UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
KANSAS CITY, MISSOURI

Case No. 07-0849-CV-W-FJG

SAMUEL K. LIPARI
(Assignee of Dissolved
Medical Supply Chain, Inc.)

Plaintiff

GENERAL ELECTRIC COMPANY, GENERAL ELECTRIC CAPITAL BUSINESS ASSET FUNDING CORPORATION, GE TRANSPORTATION SYSTEMS GLOBAL SIGNALING, LLC, JEFFREY R. IMMELT, SEYFARTH SHAW LLP, STUART FOSTER, HEARTLAND FINANCIAL GROUP, INC., CHRISTOPHER M. MCDANIEL, BRADLEY J. SCHLOZMAN

Defendants

In the United States District Court
for the Western District of Missouri

Hon. Judge Fernando J. Gaitan, Jr. presiding

SUGGESTION IN OPPOSITION TO BRADLEY J. SCHLOZMAN'S MOTION TO DISMISS FILED BY US ATTORNEY JOHN WOOD

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SUGGESTION IN OPPOSITION

Comes now the plaintiff Samuel K. Lipari and makes the following suggestion opposing Bradley J. Schlozman's dismissal from this action.

The controlling standard for this jurisdiction regarding a Rule 12(b)(6) motion for dismissal requires the court to consider the possibility of any facts entitling the plaintiff to relief:

> "The United States Supreme Court and the Eighth Circuit Court of Appeals have both observed that "a court should grant the motion and dismiss the action `only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Handeen v. Lemaire*, 112 F.3d 1339, 1347 (8th Cir.1997) (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984)); accord *Conley*, 355 U.S. at 45-46, 78 S.Ct. 99 ("A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his [or her] claim which would entitle him [or her] to relief.")"

Schuster v. Anderson, 378 F.Supp.2d 1070 at 1082 (N.D. Iowa, 2005).

The US Attorney for the Western District of Missouri, John Wood has taken the highly unusual measure of raising material factual disputes without evidence to support them in the defendant Schlozman's motion for dismissal:

> "To be clear, Schlozman adamantly denies any wrongdoing associated with the dismissal of the Lynch case, the prosecution of the ACORN employees, and his testimony before the United States Senate. "

Schlozman's motion to dismiss, footnote 7 at page 10. The plaintiff has not based his claim against Schlozman for the conduct of prosecuting ACORN employees or dismissing the Lynch False Claims Action. The predicate act alleged by the plaintiff against Schlozman is perjury before the United States Senate as a RICO conspirator and a member of a criminal enterprise distinct from the US Department of Justice an entity the complaint details the infiltration of.

This court can take notice of public records related to remarkable prescience of the plaintiff's petition before this court including the newspaper articles attached to the plaintiff's opposition to Schlozman's motion for extension of time. See exb. 1 Suggestion in Opposition to Extension.

The articles show a grand jury has been convened targeting Schlozman and at the time US Attorney John Wood entered his tardy appearance to defend Schlozman, the US Department of Justice had established probable cause existed to prosecute Schlozman for the conduct the plaintiff's complaint avers and was already preparing an indictment for the specific perjury averred by the plaintiff. The complaint avers that Schlozman was called to testify because the plaintiff press released that Todd Graves was the

Ninth US Attorney wrongfully terminated and that Graves was removed because he prosecuted Medicare fraud. Later discovery has revealed that Schlozman and then John Wood had to be installed in the office of US Attorney for the Western District of Missouri to obstruct justice in the criminal case against Cox-Health of Springfield, MO and its executives to prevent the fines described in the plaintiff's press release that Carol Lam had obtained against the San Diego Tenet hospital. Again the plaintiff refers the court to his objection to extension, exb 2 repeating the plaintiff's request for a show cause order on how USA John Wood can now represent Schlozman.

The Eight Circuit has endorsed use of the public record in weighing a motion to dismiss:

> "In reviewing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court is "not precluded in [its] review of the complaint from taking notice of items in the public record." *Papasan v. Allain*, 478 U.S. 265, 269 n. 1, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986); *Stahl v. U.S. Dep't of Agric.*, 327 F.3d 697, 700 (8th Cir.2003) ("The district court may take judicial notice of public records and may thus consider them on a motion to dismiss")."

Levy v. Ohl, 477 F.3d 988 (8th Cir., 2007).

I. Schlozman's problematic overview

Besides adopting the RICO co-conspirators use of straw man fraud regarding the averments of RICO elements, the US Attorney John Wood attempts to deceive this court after being served notice of the fraud's unlawfulness in the plaintiffs previous suggestion in opposition.

> "*Limone v. Condon*, 372 F.3d 39 at 46 (1st Cir., 2004) "Courts must be equally careful, however, not to permit a defendant to hijack the plaintiff's complaint and recharacterize its allegations so as to minimize his or her liability" *id*. Where the conspirators transcend mere bad lawyering is by knowing beforehand that the false or "Straw Man Fraud" argument will through extrinsic influence be used by a judge or a judge's law clerk to create a dismissal that appears sound but deliberately conceals the rights violations in the underlying complaint and is actuality a participation in the conduct of the defendants."

