IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

SAMUEL K. LIPARI,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 07-0849-CV-W-FJG
	)	
GENERAL ELECTRIC COMPANY, et aI.,	)	
	)	
Defendants.	)	

MOTION OF SEPARATE DEFENDANT
SEYFARTH SHAW LLP TO DISMISS

COMES NOW the separate defendant, Seyfarth Shaw LLP, and pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, moves the Court to dismiss the Complaint filed herein against this defendant, on the following bases:

1. The Complaint fails to state a claim on which relief may be granted against this separate defendant;

2. Plaintiff lacks standing to bring a RICO claim;

3. The defendant law firm owed no legal duty to the plaintiff;

4. The Complaint is barred by collateral estoppel and claim preclusion;

5. The Complaint violates Rule 8, Federal Rules of Civil Procedure.

I. BACKGROUND.

1. This action was originally filed on March 22, 2006 in the Circuit Court of Jackson County, Missouri as Case No. 0616-CV07421. In his initial Complaint, plaintiff named defendants General Electric; General Electric Capital Business Asset Funding Corporation; GE Transportation Systems; Global Signaling LLC; Carpets N More; and Heartland Financial.

2. This action was subsequently removed by the defendants to this Court on November 9,2007, after plaintiff was granted leave to file an amended Petition on October 31,2007.

3. In his Complaint, the plaintiff claims to be the "assignee" of the claims of Medical Supply Chain, Inc. Complaint, ~16. The only claims sought to be asserted against this separate defendant are based solely on the Racketeer Influenced and Corrupt Organizations Act ("RICO"). [1] The only section of that statute relied upon is 18 U.S.C. §1962(d). Complaint, ~146.

4. The facts of plaintiffs claims against defendant Seyfarth Shaw LLP are listed in the following paragraphs of the Complaint:

~131: "Seyfarth Shaw LLP ... direct[ed] ... ex parte communications with federal and state judicial officials."

~141: "Seyfarth Shaw LLP ... secured a Northern District of Illinois U.S. District Court order ... requiring petitioner to travel to Chicago ... "

~171: "Seyfarth Shaw LLP stepped **up** the retaliation against Michael Lynch ... "

~288: "Seyfarth Shaw LLP cause[d] the break-in and illegal electronic surveillance in a suburb of Chicago, Illinois to unlawfully influence the outcome of federal and Illinois state court cases related to McCook Metals and its owner Michael W. Lynch an associate of the petitioner."

Additionally, the "Cause of Action for Interference with Business Expectancies" a claim solely asserted against the "GE defendants" includes the allegations that "The General Electric defendants through their agents Seyfarth Shaw ... intentionally interfered with the petitioner's

[1] While the Counts in the Complaint which purport to assert claims for "breach of contract" and "interference with business expectancies" mention Seyfarth Shaw LLP, no claim is asserted against it in those Counts, and no damages are sought against this defendant under those Counts. See Complaint, ~'1384, 386, 391.

business expectancy ... " See 'r~371, 373-376. However, no direct allegations, claims or prayers for relief are asserted against Seyfarth Shaw LLP in this Count of the Complaint.

The "cases related to McCook Metals and its owner Michael W. Lynch" were all filed and prosecuted in the United States District Court for the Northern District of Illinois and the United States Bankruptcy Court for the Northern District of Illinois.[2]

According to the Complaint in this case, Seyfarth Shaw LLP represented General Electric and General Electric Capital. Complaint, ~~123, 143. Plaintiff does not allege that Seyfarth Shaw LLP has ever represented him or Medical Supply Chain, Inc., or that this law firm owed him a legal duty of any kind.

Plaintiff claims that his assignor, Medical Supply Chain, Inc., was damaged by the actions of the defendants, in that defendants kept Medical Supply Chain "out of the hospital supply market." Complaint, ~126. See also, ~140 ("protecting the hospital supply distribution market"); ~~371, 372, 379,380,383.

Seyfarth Shaw LLP is an Illinois limited liability partnership based in Chicago, Illinois. Complaint, '121. It does not have offices or attorneys in the Western District of Missouri.

Thus, the only claim against defendant Seyfarth Shaw LLP is an alleged violation of RICO, 18 U.S.C. §1962, based upon actions which occurred if at all only in the State of Illinois, and which somehow impacted Medical Supply Chain's entry into the hospital supply market.

