

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

SAMUEL K. LIPARI)	
(Statutory Trustee of Dissolved)	
Medical Supply Chain, Inc.))	
)	
Plaintiff <i>pro se</i>,)	
)	
v.)	Case No. 07-cv-00849-FJG
)	
GENERAL ELECTRIC COMPANY, et al.,)	
)	
Defendants.)	

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI:

Pursuant to 28 U.S.C. §§ 1331, 1441 *et seq.*, Defendants General Electric Company, General Electric Capital Business Asset Funding Corporation and GE Transportation Systems Global Signaling, LLC (“GE Defendants”) hereby submit this Notice of Removal to the United States District Court for the Western District of Missouri, from the Circuit Court of Jackson County, Missouri. As grounds for removal, the GE Defendants state as follows:

1. GE Defendants desire to exercise their right under the provisions of 28 U.S.C. § 1441 *et seq.*, to remove this case from the Circuit Court of Jackson County, Missouri, in which court said cause was pending under the name and style of Samuel K. Lipari v. General Electric Company, et al., Case No. 0616-cv07421.

2. The case is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and is an action which defendants are entitled to remove to this Court pursuant to 28 U.S.C. § 1441(a), (b) and (c), in that Plaintiff has asserted a federal claim against the GE Defendants.

3. This lawsuit was commenced on March 22, 2006 by Plaintiff Samuel K. Lipari in the Circuit Court of Jackson County, Missouri. Plaintiff's Petition alleged a single state law claim for breach of contract related to an alleged purchase agreement for a building located at 1600 N.E. Coronado Drive, Blue Springs, Missouri. Attached hereto as Exhibit A is a true and accurate copy of Plaintiff's Petition and proof of service on General Electric Company.

4. General Electric Company, General Electric Capital Business Asset Funding Corporation, GE Transportation Systems Global Signaling, LLC, Carpet n' More, Stewart Foster and Heartland Financial were named as defendants in Plaintiff's Petition.

5. Although Plaintiff named Carpet n' More and Stewart Foster as defendants in its Petition, Plaintiff never obtained service on those named defendants. Attached hereto as Exhibit B is a true and accurate copy of the Service Information from the Circuit Court.

6. In addition, although Heartland Financial was initially named as a defendant in this action, on May 4, 2006, the Circuit Court dismissed Plaintiff's Petition against Heartland Financial for failure to state a claim upon which relief could be granted. Attached hereto as Exhibit C is a true and accurate copy of the Circuit Court's Order dismissing the claims against Heartland Financial.

7. As such, the only defendants who were served with the Plaintiff's Petition and not subsequently dismissed by the Circuit Court were the GE Defendants.

8. The Plaintiff's Petition was not removable when it was originally filed because it did not assert a federal question, nor was there complete diversity of the parties. However, on July 17, 2006, the GE Defendants filed a notice of removal in this Court on diversity grounds after it became clear that Plaintiff was not pursuing any claims against the one defendant (Carpet n'More) that defeated diversity. This Court ultimately determined that it could not find that

Plaintiff took any action which indicated his intention to discontinue the action against the non-diverse defendants, and the case was subsequently remanded back to the Circuit Court of Jackson County, Missouri. Attached hereto as Exhibit D is a true and accurate copy of the U.S. District Court's remand Order.

9. On October 10, 2007, Plaintiff filed a "Motion for Leave to Amend Under RMSO 55.33". Plaintiff's motion sought leave from the Circuit Court to file an Amended Petition (a copy of which was attached to the motion) which would add new parties and new claims to this lawsuit. Attached hereto as Exhibit E are true and accurate copies of Plaintiff's "Motion for Leave to Amend Under RMSO 55.33" and the proposed Amended Petition attached thereto.