Plaintiff's Consolidated Suggestion in Opposition at page 16. The US Attorney John Wood also asks this court to dismiss Schlozman as a party and to sanction the plaintiff against future First Amendment protected conduct to seek redress. USA Wood requests this harsh sanction on mere interim orders in ongoing litigation. By dismissing Medical Supply's state claims without prejudice, a determination not opposed or appealed at the time by the defendants, the trial court elected not to make a preclusive final judgment: "A final judgment embodying the dismissal would eventually have been entered if the state claims had been later resolved by the court." *Avx Corp. v. Cabot Corp*., 424 F.3d 28 at pg 32 (Fed. 1st Cir.,

2005). As a non- final judgment, the Memorandum & Orders previously granting dismissals were mere interim orders. *Id*.

Like the unlawful conduct of using straw man fraud, USA John Wood as a representative of Schlozman was on notice that the decisions the overview references were procured through fraud and that the continuing use of this extrinsic fraud to procure adverse outcomes against the plaintiff is itself predicate acts or felonies prohibited under RICO and which USA John Wood is now participating in:

> "2. The defendants are incorrect over the styling of the concurrent Missouri federal case *Lipari, et al. v. General Electric, et al*. Circuit Court of Jackson County, Missouri, Case No. 0616-CV07421 is now styled *Lipari, et al. v. General Electric, et al*. Western District of Missouri Case No. 07-0849-CV-W-FJG previously the same case or controversy was in this court and styled as *Medical Supply Chain, Inc. v. General Electric Company, et al*., case no. 03-2324-CM.
> 3. An interim order merely dismissing the original federal claims was fraudulently procured in *Medical Supply Chain, Inc. v. General Electric Company, et al*., case no. 03-2324-CM by the GE defendants with the help of US Bank and US Bancorp through their agent Shughart Thomson & Kilroy as revealed in attorney billing records filed with this court and sought in discovery by the plaintiff.
> 4. The federal antitrust claims in *Medical Supply Chain, Inc. v. General Electric Company, et al*., case no. 03-2324-CM were dismissed by misrepresenting to this court that the plaintiff had not pled a conspiracy between two legally separate actors when the plaintiff had pled a conspiracy and agreement between the GE defendants and GHX LLC and the US Bank and US Bancorp partner Neoforma LLC and had cited the controlling legal authority that the plaintiff was not required to name as defendants the other co-conspirators identified in the complaint. See Exb. 1 GE Amended Complaint.
> GE agreement with GHX and Novation assigning hospital market share ¶10 pg. 6, Novation acquiring control over Neoforma and partnering it with its hospital supply competitor GHX creating a monopoly of 80% of the hospital supply market ¶ 15 at pg. 9; GE and "cartel members including Premier, Inc. and Novation, Inc." conspired to increase hospital supply prices in the North American Hospital Supply market injuring US hospitals ¶36 pg. 19. See Exb. 1 GE Amended Complaint
> 5. The GE complaint in 03-2324-CM stated at ¶37 pg. 20 and 21 that the GE defendants in a cartel with Novation "… preserve their inflated cost structures (the cartel has prevented the annual $23 billion dollar savings identified by US Bancorp Piper Jaffray's 2001 study by maintaining prices regardless of internal efficiencies) and by preventing the entry of competitors to the relevant market. The defendants willfully acquired and maintained that power by forming the cartel GHX, Inc. to buy an inferior electronic marketplace and exchanging ownership interests with suppliers and distributors that previously were competitors. The defendants further acted to maintain that monopoly by repudiating Medical Supply's financing and lease buy out agreement with full knowledge that Medical Supply had been previously
> prevented from entering the hospital supply e-commerce market by other cartel members of GHX, Inc." See Exb. 1, ¶37 pg. 20 and 21 GE Amended Complaint
> 6. The GE complaint in 03-2324-CM describes the conduct of US Bank and US Bancorp breaching the presently litigated contracts with the plaintiff and stated at ¶3 pg. 4 that:
> "GE appeared to be acting independently of Neoforma, when it accepted Medical Supply's proposal for a lease buy out and financing, but similarly repudiated a contract for essential facilities, preventing entry into the hospital supply market at great sacrifice when Medical Supply was not in a position to find an alternative. (Neoforma's financial partner, **US Bancorp** Piper Jaffray, has attested to a threat of filing a Suspicious Activity Report or "SAR," against Medical Supply under the USA PATRIOT Act, which would destroy Medical Supply's ability to process hospital and supplier purchasing transactions. In an affidavit by Piper Jaffray Vice President and Chief Counsel submitted in Medical Supply vs. **US Bancorp** et al No. 02-3443 (10th Cir.), Piper Jaffray argues to

file a "SAR" at any time it sees fit. Medical Supply is seeking to be protected from Piper Jaffray's extortion and any malicious use of the USA PATRIOT Act. The October 2002 and June 2003, distinct antitrust injuries to Medical Supply prevented it from beginning its operations each time and realizing the expectations of its investors and stakeholders." [Emphasis added]
7. The GE complaint in 03-2324-CM stated at ¶15 pg. 9
"**US Bancorp helped Novation acquire control of Neoforma and partner it with GHX, L.L.C. creating a monopoly of over 80% of healthcare e-commerce market).** GE repudiated a contract, sacrificing $15 million dollars on June 15th, 2003 to keep Medical Supply from being able to compete against GHX, L.L.C. and Neoforma. The healthcare market is worth 1.3 trillion dollars. GE acted on the tremendous windfall to preserve its monopoly." [Emphasis added]"

Exhibit 2 Motion in Opposition to Defendants' Motion to Compel from the US District of Kansas. See also exhibit 2-1 the Amended Complaint against GE in Kansas Court showing the elements for antitrust were present.

