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

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

PLAINTIFF'S CONSOLIDATED SUGGESTIONS IN OPPOSITION TO DISMISSAL

Comes now the plaintiff Samuel K. Lipari appearing pro se and makes the following response in opposition to the answering defendants' motions for dismissal.

STATEMENT OF FACTS

1. The defendant Bradley J. Schlozman, a private citizen sued in his private capacity has been served under F.R.Civ. P. Rule 4's alternative acceptance of State of Missouri service statutes and has the services of the Office of John Wood, the US Attorney for the Western District of Missouri and constructive notice also exists with Assistant US Attorney Jeffrey P. Ray assigned to represent Bradley J. Schlozman in defense of this action.

2. The absence of an answer or motion for dismissal is not indicative that the Office of John Wood, the US Attorney for the Western District of Missouri or Jeffrey P. Ray are not defending Bradley J. Schlozman because both represent the US Attorney General Michael B. Mukasey in *Patel v. Gonzales et al* Case #: 4:07-cv-00065 proceeding in this district before the Hon. Judge Ortrie D. Smith Date Filed: 01/24/2007 and are similarly electing not to reply to proceedings in this jurisdiction. See Exb. 1 Order of Hon. Judge Ortrie D. Smith and Exb. 2 *Patel v. Gonzales et al* Case #: 4:07-cv-00065 appearance docket.

3. None of the answering defendants' motions to dismiss dispute that Bradley J. Schlozman committed three 18 U.S.C. § 1961 predicate acts of fraud under 18 U.S.C. § 1962, or that the non-defendant government officials committed 18 U.S.C. § 1961 predicate acts of Hobbs Act Extortion in violation of 18 U.S.C. § 1962 or that Bradley J. Schlozman and the other identified state and federal government officials are part of an 18 U.S.C. § 1962(c) racketeering enterprise or that Bradley J. Schlozman participated in an 18 U.S.C. § 1962(d) conspiracy with the defendants and other non-defendant government officials.

4. The plaintiff's petition alleges Johnson County Kansas Attorney Disciplinary Coordinator Rex A. Sharp committed an 18 U.S.C. § 1961 predicate act of extortion in violation of § 1962(c). See Petition at ¶¶ 318-331 pgs. 56-60. Rex A. Sharp is alleged to be a § 1962(d) co-conspirator with the defendants. See Petition at ¶¶174, 315 on pgs. 30-55.

5. The plaintiff's petition alleges Kansas Disciplinary Administrator Stanton A. Hazlett's agent Gene E. Schroer is a § 1962(d) co-conspirator with the defendants (Petition at ¶¶ 324 on pg. 57) and that as Stanton A. Hazlett agent, Gene E. Schroer is alleged to have extorted the plaintiffas an act in furtherance of the objectives of the defendant's enterprise. See Petition at ¶¶ 186-198, and 331 on pg. 58 and to have participated in the successful scheme to take the plaintiff's Missouri recognized property interest in the form of the representation of Bret D. Landrith.

6. The plaintiff's petition alleges Gayle B. Larkin, Admissions Attorney of the Kansas Attorney Admissions Office is averred to have committed extortion against US Congress Woman Nancy Boyda's aid for helping the petitioner's key witness David Price (Petition at ¶¶ 255 on pg. 44) ; the taking of intangible rights property through this extortion is described in the petition (Petition at ¶ 253 on pg. 44); and the petition describes the deprivation of Gayle B. Larkin's honest services as Admissions Attorney of the Kansas Attorney Admissions Office (Petition at ¶¶ 255 on pg. 44) in the successful scheme to take the plaintiff's Missouri recognized property interest in the form of the prospective representation of Donna Huffman.

7. The petition's averments of federal claims are on conduct subsequent to the filing of US District Court for Kansas Action *Medical Supply Chain, Inc. v. General Electric Company, et al*., case no. 03-2324-CM; subsequent to the dismissal of the Kansas District Court action; and subsequent to the initial filing of the plaintiff's state claims or their refilling in the 16th Circuit Independence, Missouri Court.

8. The defendant privity group of McDaniel, Heartland, and Stuart Foster seek dismissal of claims against them at page 4 and 7 of the Heartland memorandum for dismissal because the petition does not charge McDaniel, Heartland, and Stuart Foster with claims based on the commission of one of the § 1961 enumerated predicate acts.

9. The petition charges McDaniel, Heartland, and Stuart Foster with participation in the § 1962(d) RICO conspiracy and membership in the § 1962(c) association in fact enterprise and clearly describes

agreements by McDaniel, Heartland, and Stuart Foster with the General Electric defendants over 1600 N.E. Coronado. See Petition at ¶ 126 on pg. 22 and ¶¶128-139 on pgs 22-23 and most thoroughly at ¶¶162-167 at pages 27-28 under the heading "ii. The Conspiracy Spoke of the GE Defendants ".

10. The petition alleges that Christopher M. McDaniel participated in extortion occurring after the Independence filing and in a scheme to present extrinsically fraudulent testimony from misinformation given by McDaniel to Blue Springs City officials to the finder of fact in the petitioner's state law trial which has not yet occurred. See Petition at ¶¶ 137 on pg. 23.

11. The petition alleges that the plaintiff did not discover Christopher M. McDaniel's role and therefore Heartland's RICO enterprise and conspiracy participation until contacting Christopher M. McDaniel for personal service information on the amended RICO complaint approved by the 16th Circuit Missouri State court. See Petition at ¶¶ 167 on pg. 28.

12. The Hobbs Act Extortion predicate act of depriving the plaintiff of title to the building at 1600 N.E. Coronado has not yet been completed in that a strange dispute arose during discovery that included denying the plaintiff any discovery but seeking the answers to the interrogatories in Exb 5. (GE Interrogatories) and Blue Springs Officials have not come forward with an affidavit or before a jury. See Petition at ¶¶ 163-166 on pg. 28.

13. The Heartland suggestion for dismissal at page 5 states the plaintiff's claims against Heartland, McDaniel and Foster should be dismissed because the defendants did not derive "any income from a pattern of racketeering or used any ill-gotten funds to invest in an alleged enterprise" ; however the petition alleges Christopher M. McDaniel and Heartland agreed to participate in the RICO conspiracy to obtain the benefit of actual title to the petitioner's building at 1600 N.E. Coronado upon completion of the § 1962(d) conspiracy's § 1961 extortion predicate act of depriving the plaintiffof title to the through extrinsic fraud in the 16th Circuit state contract action, the attempted Hobbs Act extortion the complaint avers McDaniel, Heartland and Foster were in the process of committing.

14. The Heartland suggestion for dismissal does not countenance the conduct of Bradley J. Schlozman or other state and federal officials described in the petition as committing § 1961 predicate acts, participating in the § 1962(c) association in fact enterprise, and the § 1962(d) conspiracy with Heartland, McDaniel and Foster and denies the petition alleges any § 1961 predicate acts or the

existence of a § 1962(c) enterprise separate from a predicate act; however the petition at ¶¶ 118, 125-127 at pgs. 21-22 under the heading "a. Allegations of Legitimate Association-in-Fact Enterprise" ; ¶¶135-138 at pgs. 23-24, and ¶¶161-167 at pgs. 27-28 clearly describes the continuity of separate business conduct, some of which is legitimate and independent from the § 1961 predicate acts participated in or committed by the government officials, GE defendants, Jeffrey Immelt or Seyfarth Shaw.

15. The defendant Seyfarth Shaw LLP's suggestion supporting dismissal at pg. 13 to 14 asserts the petition should be dismissed due to claim preclusion; however the defendants in the present complaint including Seyfarth Shaw were not parties named in the Kansas District Court cases *Medical Supply Chain, Inc. v. Neoforma, et al*., case number 05-2299. See Exb 4. *Medical Supply Chain, Inc. v. Neoforma, et al* Complaint; the petition before this court does not seek to modify or undue any finding in *Medical Supply Chain, Inc. v. Neoforma, et al*., case number 05-2299 or in *Medical Supply Chain, Inc. v. General Electric Company, et al*., case no. 03-2324-CM; and the plaintiff was not a party or in privity with the defense of any party in the N. Dist. of Illinois case *Rep MCR Realty LLC v. Michael W. Lynch* Case 02 C 0399.

16. The defendant Jeffrey Immelt argues at fn 5 on page 13 of his suggestion to dismiss that claim preclusion requires dismissal of the § 1962(d) conspiracy claim because Jeffrey Immelt was identified as a co-conspirator but not named as defendant in *Medical Supply Chain, Inc. v. Neoforma, et al*., case number 05-2299 and while Jeffrey Immelt contradicts controlling US Supreme Court law in *Lawlor* that all conspirator defendants need not be tried in the same action and it is entirely the plaintiff's prerogative, the suggestion neglects to inform the court that he plaintiff attempted to add Jeffrey Immelt and the GE defendants to *Medical Supply Chain, Inc. v. Neoforma, et al*. raising new federal claims against the GE defendants on September 15th, 2005 in 05-2299 and was denied the opportunity to litigate his claims against Jeffrey Immelt and the GE defendants by order of Hon. Judge Carlos Murguia of the Kansas District Court.

17. Jeffrey Immelt also had notice that the basis of the dismissal of antitrust claims in *Medical Supply Chain, Inc. v. General Electric Company, et al.*, KS Dist. case no. 03-2324-CM was contrary to controlling US Supreme Court law and that the complaint had stated an antitrust conspiracy with the independent entity GHX LLC: " Affidavit Part A Press Release of General Electric and its competitors:

"Johnson & Johnson, GE Medical Systems, Baxter International Inc., Abbott Laboratories and Medtronic, Inc. announced today that they are creating a global healthcare exchange that will be an independent Internet-based company." See Exb 6 Medical Supply Brief Statement of Facts.

18. After the interim order of dismissal cited by the defendants in *Medical Supply Chain, Inc. v. General Electric Company, et al.*, KS Dist. case no. 03-2324-CM sought to consolidate the action with *Medical Supply Chain, Inc. v. Neoforma, et al*., case number 05-2299 under Rule 42 so the plaintiff could pursue claims on subsequent conduct General Electric had become liable for: See Exb. 7 Medical Supply Motion to Consolidate.

19. The plaintiff sought to remind the court and the defendant Jeffrey Immelt that it would be more efficient to litigate the new claims in the continuing action, which the GE Defendants did not oppose. See Exb 8 Motion to Require Pleadings on the Record.

20. *Medical Supply Chain, Inc. v. Neoforma, et al*., case number 05-2299 was still proceeding when *Lipari v. General Electric et al*, 16th Circuit Missouri Case No.0616- CV07421 was filed on March 22, 2006, the plaintiff went ahead and refilled his state law claims against the GE defendants that had been dismissed without prejudice in Missouri State Court at Independence.

21. Subsequent to the state court filing, the Tenth Circuit Court took the extraordinary measure of ordering Jeffrey Immelt personally on January 9, 2007 to show cause why he had not filed for sanctions. See Exb 9 Tenth Circuit Order to Immelt.

22. The conduct plaintiff averred in *Medical Supply Chain, Inc. v. Neoforma, et al*., became a New York Times November 18, 2007 feature story of the African American Novation LLC manager Cynthia Fitzgerald who witnessed the defendant cartel's artificial inflation of hospital supplies.

23. Cynthia Fitzgerald's false claims action was released from under seal and The New York Times which had been covering Novation LLC in the wake of the petitioner's litigation printed a feature story interviewing Cynthia Fitzgerald who had witnessed the conduct described in the Neoforma complaint against Novation LLC by the petitioner. See Exb 10 Cynthia Fitzgerald Interview.

