenth Circuit to compel acceptance of the Rule 60b motion and in actuality *Medical Supply Chain, Inc. v. Neoforma, et al.*, case no. 05-2299 continues in Kansas District Court restyled as *Lipari v. US Bancorp et al*. Case no. 07-cv-02146-CM-DJW.

28. The environment in which the plaintiff seeks redress is renown for its tough corporate defense litigation practices encouraged or not reported by members of the Kansas City Metropolitan Bar Association and where the US Attorney for the Western District of Missouri refuses to enforce laws against criminal racketeering in civil litigation

29. Unlawful racketeering acts committed by Shook Hardy and Bacon LLP were described by US Department of Justice when USDOJ attorneys alleged lawyers from Shook Hardy & Bacon LLP acted with "fraudulent intent" in past efforts to protect cigarette manufacturers from lawsuits.

30. Post-trial documents filed Aug. 15 and Aug. 24 in a civil racketeering case against tobacco companies mention at least 15 Shook Hardy lawyers by name and refer to the firm more than 250 times.

A September 2, 2005 Kansas City Business Journal print edition article quoted the Notre Dame Law School professor G. Robert Blakey who stated the government's many mentions of the lawyers in the case are "an indication they could have sued them," "Lawyers should not be above the law, but in practice they are," He said tobacco lawyers were defendants in just two of the 50 states' cases against tobacco companies. Professor Blakey said it's routine practice to excuse lawyers from conspiracy suits, in part because of the extra cost of litigating against a law firm's defenses.

31. Professor G. Robert Blakey's comments as printed in the Kansas City Business Journal are however critical of the US Department of Justice for not including the private law firm or its attorneys as

civil defendants, saying: "It's an indefensible practice," and "It's indefensible if lawyers could have been sued but they were not." See "U.S. attorneys take some shots at Shook Hardy" Exb 11 Mark Kind, Kansas City Business Journal - September 5, 2005.

32. The US Department Of Justice Post Trial Brief in the tobacco case described how key witnesses like the petitioner, his former counsel Bret D. Landrith and their associates were made to fear for their lives in the defense firms' efforts to obstruct justice. See US Department Of Justice Post Trial Brief Exb 3 FN 22 Page 44.

33. The defendants use the dismissal of *Medical Supply Chain, Inc. v. Neoforma, et al.*, case no. 05-2299 that was obtained through the extrinsic fraud filing of Novation, LLC, VHA Inc., University Healthsystem Consortium Robert Baker And Curt Nonomaque's Motion To Set Oral Hearing On Motion To Dismiss , (Doc 76-1) filed on 02/21/2006 in *Medical Supply Chain, Inc. v. Neoforma, et al* by John K. Power, # 70448 of Jeffrey Immelt and the GE defendants' law firm Husch Blackwell Sanders LLP.

34. The defendants repeatedly cite to *Medical Supply Chain, Inc. v. Neoforma, et al.*, case no. 05-2299 as authority advocating the ruling should control the present action in another district and another circuit.

35. The GE Defendants obtained the ruling in *Medical Supply Chain, Inc. v. Neoforma, et al.*, case no. 05-2299 where their cartel co-conspirators Novation LLC and Neoforma, Inc were at risk by filing a fraudulent pleading by John K. Power of Husch Blackwell Sanders LLP (Exb. 12 ) Motion for Hearing while knowing the Kansas District Court had been persuaded through *ex parte* communication to not even read the petitioner's filing in response.

36. The fraud is readily discernable on its face the petitioner's complaint stated all the requisite elements for each federal count. See Exb 13. Plaintiff's Response to Motion for Oral hearing

37. The elements for the antitrust and RICO claims are referenced by element and paragraph number in the complaint in the plaintiff's appeal brief statement of facts at pgs. 19-32. See Exb 14 Lipari Neoforma Appeal Brief Statement of Facts.

38. The defendants are alleged to be RICO conspirators in an ongoing scheme to defraud Medicare and Medicaid but the GE Defendants, Immelt, McDaniel, Heartland, and Foster argue that the plaintiff has sought relief under a cause of action within the Hobbs Act for Extortion.

39. The defendants argue correctly that there is no private right of action under the Hobbs Act for extortion however the petition does not state any causes of action within the Hobbs Act for extortion which can be determined by the petition's jurisdictional statement at ¶¶ 1-4 specifying "18 U.S.C. § 1962 *et seq.* ("RICO") claims" the petition also specifies the federal claims and states the causes of action are for violations of 18 U.S.C. § 1962 *et seq.* at page 20; the petition's table of contents clearly lists only RICO and state law claims and each federal count is identified as a racketeering act of § 1961 extortion or a racketeering act of § 1961 fraud.

40. The defendants Seyfarth Shaw LLP and Jeffrey Immelt are alleged to be members of a § 1962(c) association in fact enterprise and § 1962(d) RICO conspirators in an ongoing scheme to defraud Medicare and Medicaid however they argue that state law claims not raised against Seyfarth Shaw LLP or Jeffrey Immelt should be dismissed.

41. The defendant Seyfarth Shaw LLP argues extensively that the petitioner's state law claims against Seyfarth Shaw LLP should be dismissed because Seyfarth Shaw LLP did not represent the petitioner, and had no legal duty to the plaintiff so is not liable for malpractice or tortious interference with the petitioner's third attempt to cover for the \$350,000.00 business expectancy lost from US Bank and then General Electric's breach; however the plaintiff makes no state law claims against Seyfarth Shaw LLP in the petition and only claims Seyfarth Shaw LLP is liable as a § 1962(d) RICO conspirator and for committing RICO predicate acts of § 1961 fraud.

42. On page 16 of the Jeffrey Immelt memorandum, Immelt acknowledges the state law claims are pled against the GE defendants and not Immelt, however still argues against Immelt's liability for contract based claims he is not charged over.

43. The GE Defendants in their suggestion in support of their motion to dismiss that they will file another Rule 12 (b)(6) motion sometime in the future in order to have their state claims dismissed; however the GE Defendants have not sought leave of the court for a second dismissal before failing to include all their grounds for dismissal and affirmative defenses.

44. The petitioner's state claims have not been amended or altered since Hon. Judge Nixon over ruled the GE defendants' motion for dismissal and suggestion in support.