The presence of averments required to state the plaintiff's federal antitrust claims in Kansas District Court are not contested, nor the US Supreme Court's determination that not all antitrust co-conspirators have to be named as defendants. Only the power of a judge to rule contrary to controlling authority and the express language of Congressional statute on the basis of disbelief of the plaintiff at the dismissal stage before any discovery is in an ongoing dispute which has now been docketed in the Tenth Circuit Court of Appeals.

A federal criminal complaint was filed in the Kansas City, Missouri office of the FBI by the plaintiff in 2005 over conduct involving extrinsic fraud in the Kansas District Court affecting the GE case referenced by USA John Wood but USA John Wood as successor to Schlozman has yet to responded to the complaint and its accompanying evidence. This is the unfairness addressed in the Restatement (Second) of Judgments that prevents collateral estoppel after a final judgment on the merits, however the Kansas District court has not yet addressed the implication of *Avx Corp. v. Cabot Corp*., 424 F.3d 28 at pg 32 (Fed. 1st Cir., 2005) rendering its orders as interim before the state claims are resolved or even before any discovery has taken place.

The mere interim status of the prior GE orders is underscored by the fact that the present case before this court is the same Article III case or controversy under *Avx Corp. v. Cabot Corp*., 424 F.3d 28 at pg 32 (Fed. 1st Cir., 2005). The Western District of Missouri is not free to use much of the decisions cited by USA John Wood because their interim nature bars any *res judicata* effect via claim and issue preclusion. *Liberty Mut. Ins. Co. v. FAG Bearings Corp*., 335 F.3d 752 (8th Cir., 2003) reaffirms the controlling law of this jurisdiction that the there must be a final judgment on the merits *Liberty Mut. Ins. Co. v. FAG, id*. At

758-760 and changes in facts essential to the judgment renders collateral estoppel inapplicable merits *Liberty Mut. Ins. Co. v. FAG, id*. At 71; and of course Schlozman and Seyfarth Shaw are the different or third parties of § 29 of the Restatement (Second) of Judgments where issue preclusion does not apply. See *Liberty Mut. Ins. Co. v. FAG* at 761-762. A review of this court's preclusions rulings would be de novo, not the higher abuse of discretion standard. *Liberty Mut. Ins. Co. v. FAG* at 757.

The plaintiff also incorporates the public record of an analysis showing referenced decisions were procured by fraud contained in the plaintiff's other suggestion in opposition "Plaintiff's Consolidated Suggestion in Opposition" at pages 5-7 (exb 3). The same excerpt gave notice to USA John Wood that the US Department of Justice has long fostered and protected racketeering conduct by Kansas City area law firms in private litigation.

USA John Wood attempts to have this court misapply the new emphasis on "plausibility ". USA John Wood's Motion to Dismiss overtly advocates dismissing the plaintiff's claims because the court should not believe Samuel K. Lipari in light of sanctions in other litigation by Medical Supply Chain, Inc. in Kansas District Court. As the head government attorney for this district, USA John Wood is responsible for knowing that his argument dishonestly misrepresents the plausibility standard to this court. Regardless, the plaintiff gave notice to the defendants in the plaintiff's motion for extension and consolidation (exb. 4) that the latest US Supreme Court ruling on the subject would figure in their motions to dismiss and provided in advance the legal analysis on the subject by courts in wake of the ruling!

> "5. Since the plaintiff's amendment in state court, a new set of cases describing the pleading standard in the wake of *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007) (2007) may be relevant to the court's resolution of pleading sufficiency issues. The new defendants may seek to address these additional authorities and the plaintiff's recent work in the action against the defendants' co-conspirator US Bancorp in *Lipari v. US Bancorp et al*, Ks. Dist. Court case Case No. 2:07-cv-02146-CM-DJW is available for their counsel's reference at http://www.medicalsupplychain.com/pdf/Lipari%20Response%20to%20Second%20Motion%20to%20Dismiss.pdf "

Plaintiff's Motion for Extension and Consolidation, exb 4 ¶ 5 at page 2.