24. The Plaintiff is seeking recall of the mandate in *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 03-3342 due to US Supreme Court decision overturning Tenth Circuit on Rule 12(b)(6) pleading sufficiency in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007) (2007).

25. The plaintiff is filing the requisite motions with instructions from the Clerk of the Tenth Circuit to seek the recall of the mandate in *Medical Supply Chain, Inc. v. US Bancorp, NA et al* 10th Cir. Case No.: 03-3342

26. The plaintiff is seeking a Rule 60b New Trial in *Medical Supply Chain, Inc. v. Neoforma, et al.*, case no. 05-2299 due to the US Supreme Court decision overturning Tenth Circuit on Rule 12(b)(6) pleading sufficiency in *Erickson v. Pardus*, No. 06-7317 (U.S. 6/4/2007) (2007).

27. The district court has struck the motion and is proceeding to sanction the petitioner; however the plaintiff has filed a reconsideration with the Kansas District Court and a mandamus filing with the Tenth Circuit to compel acceptance of the Rule 60b motion and in actuality *Medical Supply Chain, Inc. v. Neoforma, et al*., case no. 05-2299 continues in Kansas District Court restyled as *Lipari v. US Bancorp et al.* Case no. 07-cv-02146-CM-DJW.

28. The environment in which the plaintiff seeks redress is renown for its tough corporate defense litigation practices encouraged or not reported by members of the Kansas City Metropolitan Bar Association and where the US Attorney for the Western District of Missouri refuses to enforce laws against criminal racketeering in civil litigation

29. Unlawful racketeering acts committed by Shook Hardy and Bacon LLP were described by US Department of Justice when USDOJ attorneys alleged lawyers from Shook Hardy & Bacon LLP acted with "fraudulent intent" in past efforts to protect cigarette manufacturers from lawsuits.

30. Post-trial documents filed Aug. 15 and Aug. 24 in a civil racketeering case against tobacco companies mention at least 15 Shook Hardy lawyers by name and refer to the firm more than 250 times.

A September 2, 2005 Kansas City Business Journal print edition article quoted the Notre Dame Law School professor G. Robert Blakey who stated the government's many mentions of the lawyers in the case are "an indication they could have sued them," "Lawyers should not be above the law, but in practice they are," He said tobacco lawyers were defendants in just two of the 50 states' cases against tobacco companies. Professor Blakey said it's routine practice to excuse lawyers from conspiracy suits, in part because of the extra cost of litigating against a law firm's defenses.

31. Professor G. Robert Blakey's comments as printed in the Kansas City Business Journal are however critical of the US Department of Justice for not including the private law firm or its attorneys as

civil defendants, saying: "It's an indefensible practice," and "It's indefensible if lawyers could have been sued but they were not." See "U.S. attorneys take some shots at Shook Hardy" Exb 11 Mark Kind, Kansas City Business Journal - September 5, 2005.

32. The US Department Of Justice Post Trial Brief in the tobacco case described how key witnesses like the petitioner, his former counsel Bret D. Landrith and their associates were made to fear for their lives in the defense firms' efforts to obstruct justice. See US Department Of Justice Post Trial Brief Exb 3 FN 22 Page 44.

33. The defendants use the dismissal of *Medical Supply Chain, Inc. v. Neoforma, et al*., case no. 05-2299 that was obtained through the extrinsic fraud filing of Novation, LLC, VHA Inc., University Healthsystem Consortium Robert Baker And Curt Nonomaque's Motion To Set Oral Hearing On Motion To Dismiss , (Doc 76-1) filed on 02/21/2006 in *Medical Supply Chain, Inc. v. Neoforma, et al* by John K. Power, # 70448 of Jeffrey Immelt and the GE defendants' law firm Husch Blackwell Sanders LLP.

34. The defendants repeatedly cite to *Medical Supply Chain, Inc. v. Neoforma, et al*., case no. 05-2299 as authority advocating the ruling should control the present action in another district and another circuit.

35. The GE Defendants obtained the ruling in *Medical Supply Chain, Inc. v. Neoforma, et al*., case no. 05-2299 where their cartel co-conspirators Novation LLC and Neoforma, Inc were at risk by filing a fraudulent pleading by John K. Power of Husch Blackwell Sanders LLP (Exb. 12) Motion for Hearing while knowing the Kansas District Court had been persuaded through *ex parte* communication to not even read the petitioner's filing in response.

36. The fraud is readily discernable on its face the petitioner's complaint stated all the requisite elements for each federal count. See Exb 13. Plaintiff's Response to Motion for Oral hearing

37. The elements for the antitrust and RICO claims are referenced by element and paragraph number in the complaint in the plaintiff's appeal brief statement of facts at pgs. 19-32. See Exb 14 Lipari Neoforma Appeal Brief Statement of Facts.

38. The defendants are alleged to be RICO conspirators in an ongoing scheme to defraud Medicare and Medicaid but the GE Defendants, Immelt, McDaniel, Heartland, and Foster argue that the plaintiff has sought relief under a cause of action within the Hobbs Act for Extortion.

39. The defendants argue correctly that there is no private right of action under the Hobbs Act for extortion however the petition does not state any causes of action within the Hobbs Act for extortion which can be determined by the petition's jurisdictional statement at ¶¶ 1-4 specifying "18 U.S.C. § 1962 et seq. ("RICO") claims" the petition also specifies the federal claims and states the causes of action are for violations of 18 U.S.C. § 1962 *et seq*. at page 20; the petition's table of contents clearly lists only RICO and state law claims and each federal count is identified as a racketeering act of § 1961 extortion or a racketeering act of § 1961 fraud.

40. The defendants Seyfarth Shaw LLP and Jeffrey Immelt are alleged to be members of a § 1962(c) association in fact enterprise and § 1962(d) RICO conspirators in an ongoing scheme to defraud Medicare and Medicaid however they argue that state law claims not raised against Seyfarth Shaw LLP or Jeffrey Immelt should be dismissed.

41. The defendant Seyfarth Shaw LLP argues extensively that the petitioner's state law claims against Seyfarth Shaw LLP should be dismissed because Seyfarth Shaw LLP did not represent the petitioner, and had no legal duty to the plaintiff so is not liable for malpractice or tortuous interference with the petitioner's third attempt to cover for the $350,000.00 business expectancy lost from US Bank and then General Electric's breach; however the plaintiff makes no state law claims against Seyfarth Shaw LLP in the petition and only claims Seyfarth Shaw LLP is liable as a § 1962(d) RICO conspirator and for committing RICO predicate acts of § 1961 fraud.

42. On page 16 of the Jeffrey Immelt memorandum, Immelt acknowledges the state law claims are pled against the GE defendants and not Immelt, however still argues against Immelt's liability for contract based claims he is not charged over.

43. The GE Defendants in their suggestion in support of their motion to dismiss that they will file another Rule 12 (b)(6) motion sometime in the future in order to have their state claims dismissed; however the GE Defendants have not sought leave of the court for a second dismissal before failing to include all their grounds for dismissal and affirmative defenses.

44. The petitioner's state claims have not been amended or altered since Hon. Judge Nixon over ruled the GE defendants' motion for dismissal and suggestion in support.

45. The petition alleges the following in relationship to the assertion of challenges over pleading conspiracy raised by the defendants. See Petition at ¶¶ 146-148 at pg. 25

46. The petition pleads the following about the capacity of the conspirators under *United States v. Feldman*, 853 F.2d 648, 657 exception to intentional or `purposeful' behavior by corporations charged as members of an association-in-fact: The defendants GE, GE Capital, GE Transportation, Heartland Financial, Seyfarth Shaw, and Carpets N' More are incorporated entities and the petition alleges each corporation was a co-conspirator.

47. The petition pleads the following about the capacity of the conspirators under *U.S. v. Saadey*, 393 F.3d 669 at 676 conspirator by agreeing to facilitate only some of the acts leading to the substantive offense: the petition alleges that the defendants Jeffery Immelt, Bradley J. Schlozman, Christopher M. McDaniel, and Stuart Foster personally committed acts to further the goals of the conspiracy.

48. The petition alleges that the defendants Jeffery Immelt and Bradley J. Schlozman personally committed RICO predicate acts of fraud to prevent the conspiracy from being interrupted in its central purpose of overcharging Medicare and Medicaid through General Electric's participation in the Novation LLC hospital supply cartel.

49. The petition alleges that the defendants Christopher M. McDaniel, and Stuart Foster participating in a concealed scheme to have Heartland Financial occupy 1600 N.E. Coronado to deprive the plaintiff of the capital inputs he had obtained from General Electric and needed to enter the national market for hospital supplies in return for incentives and benefits from General Electric that if completed, would satisfy all of the elements of a substantive criminal offense of the predicate § 1961 Hobbs Act extortion.

50. The petition alleges that the defendant Christopher M. McDaniel was discovered by the plaintiff after the proposed RICO amendment to have been participating in an attempt to extort the building at 1600 NE Coronado from the plaintiff with falsely procured testimony of Blue Springs City officials that Christopher M. McDaniel had prejudiced about the business and financial assets of the plaintiff on behalf of the General Electric defendants.

51. Even though a RICO conspirator or association in fact enterprise member doesn't have to benefit personally the petition alleges that Christopher M. McDaniel and Jeffery Immelt through General Electric benefit financially from the conspiracy.

52. The petition alleges the following in relationship to pleading agreement: at ¶¶ 149-176 on pages 25-31 alleges the entry into the conspiracy by the component arms and named defendants; the petition at ¶¶ 129-145 on pages 22-25 states the entering into agreement by each named defendant for the purpose of participating in the unlawful objectives of the conspiracy; the petition in ¶¶ 178 at pg. 31 describes the over arching goal of the conspiracy; and that the conspirators share a common purpose. See Petition at ¶¶ 139-140 on pg. 24.

53. The petition states information related to whether the conspirators sought to protect the influence of the conspiracy in the US Department of Justice by alleging Scott J. Bloch destroyed email evidence of communications with the Republican National Committee and Karl Rove to sell protection. See petition at ¶¶155-159 on pgs. 26-27.

54. The petition alleges the State of Kansas Officials were to benefit from the cancer research funds they were otherwise unqualified for but would be obtained through Karl Rove's influence over the US National Institute of Health to divert the funds to the Novation LLC hospital Saint Luke's. See petition at ¶¶174-175 on pg. 31 which also adequately states the consideration given to deprive the plaintiff of the honest services of a public official.

55. The petition alleges the GE Defendants obtained the services of Stuart Foster to sell 1600 NE Coronado with knowledge of the petitioner's *lis pendens* by using GE provided incentives including use of a business jet even though the GE Defendants did not even own the property. See petition at ¶¶162 pg. 27.

56. The petition states that only those conspirators targeting the plaintiff are being charged. See Petition at ¶¶178,179 on pg. 31 and describes various events, which are alleged to be part of one large over arching scheme (to defraud Medicare, Medicaid through a regular business of making false claims against the government.

57. The petition describes a series of interconnecting events related to a continuing goal of the defendants. See Petition at ¶¶170,173 on pgs. 29-30 and pleads continuity (Petition at ¶¶ 145 pg. 25.) and conduct taking place over many years.

58. The petition alleges facts regarding the establishment of the enterprises' control and protection from law enforcement (Petition at ¶¶149-152 on pgs. 25-26) and alleges racketeering conduct by the conspiracy over many years. See Petition at ¶¶170 -172 on pg. 29.

