

**IN THE STATE OF MISSOURI  
WESTERN DISTRICT COURT OF APPEALS  
AT KANSAS CITY, MISSOURI**

SAMUEL K. LIPARI	)
<i>Appellant</i>	)
	)
	) <b>Case No. WD72559</b>
vs.	) <b>(16th Cir. Case No. 0916-CV38273)</b>
	)
	)
CHAPEL RIDGE MULTIFAMILY LLC,	)
et al.,	)
<i>Respondents</i>	)

**NOTICE OF APPELLANT’S VOLUNTARY DISMISSAL OF  
APPEAL UNDER MISSOURI SUPREME COURT RULE 84.09**

Comes now the petitioner, Samuel K. Lipari appearing *pro se* and respectfully dismisses his appeal.

**Statement of Facts**

1. The significance is not lost on the appellant that this court made an order that did not grant remand of the appeal on the day after the electorate of the State of Missouri overwhelmingly passed a resolution against the requirement of mandatory health insurance coverage.
2. The appellant was denied Missouri Supreme Court review of this court’s ruling by the honorable judges THOMAS H. NEWTON, LISA WHITE HARDWICK, and CYNTHIA R. MARTIN, in *Lipari vs. VHA-Novation et al.* Appeal (WD-70832) that contradicted the Western District Court of

Appeal's own controlling precedents and the law of the State of Missouri immediately after the appellant publicly criticized Senator Claire McCaskill's role in improperly influencing outcomes in Missouri state courts that led to the legislated public policy of Missouri in protecting its healthcare markets from being monopolized causing death and injury to its citizens and the loss of thousands of jobs, being violated.

3. This court has previously ruled against requiring the 16<sup>th</sup> Circuit Court of the honorable Judge JOHN M. TORRENCE to docket the pleadings filed by the appellant in an order signed by the Clerk of the Western District of Missouri Appellant Court TERRANCE LORD and the absence of these filings renders this appeal futile and a meaningful review of the trial court's order impossible.

4. Further investigation has revealed that the trial court of the honorable Judge JOHN M. TORRENCE's judgment was void *ab initio* where Service of Process was not effected on the defendants CHRIS M. TROPBITO, NICHOLAS L. ACKERMAN, and WELLS FARGO under Rule 74.01's requirement judgments must dispose of all parties and issues.

5. Further investigation has also revealed that the trial court of the honorable Judge JOHN M. TORRENCE's judgment was void *ab initio* where all claims against all parties were not dismissed by granting the defendants'

dismissal motions that did not seek dismissal of the appellant's claims for relief under 18 U.S.C. § 1962 (d) RICO Conspiracy.

6. Further investigation has also revealed that the trial court of the honorable Judge JOHN M. TORRENCE's order adopting the defendants' arguments that closed ended continuity had not yet exceeded two years is a determination that appellant's § 1341 Mail Fraud; § 1343 Wire Fraud; and 18 U.S.C. §1951 Hobbs Act Extortion averments have not yet ripened into Predicate Acts chargeable under 18 U. S. C. § 1961 *et seq*, therefore preventing preclusion of a future action against the defendants' racketeering enterprise and RICO conspiracy with Novation LLC.

7. The defendants WACHOVIA DEALER SERVICES INC., TONY R. MILLER, CHRIS M. TROPBITO, NICHOLAS L. ACKERMAN, and WELLS FARGO COMPANY are still committing predicate acts of § 1341 Mail Fraud; § 1343 Wire Fraud; and 18 U.S.C. §1951 Hobbs Act Extortion racketeering violating 18 U. S. C. § 1961 *et seq*. making it premature for the appellant to sue the members of the defendants' 18 U. S. C. § 1962 (d) RICO Conspiracy.

8. Further investigation has also revealed that the appellant is not required to pursue state law remedies before filing subsequent RICO 18 U. S. C. § 1961 *et seq* claims against the GE Defendants and JEFFREY IMMELT.

9. The Western District of Missouri Court of Appeals does not have jurisdiction over the present appeal.

10. No defendant has entered an appearance as an appellee or responded to the appellant's motions in the present appeal.

11. The Western District of Missouri Court of Appeals does not have a justiciable case or controversy before it.

### **Suggestion in Support**

The appellant voluntarily dismisses his appeal because there was no order of the trial court that was final or otherwise appealable pursuant to § 512.020 and Rule 74.01(b).

Missouri Supreme Court Rule 84.09 expressly states “An appellant may file a dismissal of the appellant's appeal in the appellate court at any time prior to the submission of the cause in the appellate court.” The state's Eastern District has further elaborated that : “A voluntary dismissal of the appeal necessarily occurs after the judgment has been entered and an appeal has been filed.” *In Re: Alphonse Forbeck*, No. ED 93195. at fn 6 (May 18, 2010).

The appellant has determined that there has been no judgment from which an appeal can yet be taken in the underlying action. A prerequisite to appellate review and to appellate jurisdiction is that there be a final

judgment. See Sec. 512.020, RSMo 2000; *In re Marriage of Werths*, 33 S.W.3d 541, 542 (Mo. banc 2000).