[2] *Great Lakes Processing, et al.* v. *Seyfarth Shaw LLP,* Case No. 2002-CH-09478, Circuit Court of Cook County, Illinois, filed May 15, 2002; *Joseph Baldi, et al.* v. *Longview Aluminum, LLC, Michael Lynch, et al.,* Case No.1 :02-cv-04608, United States District Court, Northern District of Illinois, filed June 27, 2002; *Michael Lynch, et al.* v. *Seyfarth Shaw,* Case No. 02-01106, Adversary Proceeding, United States Bankruptcy Court, Northern District of lllinois.

II. THE COMPLAINT FAILS TO STATE A CLAIM.

On a Motion to Dismiss, the properly-pled allegations ofthe Complaint are accepted as true, and every reasonable inference is to be exercised in favor of the plaintiffs claim. *Federer v. Gephardt,* 363 F.3d 754, 757 (8th Cir. 2004). The court will dismiss a cause of action for failure to state a claim when it appears beyond a doubt that the plaintiff can prove no set of facts in support of the theory of recovery that would entitle him or her to relief, *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); *Maher v. Durango Metals, Inc.,* 144 F.3d 1302, 1304 (10th Cir. 1998), or when an issue oflaw is dispositive, *Neitzke v. Williams,* 490 U.S. 319, 326, 109 S.Ct. 1827,104 L.Ed.2d 338 (1989). The court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, *Maher,* 144 F.3d at 1304, and all reasonable inferences from those facts are viewed in favor of the plaintiff, *Swanson v. Bixler,* 750 F.2d 810, 813 (10th Cir. 1984).

However, this deference does not extend to creating a cause of action where none is properly stated, particularly in a RICO case. As Judge Carlos Murguia (from the District of Kansas) instructed this very plaintiff in a similar case:

> Under Rule 9(b), plaintiff must allege with particularity not only each element of a RICO violation, but also the predicate acts of racketeering. *Phillips USA, Inc. v. Alljlex USA, Inc.,* 1993 WL 191615, at *2 (D.Kan. May 21, 1993) (quoting *Farlow v. Peat, Marwick, Mitchell & Co.,* 956 F.2d 982, 989 (10th Cir.1992»). To properly allege the predicate acts, plaintiff must specify the "who, what, where, and when" of each purported act. *Id.* (citation omitted).

Medical Supply Chain, Inc. v. Neoforma, Inc., 419 F.Supp.2d 1316,1329 (D. Kan. 2006).

Thus, under RICO, specific acts must be alleged; the Complaint must do more than merely recite boiler-plate language from the statute. *DIRECTV, Inc. v. Cavanaugh,* 321 F.Supp.2d 825 (E.D. Mich. 2003).

In the present case, plaintiffs only claims against defendant Seyfarth Shaw LLP are that it participated in activities in a civil case and a bankruptcy proceeding in Illinois, including (supposedly) participating in "ex parte" communications with state and federal judicial officials, securing a court order in the Illinois case requiring Mr. Lipari (and not Medical Supply Chain) to appear and give his testimony in Illinois, somehow "retaliating" against one Michael Lynch (and not Medical Supply Chain), including (supposedly) causing a "break-in" and "illegal electronic surveillance in a suburb of Chicago, Illinois" pertaining to Mr. Lynch and his company.'

Notably, none of the actions allegedly taken by Seyfarth Shaw had anything to do with Medical Supply Chain, Inc., the supposed "assignor" of "all" claims asserted in this action. In addition, there is no "who, what, where, and when" of each purported act, as required by law. The Complaint fails for this reason alone.

Litigation Privilege.

In addition, as all of plaintiffs claims arise from actions taken by this defendant in other litigation, there is an absolute litigation privilege which precludes any claim arising therefrom.