59. The conspiracy exists until there has been an affirmative showing that it has been terminated and the petition does not allege the withdraw of any co-conspirator from the conspiracy or enterprise or termination of the conspiracy or enterprise.

60. The petition pleads continuity by stating facts related to cover-up attempts continuing today: the petition avers Scott J. Bloch destroyed email from the RNC network related to the conspirator's enterprise to sell US Department of Justice protection to companies like Novation LLC.

61. The petition alleges that Jeffery Immelt committed fraud by omitting disclosure of liability to the plaintiff from General Electric's annual and quarterly reports.

62. The petition alleges Bradley J. Schlozman committed perjury before the US Senate Judiciary Committee to conceal the conspiracy's consolidation of control over the US Department of Justice through hiring violations.

63. The petition alleges Seyfarth Shaw LLP extorted the plaintiff to obtain unrepresented testimony in an attempt to compromise the petitioner's case against the GE Defendants.

64. The petition alleges the following in relationship to pleading proceeds of the conspiracy: defendants are beneficiaries of most if not all of the alleged schemes (Petition at ¶¶ 174 pg. 30); the petition alleges the conspirators maintained a $39,000,000.00 bribery fund (Petition at ¶¶ 288-20 pg. 50); the petition alleges the plaintiff was directly injured by over $450,000,000.00 the conspirators were able to retain in the enterprise by eliminating competition from the plaintiff through breach of contract (Petition at ¶¶ 383 pg. 65); the petition alleges the conspirators were willing to fund the petitioner's money losing competitor to further the conspiracy's goals of overcharging Medicare and Medicaid (Petition at ¶¶ 95-97 pg. 15); and the petition alleges the conspirators protected GE Capital's liability in the UAL bankruptcy by procuring an outcome through extrinsic fraud ending medical and pension benefits for the company's union members. See Petition at ¶¶ 173 pg. 29-30.

65. The petition alleges the existence of a RICO enterprise (Petition at ¶¶ 116 Pg. 20); that the enterprise was an association that pursues its unlawful objectives through its normal course of business

(Petition at ¶¶ 118,119,120,121,122,123,124,125,126,127 on Pgs. 21-22); and that the association in fact pursues its unlawful objectives through continuing unlawful racketeering conduct. ¶¶ 128,129 Pg. 23.

66. The petition alleges the defendants individual participation in the "operation or management" of the alleged RICO enterprise's affairs alleging *Reve's* Test management and control by the named defendants: See Petition at ¶¶ 130,131,132,133,134,135,136,137,138 Pgs. 23-24

67. The petition alleges § 1961 predicate acts have been undertaken in furtherance of the varied purposes of a common organized crime enterprise with a common purpose shared by the members of the RICO enterprise: See Petition at ¶¶ 139,140,141,142 Pg. 24.

68. The petition avers a pattern of racketeering by alleging the enterprise has been criminally extorting its victims over several years and will continue to do so in the future: Petition at ¶¶ 143,144,145 Pg. 24-25.

69. The petition alleges 18 U.S.C. § 1961(1) Hobbs Act Extortion predicate elements of :

70. (1) induced [the victim], with [the victim's] consent, to part with property (Petition at ¶¶ 43 at pg. 8, ¶¶ 94, 95 at pg. 15, ¶¶125,126,127 at pg. 22, ¶¶ 171,172 at pg. 29, ¶¶ 174 at pg. 30, ¶¶ 259 at pg. 45, ¶¶ 320, 321, 323 at pg. 57, ¶¶ 328, 329 at pg. 57);

71. (2) Property Extorted From Threatened Force, Violence, or Fear (including Fear of Economic loss) or Through Color of Official Right , loss of petitioner's property in the services of Bret D. Landrith for conduct permitted by the reciprocal admission agreement between KS. District Court and the W.D. of Missouri (Petition at ¶¶ 200 at pg. 34), loss of petitioner's property in the chose in action *Medical Supply Chain, Inc. v. Neoforma et al* under color of official right (Petition at ¶¶ 203 at pg. 340, loss of petitioner's property in the chose in action *Medical Supply Chain, Inc. v. Neoforma et al* under color of official right (Petition at ¶¶ 232 at pg. 40), loss of petitioner's property in the honest services of the US Attorney for the Western District of Missouri (Petition at ¶¶ 233 at pg. 41), loss of petitioner's property in the right to possess and occupy the office building 1600 N.E. Coronado purchased by the plaintiff through the state law real estate purchase contract, the loss of the proceeds of $350,000.00 from the sale of the remainder of GE Transportation's 5.4 million dollar lease (Petition at ¶¶ 236 at pg. 41), loss of petitioner's property in the right in the honest services of Stanton Hazlett the State of Kansas Attorney Discipline Administrator and loss under Color of Official Right (Petition at ¶¶ 210, 211, 212, 213, 214, 215,216, 217, 221, 231 at pgs. 36-42), loss of petitioner's property in the right to the business expectancy of David Sperry's legal

representation (Petition at ¶¶ 41,238, 239, 240 at pg. 7,42), loss of petitioner's property in the right to the business expectancy of James C. Wirken's legal representation (Petition at ¶¶ 240 at pg. 42), etc.

72. (3) in such a way as to adversely effect interstate commerce through RICO Hobbs Act Extortion predicate acts (Petition at ¶¶ 105,106, 107 Pgs. 17-18) discovery of McDaniel's role in the scheme to deprive the plaintiff of 1600 NE Coronado and the capital to enter the market for hospital supplies (Petition at ¶¶163,164,165, 166,167, 278 pg. 28, 48).

73. The petition pleads fraud on the court by the GE Defendants (Petition at ¶¶273,274,275, 280,281,282,283,284, 285, 339,340,341,342,343,345,346 Pg. 47, 48,49,59,60) and fraud by Jeffery Immelt in securities filings "Racketeering Act Number Fourteen Fraudulent Misrepresentations on Form 10-K's By Defendant Jeffrey R. Immelt" (Petition at ¶¶ 332 Pg. 58).

ARGUMENTS IN OPPOSITION TO THE DEFENDANTS' MOTIONS TO DISMISS

The plaintiff asserts the defendants are not entitled to dismissal under this court's standard in*Saunders v. Farmers Ins. Exchange*, 515 F.Supp.2d 1009 at (W.D. Mo., 2007). See also *Missouri ex rel Nixon v. Progressive Business*, 504 F.Supp.2d 699 (W.D. Mo., 2007).

The GE Defendants have stated their intention to file a prohibited second motion to dismiss the petitioner's state law based claims. The petitioner objects because this would be a prohibited second Rule 12 motion to dismiss. Palermo, Federal Pretrial Practice: Basic Procedure & Strategy 2001 at page 21

The defendants have mistaken the applicability of F.R.Civ.P. Rule 8. The petition is a short and concise statement of each claim. The shortness sought by the defendants under Rule 8 applies only to the claims not the statement of facts. "Rule 8 does not set out a page limit, but rather requires that `[e]ach averment of a pleading shall be simple, concise, and direct.'" *Oil Express Nat'l, Inc. v. D'Alessandro*, No. 96 C 1528, 1997 WL 613276, at *2 (N.D.Ill. Sept.26, 1997).The plaintiff's claims meet the concise requirements of Rule 8 averments:

> "Rule 8 does not require a "short and plain complaint," but rather a "short and plain statement of the claim." FED. R.CIV.P. 8(a)(2) (emphasis added)... Moreover, it is "each averment of a pleading" that Rule 8(e)(1) states "shall be simple, concise, and direct" — not each pleading itself."

Ciralsky v. C.I.A., 355 F.3d 661 at 670 (D.C. Cir., 2004). The plaintiff's claims are stated with short concise averments of only the elements required to sustain each claim. However, the plaintiff's case is complex and includes multiple claims based on the conduct of both defendants many agents and

employees. Rule 8(a)(2) "must be applied with some logic and common sense. The length of a pleading will depend upon a number of factors, not the least of which is the complexity of the case." *In re Catanella, E.F. Hutton & Co., Inc.*, 583 F.Supp. at 1401. See also *Untracht v. Fikri*, 368 F.Supp.2d 409 (W.D. Pa., 2005).

The defendants have committed far more chargeable acts than those the petitioner has made claims over. Under F.R.Civ.P. Rule 18(a) and the doctrine of claim preclusion, the petitioner forfeits claims that existed at the time of filing if he does not raise them. The answering defendants' arguments the petition states too many claims are frivolous. F.R.Civ.P. Rule 8 is not a source of immunity for the commission of numerous felonies chargeable as predicate acts.

As will be shown *infra*, the defendants were mistaken about res judicata; fundamental aspects of RICO § 1962(d) conspiracy and RICO § 1962(c) Enterprise law; Open Ended Continuity; the effect of nondefendant government officials committing uncharged predicate acts in furtherance of the conspiracy to substantiate the plausibility of the conspiracy claimed; extortion through color of official right; the applicability of fraud on the court to the § 1961 predicate fraud acts; and other significant areas of this litigation. As a consequence, the defendants' arguments this information should cause the petition to be dismissed is not competent.

Komm v. McFliker, 662 F.Supp. 924 at 927 (W.D. Mo., 1987) establishes a heightened standard for stating the RICO enterprise requirements of continuity plus relationship by means of "related but distinct schemes" that requires the association in fact ongoing business relationships and unlawful goals to be delineated. This standard is consistent with *Bell Atlantic v. Twombly*, No. 05-1126, 2007 WL1461066 (May 21, 2007) and the determination that Sherman Act conspiracy on which RICO is based requires more than notice pleading.

The defendants' assertion of preclusion is frivolous under *Liberty Mutual Insurance Co. v. Fag Bearings Corporation*, Case No. 99-5017-CV-SW-3 (W.D. Mo. 5/21/2001). The cases do not have parties in common and are not final, the state claims having continued. "if the right arises under tort law—he needn't join them in one suit"*,Manicki v. Zeilmann*, 443 F.3d 922 at 926 (7th Cir., 2006) See also *Lawlor v. National Screen Service Corp*., 349 U.S. 322 at 330 , 75 S.Ct. 865, 99 L.Ed. 1122 (1955). Petition alleges new defendants and new violations *Engelhardt v. Bell & Howell Co*., 327 F.2d 30 (8th Cir.1964).

The only common issues to the previous antitrust litigation and the present action are the state contract related claims which have yet to be litigated: "…issue preclusion applies to issues that are 'actually litigated.'" *Liberty Mutual Insurance* Case No. 99-5017-CV-SW-3at pg. 12 (W.D. Mo. 5/21/2001).

If the petitioner brought new antitrust claims against the General Electric defendants on subsequent conduct designed to exclude the petitioner from the market for hospital supplies including misconduct in the present litigation, there would be no issue preclusion. *Manning v. City of Auburn*, 953 F.2d 1355, 1360 (11th Cir.1992) (decision whether or not to attempt to assert claims that arose subsequent to the filing of the action "is optional for the plaintiff; the existence of the doctrine of res judicata does not make the filing of supplements mandatory").

In law antitrust conduct like racketeering creates claims with each act furthering the monopoly:

> "Each time the arrangement precluded Cellar Door from competitively bidding for an event, a cause of action may have accrued to Cellar Door. Therefore, as in *Lawlo*r and *Cream Top*, those causes of action that arose subsequent to the 1983 dismissal are not barred by res judicata. Accordingly, we must reverse the District Court's order granting summary judgment in favor of appellees."

