

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

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

**PLAINTIFF’S MOTION TO WITHDRAW ANY AND ALL EX PARTE ORDERS**

Comes now the plaintiff Samuel K. Lipari appearing pro se and respectfully requests any and all *ex parte* orders related to Bradley J. Schlozman and created through the staff of US Attorney (“USA”) John Wood and law clerks of the court be withdrawn. The plaintiff Samuel K. Lipari respectfully makes his request for the following reasons:

**STATEMENT OF FACTS**

1. The court’s order granting dismissal (doc. 59) dated 7/30/08 did not reflect the record of the litigation or the issues raised between the parties.
2. The order did not address the unanswered 28 USC § 455 Motion for Recusal filed on 11/08/06 by the plaintiff.
3. The order did not discuss the implications to the party repeatedly identified in the complaint with a significant and material interest in the proceeding St. Luke’s Health System and to which the Hon. Fernando J. Gaitan, Jr. had a fiduciary interest in as a member of the board of directors that was documented in the 11/08/06 Motion for Recusal.
4. The order did not address the timely motion to remand the action previously filed by the plaintiff.
5. The findings in the order were overreaching in that the order cited interim orders in the Kansas District Court that were not final judgments required for issue or claim preclusion.
6. The findings in the order were overreaching in that the order in clear error misrepresented the plaintiff’s RICO standing by denying the existence of the complaint’s repeated averments of material tangible injury to the plaintiff’s property interests meeting the requirements of Eighth Circuit controlling precedent and the contradicting the unanimous decision of the US Supreme Court in *Bridge v. Phoenix Bond & Indemnity Co.*, No. 07-210 (U.S. 6/9/2008).

7. The defendant Bradley J. Schlozman was not added to the action until the plaintiff amended his complaint on 12/07/2007 to include Schlozman's misuse of his office as US Attorney for the Western District of Missouri in his interest and capacity as an agent of the Republican National Committee to further the racketeering enterprise and conspiracy to defraud Medicare through the Novation LLC and St. Luke's Health System scheme.

8. The plaintiff has not been given notice of any *ex parte* contacts between the defendants and the court or any assistance or writing by employees of the US Department of Justice to provide for the court or aid the law clerks of the court in preparing orders in this action.

### **SUGGESTION IN SUPPORT**

The court's order granting dismissal (doc. 59) dated 7/30/08 by not addressing previous issues raised between the parties that would have to be addressed for entry of judgment creates the appearance that the order was ghost written by the US Department of Justice Office of John Wood, representing a later party to the action. See *Bradley v. Maryland Casualty Company*, 382 F.2d 415 at 422 (8th Cir., 1967) "apparent, from the typing in the original record, that counsel for the defendants were called upon by the trial court for aid in the preparation of its findings and conclusions"*Id.*

The practice of having counsel for a party write an order *ex parte* is called ghostwriting of judicial orders and is condemned in the Eighth Circuit and other federal jurisdictions:

"This Circuit and other appellate courts have condemned the ghostwriting of judicial orders by litigants. *In re Colony Square Co.*, 819 F.2d 272 (11th Cir.1987); cert. denied, --- U.S. ---, 108 S.Ct. 1271, 99 L.Ed.2d 482 (1988); *Keystone Plastics, Inc. v. C & P Plastics, Inc.*, 506 F.2d 960 (5th Cir.1975); *Bradley v. Maryland Casualty Co.*, 382 F.2d 415 (8th Cir.1967). In *Colony Square*, this Court noted that the dangers of ghostwriting are obvious. "When an interested party is permitted to draft a judicial order without response by or notice to the opposing side, the temptation to overreach and exaggerate is overwhelming." 819 F.2d at 275. In that case, the judge called counsel for the party for whom the judge intended to rule and asked counsel to draft the order. Opposing counsel was not notified of these *ex parte* contacts nor apprised that the opinion had been drafted by the other side."

*Dixie Broadcasting, Inc., In re*, 871 F.2d 1023 at 1029-1030 (C.A.11 (Ala.), 1989).

The order overreached this court's power under the law to preclude issues or claims on the basis of interim orders in other courts as detailed in the plaintiff's Rule 59(e) Motion (doc.61) and the plaintiff's reply to suggestions in opposition by Schlozman (doc.64); by Seyfarth Shaw (doc. 65); and the General

Electric defendants (doc. 67 ). The plaintiff had refuted these issues in a consolidated response to the defendants' dismissals (excluding the tardy dismissal later filed by Schlozman)(doc. 42).

The order exaggerated or misrepresented to the court that the complaint lacked averments of material tangible injury to the plaintiff's business property. detailed in the plaintiff's Rule 59(e) Motion (doc.61) and the plaintiff's reply to suggestions in opposition by Schlozman (doc.64); by Seyfarth Shaw (doc. 65); and the General Electric defendants (doc. 67 ). The plaintiff had refuted these issues in a consolidated response to the defendants' dismissals (excluding the tardy dismissal later filed by Schlozman)(doc. 42). The plaintiff described the specific paragraphs of his complaint averring material tangible injuries to his business that were ignored or intentionally omitted in the order the plaintiff's reply to the suggestion in opposition to Rule 59 relief by Seyfarth Shaw (doc. 65) at pages 2-4.