As this Court has held, the Missouri Supreme Court recognizes the litigation privilege, which precludes the filing of suit over an opposing counsel's conduct in a prior litigation. *Trachsel v. Two Rivers Psychiatric Hosp.,* 883 F.Supp. 442 (W.D.Mo. 1995). In *Trachsel,* this Court noted that the Missouri Supreme Court had approvingly cited Restatement (Second) of Torts § 586 in *Laun v.*

3 Plaintiffs assoeiate, David Martin Price, suffered outright dismissal of his comparable claims, when asserted in the United States District Court for the Northern District of Illinois. *David 'Martin Price v. Han. Mark Filip, et al.,* Case No.1 :06-cv-03783, filed July 13, 2006, dismissed by the Court *sua sponte,* July 17, 2006, United States District Court, Northern District of Illinois; Case No. 1:06-cv-02500, filed May 4, 2006, dismissed May 12, 2006, United States District Court, Northern District of Illinois; *David Martin Price, Michael W. Lynch, et al. v. Seventh Circuit Court of Appeals, et al,* Case No.1 :06-cv-03751, filed July 10,2006, terminated August 23,2006, United States District Court, Northern District of Illinois.

Union Electric Co., 350 Mo. 572, 166 S.W.2d 1065, 1068-69 (1942). That section of the Restatement provides for an absolute litigation privilege. Based on this reading of Missouri law, this Court applied the absolute litigation privilege in *Trachsel.* 883 F.Supp. at 442.

The litigation privilege is an absolute one. *Id.; DeCamp v. Douglas County Franklin Grand JUlY,* 978 F.2d 1047, 1050 (8th Cir. 1992) (,'Absolute immunity protects participants in judicial proceedings to help guarantee independent decision-making and prevent harassment and intimidation. ").

The absolute litigation privilege is also recognized in Illinois, where Seyfarth Shaw's alleged misconduct occurred. *Cummins v. Heaney,* 2005 WL 2171066 (N.D. Ill. 2005); *Zanders v. Jones,* 680 F.Supp. 1236, 1238 (N.D.IlI. 1988); *Popp v. O'Neil,* 313 Ill.App.3d 638, 642, 730 N.E.2d 506, 510 (2000).

Thus, a basis for dismissing the Complaint against this defendant exists under the absolute litigation privilege.

Predicate Acts.

In order to state a claim for relief against a defendant under RICO, the plaintiff must allege specific acts representing "racketeering activities," i.e. criminal acts. *H.J, Inc. v. Northwestern Bell Telephone Co.,* 492 U.S. 229 (1989); *Harvey v. Harvey,* 931 F.Supp. 127 (D. Conn. 1996), aff'd 108 F.3d 329 (2d Cir. 1997); *Dempsey v. Sanders,* 132 F.Supp.2d 222 (S.D. N.Y. 2001); *Williams v. Dow Chemical Co.,* 255 F.Supp.2d 219 (S.D. N.Y. 2003). The claimed predicate acts must be pled with particularity, or the plaintiff will suffer dismissal. *Equitable Life Assurance Society v. Alexander Grant* & *Co.,* 627 F.Supp. 1023 (S.D. N.Y. 1985).

Notably, none ofthe acts of Seyfarth Shaw LLP alleged in the Complaint rises to the level of a criminal act. Obtaining a court order for Mr. Lipari to give his testimony, engaging in "ex parte" communications (which is of course denied), and even somehow "retaliating" against a non-party in some other litigation do not constitute criminal acts, and the Complaint does not claim them to be. Thus, the Complaint fails to state a claim under RICO, because it does not properly allege sufficient predicate acts by this defendant.

As noted above, plaintiff generally purports to assert a claim under "RICO," and even cites the general statute, 18 U.S.c. §1962 (Complaint, p. 20, Section VII., A., 1). However, despite its prolixity, the Complaint is totally void of any citation to the specific subsection of §1962 on which he purports to base his claims, leaving it for defendants and the Court to figure it out. At paragraph 116 of the Complaint, plaintiff apparently attempts to state a claim under all three substantive subsections of §1962, by claiming the defendants "directly or indirectly invested in" [§1962(a)], "maintains an interest in," [§1962(b)], "and or [sic] participates in" [§1962(c)] an enterprise.

A review of each of these subsections reveals no legal basis for a claim against Seyfarth Shaw LLP.

18 *V.S.c.* §1962(a).

In order to state a claim for relief under this subsection, the plaintiff must allege that the defendants "used" funds derived from the "racketeering activities" to invest in the "enterprise." *Guerrero v. Katzen,* 571 F.Supp. 714 (D. D.C. 1983), aff'd 249 U.S.App.D.C. 206, 774 F.2d 506 *(1985); Hemmings v. Barian,* 822 F.2d 688 (7th Cir. 1987).