The pleading referenced by ¶ 5 of exhibit 4 is attached as exhibit 5 and is a reply to the defendants' hospital supply cartel co-conspirators US Bank and US Bancorp's motion to dismiss arguing that the plaintiff's contract claim should be dismissed on "plausibility" because the Kansas District Court should not believe the plaintiff (in light of sanctions obtained against Medical Supply Chain, Inc through the extrinsic fraud of US Bancorp's agents also detailed in the reply). Pages 12 to 15 of the reply are dedicated

to the plausibility factor or element raised in *Bell Atlantic Corp. v. Twombly*, U.S. , 127 S. Ct. 1955, 1965, 167 L. Ed. 2d 929 (2007) and the clarification by the Supreme Court in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007) (2007) admonishing courts that the averments in a complaint at the pleading stage are to be taken as true.

Despite being on notice, USA John Wood is using his overview to cause the court to dismiss the plaintiff's claims against Bradley J. Schlozman out of disbelief and in contradiction to the authority barring such a dismissal in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007) (2007).

The correct standard for dismissal is warranted when "…no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Handeen v. Lemaire*, 112 F.3d 1339, 1347 (8th Cir.1997). The complaint pleads the material facts that prove the plaintiff's allegations even though only Rule 8 applies to the non-fraud averments because the defendants' cartel has repeatedly obtained dismissals arguing (falsely for procuring dismissals and sanctions through extrinsic fraud) an element was not pled or that antitrust conspiracy was not adequately averred. In recognition that now something more than a short and concise statement is needed to plead antitrust and probably RICO conspiracy after *Bell Atlantic Corp. v. Twombly* the plaintiff included the material facts. Because the material facts meeting the elements of RICO are public record and indisputable, just like they were in the plaintiff's federal antitrust cases, the defendants must have the judge sanction the plaintiff and tar and feather his pleadings to stop the litigation at any cost before the plaintiff can present the evidence to the finder of fact, much less conduct discovery.

Now in *Limestone Development v. Village of Lemont, Ill.*, 520 F.3d 797 at 804 (7th Cir., 2008) the Seventh Circuit with caution has adopted the plaintiff's prudent belief *Twombly* is applicable to RICO conspiracy. The plaintiff's pleading was tempered however by the defendants' co-conspirators through Husch, Blackwell and Sanders LLP obtaining sanctions on pleadings for supposedly violating Rule 8 with supplemental detail previously required for antitrust conspiracy by Kansas District Judge Carlos Murguia.

USA John Wood is aware a set of facts could exist that would make Bradley J. Schlozman jointly and severally liable as a member of a RICO enterprise and as a RICO co-conspirator. Any defense counsel for Schlozman would be responsible for knowing that not only the plaintiff's RICO allegations against Schlozman in his capacity as an agent of the Republican National Committee as averred with detail in this complaint but that further misconduct in furtherance of the defendants' scheme to artificially inflate

hospital supply costs and overcharge Medicare and Medicaid were committed by Bradley J. Schlozman and the later US Attorney for the Western District of Missouri, John Wood in obstructing the criminal prosecution of the Novation LLC Hospital CoxHealth in Springfield, Missouri for Medicare fraud. After US Attorney Todd Graves had convened a Grand Jury in this jurisdiction at the displeasure of Karl Rove, US Senator Kit Bond and Governor Matt Blunt, Graves had to be fired by the RICO conspirator Karl Rove.

This further set of facts is detailed at length in exb 6 through exb 6-5 the complaint and appendices in *Lipari v. Novation et al*. a 16th Circuit Court of Missouri case Case No. 0816-cv-04217 filed subsequent to the present racketeering complaint. Under the table of contents for section IV entitled "The Attempt to Interfere With CoxHealth Investigation", the role and conduct of Bradley J. Schlozman, Scott J. Bloch, USA for Kansas Eric F. Melgran and USA John Wood in the obstruction of justice to further the defendants' scheme to overcharge Medicare and Medicaid is described with particularity at pages 20-55. The Novation defendant Lathrop & Gage LC did not seek dismissal of the plaintiff's claims but is instead arguing that Missouri's punitive damages provisions are unconstitutional.

Beyond knowing the existence of a set of facts entitling the plaintiff to relief against Schlozman for RICO violations, John Wood, the US Attorney for the Western District of Missouri worked in the same law office as the defendant and participated in unlawful conduct with Schlozman for the purposes of advancing the defendants' racketeering scheme described in the plaintiff's present RICO complaint. The serious bar to Wood representing Schlozman described in the plaintiff's opposition to extension (see exb 1) is now complicated by USA John Wood denying the plaintiff's complaint against Schlozman states a claim when USA John Wood has personal knowledge of Bradley J. Schlozman's participation in the defendants' scheme as Wood himself did in the plan to settle criminal charges against the Novation LLC hospital Cox Health Care Services Of The Ozarks, Inc. and criminal charges against its officials including Robert H. Bezanson. *United States v. Cancilla*, 725 F.2d 867, 870 (2d Cir.1984) (defendant could not waive a conflict where, unbeknownst to him, his counsel allegedly engaged in criminal activities similar to the charges against defendant with a possible co-conspirator of defendant).