The trial court's labeling its order a "judgment" is not determinative of whether the ruling was final or with prejudice against all of the claims and against all of the parties the appellant brought suit against:

"Merely calling an order a "judgment" does not make it one.

While designating a trial court decision a "judgment" is essential under *City of St. Louis v. Hughes*, 950 S.W.2d 850, 853 (Mo. banc 1997), for there to be a final judgment for purposes of appeal, this does not mean that merely calling a decision a "judgment" makes it one. Cf. *In re J.W.P.*, 986 S.W.2d 198, 199 (Mo.App.1999)."

*Dangerfield v. City Of Kansas City*, No. WD 61294 (June 30, 2003).

The trial court did not make a final order disposing of all claims against all parties by adopting the defendants' motions to dismiss which failed to seek dismissal against most RICO Conspiracy charges brought by the appellant and consequently, the order is not a judgment under Rule 74.01(b) and under controlling Western District precedent in *Habahbeh v. Beruti*, 100 S.W.3d 851 (Mo. App., 2003).

The trial court did not make a final order disposing of all claims against all parties because the court never obtained jurisdiction over three defendants named in the Amended petition:

“[o]nly by service of process authorized by statute or rule (or by appearance) can a court obtain jurisdiction to adjudicate the rights of a [party]. Actual notice is insufficient.” *Worley v. Worley*, 19 S.W.3d 127, 129 (Mo. banc 2000).

Consequently, the order is not a judgment under Rule 74.01(b) and under controlling Western District precedent in *Habahbeh v. Beruti*, 100 S.W.3d 851 (Mo. App., 2003) for failure to serve three of the defendants.

The trial court could not continue making dispositive rulings in the proceeding before it after the plaintiff filed a change of venue motion having an automatic effect and depriving the trial court of jurisdiction and authority to make judgments. The timely Motion to Change Venue was automatic in effect and deprived the trial court of the jurisdiction to enter dismissals of parties in this action under *State Lebanon School District III v. Winfrey State ex rel. Lebanon School District R-III, v. The Honorable Larry WINFREY*, Case No. SC 86873 (January 31, 2006). The trial court’s order was void *ab initio*. See *Davis v. J.C. Nichols Co.*, 768 S.W.2d 81, 83 (Mo.App.1986)

(holding that where a court is without authority to act, its proceedings are void).

The Missouri Constitution confers jurisdiction upon the circuit courts over “cases and matters.” MO. CONST. art. V, sec. 14(a). Article V of the Missouri Constitution governs subject-matter jurisdiction, which is the court’s authority to render a judgment in a particular category of case. *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 252-53 (Mo. banc 2009). Our Constitution, however, requires a case to be justiciable in order for the circuit court to have subject-matter jurisdiction over it. *B.S. v. State*, 966 S.W.2d 343, 344 (Mo. App. E.D. 1998).

No appellee has entered an appearance nor responded to any motion before this court on this appeal. There is not a justiciable controversy before this appellate court.

The Eleventh Circuit US Court of Appeals has rejected the argument that a RICO claim is unripe until a plaintiff has first pursued contractual remedies. The appellant may now bring additional RICO predicate act and RICO Conspiracy claims against the GENERAL ELECTRIC COMPANY defendants JEFFREY IMMELT for their further racketeering conduct with the Novation LLC cartel latecomer co-conspirators. See *Liquidation Comm'n of Banco Intercontinental, S.A. v. Renta*, 530 F.3d 1339 (11th Cir. 2008).

The Western District Court of Appeals only now retains jurisdiction over the parties for the purpose of discipline and its duty to police the conduct of officers of the court acting within the Western District.

The honorable judges THOMAS H. NEWTON, LISA WHITE HARDWICK, and CYNTHIA R. MARTIN now have evidence and documented violations of 18 U. S. C. § 1341 Mail Fraud and 18 U. S. C. § 1343 Wire Fraud by the Missouri licensed officers of the court CHRISTOPHER BARHORST, HOLLY L. FISHER, CHRIS M. TROPITO, NICHOLAS L. ACKERMAN, and TONY R. MILLER.

The honorable judges THOMAS H. NEWTON, LISA WHITE HARDWICK, and CYNTHIA R. MARTIN now have evidence and documentation that the honorable Judge JOHN M. TORRENCE failed to docket filings made in his court by the appellant to facilitate the investigation of CHRISTOPHER BARHORST, HOLLY L. FISHER, CHRIS M. TROPITO, NICHOLAS L. ACKERMAN, and TONY R. MILLER for these felonies injuring WACHOVIA DEALER SERVICES ,WELLS FARGO COMPANY, CHAPEL RIDGE MULTIFAMILY LLC and the people of the State of Missouri who relied on the appellant to enter the market and provide price competition in the delivery of hospital supplies.