In addition, the Complaint must allege *how* income derived from the racketeering activities were used to maintain defendants' interest in the "enterprise," and when it fails to do so, the

Complaint must be dismissed. *Crawford & Sons, Ltd. Profit Sharing Plan v. Besser,* 216 F.R.D. 228 (E.D. N.Y. 2003).

In the Complaint, plaintiff makes no allegation that the defendants used any funds from the alleged "racketeering activities" to invest in the enterprise, much less does he specify how such income was used. Indeed, he makes no mention of any funds supposedly derived by anyone from the alleged racketeering activities. Thus, there is no cognizable claim under 18 U.S.c. §1962(a).

18 U.S.C. §1962(b).

In order to state a claim for relief under this subsection, the plaintiff must allege injury to himself from the acquisition or maintenance of the "enterprise" by the defendants separate from the injury resulting from the predicate acts themselves. Otherwise, the Complaint fails to state a claim on which relief may be granted. *Discon, Inc. v. NYNEX Corp.,* 93 F.3d 1055 (2d Cir. 1996), cert. den. 522 U.S. 809 (1997); *Allstate Insurance Co. v. Siegel,* 312 F.Supp.2d 260 (D.Conn. 2004).

The Complaint does not allege any injury or damage to the plaintiff from the acquisition or maintenance of the "enterprise," separate from any (alleged) injury from the predicate acts themselves, and so it fails to state a claim on which relief can be granted.

18 U.S.c. §1962(c).

In order to state a claim for relief under this subsection, the plaintiff must allege that the defendant exerted some control, or played an integral role, in the enterprise. *Guaranty Residential Lending, Inc. v. International Mortgage Center, Inc.,* 305 F.Supp.2d 846 (N.D. Ill. 2004); *United States v. Hurley,* 63 F.3d 1 (1st Cir. 1995), cert. den. 517 U.S. 1105 (1996).

The Complaint makes no allegation that Seyfarth Shaw LLP exerted any control or otherwise played an integral role in the alleged enterprise, and so the Complaint fails to state a claim on which relief may be granted against this defendant under subsection (c) of 18 U.S.c. § 1962.

The "Enterprise" vs. the "Pattern."

Finally, in order to establish a cognizable claim for relief under either subsection (b) or subsection (c) of 18 U.S.c. § 1962, the plaintiff must allege the existence of an "enterprise" which is separate and apart from the "pattern of racketeering activity" in which the enterprise (allegedly) engages. *Montesano* v. *Seafirst Commercial Corp.,* 818 F.2d 423 (5th Cir. 1987); *Old Time Enterprises, Inc.* v. *International Coffee Corp.,* 862 F.2d 1213 (5th Cir. 1989); *Parker & Parsley Petroleum Co.* v. *Dresser Industries,* 972 F.2d 580 (5th Cir. 1992); *First Capital Asset Management* v. *Satinwood,* 385 F.3d 159 (2d Cir. 2004); *Walsh* v. *America's Tele-Network Corp.,* 195 F.Supp.2d 840 (E.D. Tex. 2002); *Bruss Co.* v. *Alinet Communication Services,* 606 F.Supp. 401 (N.D. Ill. 1985).

Reading the Complaint most liberally for the plaintiff, he only alleges a disparate set offacts, in order to allege a "pattern" of "racketeering" activity. He makes no claim that the "enterprise" has any existence separate from this loose set of facts. Therefore, the Complaint fails to state a claim under RICO and should be dismissed.

III. PLAINTIFF LACKS STANDING.

In order to file any claim in federal court, the plaintiff must have standing. Dismissal is proper if the plaintiff lacks standing or the complaint evidences another insuperable bar to relief. See *Bowman* v. *Western Auto Supply Co.,* 985 F.2d 383, 384 (8th Cir.), cert. denied, 508 U.S. 957 (1993). In a RICO case, the requirement for standing is even more strict. The United States

Supreme Court has established a proximate cause standard when considering whether a plaintiff has standing to bring a RICO case.