Cellar Door Productions, Inc. of Michigan v. Kay, 897 F.2d 1375 (C.A.6 (Mich.), 1990). See also *Bayview Hunters Point*:

> "As the Supreme Court noted, "Acceptance of the respondents' novel contention [that a prior judgment should bar subsequent claims] would in effect confer on them a partial immunity from civil liability for future violations. Such a result is consistent with neither the antitrust laws [or Clean Air Act] nor the doctrine of res judicata."12 *Lawlor*, 349 U.S. at 329, 75 S.Ct. 865."

Bayview Hunters Point v. Metropolitan Transp., 177 F.Supp.2d 1011 (N.D. Cal., 2001).

Litigation Privilege Inapplicable. The litigation privilege argument raised by the defendant Seyfarth Shaw LLP is inapplicable. Missouri State statutes cannot immunize Seyfarth Shaw LLP for Fraud or Extortion or the General Electric defendants acting through the attorney Jonathan I. Gleklen of Arnold & Porter LLP.

> *"Hampton v. Chicago*, 484 F.2d 602 (7th Cir. 1973), cert. denied, 415 U.S. 917, 94 S.Ct. 1413, 39 L.Ed.2d 471 (1974), the defendants argued that they were absolutely immune from § 1983 liability because they enjoyed absolute immunity under state law. We again rejected the argument that state law controls the immunity question. Id. at 608. We held that "(i)n view of the overriding importance of federal law, the area of (a defendant's) protection cannot be either limited or expanded by a state's statutory definition." *Id*."

Jaworski v. Schmidt, 684 F.2d 498 at 500 (C.A.7 (Wis.), 1982).

Seyfarth Shaw LLP has also not been charged state law based claims in this petition. Seyfarth Shaw LLP has not been charged with malpractice or on the basis of a duty to the petitioner. While Seyfarth Shaw LLP was the agent the General Electric defendants acted through in the tortuous interference of the petitioner's third attempt to capitalize his entry into the hospital supply market and cover for US Bancorp NA's breach, this claim has not been charged against Seyfarth Shaw LLP and remains unchanged against the General Electric defendants and survived dismissal in state court.

Seyfarth Shaw LLP's arguments are spurious and utilize the "Straw Man Fraud" technique of the defendant conspirators that procured outcomes in Kansas District court through extrinsic fraud. "Having erected this straw man, the appellants then shred it…"*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. The conferral of immunity upon the judge-defendant does not destroy the judicial state action which the judge may have performed. *Robinson v. Bergstrom*, 579 F.2d 401, 404 (7th Cir. 1978) (State action issue addressed prior to immunity issue). If the factual particulars of a conspiracy can be alleged, private persons may be exposed to § 1983 liability by conspiring with absolutely immune judges. Seyfarth Shaw LLP would have been liable here to the petitioner if the petitioner determined that Seyfarth Shaw LLP engaged in a conspiracy with the judge, or more specifically, by having "reached an understanding" with the judge to engage in a course of action that would deprive the petitioner of his constitutional rights. *Adickes v. S. H. Kress & Co*., 398 U.S. at 152, 90 S.Ct. 1598.

Seyfarth Shaw's co-conspirators the General Electric defendants continued to commit acts of fraud and extortion after they were specifically put on notice that they were not immune from their agent Jonathan I. Gleklen of Arnold & Porter LLP's conduct under *Cardtoons*: The en banc court held that Noerr-Pennington did not apply and that prelitigation communications between private parties were not immunized by the right to petition the government guaranteed by the First Amendment because there was

no petition addressed to the government. See *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 208 F.3d 885 (10th Cir. 2000) ("Cardtoons V").

The defendant Seyfarth Shaw LLP was sufficiently on notice that its conduct could be civilly actionable:

> "Behavior prohibited by § 1962(c) will violate RICO regardless of the person to whom it may be attributed, and we will not shrink from finding an attorney liable when he crosses the line between traditional rendition of legal services and active participation in directing the enterprise. The polestar is the activity in question, not the defendant's status. *In re American Honda Motor Co. Dealerships Relations Litig.*, 941 F.Supp. 528, 560 (D.Md.1996)("Th[e] cases reveal an underlying distinction between acting in an advisory professional capacity (even if in a knowingly fraudulent way) and acting as a direct participant in [an enterprise's] affairs.")."

Handeen v. Lemaire, 112 F.3d 1339 (C.A.8 (Minn.), 1997).

Seyfarth Shaw cannot hide behind its role in the Northern District of Illinois Bankruptcy proceeding because the controlling law of this jurisdiction specifically subjects Seyfath Shaw to this petition's liability:

> "If Handeen's evidence is up to this challenge, we are comfortable that he will have succeeded in proving that the attorneys conducted the bankruptcy estate. In that event, this would not be a case where a lawyer merely extended advice on possible ways to manage an enterprise's affairs. Cf. *Azrielli,* 21 F.3d at 521 (foreclosing liability where defendant only acted as attorney in illicit transactions). Nor would this be a situation where counsel issued an opinion based on facts provided by a client. See *Reves,* 507 U.S. at 185-86, 113 S.Ct. at 1173-74 (concluding that accounting firm did not violate RICO when it prepared audits in reliance upon a client's existing records); Nolte, 994 F.2d at 1316-17 (refusing to impose RICO liability where attorney had generated documents based on facts provided by client). Instead, if the Firm truly did associate with the enterprise to the degree encompassed by the Complaint, we would not hesitate to hold that the attorneys "participated in the core activities that constituted the affairs of the [estate]," *Napoli v. United States*, 32 F.3d 31, 36 (2d. Cir.1994), cert. denied, 513 U.S. 1110, 115 S.Ct. 900, 130 L.Ed.2d 784, and reh'g granted, factual inaccuracies corrected, and original determination confirmed, 45 F.3d 680 (2d. Cir.), cert. denied, 514 U.S. 1084, 115 S.Ct. 1796, 131 L.Ed.2d 724, and cert. denied, 514 U.S. 1134 - ----, 115 S.Ct. 2015-16, 131 L.Ed.2d 1014 (1995), namely, the manipulation of the bankruptcy process to obtain a discharge for Lemaire. In that instance, the Firm would have played some "role in the conception, creation, or execution," *Azrielli*, 21 F.3d at 521, of the illegal scheme, and we could safely say that the lawyers participated in the operation or management of the estate by assuming at least "some part in directing the enterprise's affairs." *Reves*, 507 U.S. at 179, 113 S.Ct. at 1170 (emphasis in original). Therefore, we conclude that the Complaint could justify a finding that the Firm participated in the conduct of the alleged RICO enterprise."

Handeen v. Lemaire, 112 F.3d 1339 at 1350-1351 (C.A.8 (Minn.), 1997).

The present complaint clearly states the petitioner was placed in fear of his life and safety by the conduct of Seyfarth Shaw LLP and charges that Seyfarth Shaw LLP committed predicate acts of fraud against the petitioner in addition to controlling or directing the RICO enterprise to obstruct the petitioner's entry into the hospital supply market. The petition also avers that Seyfarth Shaw LLP was an incorporated

entity member of the association in fact RICO enterprise and that Seyfarth Shaw LLP participated in a RICO § 1962(d) conspiracy with the other defendants to obtain Medicare and Medicaid funds through false claims against the federal government.

The petitioner has not found any case law suggesting Fraud on the Court is excluded from the definition of Fraud as a § 1961 enumerated predicate act. Certainly the defendants were unable to. It is however clearly established that the petitioner has a right to bring new claims based on conduct in a preceding litigation."[A]n adverse party may, by bringing a new proceeding, invoke the power of the courts to scrutinize the conduct of the parties in the previous action. *Marshall v. Holmes*, 141 U.S. at 599, 12 S.Ct. at 65, quoting *Johnson v. Waters*, 111 U.S. 640, 667, 4 S.Ct. 619, 633, 28 L.Ed. 547 (1884)" [emphasis added] *Leber-Krebs, Inc. v. Capitol Records*, 779 F.2d 895 at 901 (C.A.2 (N.Y.), 1985).

RICO § 1962(d) Conspiracy. All answering defendants assert two or more predicate § 1962(c) acts have not sufficiently been pled against them individually and therefore deny they themselves are liable under the RICO conspiracy alleged in the petition. The defendants have mistakenly thought the standard for RICO § 1962(d) conspiracy is the same as civil conspiracy claim under Missouri law: "(1) two or more persons; (2) with an unlawful objective; (3) after a meeting of the minds; (4) committed at least one act in furtherance of the conspiracy; and (5) the plaintiff was thereby injured." *Phelps v. Bross*, 73 S.W.3d 651, 657 (Mo.Ct.App.2002); *Gibson v. Brewer*, 952 S.W.2d 239, 245 (Mo.1997) (en banc).

Elements 4 and 5 are unnecessary for proving a RICO § 1962(d) conspiracy:

> "In order to obtain a conviction for RICO conspiracy, the government does not need to prove that the defendant committed or agreed to commit two predicate acts himself, or even that any overt acts have been committed. See *Salinas v. United States*, 522 U.S. 52, 63, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997) ("There is no requirement of some overt act or specific act in the statute before us.") In fact, the Supreme Court has held,
> **One can be a conspirator by agreeing to facilitate only some of the acts leading to the substantive offense. It is elementary that a conspiracy may exist and be punished whether or not the substantive crime ensues, for the conspiracy is a distinct evil, dangerous to the public, and so punishable in itself.**
> *Id*. at 65, 118 S.Ct. 469." [Emphasis added]

U.S. v. Saadey, 393 F.3d 669 at 676 (6th Cir., 2005). See also *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] . *Saadey Id*. At 677. neither the scheme to defraud, *United States v. Tadros*, 310 F.3d 999, 1006 (7th Cir.2002); *United States v. Pimental*, 380 F.3d 575, 585 (1st Cir.2004), nor the conspiracy, e.g., *United States v. Bond*, 231 F.3d 1075,

1079 (7th Cir.2000); *United States v. Martin*, 228 F.3d 1, 10-11 (1st Cir.2000), has to succeed in inflicting harm for the participants to be guilty. See *Salinas v. United States,* 522 U.S. 52, 65, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997) ("A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor.").

Seyfarth Shaw LLP like Jeffrey Immelt have RICO conspiracy liability for participating in the scheme to defraud the petitioner. Heartland, McDaniel and Foster's argument that the petition did not allege their benefit or investment (which the petition did) also fails because participant in a scheme to defraud is guilty even if he is an altruist and all the benefits of the fraud accrue to other participants, *Lombardo v. United States*, 865 F.2d 155, 159-60 (7th Cir.1989); *United States v. Moede*, 48 F.3d 238, 242 (7th Cir.1995); *United States v. Blasini-Lluberas*, 169 F.3d 57, 65 (1st Cir.1999); *United States v. Oplinger*, 150 F.3d 1061, 1065 (9th Cir.1998), just as a conspirator doesn't have to benefit personally to be guilty of conspiracy — a point so obvious that the petitioner can't find a case that states it, although it is implicit in statements of the elements of conspiracy, of which personal benefit is not one. *E.g., United States v. Duran*, 407 F.3d 828, 835-36 (7th Cir.2005); *United States v. Miller*, 405 F.3d 551, 555-56 (7th Cir.2005). For that matter, neither the scheme to defraud, *United States v. Tadros*, 310 F.3d 999, 1006 (7th Cir.2002); *United States v. Pimental*, 380 F.3d 575, 585 (1st Cir.2004), nor the conspiracy, e.g., *United States v. Bond*, 231 F.3d 1075, 1079 (7th Cir.2000); *United States v. Martin*, 228 F.3d 1, 10-11 (1st Cir.2000), has to succeed in inflicting harm for the participants to be guilty.