The plaintiff attempted to alert the Office of the US Attorney for the Western District of Missouri of the impossibility of providing Schlozman a defense and even sent a letter informing Assistant US Attorney Jeffrey P. Ray of Ray's responsibility to file an ethics complaint against USA John Wood with the

US Department of Justice Office of Professional Responsibility for Wood's entry of an appearance as Schlozman's defense counsel in an action against Schlozman in his private capacity as an agent of the Republican National Committee, filed after Schlozman was no longer a government official. See exb 7. Letter to Jeffrey P. Ray.

When courts have attempted to hold RICO complaints to a now discredited heightened standard of pleading[1] it has been to avoid the temptation "to dress a garden-variety fraud and deceit case in RICO clothing." *Condict v. Condict*, 826 F.2d 923, 929 (10th Cir. 1987). The problem the USA John Wood has with invoking a non law based bias against RICO claims and subjecting the plaintiff to a heightened standard is that the claims against the GE defendants had been paired down (albeit through extrinsic fraud in getting the federal antitrust claims dismissed) to state law contract related misconduct. Then the defendants in concert committed numerous racketeering acts to interfere with even the resolution of the plaintiff's state claims. The US Supreme Court has rejected the argument judges should intercede to prevent RICO from being used to prevent "over-federalization" of state law prohibited conduct: "Whatever the merits of petitioners' arguments as a policy matter, we are not at liberty to rewrite RICO to reflect their—or our—views of good policy" *Bridge v. Phoenix Bond & Indemnity Co*., No. 07-210 (U.S. 6/9/2008) (2008).

The present complaint details these acts subsequent to the dismissal of the federal antitrust claims and USA John Wood knows some of the acts were done and Wood willingly became a latecomer to the conspiracy, fraudulently participating in a malicious investigation of the plaintiff for the purpose of attempting to fraudulently conceal the unauthorized use of electronic eavesdropping and other measures used by Schlozman for the RNC for the purpose of interfering in the plaintiff's civil litigation (and to procure the sanctions Wood now attempts to use to mislead this court) all of which is detailed in the complaint.

II. Schlozman's assertion the complaint does not establish an "enterprise" involving Schlozman for purposes of civil RICO.

[1] The latest to resolve this issue is the 11th Circuit: "We now hold that RICO predicate acts not sounding in fraud need not necessarily be pleaded with the particularity required by Fed. R. Civ. P. 9(b)." *Liquidation Commission of Banco Intercontinental v. Renta*, No. 06-15388 at pg. 32 (11th Cir. 6/19/2008) (11th Cir., 2008).

The plaintiff loaned Rosalind Wynne the computer to organize her notes on the False Claims being made against Medicare by Blue Cross Blue Shield of Kansas. At every step of the way she was blocked by the Western District of Missouri Office of the US Attorney. This was just a small part of the nationwide enterprise under the control of the defendants and Novation LLC to loot Medicare. The plaintiff's complaint adequately pleads the enterprise to defraud Medicare and Medicaid by overcharging for hospital supplies and the defendants' various roles in protecting the ongoing Novation LLC scheme. The alleged enterprises do not include a bankruptcy. The complaint clearly pleads the over arching enterprise. It is a concerted effort by Volunteer Hospital Association, University Healthcare Consortium, Novation LLC, Neoforma, Inc. General Electric and GHX LLC to defraud Medicare and Medicaid. Schlozman's alleged role, like Seyfarth Shaw's are mere bit parts. Schlozman's is in the obstruction of the plaintiff's efforts to obtain redress and recover his business property required to enter the market for hospital supplies monopolized by the Novation LLC just like Seyfarth Shaw's is in destroying the plaintiff's third effort to cover for the escrow accounts withheld by US Bancorp by obtaining Michael W. Lynch's assistance in arranging underwriters for the investment capital. General Electric knowingly participated in destroying the plaintiff's second effort to use property he had obtained to enter the market for hospital supplies and it appears funded Seyfarth Shaw's destruction of Lynch.

Like Seyfarth Shaw's misleading arguments Schlozman has incorporated by reference according to footnote 4 at page 4 of Schlozman's motion including co-conspirators must be in privity (improperly citing state law[2] not, the far higher federal standard excluding privity this court is required to follow and ignoring Seyfarth's conduct is after the cited Kansas District Court decisions) USA John Wood misrepresents the current state of civil RICO law.

This circuit has not resolved whether the association-in-fact enterprise Schlozman is alleged to be part of requires proof of a common fraudulent purpose at the summary judgment phase. See *Craig Outdoor Advertising, Inc. v. Viacom Outdoor, Inc*., No. 06-3341 at pg. 33 (8th Cir. 6/4/2008) (8th Cir., 2008). However the complaint avers Schlozman was a member of an association-in-fact enterprise and that he committed perjury before the US Senate in a conspiracy to protect the enterprise from discovery (the

[2] "Here the res judicata effect of the first judgment, which was entered in federal court and based on federal law, is governed by federal law. See *Canady v. Allstate Ins. Co*., 282 F.3d 1005, 1014 (8th Cir. 2002)" *Friez v. First American Bank & Trust of Minot*, 2003 C08 394 (USCA8, 2003) See also the court's analysis at ¶22 precluding privity.

complaint alleges Schlozman was called to testify because of a surprising chain of events triggered by the plaintiff's press release about the wrongful firing of USA Todd Graves published by the plaintiff because the conspiracy was preventing the plaintiff from obtaining discovery on his contract claims in state court).