> The RICO violation must be both the "but for" and proximate cause of the injury to the plaintiffs business or property. *Holmes* v. *Sec. Investor Prot. Corp.*, 503 U.S. 258,268, 112 S.Ct. 1311,117 L.Ed.2d 532 (1992). In other words, [Plaintiff] must show: (1) that but for Defendants' conduct of an enterprise through a pattern of racketeering, he would not have been injured; and (2) some direct relation between the injury asserted and the injurious conduct alleged. *Corley* v. *Rosewood Care Ctr., Inc. of Peoria,* 388 F.3d 990, 1005 (7th Cir.2004).

RWB Services, LLCv. Rally Capital Services, LLC, 502 F.Supp.2d 787, 791 (N.D. Ill. 2007). As the Eighth Circuit has observed:

> Plaintiffs have standing in a civil RICO case only if the RICO violations both factually and proximately caused injury to the plaintiffs' business or property. See *Holmes* v. *Securities Investor Protection Corp.,* 503 U.S. 258,265-68 (1992). Proximate cause is a flexible common-law concept imported from tort law into RICO jurisprudence by way of the antitrust laws. See id. at 267-68. Since but- for causation, or causation in fact, has no logical ending point, the concept of proximate cause cuts offliability for those damages only distantly caused by a defendant's bad acts. Using proximate cause as a standing requirement in civil RICO cases is justified on three grounds. First, the proximate cause requirement reduces the need for apportioning between damages caused by the defendant's actions and damages caused by independent factors. Second, it prevents two or more parties along the chain of causation from obtaining duplicative recovery. Third, the need for deterrence can be met with recoveries by more directly injured parties. See id. at 269-70.

Newton v *Tyson Foods Inc.,* 207 F.3d 444,447 (8th Cir. 2000).

Standing to sue under RICO requires "some direct relation between the injury asserted and the injurious conduct alleged." *Lyons* v *Philip Morris Inc.,* 225 F.3d 909, 914 (8th Cir. 2000), quoting *Holmes* v. *Securities Investor Protection Corp.,* 503 U.S. 258,268 (1992) (RICO); see also

Associated Gen. Contractors, Inc. v. Carpenters, 459 U.S. 519, 540-45 (1983). Similarly, this Circuit has held:

> First, in examining the statutory language by reason of in § 1964(c), the Supreme Court held that, to have standing under RICO, the plaintiff must have been injured by conduct which constitutes racketeering activity, that is, RICO predicate acts, and not by other conduct of the defendant. See *Sedima* [5. *P. R. L.* v. *Imrex Co.], 473* U.S. [479,] at 496-97 [(1985)], citing *Haroco, Inc. v. American National Bank & Trust Co.,* 747 F.2d 384,398 (7th Cir. 1984), *aff'd,* 473 U.S. 606 (1985»). This was because the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern, for the essence ofthe violation is the commission of those acts in connection with the conduct of an enterprise. Id. at 497. The Supreme Court further refined the RICO standing requirement in *Holmes v. Securities Investor Protection Corp., 503* U.S. 258, 266-68 (1992) (Holmes), by refusing to read RICO expansively to allow all factually injured plaintiffs to recover. The Court rejected but for causation and instead construed RICO to require proximate cause, that is, some direct relation between the injury asserted and the injurious conduct alleged.

Hamm v. Rhone-Poulenc Rorer Pharmaceuticals, 187 F.3d 941,952 (8th Cir. 1999). See also, *Appletree Square L Ltd. Partnership v. WR. Grace & Co.,* 29 F.3d 1283 (8th Cir. 1994).

InLernerv. Fleet Bank, N.A., 318 F.3d 113 (2d Cir. 2003), cert. den. 540 U.S. 1012 (1993), the Court affirmed dismissal of a RICO complaint, where the alleged racketeering activities were not the proximate cause of the plaintiffs' alleged injuries.

Similarly, in the present case, there is absolutely no relation, much less a *"direct* relation," between the injuries alleged by the plaintiff (i.e. Medical Supply Chain's failure to enter into the medical supply business) and the alleged acts of Seyfarth Shaw in Illinois proceedings relating to Mr. Lynch or even in obtaining an order for Mr. Lipari (not Medical Supply Chain) to appear in Illinois to give his testimony.

Thus, plaintifflacks standing to sue under RICO, and all claims against Seyfarth Shaw LLP should be dismissed.