Because of the factual inaccuracies amounting to clear error, the order fails the second tier of analysis on whether the order is improperly *ex parte* under the criteria established by *In re Colony Square*, 819 F.2d 272 (11th Cir.1987) as described in *Bilzerian v. Shinwa Co. Ltd.*, 184 B.R. 389 at 394-395 (Bankr.M.D.Fla., 1995). The order if it was produced *ex parte* cannot stand because it fails to be "supported by evidence" as required by *United States v. El Paso Natural Gas Co.*, 376 U.S. 651, 656, 84 S.Ct. 1044, 1047, 12 L.Ed.2d 12 (1964). See *Bradley v. Maryland Casualty Company*, 382 F.2d 415 at 423 (8th Cir., 1967).

The gravamen of the possibility the court's order was produced *ex parte* or with the *ex parte* assistance of the US Department of Justice to the court's law clerks is that the defendant Bradley J. Schlozman is alleged in the complaint to have misused his positions in the US Department of Justice to interfere in the plaintiff's civil litigation against the defendants to enforce his rights and property interests to enter the market and compete against Novation LLC/St. Luke's hospital supply cartel. The complaint also alleges that the current US Attorney for the Western District of Missouri, John Wood also unlawfully used his office to interfere in the same litigation and to protect the Novation LLC/St. Luke's hospital supply cartel's goal of defrauding Medicare, including specifically protecting CoxHealth from criminal prosecution, the purpose the plaintiff's complaint alleges USA Todd Graves was unlawfully removed from office.

The plaintiff's response to Schlozman's suggestion in opposition to Rule 59 relief details the problems with the USA John Wood's misuse of the court proceedings to commit unlawful acts or to further the unlawful objectives of the enterprise:

"Interference with the government prosecution that surpasses mere advocacy in the firing of USA Todd Graves, like firing USA Carol Lam to save Tenet Healthcare Corporation from Medicare fraud prosecution is extrinsic fraud and appears to be being investigated by USDOJ Inspector General Glenn A. Fine and the Congressional Judiciary committees, with the defendant Bradley J. Schlozman's aids being subpoenaed one business day after USA John Wood frivolously objected to the plaintiff's Rule 59(e) Motion (Schlozman had tried to hire RNC attorneys for WD of MO AUSA positions). See exb. 7 and 8

The investigation of the unauthorized wiretapping complained by the plaintiff is being conducted by H. Marshall Jarrett, the head of Justice's Office of Professional Responsibility. See exb. 9

Dustin Sherwood, the similarly situated party to the plaintiff in experiencing extrinsic fraud in the form of RICO extortion through color of official right via threats of economic harm described in *U.S. v. Kelley*, 461 F.3d 817 at 826 (6th Cir., 2006) and through the coercive nature of official office described in *U.S. v. Antico*, 275 F.3d 245 at 256 (3rd Cir., 2001) by Husch Blackwell Sanders LLP, Shughart Thomson & Kilroy PC, and Lathrop & Gage LC along with Shughart Thomson & Kilroy PC's successor in interest Polsinelli Shalton Flanigan Suelthaus PC was sent away to jail during the days required to raise the \$150,000.00 bond in order to stop the sale of his farm."

Plaintiff's Reply Suggestion (doc. 64) at page 9.

The extra-judicial influence of the defendants that included predicate acts of extortion under color of official right by the private law firms representing the defendants and the use of illegal wiretapping by the US Department of Justice to interfere in the plaintiff's litigation of business property claims and to interfere in further attempts of the plaintiff to enter into the market for hospital supplies controlled by the Novation LLC cartel is shocking misconduct in this district like that described in *United States v. Martinez*, 667 F.2d 886, 887-88 (10th Cir.1981) where USDOJ attorneys met *ex parte* with a district judge and witnesses to unlawfully influence the outcome of a proceeding. In what is for practical purposes an Eighth Circuit decision by a panel of this circuit's judges hearing a Tenth Circuit case, the court determined that "A judge is not only entitled but also has a duty to take all lawful measures reasonably necessary to prevent the occurrence of a crime in his courtroom." *Martinez v. Winner*, 771 F.2d 424 at 435 (C.A.10 (Colo.), 1985).

In *Colony Square*, the Court noted that the dangers of ghostwriting are obvious. "When an interested party is permitted to draft a judicial order without response by or notice to the opposing side, the temptation to overreach and exaggerate is overwhelming." 819 F.2d at 275. In that case, the judge called

counsel for the party for whom the judge intended to rule and asked counsel to draft the order. Opposing counsel was not notified of these *ex parte* contacts nor apprised that the opinion had been drafted by the other side. Such circumstances would require vacating or withdrawing the order if the process by which the judge arrived at them was "fundamentally unfair." *Id.* at 276. See *Dixie Broadcasting, Inc., In re*, 871 F.2d 1023 at 1029-1030 (C.A.11 (Ala.), 1989).

The order if created or assisted through *ex parte* conduct by USA John Wood or other US Department of Justice employees violates the plaintiff's Due Process in the manner recognized in *Chicopee Mfg. Corp. v. Kendall Company*, 288 F.2d 719, 724-725 (4th Cir. 1961). The Fourth Circuit Court of Appeals held in *Chicopee*, that:

"... there is no authority in the federal courts that countenances the preparation of the opinion by the attorney for either side. That practice involves the failure of the trial judge to perform his judicial function and when it occurs without notice to the opposing side, as in this case, it amounts to a denial of due process. In either event, a reversal of the judgment and a remand for further proceedings would be justified."

*Chicopee Mfg. Corp.*; 288 F.2d 724, 725.

#### CONCLUSION

Whereas for the above stated reasons the plaintiff respectfully requests that the court disclose and withdraw any *ex parte* orders in this action.

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 8/12/08.

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