Among the details in the complaint condemned as surplus by the other defendants are the relationships, structures and hierarchies of both legitimate and illegitimate organizations satisfying the structure requirements at least at the pleading stage for an enterprise. Bradley J. Schlozman's enterprise and the organizations Schlozman has conspired with would not embarrass "The Chicago Vice Lords." See *Limestone Development v. Village of Lemont, Ill*., 520 F.3d 797 at 804 (7th Cir., 2008) citing *United States v. Jackson*, 207 F.3d 910, 914 (7th Cir.), vacated and remanded for reconsideration on unrelated grounds, 531 U.S. 953, 121 S.Ct. 376, 148 L.Ed.2d 290 (2000). "'[T]he existence of an association-in-fact is oftentimes more readily proven by what it does, rather than by abstract analysis of its structure.' *United Stabs v. Coonan*, 938 F.2d 1553, 1559 (2d Cir.1991)" *Republic of Colombia v. Diageo North America Inc.*, 531 F.Supp.2d 365 at 422 (E.D.N.Y., 2007). *Republic of Colombia* happens to be a supply chain RICO control case to artificially inflate retail liquor prices detailed at 423-427 that is not unlike Novation LLC.

The complaint describes an organization bigger and with more capacity than that required to commit the alleged predicate acts. The failure to do this by other plaintiffs creates the case law where an enterprise is insufficiently averred. Thus, the defense counsel's continual whining over the robustly detailed enterprises and conspiracy in the plaintiff's complaint. In actuality, this quality of the plaintiff's complaint is the Eight Circuit's defining criteria for the sufficiency of an enterprise:

> "The Eighth Circuit Court of Appeals has defined this characteristic as follows:
> Th[e] distinct structure might be demonstrated by proof that a group has engaged in a diverse pattern of crimes or that it has an organizational pattern or system of authority beyond what was necessary to perpetrate the predicate crimes [....] **Thus, the "focus of the inquiry" on this characteristic is "whether the enterprise encompasses more than what is necessary to commit the predicate RICO offense."** [*Diamonds Plus, Inc*., 960 F.2d at 770].
> *Gunderson*, 85 F.Supp.2d at 916 (quoting *Reynolds v. Condon*, 908 F.Supp. 1494, 1509 (N.D.Iowa 1995))."[Emphasis added]

Schuster v. Anderson, 378 F.Supp.2d 1070 at 1096 (N.D. Iowa, 2005).

Quite simply, the plaintiff's complaint alleges an enterprise by the current Eighth Circuit standard, related predicate acts that pose a threat of continuing criminal activity:

> "To constitute racketeering activity under RICO, the predicate acts must be related and must "amount to or pose a threat of continued criminal activity." *H.J. Inc. v. Northwestern Bell Tel. Co*., 492 U.S. 229, 239 (1989). "Any recoverable damages occurring by reason of a violation of §

1962(c) will flow from the commission of the predicate acts." *Sedima, S.P.R.L. v. Imrex Co*., 473 U.S. 479, 496 (1985)."

Dahlgren v. First National Bank of Holdrege, No. 07-1951 (8th Cir. 7/11/2008) (8th Cir., 2008).

III. Schlozman's assertion the complaint does not establish a "pattern" of racketeering activity involving Schlozman for purposes of civil RICO.

US Attorney John Wood is attempting to deceive this court into overruling *Bridge v. Phoenix Bond & Indemnity Co*., No. 07-210 (U.S. 6/9/2008) (2008) and defying the US Supreme Court by imposing a heightened civil RICO pleading standard to throw out the plaintiff's complaint on failure to plead a "pattern" despite having *fourteen* ! predicate acts by members of Schlozman's enterprise and conspiracy along with continuing criminal activity by the conspirators in the Novation LLC enterprise to defraud Medicare and Medicaid. The US Attorney John Wood is attempting to defraud the court by expressly using the "garden-variety" misconduct argument at page 8 of his motion to dismiss that was specifically rejected by our nation's highest court.

The complaint alleges a RICO enterprise recognizable in other court rulings:

"The Amended Complaint further alleges, although in a somewhat disjointed fashion, each individual Defendant's participation in the scheme, and their relationship to each other. Id. at ¶¶ 61-133. Finally, the allegations in the Amended Complaint regarding the interrelationship between the Defendants and the use of the same Mortgage Brokers, Title Companies and Appraisers with respect to numerous loan transaction support a conclusion that the enterprise was an "ongoing organization," within which the members "function[ed] as a continuing unit." *Turkette*, 452 U.S. at 583, 101 S.Ct. 2524. Drawing all inferences in favor of Superior, the Court finds that Superior's allegations that the Defendants associated together sufficiently alleges the existence of an "enterprise" under RICO. See *Nunes*, 609 F.Supp. at 1064."