IV. SEYFARTH SHAW LLP OWED NO DUTY TO PLAINTIFF.

According to the Complaint, Seyfarth Shaw LLP represented General Electric and General Electric Capital. Complaint, ~'1123, 143. Plaintiff does not allege an attorney-client relationship between Seyfarth Shaw LLP and himself or Medical Supply Chain, Inc. Thus, plaintiff does not allege any legal basis for a duty owed by Seyfarth Shaw LLP to either himself or Medical Supply Chain, Inc. In the absence of such a duty, there can be no liability for a law firm's conduct.

This issue was specifically address by the Missouri Supreme Court in the case of *Donahue* v. *Shughart, Thomson & Kilroy, P.e.,* 900 S.W.2d 624, 628-29 (Mo. bane 1995). As recently observed by the Missouri Court of Appeals, *Donahue* established the following principles:

> The question of legal duty of attorneys to non-clients will be determined by weighing the following factors: (1) the existence of a specific intent by the client that the purpose ofthe attorney's services were to benefit the plaintiffs; (2) the foreseeability ofthe harm to the plaintiffs as a result of the attorney's negligence; (3) the degree of certainty that the plaintiffs will suffer injury from attorney misconduct; (4) the closeness of the connection between the attorney's conduct and the injury; (5) the policy of preventing future harm; and (6) the burden on the profession of recognizing liability under the circumstances. *Id.* at 629. "[Tjhe ultimate factual issue that must be pleaded and proved is that an attorney-client relationship existed in which the client specifically intended to benefit the plaintiff." *Id.* at 628.

Jackson v. *Williams, Robinson, White,* 230 S.W.3d 345,350 (Mo. App. 2007)(affirnling dismissal). See also, *Fox* v. *'White,* 215 S.W.3d 257 (Mo. App. 2007)(affirming dismissal). *Mid-Continent Casualty Company* v. *Daniel Clampett Powell,* 196 S.W.3d 595 (Mo. App. 2006)(affirming summary judgment for defendant). None ofthese factors applies in the present case: (1) There was

no actual or alleged specific intent by the client (General Electric) that the purpose of the Seyfarth Shaw's services were to benefit Medical Supply Chain or Mr. Lipari. Indeed, they were the adverse party and its representative; (2) it could not have been actually or reasonably foreseeable that harm would result to Medical Supply Chain (or its Mr. Lipari) from any aets of negligence on the part of Seyfarth Shaw LLP; (3) there was no possibility, much less any degree of certainty that Medical Supply Chain would suffer injury from Seyfarth Shaw's (alleged) misconduct; (4) there was no connection between the Seyfarth Shaw's conduct and the injury alleged by Medical Supply Chain; (5) the policy of preventing future harm does not apply here; and (6) the recognition of liability under the circumstances would impose serious harm upon the profession.

Thus, in the absence of any such duty, the Complaint fails to state a claim on which relief may be granted against this separate defendant, Seyfarth Shaw LLP.

V. THE COMPLAINT IS BARRED BY COLLATERAL ESTOPPEL AND CLAIM PRECLUSION.

Plaintiffs' claim in this action arise mostly from actions which (supposedly) took place in other civil proceedings, specifically:

> Medical Supply Chain v. General Electric Co., Case No. 03-2324-CM, United States District Court, District of Kansas. Complaint, ~8.
>
> Medical Supply Chain v. Neoforma, Case No. 05-021 O-CV-W-ODS, United States District Court, Western District of Missouri. Complaint, ~12.
>
> Rep MCR Realty, LLC v. Michael W. Lynch, Case No. 02 C 0399, United States District Court, Northern District of Illinois. Complaint, ~'1142, 43.

The RICO claims asserted in the present Complaint could just as well have been asserted in those prior cases. The failure to assert them bars the claims, on the basis of collateral estoppel and

claim preclusion. *Misischia v. St. John's Mercy Health System,* 457 F.3d 800 (8th Cir. 2006); *Whitaker v. Ameritech Corp.,* 129 F.3d 952 (7th Cir. 1997); *Barkley v. Carter County State Bank,* 920 F.Supp. 1441 (E.D. Mo. 1996); *Henry v. Farmer City State Bank,* 808 F.2d 1228 (7th Cir. 1986); *Gray v. Coomer,* 706 F.Supp. 539 (W.D. Ky. 1988).