The defendants are mistaken over the need to state a claim relevant to a § 1962(c) predicate act:

> "Erskine, Satchell, and Branch argue that the conspiracy claims against them should be dismissed because "where the Plaintiff fails to allege a substantive violation of RICO, no claim for civil conspiracy to violate RICO may exist." (Doc. 41 at 6; see also Doc. 55 at 5; Doc. 56 at 1.) This argument is without merit. First of all, as concluded in the previous section of this discussion, Lockheed has stated a claim against these three Defendants under section 1962(c). Secondly, the Defendants do not cite any case that supports their proposition that section 1962(d) claims necessarily fall with section 1962(c) claims. They all cite *Beck v. Prupis*, but in that case, in which the Supreme Court affirmed the Eleventh Circuit Court of Appeals, the Supreme Court explicitly declined to either adopt or even address that proposition:
>
> [W]e do not resolve whether a plaintiff suing ... for a RICO conspiracy must allege an actionable violation under §§ 1962(a)-(c), or whether it is sufficient for the plaintiff to allege an agreement to complete a substantive violation and the commission of at least one act of racketeering that caused him injury.
>
> *Beck,* 529 U.S. 494, 506 n. 10, 120 S.Ct. 1608, 146 L.Ed.2d 561 (2000). The issue in *Beck* was actually "whether a plaintiff can bring a section 1962(d) claim for injury flowing from an overt act that is not an act of racketeering." *Id.*"

Lockheed Martin Corp. v. Boeing Co., 314 F.Supp.2d 1198 at 1222-1223 (M.D. Fla., 2004). Like Lockheed however, the petitioner has stated claims in the form of extortion and fraud predicate acts.

The defendants are mistaken over the applicability of *Reves v. Ernst & Young*, 507 U.S. 170 (1993) to RICO conspiracy: "See *Posada-Rios*, 158 F.3d at 857 (concluding "that the better-reasoned rule" is one which does not import the *Reves* test into a RICO conspiracy claim, "especially in light of the Supreme Court's recent decision in [*Salinas*]" which held "that S 1962(d) is governed by traditional conspiracy law")" *Smith v. Berg*, 247 F.3d 532 at fn 12 (3rd Cir., 2001).

Liability for the "passive conspirator" exists notwithstanding *Reves v. Ernst & Young*, 507 U.S. 170, 185 (1993). Some defendants claim that the law requires a showing of "operation or management of the enterprise" to demonstrate a RICO conspiracy under Section 1962(d).Even though the Supreme Court did hold in *Reves* that, to "conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs, one must participate in the operation or management of the enterprise itself," the passive conspirator immunity argument fails for the following reasons.

First, *Reves* involved a Section 1962(c) substantive RICO offense not a Section 1962(d) RICO conspiracy offense. In *Reves*, the Supreme Court held that an accounting firm could not be liable under Section 1962(c) for incorrectly valuing a farm cooperative's assets listed on its financial statements. *Reves*, 507 U.S. at 179. The Court reasoned that the firm had not "conduct[ed] or participated ... in the conduct" of the enterprise's affairs because it did not participate in the "operation or management of the enterprise itself." *Id.*

The GE defendants Seyfarth Shaw LLP, Immelt want this court to adopt the Ninth Circuit rule from the late 90's that RICO conspiracy requires acts in furtherance or control by each defendant The Eight Circuit does not *U.S. v. Darden*, 70 F.3d 1507 at 1543 (C.A.8 (Mo.), 1995). All circuits but the Ninth have concluded that *Reves* addressed only the extent of conduct or participation necessary to violate Section 1962(c), and did not address the principles of conspiracy law under Section 1962(d).[1] See *Smith v. Berg*,

[1] As noted, only the Ninth Circuit has ruled that *Reves'* on or management" test applies to RICO conspiracy charges. See *Neibel v. Trans World Assurance Co*., 108 F.3d 1123, 1128-29 (9th Cir. 1997). However, *Neibel* was decided before *Salinas*, and the Ninth Circuit has not yet revisited its ruling. Moreover, Neibel relied upon *United States v. Antar*, 53 F.3d 568, 581 (3d Cir. 1995), another pre-*Salinas* decision, which the Third Circuit subsequently ruled was no longer good *Smith v. Berg*, 247 F.3d at 534.

247 F.3d 532 (3d Cir. 2001); *United States v. Posada-Rios*, 158 F.3d 832, 857 (5th Cir. 1998); *Napoli v. United States*, 45 F.3d 680, 683-84 (2d Cir. 1995); *MCM Partners, Inc. v. Andrews-Bartlett & Assoc.*, 62 F.3d 967, 979 (7th Cir. 1995); *United States v. Starrett*, 55 F.3d 1525, 1547 (11th Cir. 1995); *United States v. Quintanilla*, 2 F.3d 1469, 1485 (7th Cir. 1993) ("to hold that under section 1962(d) the government must show that an alleged coconspirator ... participated to the extent required in *Reves* would add an element to RICO conspiracy that Congress did not direct"). The Tenth Circuit stated:

> "[T]he word 'participate' makes clear that RICO liability is not limited to those with primary responsibility for the enterprise's affairs, just as the phrase 'directly or indirectly' makes clear that RICO liability is not limited to those with a formal position in the enterprise, but some part in directing the enterprise's affairs is required." Reves II, 507 U.S. at 179, 113 S.Ct. at 1170 (footnote omitted). Id. (footnote omitted). Outsiders, such as the Title Companies, who are associated with a RICO enterprise and participate in the operation or management of the enterprise may also be liable under 1962(c). *Reves II*, 507 U.S. at 185, 113 S. Ct. at 1173."

BancOklahoma Mortgage Corp. v. Capital Title Co. Inc., 194 F.3d 1089, 1100 (10th Cir. 1999). Thus, *Reves'* "operation or management" standard applies only to substantive RICO offenses under Section 1962(c) and not to a conspiracy to violate RICO under Section 1962(d).

Second, after *Reves,* the Supreme Court specifically set forth in *Salinas* the standard for liability under Section 1962(d). See *Salinas*, 522 U.S. at 65. Such conspiracy liability requires a showing that: (1) two or more people agreed to commit a substantive RICO offense, and (2) the defendant knew of and agreed to the overall objective of the violation. *Id*.; See *Posada-Rios*, 158 F.3d at 857 (citing *Salinas*); *Brouwer v. Raffensperger, Hughes & Co*., 199 F.3d 961, 967 (7th Cir. 2000) (same). There can be no question that the Supreme Court was aware of its decision in *Reves* when it decided *Salinas*, and there is nothing inconsistent between the two decisions.

Thus, reading *Reves* and *Salinas* together, it is clear that a defendant may be held liable for conspiracy to violate Section1962(c) if the defendant knowingly agrees to violate the elements of Section 1962(c), one of which is the "operation or management" of a RICO enterprise.[2] However, liability for a

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[2] Relying upon *Beck v. Prupis*, 529 U.S. 494 (2000), Defendants could assert that *Salinas* is irrelevant for the purpose of civil RICO claims. *Beck* involved a chief executive officer whose employment was terminated when he discovered that certain of his company's officers were engaged in racketeering. The Court ruled that the termination, allegedly in furtherance of a RICO conspiracy, was not independently wrongful under any substantive RICO provision and did not give rise to a cause of action under Section 1962(c). In *Beck*, the only mention of *Salinas* appears in a footnote:
"[w]e have turned to the common law of criminal conspiracy to define what constitutes a violation of § 1962(d), ... This case,however, does not present simply the question of what constitutes a violation of §

RICO conspiracy under Section 1962(d) does not require the same proof of participation in the "operation or management" of the alleged RICO enterprise, just as it does not require proof of commission of all the other elements of the Section 1962(c) substantive offense. *Salinas*, 522 U.S. at 65; see also *Smith*, 247 F.3d at 537. See also *GP Industries, LLC v. Bachman*, 514 F.Supp.2d 1156 at 1166 (D. Neb., 2007) Only agreement to participate is necessary *U.S. v. Browne*, 505 F.3d 1229 at 1264 (11th Cir., 2007).

Moreover, Bradley J. Schlozman, Christopher M. McDaniel, Heartland, and Stuart Foster all became liable for the conspiracy's preceding acts when they joined the ongoing conspiracy. "Acts taken in furtherance of the Enterprise, even before an individual Defendant joined the conspiracy are actionable under Section 1962(d) if they further the objectives of the Enterprise. *Salinas v. United States*, 522 U.S. 52, 63-64 (1997).

Bradley J. Schlozman, Christopher M. McDaniel, Heartland, and Stuart Foster are liable when the jury determines they joined the conspiracy. For purposes of the petition they are now subject to the petitioner's conspiracy claims: "Once a conspiracy is shown to exist, the evidence sufficient to link another defendant to it need not be overwhelming." *United States v. Diaz*, 176 F.3d 52, 97 (2d Cir.1999) (quoting *United States v. Amato*, 15 F.3d 230, 235 (2d Cir.1994)). "[o]nce a RICO enterprise is established, a defendant may be found liable even if he does not have specific knowledge of every member and component of the enterprise." *Mason Tenders District Council Pension Fund v. Messera*, 1996 WL 351250 at *6 (S.D.N.Y.1996).

The defendants are also mistaken over the requirements of pleading the existence of a RICO enterprise:

> "Congress's purpose in enacting RICO was to eradicate organized crime by "**bring[ing] the often highly diversified acts of a single organized crime enterprise under RICO's umbrella**." *Eufrasio*, 935 F.2d at 566. Accordingly, "**separately performed, functionally diverse and directly unrrelated predicate acts and offenses will form a pattern** [of racketeering] under RICO, as long as they all have been undertaken in furtherance of one or another varied purposes of a common organized crime enterprise." *Id*. Moreover, **a RICO enterprise may engage in a pattern of racketeering activity that consists of separate and distinct conspiracies**. *United States v. Pungitore*, 910 F.2d 1084, 1099-1101, 1134-35 (3d Cir. 1990)." [Emphasis added]
>
> *United States v. Irizarry* at fn 7 (3rd Cir., 2003).

1962(d), but rather the meaning of a civil cause of action for private injury by reason of such a violation." *Beck*, 529 U.S. at 501 n.6. However, this sentence does not in any way repudiate or undercut the *Salinas* holding. The Beck decision turns rather on the injury requirement of Section 1964(c). *Id*. Thus, violations of Section 1962(d) continue to be defined under and governed by Salinas.

The Statement of Facts *supra* shows element by element that the plaintiff has alleged what is required in this jurisdiction for alleging an enterprise:

> *"United States v. Lemm*, 680 F.2d 1193, 1198 (8th Cir.1982), cert. denied, 459 U.S. 1110, 103 S.Ct. 739, 74 L.Ed.2d 960 (1983), the Eighth Circuit outlined the three basic characteristics of a RICO enterprise: "(1) common or shared purpose; (2) some continuity of structure and personnel; and (3) an ascertainable structure distinct from that inherent in the conduct of a pattern of racketeering."

Hanline v. Sinclair Global Brokerage Corp., 652 F.Supp. 1457 at 1462 (W.D. Mo., 1987). The defendants also attempt to deceive the court with their arguments that their legitimate conduct even described as such by the petitioner somehow immunizes them from RICO Enterprise liability. Because the petition describes a distinct enterprise separate from the legitimate businesses (even acting against the interests of General Electric shareholders by not honoring contracts with the petitioner):

> "An enterprise may be said to exist where ... separateness from the acts of racketeering can be found. **Discrete existence rather than the legality or illegality of the enterprise's activities or goals, is the test**." *Bennett* at 1060. In other words, an enterprise must provide some legitimate services and have an existence apart from the acts of the racketeering. *Id*." [Emphasis added]

Great American Acceptance Corp. v. Zwego, 902 S.W.2d 859 (Mo. App.W.D., 1995).