Superior Bank, F.S.B. v. Tandem Nat. Mortg., Inc., 197 F.Supp.2d 298 at 325 (D. Md., 2000)

The complaint adequately alleges that Schlozman was a co-conspirator:

"An agreement to participate in a RICO conspiracy may be shown either by proving "an agreement on the overall objective of the conspiracy" or by showing that the defendant agreed to commit two predicate acts. *United States v. Browne*, 505 F.3d 1229, 1264 (11th Cir. 2007) (citation omitted). The existence of an agreement, as well as its objective, may be inferred from circumstantial evidence demonstrating "that each defendant must necessarily have known that the others were also conspiring to participate in the same enterprise through a pattern of racketeering activity." *Id*. (citation omitted). But this does not require proof that "each conspirator agreed with every other conspirator . . . [or] was aware of all the details of the conspiracy." *Starrett*, 55 F.3d at 1544. Indeed, participation in a conspiracy may be inferred merely from acts which furthered its object. *United States v. Kopituk*, 690 F.2d 1289, 1323 (11th Cir. 1982), cert. denied, 463 U.S. 1209 (1983) (citation omitted)."

Liquidation Commission of Banco Intercontinental v. Renta, No. 06-15388 at pg. 25 (11th Cir. 6/19/2008) (11th Cir., 2008)

US Attorney John Wood instead advocates a wholesale revolution in criminal law by asking this court to make a civil RICO precedent invalidating the low threshold for racketeering conspiracy which would result in overhauling Rule 8b of criminal procedure:

> "It is clear that in conspiracy cases, particularly RICO cases, the mere allegation of conspiracy is sufficient to tie defendants closely enough together for Rule 8(b) purposes. A RICO count itself, "virtually by definition, ... constitute[s] a `series of acts or transactions' sufficiently intertwined to permit a joint trial of all defendants." *United States v. Bagaric*, 706 F.2d 42, 69 (2d Cir.), cert. denied, 464 U.S. 840, 104 S.Ct. 133, 134, 78 L.Ed.2d 128 (1983). Equally, the racketeering acts constituting the alleged RICO violation are closely enough related to permit a joint trial under Rule 8(b).17 The only question is whether Simon's alleged extortion of Ralph Lawrence is part of the same series of acts or transactions as any of the racketeering acts, so as to sustain joinder under Rule 8(b)."

U.S. v. Biaggi, 705 F.Supp. 852 (S.D.N.Y., 1988).

United States v. Weisman, 624 F.2d 1118, 1129 (2d Cir.), cert. denied, 449 U.S. 871, 101 S.Ct. 209, 66 L.Ed.2d 91 (1980) cautioned against precisely this result when the loose RICO pattern standard is eviscerated to defeat the element against one co-conspirator:

> "If ... [predicate] acts could properly be considered part of a "pattern of racketeering activity," we see no reason why they could not similarly constitute part of a "series of acts or transactions constituting an offense" within the meaning of Rule 8(b). Indeed, a construction of Rule 8(b) that required a closer relationship between transactions than that necessary to establish a "pattern of racketeering activity" under RICO might possibly prohibit joinder in circumstances where Congress clearly envisioned a single trial."

US v. Weisman at pg 1129.

IV. Schlozman's assertion the complaint does not establish that Schlozman committed any predicate acts for purposes of civil RICO.

The USA Attorney implies what Seyfarth Shaw's clearly erroneous or intentionally misleading enterprise overtly states that the plaintiff's complaint detailing misconduct to disrupt the plaintiff's efforts at redress do not state predicate acts because extrinsic fraud or extortion to procure court outcomes contrary to controlling law cannot be an enumerated RICO predicate act or cannot be the goal of an enterprise. The plaintiff has clearly stated the existence of an enterprise, averred that Bradley J. Schlozman and Seyfarth Shaw were part of the association in fact enterprise and that they made false pre-litigation statements and threats (yes Seyfarth Shaw extorted the plaintiff and made false representations in the pre-litigation stage of the disputes between the plaintiff and Lipari) as well as committing extortion during the litigation. USA John Wood, Bradley J. Schlozman and the lawyers of Seyfarth Shaw should refrain from attempting to be admitted to the bar in the State of New York where the issues raised by them would not be suffered long:

> "In the instant case, plaintiffs have pled the illegal acts of the defendants which constitute "racketeering activity" and the methods used by them which caused injury to plaintiffs. The alleged pattern of racketeering engaged in by defendants includes: the use of the U.S. mail to fraudulently obtain the judgment confirming the Beth Din arbitration award; filing and recording the allegedly fraudulent deed of January 15, 2004; sending checks issued by defendants in furtherance of their scheme; filing documents with respect to the eviction of the Ungar family in the Housing Part of Civil Court, Kings County; colluding among themselves in filing false statements in their answers; and, the use of telephone wires on numerous occasions to call UNGAR to have him induce WEISZ to resign as Trustee of the TRUST. Plaintiffs allege that each of the defendants acted in concert through an illegal "enterprise" to commit the theft of 1941 51st Street from UNGAR. **The definition of "enterprise," pursuant to 18 USC § 1961 (4), includes a "group of individuals associated in fact although not a legal entity." Thus, FELLER, JULIAN and UZIEL are all alleged to be part of an "enterprise" formed to defraud the TRUST and UNGAR. Therefore, plaintiffs allege that the violations of the RICO statutes by defendants FELLER, JULIAN and UZIEL are the proximate cause of plaintiffs' injuries, and are subject to civil penalties of treble damages plus attorneys' fees. (18 USC § 1964 (c);** *Anza v. Ideal Steel Supply Corp*., 547 US 451, 457 [2006]; *Sedima, S.P.R.L. v. Imrex Co., Inc*., 473 US 479, 497 [1985]; *McLaughlin v. American Tobacco Co*., 522 F3d 215 [2d Cir 2008])."