VI. THE COMPLAINT VIOLATES RULE 8, FRCP.

Rule 8(a), Federal Rules of Civil Procedure states: "A pleading ... shall contain .. a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(e)(1) elaborates on the "short and plain requirement" in requiring each averment to be "simple, concise, and direct." To paraphrase Judge Murguia from his decision in *Medical Supply Chain v. Neoforma,* plaintiffs 69 page, 403 paragraph complaint "falls miles from Rule 8's boundaries." 419 F.Supp.2d at 1331. "In sum, plaintiffs complaint is so exceptionally verbose and cryptic that dismissal is appropriate." *Id.*

And dismissal in the present case is a realistic and viable option, authorized by law.

> *See United States ex reo Garst v. Lockheed-Martin Corp.,* 328 F.3d 374,378-79 (7th Cir. 2003) (affirming dismissal of plaintiffs 155 page, 400 paragraph complaint, holding that "[l]ength may make a complaint unintelligible, by scattering and concealing in a morass of irrelevaneies the few allegations that matter") (eiting *In re Westinghouse Sec. Litig.,* 90 F.3d 696, 702-03 (3d Cir. 1996) (240 pages, 600 paragraphs); *Kuehl v. FDIC,* 8 F.3d 905,908-09 (1st Cir. 1993) (43 pages, 358 paragraphs), *Michaelis v. Neb. State Bar Assoc.,* 717 F.2d 437, 439 (8th Cir. 1983) (98 pages, 144 paragraphs)).

Id., at 1331-1332. Rule 8 therefore justifies dismissal of the Complaint in the present ease.

VII. CONCLUSION.

Based upon all the foregoing arguments and authorities, defendant Seyfarth Shaw LLP prays that the Complaint be dismissed against it, with prejudice, and that this defendant be awarded its costs herein incurred and expended.

SPENCER FANE BRITT & BROvVNE LLP

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Certificate of Service

I hereby certify that on February 11,2008, I electronically filed the foregoing with the clerk of the court using the *CMIECF* system which will send a notice of electronic filing to the following:

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lsi J. Nick Badgerow
ATTORNEY FOR DEFENDANT
SEYFARTH SHAW LLP

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business expectancy. . ." See ¶¶371, 373-376. However, no direct allegations, claims or prayers for relief are asserted against Seyfarth Shaw LLP in this Count of the Complaint.

The "cases related to McCook Metals and its owner Michael W. Lynch" were all filed and prosecuted in the United States District Court for the Northern District of Illinois and the United States Bankruptcy Court for the Northern District of Illinois.[2]

According to the Complaint in this case, Seyfarth Shaw LLP represented General Electric and General Electric Capital. Complaint, ¶¶123, 143. Plaintiff does not allege that Seyfarth Shaw LLP has ever represented him or Medical Supply Chain, Inc., or that this law firm owed him a legal duty of any kind.

Plaintiff claims that his assignor, Medical Supply Chain, Inc., was damaged by the actions of the defendants, in that defendants kept Medical Supply Chain "out of the hospital supply market." Complaint, ¶126. See also, ¶140 ("protecting the hospital supply distribution market"); ¶¶371, 372, 379, 380, 383.

Seyfarth Shaw LLP is an Illinois limited liability partnership based in Chicago, Illinois. Complaint, ¶21. It does not have offices or attorneys in the Western District of Missouri.

Thus, the only claim against defendant Seyfarth Shaw LLP is an alleged violation of RICO, 18 U.S.C. §1962, based upon actions which occurred – if at all – only in the State of Illinois, and which somehow impacted Medical Supply Chain's entry into the hospital supply market.

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[2] *Great Lakes Processing, et al. v. Seyfarth Shaw LLP*, Case No. 2002-CH-09478, Circuit Court of Cook County, Illinois, filed May 15, 2002; *Joseph Baldi, et al. v. Longview Aluminum, LLC, Michael Lynch, et al.*, Case No. 1:02-cv-04608, United States District Court, Northern District of Illinois, filed June 27, 2002; *Michael Lynch, et al. v. Seyfarth Shaw*, Case No. 02-01106, Adversary Proceeding, United States Bankruptcy Court, Northern District of Illinois.