Respectively submitted,

S/Samuel K. Lipari

SAMUEL K. LIPARI

803 S. Lake Drive

Independence, Missouri 64053

saml@medicalsupplychain.com

Pro se

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 6<sup>th</sup> day of August 2010 by hand delivery, by first class mail postage prepaid, or by email to:

Marrow, Willnauer & Klosterman, LLC

James C. Morrow #32658

Abagil L. Pierpoint #59997

Executive Hills East, Bldg. A

10401 Holmes Suite 300

Kansas City, MO 64131; (816) 382-1382

[jmorrow@mwklaw.com](mailto:jmorrow@mwklaw.com)

[apierpoint@mwklaw.com](mailto:apierpoint@mwklaw.com)

ATTORNEY FOR DEFENDANT

SWANSON & MIDGLEY LLC,

CHRISTOPHER BARHORST

HOLLY L FISHER

4600 MADISON STE 1100

KANSAS CITY, MO 64112; (816) 842-6100

[cbarhorst@swansonmidgley.com](mailto:cbarhorst@swansonmidgley.com)

[hfisher@swansonmidgley.com](mailto:hfisher@swansonmidgley.com)

Horn Aylward & Bandy, LLC

Danne W. Webb #39384

2600 Grand Blvd. Suite 1100

Kansas City, MO 64108; (816) 421-0700

[dwebb@hab-law.com](mailto:dwebb@hab-law.com)

ATTORNEY FOR DEFENDANT

CHAPEL RIDGE MULTIFAMILY LLC; 3460 NE AKIN

BOULEVARD LEES SUMMIT, MO 64064

Bryan Cave, LLP  
Keitha M. Wright #58646  
1200 Main Street Suite 3500  
Kansas City, MO 64105  
816-374-3370 (direct)  
[keitha.wright@bryancave.com](mailto:keitha.wright@bryancave.com)  
ATTORNEY FOR DEFENDANT'S LEANNE ZELLMER  
2300 MAIN ST. STE 900 KANSAS CITY, MO 64108;  
(816) 448-3100  
[lianne.zellmer@regus.com](mailto:lianne.zellmer@regus.com)  
REGUS PLC; 26 BOULEVARD ROYAL L-2449  
LUXEMBOURG; +44 (0) 1932 895059 C/O REGUS  
PLC REGISTERED OFFICE 22 GRENVILLE STREET;  
ST. HELIER; JERSEY, JE4 8PX  
REGUS MANGEMENT GROUP LLC; 15305 DALLAS  
PARKWAY STE 1400 ADDISON, TX 75001 C/O  
REGISTERED AGENT CSC LAWYERS  
INCORPORATING SERVICE, INC.; 150 S PERRY ST.  
MONTGOMERY, AL 36104

Deacy & Deacy, LLP  
Spencer J. Brown #18616  
920 Main Street, Suite 1900  
Kansas City, MO 64105 (816) 421-4000  
[cld@deacylaw.com](mailto:cld@deacylaw.com)  
ATTORNEY FOR DEFENDANT'S  
TROPPILO & MILLER LLC  
508 WALNUT STREET  
KANSAS CITY, MO 64106 (816) 221-6006

Troppito & Miller, LLC  
508 Walnut Street  
Kansas City, MO 64106 (816) 221-6006  
ATTORNEY FOR DEFENDANT  
NICHOLAS L. ACKERMAN #54761  
CHRIS L TROPPILO  
TONY R MILLER  
508 WALNUT STREET

KANSAS CITY, MO 64106 (816) 221-6006

[nla@troppitomiller.com](mailto:nla@troppitomiller.com)

[trm@troppitomiller.com](mailto:trm@troppitomiller.com)

[cmt@troppitomiller.com](mailto:cmt@troppitomiller.com)

South & Associates, P.C.

Blaine Dickeson #57938

6363 College Blvd. Suite 100

Overland Park, KS 66211 (913) 663-7600

[blaine.dickeson@southlaw.com](mailto:blaine.dickeson@southlaw.com)

ATTORNEY FOR WACHOVIA DEALER SERVICES  
INC.; 8575 W 110TH ST, STE 100 OVERLAND PARK,  
KS 66210 WELLS FARGO; 420 MONTGOMERY  
STREET, SAN FRANCISCO, CALIFORNIA 94163;  
(866) 249-3302

Husch Blackwell Sanders LLP

John K. Power #70448

Michael S. Hargens #51077

Sean Laferte #60403

4801 Main Street Suite 1100

Kansas City, MO 64105 (816) 983-8000

[john.power@huschblackwell.com](mailto:john.power@huschblackwell.com)

[michael.thompson@huschblackwell.com](mailto:michael.thompson@huschblackwell.com)

[sean.laferte@huschblackwell.com](mailto:sean.laferte@huschblackwell.com)

ATTORNEYS FOR, GENERAL ELECTRIC  
COMPANY, GENERAL ELECTRIC CAPITAL  
BUSINESS ASSET FUNDING CORPORATION AND  
GE TRANSPORTATION SYSTEMS GLOBAL  
SIGNALING, LLC, JEFFREY R. IMMELT 3135  
EASTON TURNPIKE  
FAIRFIELD, CT 06828-0001 (203) 373-2211

S/ Samuel K. Lipari

SAMUEL K. LIPARI

803 S. Lake Drive

Independence, MO 64064

816.507.1328

[saml@medicalsupplychain.com](mailto:saml@medicalsupplychain.com)

Plaintiff, *Pro Se*