Even if some enterprise members like Stewart Foster, Heartland Financial Group, Inc., and Christopher M. McDaniel had a smaller role, the defendants are averred in detail to know of the general existence of the enterprise and they are still liable in the scheme:

> The requirement of association with the enterprise is not strict. The RICO net is woven tightly to trap even the smallest fish, those peripherally involved with the enterprise. The RICO statute seeks to encompass people who are merely associated with the enterprise. The defendant need only be aware of at least the general existence of the enterprise named in the indictment, and know about its related activities.

U.S. v. Cianci, 378 F.3d 71 at 95 (1st Cir., 2004). Stewart Foster, Heartland Financial Group, Inc., and Christopher M. McDaniel through their position and particularized role in predicate acts on behalf of the enterprise (even retaining real estate property and cash that is rightfully the petitioner's) are properly subject to RICO liability:

> "To establish that a defendant agreed to, or did, conduct or participate in the affairs of an enterprise through a pattern of racketeering, "the government must show that the [defendant] is enabled to commit the predicate offenses solely by virtue of his position in the enterprise or involvement in or control over the affairs of the enterprise; or . . . that the predicate offenses are related to the activities of that enterprise." *United States v. Jannotti*, 729 F.2d 213, 226 (3d Cir. 1984) (citation and internal quotations omitted)."

United States v. Irizarry at pg. 40 (3rd Cir., 2003).

Open Ended Continuity. "Congress was concerned in RICO with long-term criminal conduct."*Vanliner Ins. Co. v. All Risk Service, Ltd.,* 990 F.Supp. 1145 at 1148 (E.D. Mo., 1997). The plaintiff must allege "ongoing unlawful activities whose scope and persistence pose a special threat to social well-being." *Trans World Airlines, Inc. v. Berger*, 864 F.Supp. 106 at 108 (E.D. Mo., 1994). "Where there is only one purpose, one result, one set of participants, one victim and one method of commission, there is no continuity and, therefore, no pattern of racketeering activity." *Allright Missouri, Inc. v. Billeter et al.*, 631 F.Supp. 1328 at 1329 (E.D. Mo., 1986).

The complexity and the defense counsel cursed prolixity of the petition is in actuality what successfully stating continuity plus relationship by means "related but distinct schemes" requires in the Western District of Missouri *Komm v. McFliker*, 662 F.Supp. 924 at 927 (W.D. Mo., 1987).

The information in the petition described as a violation of Rule 8 by the defendants is necessary to meet the similar endeavors test that is the controlling law of this jurisdiction:

> "The test formulated by the Eighth Circuit is whether defendants have engaged in similar endeavors in the past, whether they were engaged in similar activities elsewhere, or whether they have been engaged in other criminal activities. *Terre Du Lac Assoc. v. Terre Du Lac, Inc*., 834 F.2d 148, 150 (8th Cir.1987), petition for cert. filed, (April 21, 1988); *Deviries v. Prudential-Bache Securities*, 805 F.2d 326, 329 (8th Cir.1986)"

Police Retirement System v. Midwest Inv. Ad. Serv., 706 F.Supp. 708 at 712 (E.D. Mo., 1989). The descriptions of the conduct of each conspirator including the charged defendants meets this test and sufficiently pleads continuity for purposes of establishing a pattern of racketeering activity:

> "[T]he alleged conduct by defendants, comprising multiple mail, wire and securities frauds undertaken in furtherance of at least nine separate securities transactions, satisfies the "pattern" requirement under RICO even under its strict recent interpretations. See, e.g., *Holmberg v. Morrisette*, 800 F.2d 205 (8th Cir.1986); *Superior Oil Co. v. Fulmer*, 785 F.2d 252 (8th Cir.1986). This is not a case in which multiple frauds are alleged in furtherance of a single unlawful transaction, *Albright Missouri, Inc. v. Billeter*, 631 F.Supp. 1328, 1330 (E.D.Mo.1986). This Court concludes that plaintiffs have pleaded "continuity plus relationship" adequately to render dismissal inappropriate."

Welek v. Solomon, 650 F.Supp. 972 at 974 (E.D. Mo., 1987).

Regular Way of Doing Business. The petition has described in detail the defendant corporations conduct as a regular way of doing business and for the purpose of an overarching unlawful objective-the overcharging of Medicare and Medicaid funds. This establishes the requisite open ended continuity not

withstanding the defendants false argument such detail should have been omitted under Rule 8. See *Gotfredson v. Larsen LP*, 432 F.Supp.2d 1163 at 1176 (D. Colo., 2006).

Open ended continuity is always present where it is averred that the defendants regularly conduct their business as the petitioner described:

> "Open-ended continuity is present where "the predicates are a regular way of conducting [an] ongoing legitimate business."4 H.J., 492 U.S. at 243, 109 S.Ct. at 2902; Sion, 893 F.2d at 447. In performing this analysis, the Court must look to whether the predicate acts themselves were a regular way of conducting the Defendants' business, not whether Defendants' conduct as a whole, including tortious conduct outside the purview of RICO section 1961(1) occurring in concert with the RICO predicates, were a regular way of conducting their ongoing legitimate business. See Sion, 893 F.2d at 448; Johnston v. Wilbourn, 760 F.Supp. 578, 588 & n. 13 (S.D.Miss.1991). Given the dearth of case law addressing this manner of establishing open-ended continuity, see Vicom, 20 F.3d at 783, the Court will be guided by the plain meaning of the test."

Fac, Inc. v. Cooperativa De Seguros De Vida, 106 F.Supp.2d 244 at 259 (P.R., 2000).

The Heartland defendants distinctiveness concern is not applicable not when individual defendants are also part of an association-in-fact that constitutes the enterprise. See, e.g., *Jacobson v. Cooper*, 882 F.2d 717, 720 (2d Cir.1989) (upholding claims where individual defendants were named as part of association-in-fact enterprise); *United States v. Perholtz*, 842 F.2d 343, 353-54 (D.C.Cir.) (same), cert. denied, 488 U.S. 821, 109 S.Ct. 65, 102 L.Ed.2d 42 (1988). In the example used in *Atlas Pile Driving*, there is little doubt that the racketeers are distinct from the enterprise. *Brittingham v. Mobil Corp*., 943 F.2d 297 at 302 (C.A.3 (Pa.), 1991).

The petitioner has adequately pled an association fact as it regards the corporate defendants General Electric, GE Capital, GE Transportation, Seyfarth Shaw LLP, and Heartland Financial Group, Inc. In *United States v. Feldman*, 853 F.2d 648, 657 an exception is described for to intentional or `purposeful' behavior by corporations charged as members of an association-in-fact. See *United States v. Feldman*, 853 F.2d 648, 657 (9th Cir.1988).

The defendants frivolously argue that the petition cannot state a claim where it describes the named defendants in conspiracy and association in fact enterprise with federal and state government officials that are not charged. As will be shown *infra*, "color of official right" is one of the ways the defendants committed extortion with the aid of government actors. The condemned conduct of RICO enterprise is Congress' way of addressing the infiltration of institutions by organized crime. There is no distinction between private and government entities being victim of the infiltration:

> "The evidence amply establishes a close relationship between defendants and the City in which they exercised their leadership roles. The enterprise and the conspiracy still thrived and the defendants were able to complete other schemes through their abuse of the municipal apparatus."

U.S. v. Cianci, 378 F.3d 71 at 87 (1st Cir., 2004).

The defendant Christopher M. McDaniel is alleged to have communicated false and harmful information to City of Blue Springs officials on behalf of the RICO enterprise for the purpose of committing extrinsic fraud against the petitioner and denying the petitioner the opportunity to present evidence for his state law based contract claims and to ultimately deprive the petitioner of his rightful ownership of the building at 1600 N.E. Coronado in Blue Springs, Missouri. A scheme that is only part way accomplished.

For purposes of a RICO conspiracy and for RICO predicate acts, the petitioner has alleged an endeavor which, if completed, would have satisfied the "pattern" requirement of RICO. See *Salinas v. United States*, 522 U.S. 52, 61-66, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997); *United States v. Edwards*, 303 F.3d 606, 642 (5th Cir.2002). See *Salinas v. United States,* 522 U.S. 52, 65, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997) ("A conspirator must intend to further an endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, but it suffices that he adopt the goal of furthering or facilitating the criminal endeavor.").

With the establishment of an association in fact enterprise made up of the defendants and their co-conspirators in an ongoing scheme to defraud Medicare and Medicaid, the petition establishes claims under § 1962(c) under the controlling law of this jurisdiction providing the petition states two or more predicate acts:

> "To state a claim under § 1962(c), a plaintiff must establish: (1) the existence of an enterprise; (2) conduct by the defendants in association with the enterprise; (3) the defendants' participation in at least two predicate acts of racketeering; and (4) conduct that constitutes a pattern of racketeering activity."

In re Sac & Fox Tribe of Mississippi in Iowa/Meskwaki Casino Litig., 340 F.3d 749, 767 (8th Cir.2003).

No Court has held that a racketeering act must be "engaged in jointly by Defendants" to constitute a racketeering act that is actionable under RICO. Instead, it has long been the law under RICO that "it is irrelevant that each Defendant participated in the enterprise's affairs through different, even unrelated

crimes, so long as [the fact finder] may reasonably infer that each crime was intended to further or [was related to] the enterprise's affairs." *United States v. Elliot*, 571 F.2d 880, 902-03 (5th Cir. 1978).

The defendants argument that the petitioner has stated a cause of action under the Hobbs Act where none exists is the straw man fraud to deceive the court described in *Limone v. Condon*, 372 F.3d 39 at 46 (1st Cir., 2004). The basis for the GE defendants argument is that the Hobbs Act Extortion violations pled as a predicate RICO Act against any of the defendants fail to state a claim under *Wisdom v. First Midwest Bank of Poplar Bluff*, 167 F.3d 402 (8th Cir. 1999). The GE defendants misrepresent *Wisdom* where the RICO claim was not pled with the required elements of enterprise and continuity, therefore the "district court **read the complaint as alleging implied rights of action under** … **18 U.S.C. § 1951** (1996) (extortion)." [Emphasis added] *Id.* at 405.

The contention that the petitoner's extortion claims fail is sanctionably frivolous because the plaintiff has not claimed a cause of action under 18 U.S.C. § 1951(the Hobbs Act) but instead claimed a cause of action under 18 § 1962(c) where Hobbs Act extortion is expressly stated and enumerated as a predicate act for a private cause of action under 18 § 1961(1) :

> "§ 1961. Definitions As used in this chapter—
> (1) "racketeering activity" means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, **extortion**…" [Emphasis added]

Unfortunately for the integrity of Husch, Blackwell and Sanders LLP, the GE Defendants' defense firm is responsible for knowing this argument is false and that their argument deliberately misrepresents the applicable federal law because the same pleading cites just such a private civil action based on Hobbs Act Extortion as a RICO predicate Act at page 13: *Scheidler v. National Organization for Women, Inc*., 537 U.S. 393 (2003). The US Supreme Court headnote or syllabus even states in the first paragraph:

> "**In concluding that petitioners violated RICO's civil provisions**, the jury found, among other things, that petitioners' alleged pattern of racketeering activity included violations of, or attempts or conspiracy to violate**, the Hobbs Act**, state extortion law, and the Travel Act, §1952."