Becher v. Feller, 2008 NY Slip Op 51060(U) at pg. 10 (N.Y. Sup. Ct. 5/29/2008).

Schlozman is alleged to be a RICO conspirator and the conspiracy does not even have to have committed a predicate act for Schlozman to be liable: "*In re Motel 6 Securities Litigation*, 161 F.Supp.2d 227 at 237 (S.D.N.Y., 2001). **RICO conspiracy does not require the government to prove that any predicate act was actually committed at all**." [Emphasis added]" Plaintiff's Consolidated Suggestion at pg. 18.

V. Schlozman's assertion the complaint does not establish that he has standing to assert a civil RICO claim as to any of the predicate acts allegedly committed by Schlozman.

The complaint alleges that the plaintiff was injured in his business by the conduct of the conspirators, and the enterprise Schlozman is alleged to be part of. The complaint specifically charges Bradley J. Schlozman only in his individual capacity as a private citizen and as an agent for The Republican National Committee, an organization that is not the government. The Supreme Court handed down an opinion holding that there is no constitutional impediment to allowing a case to proceed while the President is in office. See *Clinton v. Jones*, 520 U.S. 681, 117 S.Ct. 1636, 137 L.Ed.2d 945 (1997). "[i]mmunities are grounded in `the nature of the function performed,'" rather than in the lawful or unlawful motivations of the person performing them. (P. Opp. at 10, quoting *Clinton v. Jones*, 520 U.S. 681, 693, 117 S.Ct. 1636, 137 L.Ed.2d 945 (1997)). Schlozman is alleged to commit perjuryin the function of a testifying witness for the purpose of concealing the RICO enterprise in conspiracy with other agents of the RNC. Perjury cannot be a core function of Schlozman's former office in the USDOJ protected from

judicial "intrusion" in the form of private lawsuits for damages under *Nixon*, 457 U.S. at 754, 102 S.Ct. 2690. Also Schlozman was not a prosecutor at the time he falsely testified to the US Senate Judiciary Committee so his perjury is not immunized under *White v. Murphy*, 789 F.2d 614 (8 Cir.1986).

USA John Wood seeks to mislead the court by fraudulently stating the complaint alleges predicate acts by Schlozman for decisions whether to prosecute or not prosecute a case. Here again USA John Wood shamelessly commits the same straw man fraud harshly condemned in *Limone v. Condon*, 372 F.3d 39 at 46 (1st Cir., 2004) and which John K. Power of Hush Blackwell Sanders LLP used to procure facially erroneous decisions in Kansas District Court, despite notice of the unlawfulness. There is no predicate act in the fourteen charged by the plaintiff for prosecutorial decisions, the eleventh count charges Schlozman with the predicate act of perjury to defraud the US Senate where Schlozman's function was that of witness, not prosecutor or mere USDOJ assistant attorney. The perjuries alleged included misrepresentations over ministerial decisions including hiring decisions in violation of the Hatch Act and knowledge of the unlawful firing of USA Todd Graves.

CONCLUSION

Congress has determined what the requirements are for seeking redress in RICO. The latest Supreme Court ruling, (post dating USA John Wood's authorities) *Bridge v. Phoenix Bond & Indemnity Co*., No. 07-210 (U.S. 6/9/2008) has cautioned judges not to impose requirements that are not in the RICO statutes. The plaintiff has met the pleading requirements. Similarly, in authority not addressed by USA John Wood, *Erickson v. Pardus,* the court has clarified in the wake of *Twombly* that in the pleading stage before discovery has commenced, the court is required to accept the plaintiff's averments as true.

If the USA Attorney's assertions have any validity it will only be after discovery has been conducted and the action proceeds to summary judgment phase without evidence to support the plaintiff's complaint. Unfortunately, what the court is witnessing is however USA John Wood acting contrary to law and representing Schlozman, a fellow participant in what has plagued the Western District Court's ability to resolve the *Medical Supply Chain, Inc. v. Neoforma, et al*., Case No. 05-0210-CV-W-ODS antitrust litigation against Novation LLC, now attempting to stop the plaintiff from putting on evidence to the finder of fact.

Respectfully submitted,

S/ Samuel K. Lipari
Samuel K. Lipari

CERTIFICATE OF SERVICE

I certify I have sent a copy via email to the undersigned and opposing counsel via ECF on 7/22/08 through posting an electronic file with the Clerk of the Western District of Missouri Court.

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