10. One of the new claims that Plaintiff sought to add through his proposed Amended Petition was a claim under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §1962, *et seq.* Indeed, Plaintiff specifically alleges in his proposed Amended Petition a "CAUSE OF ACTION FOR VIOLATIONS OF 18 U.S.C. § 1962 *et seq.*" (*See* Exhibit E, proposed Amended Petition, p. 20)

11. Further, Plaintiff's allegations under his proposed RICO claim appear to be based upon the defendants' alleged violations of the Hobbs Act, 18 U.S.C. § 1951. Plaintiff specifically alleged that "[t]he defendants committed violations of the [sic] The Hobbs Act, 18 U.S.C. § 1951[.]" (*See* Exhibit E, proposed Amended Petition, p. 25, ¶ 165)

12. The new defendants that Plaintiff has sought to add through his proposed Amended Petition are Jeffrey R. Immelt, Stewart Foster, Heartland Financial USA, Inc., John Schmidt, Bradley J. Schlozman and Seyfarth Shaw LLP.¹

¹ On October 12, 2007, Plaintiff filed with the Circuit Court a "Correction of Proposed Amended Complaint." This pleading purported to attach a "Corrected Amended Petition" presumably intended to take the place of the proposed Amended Petition attached to Plaintiff's October 10, 2007 Motion for Leave to Amend. The "Corrected Amended Petition" tracked the proposed Amended Petition very closely, except it replaced defendant Heartland Financial

13. The Circuit Court granted Plaintiff's Motion to Amend on October 31, 2007, however Plaintiff has yet to file an Amended Petition. Attached hereto as Exhibit G is a true and accurate copy of the Circuit Court's Order granting Plaintiff's "Motion for Leave to Amend Under RMSO 55.33".

14. All of the GE Defendants have joined in this Notice of Removal. Clearly, since the Amended Petition has not been filed yet, no new parties have officially been added to the lawsuit and served with process. Heartland Financial, which was previously dismissed by an Order dated May 25, 2006 (Exhibit C), hereby consents to removal of this action to federal court. See Exhibit H attached hereto.

15. Any civil action brought in State court over which the federal district courts of the United States would have had original jurisdiction may be removed. 28 U.S.C. § 1441(a); 28 U.S.C. § 1331. Whenever a separate and independent claim within the jurisdiction conferred by §1331 is joined with one or more otherwise non-removable claims, the entire case may be removed and the district court may determine all issues therein. 28 U.S.C. §1441(c).

16. This Notice of Removal is timely filed in accordance with the requirements of 28 U.S.C. § 1446(b), in that it is filed within thirty days after receipt by the GE Defendants of an "amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." Specifically, the GE Defendants became aware that Plaintiff was attempting to assert a federal RICO claim under 18 U.S.C. §1962, *et seq.* when the Plaintiff filed its Motion for Leave to Amend (which attached a copy of the proposed Amended Petition) on October 10, 2007.

USA, Inc. with Heartland Financial Group, Inc., and it replaced defendant John Schmidt with Christopher M. McDaniel. Attached hereto as Exhibit F are true and accurate copies of Plaintiff's "Correction of Proposed Amended Complaint" and the alleged "Corrected Amended Petition" attached thereto.

17. Accordingly, this Court has original federal question jurisdiction under 28 U.S.C. § 1331 because the case now involves claims under the laws of the United States. In addition, this Court has supplemental jurisdiction over Plaintiff's state law claims against the defendants under 28 U.S.C. § 1367(a). Thus, the action may be removed to this Court pursuant to 28 U.S.C. §§ 1441 and 1331.

18. For the reasons set forth herein, the United States District Court for the Western District of Missouri is the appropriate court for filing a Notice of Removal from the Circuit Court of Jackson County, Missouri, and accordingly, the GE Defendants seek to remove the case to this Court.

19. The GE Defendants have complied with all applicable requirements of 28 U.S.C. § 1446, and will file a true and correct copy of this Notice of Removal with the State Court. The GE Defendants are also providing Plaintiff with a copy of this Notice of Removal.

WHEREFORE, GE Defendants serve notice that this case is removed from the Circuit Court of Jackson County, Missouri, where it is was pending, to this Court, for the exercise of jurisdiction over this action as though this case had been originally instituted in this Court.

HUSCH & EPPENBERGER, LLC

By: /s/ John K. Power

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ATTORNEYS FOR GENERAL ELECTRIC
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AND GE TRANSPORTATION SYSTEMS
GLOBAL SIGNALING, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was forwarded this 9th day of October, 2007, by first class mail, postage prepaid to:

Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064

/s/ John K. Power