Scheidler Id. This misconduct by the defendants' counsel has not only been permitted in the Kansas District Court and the Tenth Circuit but even more incredulously the plaintiff has been repeatedly sanctioned for the *GE Defendants* misconduct and it appears this conduct resulted in repeated denials of discovery while this action was in state court.

The jurisdictional statement at the opening of the petition puts the defendants on notice that the petitioner is bringing causes of action under 18 U.S.C. § 1961 et seq. (RICO). The petitioner clearly claims RICO § 1961 predicate act violations of 18 U.S.C. § 1951. Hobbs Act extortion is expressly stated and enumerated as a predicate act for a private cause of action under 18 § 1961(1). The defendants are responsible for knowing their 18 U.S.C. § 1951 argument is false where the GE Defendants have actually cited to *Scheidler*.

The decision in *Neoforma* procured in part through the extrinsic fraud of John K. Power is not even followed in the Kansas District Court. Instead then Chief Judge John W. Lungstrum reverted to controlling law violated by the court in *Neoforma* :

> "But in this case **plaintiff alleges predicate acts of extortion, not fraud, and therefore no such heightened pleading standard applies**. See *Robbins v. Wilkie*, 300 F.3d 1208, 1211 (10th Cir. 2002) (clarifying that *Farlow* and *Cayman Exploration Corp*. only require that RICO predicate acts of fraud be pleaded with particularity)" [emphasis added]

Ferluga v. Eickhoff, 408 F.Supp.2d 1153 at 1159 (D. Kan., 2006).

Another reason the defendants have abused the petitioner under the pretext of Rule 8 for including the conduct of their co-conspiring government officials is that the petition clearly establishes extortion under color of official right:

> "Under the "color of official right" theory, a public official like Kelley obtains a "payment to which he was not entitled, knowing that the payment was made in return for official acts." *Evans v. United States*, 504 U.S. 255, 268, 112 S.Ct. 1881, 1889, 119 L.Ed.2d 57 (1992). Barbara Kelley, as a private citizen, can be convicted of aiding and abetting a public official in the official's extortion, and for conspiring with a public official to commit extortion, under this theory as well. See *United States v. Collins*, 78 F.3d 1021, 1031-33 (6th Cir. 1996). Here, there was extensive evidence showing that the Kelleys received cash, parties, home renovations, auto repairs, and a new car from Vallecorsa in exchange for favorable treatment in granting or renewing his company's airport contracts. Under the "fear of economic harm" theory, the defendant receives payment from the victim because the victim believes that the defendant can exercise his or her power to the victim's economic detriment. "The fear need not be the product of the defendant's actions. `It is enough if the fear exists and the defendant intentionally exploits it.'" Id. at 1030 (quoting *United States v. Williams*, 952 F.2d 1504, 1513-14 (6th Cir.1991)). Private citizens can also be convicted under the "fear of economic harm" theory. See *id*.

U.S. v. Kelley, 461 F.3d 817 at 826 (6th Cir., 2006).

Where the petition describes Kansas State officials committing predicate acts directly injuring the petitioner's business property expectations including interfering with attorneys representing the petitioner and committing predicate acts in conspiracy or association in fact with the defendants, the petitioner has stated a predicate act of RICO Hobbs Act extortion.

The inducement component of an extortion claim is unnecessary in the color of official right counts:

> "The coercive nature of the official office provides all the inducement necessary. *United States v. Evans*, 910 F.2d 790, 796-97 (11th Cir. 1990). Relying on the common law of extortion, the Supreme Court agreed and held that "the word `induced' is a part of the definition of the offense by the private individual, but not the offense by the public official.... The statute merely requires of the public official that he obtain `property from another, with his consent,... under color of official right.' " Evans, 504 U.S. at 265."

U.S. v. Antico, 275 F.3d 245 at 256 (3rd Cir., 2001)

The defendants mistake the extortion property requirement applicability. The definition of property for RICO predicate acts and injury purposes is expansive. The defendants' arguments that the plaintiff has not been injured for RICO purposes by the loss of his property are sanctionably frivolous. A RICO plaintiff "can only recover to the extent that [] he has been injured in his business or property by the conduct constituting the violation." *Sedima*, 473 U.S. at 496, 105 S.Ct. 3275.

The loss of money from the sale of the lease to GE and GE Transportation, the loss of the sale of hospital supplies each day that the defendants keep the plaintiff from doing business through violations of § 1962(c) that flow from the commission of the predicate acts intended to prevent the plaintiff from recovering his capitalization or to injure his business reputation to prevent the plaintiff from raising other capital are RICO business injuries:

> "**Money is property under RICO**. See *Bankers Trust Co. v. Rhoades*, 741 F.2d 511 (2d Cir.1984), vacated and remanded on other grounds, 473 U.S. 922, 105 S.Ct. 3550, 87 L.Ed.2d 673 (1985) ("Bankers has alleged that it has been deprived of various sums of money by the defendants' activities. There is no question that this constituted `injur[y] in [its] business or property .'"). [Emphasis added]

Schwab v. Philip Morris USA, Inc., 449 F.Supp.2d 992 at 1039 (E.D.N.Y., 2006)." A fortiori, if money is property under the antitrust laws, it is property under RICO." *Schwab, Id*. at pg. 1039.

Whether an injury hurts an interest of the petitioner in his business is resolved under Missouri state law:

> "While federal law governs most issues under RICO, whether a particular interest amounts to property is quintessentially a question of state law. *Logan v. Zimmerman Brush Co*., 455 U.S. 422, 430, 102 S.Ct. 1148, 1154, 71 L.Ed.2d 265 (1982) ("The hallmark of property ... is an individual entitlement grounded in state law...."); *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, 33 L.Ed.2d 548 (1972) (property interests "are created and their dimensions are defined by" sources "such as state law.")."

Doe v. Roe, 958 F.2d 763 at 768 (C.A.7 (Ill.), 1992).

It is clearly frivolous to assert that the petitioner does not have property in his chose in action for recovering in court on his contract with the GE defendants over 1600 NE Coronado: "…given a surviving chose in action for protection of property rights and a valid merger agreement, Western Delaware could acquire a capacity along with Beneficial to sue Gamble-Skogmo by virtue of an effective assignment." *Western Auto Supply Co. v. Gamble-Skogmo, Inc*., 348 F.2d 736 at 741 (C.A.8 (Minn.), 1965)

The GE defendants have repeatedly misrepresented to federal courts the petitioner's purchase of 1600 NE Coronado and sale of the remainder of the 5.4 million dollar lease to GE Transportation as a failed lease agreement. However even under this fraudulent misrepresentation the petitioner still lost a property right under Missouri State law:

> "We hold therefore, that plaintiff's Counts I and II state a cause of action for negligent interference with a tenant's right to use and enjoy a leasehold within the limitations we expressed in Counts I and II of the Chubb Group opinion. Should plaintiff be able to prove its cause of action, it would be entitled to its prospective profits, limited by the general rule that such profits are recoverable only when proved to be reasonably certain had it not been for defendant's tortious conduct, and when ascertainable and measurable with reasonable certainty. *Riddle v. Dean Machinery Co*., 564 S.W.2d 238, 257 (Mo.App.1978)."

Volume Services, Inc. v. C.F. Murphy & Associates, Inc., 656 S.W.2d 785 at 792 (Mo. App.W.D., 1983). See also *Shaw v. Greathouse*, 296 S.W.2d 151 at 153 (Mo. App., 1956).

The deprivation of the petitioner's business expectancy in legal representation by Kansas and Missouri private attorneys (protected even when not a contract under Missouri tortuous interference law) is property extorted from the petitioner:

> Illustrations of intangible or invisible rights in property are to be found in copyrights, trade marks or names, good will, the right to the publication of news, market reports, and the products of one's brain independent of copyright. *Natl. Telegraph News Co. v. W. U. Telegraph Co*., 119 Fed. 294, 56 C. C. A. 198, 60 L. R. A. 805; *Simmons Hardware Co. v. Waibel,* 1 S. D. 488, 47 N. W. 814, 11 L. R. A. 267, 36 Am. St. Rep. 755; *De Lauder v. Balto. Co*., 95 Md. 1, 6, 50 Atl. 427. These, after all, are but incorporeal rights of property and could well be classed as such. There may be, and there doubtless are, others, because the ever expanding horizon of human effort, mental and physical, is continually creating new relations out of which, from necessity, arise new rights. Analysis will disclose that all of these possess the essential characteristics of rights incorporeal, in that they issue out of something corporate, either real or personal, and are inheritable and are not tangible or visible. 2 Black. Comm. 20; Cyclopedic L. Dict.; *Walker v. Daly*, 80 Wis. 222, 227, 49 N. W. 812; *Slingerland v. Inter. Contr. Co*., 43 App. Div. 215, 230, 60 N. Y. Supp. 12, affirmed 169 N. Y. 60, 61 N. E. 995, 56 L. R. A. 494."

Heller v. Lutz, 254 Mo. 704, 164 S.W. 123 at 124-125 (Mo., 1913).

A federal property right is also properly a recognized business injury to the petitioner. The honest services of the Federal and Kansas State Officials as described in the complaint (exclusive of the defendant

Schlozman who is described acting in his private capacity as a conspirator and member of the association in fact RICO enterprise) were being taken from the petitioner by the defendants:

> "The specific type of wire fraud at issue here— "honest services wire fraud"—arises under 18 U.S.C. § 1346, which this Circuit has interpreted to "clearly prohibit[ ] a scheme or artifice to use the mails or wires to enable an officer or employee of a private entity (or a person in a relationship that gives rise to a duty of loyalty comparable to that owed by employees to employers) purporting to act for and in the interests of his or her employer (or of the person to whom the duty of loyalty is owed) secretly to act in his or her or the defendant's own interests instead, accompanied by a material misrepresentation made or omission of information disclosed to the employer." *United States v. Rybicki*, 354 F.3d 124, 126-27 (2d Cir.2003) (en banc); see also id. at 147 (stating that a conviction requires a showing of "(1) a scheme or artifice to defraud; (2) for the purpose of depriving another of the intangible right of honest services . . . ; (3) where the misrepresentations (or omissions) made by the defendants are material in that they have the natural tendency to influence or are capable of influencing the employer to change its behavior; and (4) use of the mails or wires in furtherance of the scheme"); 18 U.S.C. § 1346."

U.S. v. Gotti, 459 F.3d 296 at 330-331 (2nd Cir., 2006). See also *U.S. v. Antico*, 275 F.3d 245 (3rd Cir., 2001):

> "Courts have interpreted the term " `scheme or artifice to defraud' [to] include a scheme or artifice to deprive another of the intangible right of honest services," *United States v. Woodward*, 149 F.3d 46 (1st Cir. 1998) (citing *United States v. Sawyer*, 85 F.3d 713, 723-24 (1st Cir. 1996)), giving rise to the "intangible rights doctrine." This doctrine reaches public and private fraud at the state and local levels, including prosecutions of public officials or employees who have failed to provide honest services to the citizenry they serve."

U.S. v. Antico, 275 F.3d 245 at 261 (3rd Cir., 2001).

