

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

SAMUEL K. LIPARI,)
Plaintiff,)
v.) Civil No. 07-0849-CV-W-FJG
GENERAL ELECTRIC COMPANY, *et al.*,)
Defendants.)

**REPLY SUGGESTION TO THE GENERAL ELECTRIC DEFENDANTS
OPPOSITION SUGGESTION OPPOSING RULE 59 RELIEF**

Comes now the plaintiff Samuel K. Lipari and replies to the General Electric Defendants' suggestion.

a. GE Defendants Argument That There Is No Newly Discovered Material Evidence Which Would Support An Alteration or Amendment of the Court's Judgment is Frivolous.

The plaintiff has not raised any new evidence to support his Rule 59(e) Motion. There has been no discovery yet. The plaintiff's motion is solely on the basis of clear error or manifest error and injustice.

b. GE Defendants' Argument That Plaintiff Has Failed to Establish a Manifest Error of Law or Fact Which Would Support a Rule 59(e) Motion is Frivolous.

The plaintiff's Rule 59(e) motion is based on this court's manifest error of law finding that the plaintiff lacks injury based standing to pursue his racketeering claims. The court's 7/30/2008 order dismissing the plaintiff's claims contradicts a unanimous US Supreme Court ruling in *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07-210 (U.S. 6/9/2008) that is both the controlling authority for this court and stare decisis on the issue of sufficiently pleading standing. There is no greater manifest error possible.

The plaintiff's Rule 59(e) motion is based on this court's manifest error of fact. The plaintiff's claims are replete with averments of concrete injury that is not speculative. The show cause order as a matter of controlling Tenth Circuit law evidenced the Kansas District Court's continued consideration of *MSCI v. Neoforma, Inc.* The case is still not a final judgment because on August 11, 2008 the Tenth Circuit US Court of Appeals in *MSCI v. Neoforma, Inc.* Case no. 08-3187 denied the defendants' motion to dismiss the appeal.

The plaintiff incorporates by reference the plaintiff's Reply Suggestion To Defendant Seyfarth Shaw LLP's Opposition Suggestion Opposing Rule 59 Relief and the plaintiff's Reply Suggestion To Defendant Schlozman's Opposition Suggestion Opposing Rule 59 Relief.

c. GE Defendants' Argument Plaintiff's Recusal Argument Lacks Merit is Frivolous.

The plaintiff's Rule 59(e) observation that the court has not yet ruled on the plaintiff's § 455 motion for recusal is not a new motion for recusal in the "eleventh hour." The GE defendants citation to an out of jurisdiction case *Twist v. Department of Justice*, 344 F.Supp. 137 (D. D.C. 2004) to argue timeliness is frivolous in that neither the case nor the GE defendants address the controlling case law of the Eighth Circuit *Little Rock School District v. Armstrong*, No. 02-3867EA (8th Cir., 2004) that this action is the same matter or controversy as when this action was earlier removed and the § 455 motion for recusal has yet to be answered. Nor has Hon. Judge Fernando J. Gaitan disclosed his 28 U.S.C. § 455(b)(5)(i) directorship in St. Luke's, the timeliness rule of *Kansas Public Employees Retirement System, In re*, 85 F.3d 1353 at 1359 (C.A.8 (Mo.), 1996) isn't implicated until after the court's disclosure: "455(a) objections can be waived after a court gives full disclosure of the grounds for disqualification. 28 U.S.C. § 455(e)." *Kansas Public Employees Retirement System, In re*, 85 F.3d 1353 at 1359.

The temporal relationship of this court's order with the defendants conduct procuring dismissals in the 16th Circuit of Missouri state antitrust action against the defendants' cartel and a show cause order designed to effect a dismissal of the plaintiff's contract claims against the defendants' cartel members US Bank and US Bancorp exceeds that rejected in *Glass v. Pfeffer*, 849 F.2d 1261 at 1268 (C.A.10 (Kan.), 1988) and gives rise to the appearance of a lack of independence or extra judicial bias and prejudice by this court.

The plaintiff incorporates by reference the plaintiff's Reply Suggestion To Defendant Seyfarth Shaw LLP's Opposition Suggestion Opposing Rule 59 Relief and the plaintiff's Reply Suggestion To Defendant Schlozman's Opposition Suggestion Opposing Rule 59 Relief.

CONCLUSION

Whereas for the above reasons, the GE defendants' objection to the Rule 59(e) Motion is frivolous. The plaintiff respectfully requests the court withdraw its memorandum and order dismissing the plaintiff's federal claims.

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 email on 8/25/08.

John K. Power
Leonard L. Wagner
Michael S. Hargens
Husch Blackwell Sanders, LLP
1200 Main Street
Suite 2300
Kansas City, MO 64105
(816)283-4651
Fax: (816)421-0596
john.power@husch.com
lwagner@kcsouthern.com
michael.hargens@husch.com
via email
Attorneys for the GE Defendants

J. Nick Badgerow
Spencer Fane Britt & Browne, LLP
9401 Indian Creek Parkway
Suite 700
Overland Park, KS 66210
(913)327-5134
Fax: (913)345-0736
Email: nbadgerow@spencerfane.com
Attorney for Seyfarth Shaw LLP

Jeffrey P. Ray
Office of the United States Attorney
400 E. 9th St.
Room 5510
Kansas City, MO 64106
(816) 426-3130
Fax: (816) 426-3165
Jeffrey.Ray@usdoj.gov
Attorney for Bradley J. Schlozman

S/ Samuel K. Lipari

Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064
816-365-1306
saml@medicalsupplychain.com
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