Retention of Extorted Property Under *Scheidler II* The question (if the defendants' dismissal challenge rises to a serious question) should be does *Scheidler II* change the pleading requirement for Hobbs Act extortion as a RICO predicate act. The question has been asked and answered:

> "This case raises an issue of first impression for this Court: the scope of the Supreme Court's holding *Scheidler v. National Org. for Women, Inc.*, 537 U.S. 393, 123 S.Ct. 1057, 154 L.Ed.2d 991 (2003) ("Scheidler II"),1 in which the Supreme Court tightened the requirements for finding that a defendant has committed extortion under the Hobbs Act, 18 U.S.C. § 1951. On appeal, the defendants-appellants—Peter Gotti, Richard G. Gotti, Anthony ("Sonny") Ciccone, and Richard Bondi—argue that *Scheidler II* invalidates all of the Hobbs Act counts in this case that were premised on the extortion of intangible property rights. We hold, however, that *Scheidler II* did not invalidate the challenged extortion counts at issue in this case, because *Scheidler II*—far from holding that a Hobbs Act extortion could not be premised on the extortion of intangible property rights—simply clarified that for Hobbs Act liability to attach, there must be a showing that the defendant did not merely seek to deprive the victim of the property right in question, but also sought to obtain that right for himself."

U.S. v. Gotti, 459 F.3d 296 (2nd Cir., 2006).

The petition clearly states the defendants have retained 1600 N.E. Coronado, the money from the sale of the 5.4 million dollar lease to GE Transportation (the $350,000.00 expectancy the petitioner sought

to cover US bank's breach with, and the profits from selling hospital supplies. The petition also describes intangible rights that the defendants still maintain adverse possession or control over. In *Gotti*, a key piece of intangible property was the union's lucrative pharmaceutical services contract. *U.S. v. Gotti*, 459 F.3d 304.

The petition clearly pleads fraud predicate act elements in claims against the defendants Jeffery Immelt, Bradley Schlozman and Sayfarth Shaw LLC. The averred facts are related to the particular defendant and informs each defendant of the specific act allegedly committed by the defendant justifying his inclusion in a particular count. As such the petitioner has adequately pled the circumstances of fraud: "Circumstances" include such matters as "the time, place and contents of false representations, as well as the identity of the person making the misrepresentation and what was obtained or given up thereby." *Id*. *Lally v. Crawford County Trust & Sav. Bank*, 863 F.2d 612, 613 (8th Cir.1988) (per curiam).

The petition avers Jeffrey Immelt had a duty under securities law to disclose the liability of the petitioner's claims. Under federal securities laws reliance is presumed if the omissions were material and the defendant had a duty to disclose, *Pollack v. Laidlaw Holdings*, Inc., 90 Civ. 5788(DLC), 1995 WL 261518 at *11 (S.D.N.Y. May 3, 1995).

> Where there are multiple defendants, the complaint must inform each defendant of the specific act allegedly committed by the defendant justifying his inclusion in a particular count. *McKee*, 604 F.Supp. at 931. However, where the defendants are corporate insiders or control the actions of an entity, this requirement is subject to some modification, especially in situations where defendants are in a better position to know the extent of each defendant's participation in the complained of conduct. See *Banowitz v. State Exchange Bank*, 600 F.Supp. 1466 (N.D.Ill.1985). The key question is whether each defendant is given sufficient notice of their respective roles in order that they may answer the complaint. Id.; *Haroco*, 747 F.2d at 405 (Rule 9(b) only requires a general outline of a fraudulent scheme and reasonable notice as to each defendant's respective role)."

P & P Marketing, Inc. v. Ditton, 746 F.Supp. 1354 at 1362 (N.D. Ill., 1990).

The defendant Jeffrey Immelt argues spuriously that the liability ended for General Electric after the Kansas District Court dismissed the claims. However the state claims identified in the petition were dismissed without prejudice and the record sows (including dates in the petition's procedural history) that the state case was filed while the Kansas District Court case was still going on. Regardless, Jeffry Immelt knew the antitrust felonies were still be committed and that every day General Electric kept the petitioner out of the market for hospital supplies, new liability accrued for General Electric. A fact briefed in filings to the GE defendants in an attempt to add the post mandate GE case to the *Neoforma* litigation which itself

still continues. However the ultimate revelation of the falseness of Jeffrey Immelt's argument to this court is whether the liability has now been included in the 2007 annual report or quarterly SEC filings. The petitioner is unaware of any such disclosure and it appears Jeffrey Immelt has committed additional predicate acts of fraud.

The petition also describes in detail the taped conversation of Seyfarth Shaw LLP acting through its agent in fraudulently representing an affidavit made by Michael Lynch exists in the Northern District of Illinois court that Lynch transferred property or money to the petitioner. The petition also alleges the order obtained by Judge Mark Filip was a pretext or fraud to place the petitioner in justifiable terror, fearing for his life and safety. The petition states that the petitioner gave his testimony without legal representation (also accomplished by the defendants' repeated predicate acts) out of the belief the defendants were entitled to it under official color of right. Something the defendants' email asserted.

The petition alleges that the defendant Bradley J. Schlozman was called before the US Senate judiciary committee to testify because the petitioner was unable to obtain discovery from the GE defendants and out of frustration the petitioner sought to expose the role government of government officials in the General Electric/Novation LLC enterprise. The defendant Bradley J. Schlozman is averred to have perjured himself about conduct Schlozman committed in furtherance of the enterprise and conspiracy. The petitioner was injured when due to Schlozman's fraud, the enterprise and conspiracy went unexposed. The reliance of the Congressional oversight arms of the House and Senate Judiciary committees on Bradley J. Schlozman's false testimony allows the enterprise to continue injuring the petitioner.

The petition adequately pleads injury from the fraud acts through reliance where it states third parties relied on the defendants' frauds leading to the injury of the petitioner:

> "As a second possibility, a plaintiff may allege that his injuries were caused by a third party's reliance on fraudulent scheme. See, e.g., County of Suffolk v. Long Island Lighting Co., 907 F.2d 1295, 1300, 1311 (2d Cir.1990) (permitting plaintiff county and utility ratepayers to sue on theory that defendant utility had testified falsely before the state Public Service Commission, which granted the utility the right to increase rates in reliance on the false testimony). Proof of third-party reliance will not always satisfy RICO's requirement of proximate causation. See 2 Civil RICO Litigation § 8.04[B][1][a] ("[I]f the defendant's misrepresentations cause a third party to take actions causing plaintiffs injury, the factual causation link is satisfied."

Schwab v. Philip Morris USA, Inc., 449 F.Supp.2d 992 at 1045 (E.D.N.Y., 2006).

The petition shows that had the required documents from the 16th Circuit been filed including the docketing statement altered by the GE defendants' counsel John K. Power , the Clerk of the Western

District Court could have concluded that on the face of the appearance docket, the thirty day time limit for removal to federal court had expired. Power had a duty to provide the Clerk of the Western District copies of *all process* which also would have revealed the lack of federal jurisdiction for timeliness:

> "A case originally filed, in state court can be removed to federal court when defendants file a notice of removal with the district court of the United States, "containing a short and plain statement of the grounds of removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.". 28 U.S.C. § 1446(a)."

Miller v. R.J. Reynolds Tobacco Co., Inc., 502 F.Supp.2d 1265 at 1268 (S.D. Fla., 2007).

The fraud is now a question for the jury. The controlling law of this jurisdiction recognizes that in this *ex parte* removal proceeding where had a duty to present the full docket and prevented the petitioner's interest from being recognized,

"…it is the rule that fraud is extrinsic or collateral within the meaning of the rule when its effect is to prevent an unsuccessful party from having a trial or from fully presenting his case" *Fiske v. Buder*, 125 F.2d 841 at 849 (8th Cir., 1942).

The petition clearly states what the State of Missouri recognizes as extrinsic fraud:

> "Fraud extrinsic to the judgment is shown when proof of facts is made which if known to the trial court would have caused the trial court to not enter the judgment; facts which would have caused the court to enter a different judgment do not constitute fraud extrinsic to the judgment. *Gehm v. Gehm*, 707 S.W.2d 491, 494[2, 3] (Mo.App.1986)."

Marriage of Harrison, In re, 734 S.W.2d 934 at 938-939 (Mo. App. S.D., 1987).

The petition also avers extrinsic fraud by Seyfarth Shaw LLP committed against the petitioner in Missouri to procure his unrepresented testimony for the purpose of defeating his GE claims that the State of Missouri recognizes is extrinsic fraud:

> "Here, if Sally indeed signed the separation agreement involuntarily, and if her testimony at the hearing, quoted supra, was given under duress, such facts, if known to the trial court, would--or should--have caused it to not enter the dissolution decree."

Marriage of Harrison, In re, 734 S.W.2d 934 at 940-941 (Mo. App. S.D., 1987).

If the court finds the petition's fraud averments deficient, the proper course is to permit amendment to cure the deficiencies: "…even if the allegations are deficient, the court would allow plaintiff the opportunity to amend rather than dismiss Count VII for failure to plead fraud with particularity. See, e.g., *Bennett*, 685 F.2d at 1062." *Nagle v. Merrill Lynch, Pierce, Fenner & Smith*, 790 F.Supp. 203 at 210 (S.D. Iowa, 1992).

The answering defendants each mistakenly asserted the petition failed to plead injury. RICO injury is subject to the Rule 8 pleading standard. See *Ferluga v. Eickhoff*, 408 F.Supp.2d 1153 at 1159 (D. Kan., 2006). The information in the petition states the petition's direct resulting intangible business injuries and monetary damages from predicate acts in furtherance of the defendants' conspiracy. Defendants were given notice on page 4 of the petition ¶¶ 30, 31 of the nature of business property injury and the damages resulting from their predicate acts to prevent the petitioner from obtaining his contract expectations. The foreseeable results of Seyfarth Shaw LLP's role in the RICO conspiracy and RICO enterprise was to interfere with the petitioner's state court resolution of this controversy increasing the costs and delays of litigation, an injury squarely recognizable even in the context of bankruptcy litigation. See *First Capital Asset Management v. Brickellbush*, 218 F.Supp.2d 369 at 383, and at fn 44,45,46 (S.D.N.Y., 2002). See also *In re Motel 6 Securities Litigation*, 161 F.Supp.2d 227 at 235 (S.D.N.Y., 2001). The petition demonstrate "the 'concrete loss' required of a RICO plaintiff. See *Isaak v. Trumbull S & L*, 169 F.3d 390, 396 (6th Cir. 1999) (finding that plaintiff's RICO injury was ascertainable and definable by the time bankruptcy was filed)" *In re Jamuna Real Estate LLC,* 365 B.R. 540 at 556 (Bankr. E.D. Pa., 2007).

The plaintiff has standing against the defendants having suffered injuries that were proximately caused by the conduct complained of under *Holmes v. Securities Investor Protection Corp*., 503 U.S. 258, 268 (1992) (standing for RICO claims); *Blue Shield v. McCready*, 457 U.S. 465, 477 (1982) (standing for antitrust claims) and *McCready and Associated Gen. Contractors, Inc., v. California State Council of Carpenters*, 495 U.S. 519 (1983) (Herein "*AGC*" standing for RICO claims).

As shown in the statement of facts, the petitioner has concisely pled averments of resulting injuries that meet each of the formal RICO proximate cause factors under *Steamfitters*, 171 F.3d at 932 the proximate cause factors under *McCready* 457 U.S. at 467 and proximate cause factors under *AGC*, 459 U.S. at 537-38, 540, 542-44.

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 4/14/08.

And served the following counsel for Jeffrey R. Immelt, General Electric Capital Business Asset Funding Corporation, GE Transporation Systems Global Signaling, LLC, and General Electric Company via email at the following addresses:

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