II. THE COMPLAINT FAILS TO STATE A CLAIM.

On a Motion to Dismiss, the properly-pled allegations of the Complaint are accepted as true, and every reasonable inference is to be exercised in favor of the plaintiff's claim. *Federer v. Gephardt*, 363 F.3d 754, 757 (8th Cir. 2004). The court will dismiss a cause of action for failure to state a claim when it appears beyond a doubt that the plaintiff can prove no set of facts in support of the theory of recovery that would entitle him or her to relief, *Conley v. Gibson,* 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957); *Maher v. Durango Metals, Inc.,* 144 F.3d 1302, 1304 (10th Cir. 1998), or when an issue of law is dispositive, *Neitzke v. Williams,* 490 U.S. 319, 326, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989). The court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, *Maher,* 144 F.3d at 1304, and all reasonable inferences from those facts are viewed in favor of the plaintiff, *Swanson v. Bixler,* 750 F.2d 810, 813 (10th Cir. 1984).

However, this deference does not extend to creating a cause of action where none is properly stated, particularly in a RICO case. As Judge Carlos Murguia (from the District of Kansas) instructed this very plaintiff in a similar case:

> Under Rule 9(b), plaintiff must allege with particularity not only each element of a RICO violation, but also the predicate acts of racketeering. *Phillips USA, Inc. v. Allflex USA, Inc.,* 1993 WL 191615, at *2 (D.Kan. May 21, 1993) (quoting *Farlow v. Peat, Marwick, Mitchell & Co.,* 956 F.2d 982, 989 (10th Cir.1992)). To properly allege the predicate acts, plaintiff must specify the "who, what, where, and when" of each purported act. *Id.* (citation omitted).

Medical Supply Chain, Inc. v. Neoforma, Inc., 419 F.Supp.2d 1316, 1329 (D. Kan. 2006).

Thus, under RICO, specific acts must be alleged; the Complaint must do more than merely recite boiler-plate language from the statute. *DIRECTV, Inc. v. Cavanaugh*, 321 F.Supp.2d 825 (E.D. Mich. 2003).

In the present case, plaintiff's only claims against defendant Seyfarth Shaw LLP are that it participated in activities in a civil case and a bankruptcy proceeding in Illinois, including (supposedly) participating in "ex parte" communications with state and federal judicial officials, securing a court order in the Illinois case requiring Mr. Lipari (and not Medical Supply Chain) to appear and give his testimony in Illinois, somehow "retaliating" against one Michael Lynch (and not Medical Supply Chain), including (supposedly) causing a "break-in" and "illegal electronic surveillance in a suburb of Chicago, Illinois" pertaining to Mr. Lynch and his company.[3]

Notably, none of the actions allegedly taken by Seyfarth Shaw had anything to do with Medical Supply Chain, Inc., the supposed "assignor" of "all" claims asserted in this action. In addition, there is no "who, what, where, and when" of each purported act, as required by law. The Complaint fails for this reason alone.

Litigation Privilege.

In addition, as all of plaintiff's claims arise from actions taken by this defendant in other litigation, there is an absolute litigation privilege which precludes any claim arising therefrom.

As this Court has held, the Missouri Supreme Court recognizes the litigation privilege, which precludes the filing of suit over an opposing counsel's conduct in a prior litigation. *Trachsel v. Two Rivers Psychiatric Hosp.*, 883 F.Supp. 442 (W.D.Mo. 1995). In *Trachsel*, this Court noted that the Missouri Supreme Court had approvingly cited Restatement (Second) of Torts § 586 in *Laun v.*

[3] Plaintiff's associate, David Martin Price, suffered outright dismissal of his comparable claims, when asserted in the United States District Court for the Northern District of Illinois. *David Martin Price v. Hon. Mark Filip, et al.*, Case No. 1:06-cv-03783, filed July 13, 2006, dismissed by the Court *sua sponte*, July 17, 2006, United States District Court, Northern District of Illinois; Case No. 1:06-cv-02500, filed May 4, 2006, dismissed May 12, 2006, United States District Court, Northern District of Illinois; *David Martin Price, Michael W. Lynch, et al. v. Seventh Circuit Court of Appeals, et al*, Case No. 1:06-cv-03751, filed July 10, 2006, terminated August 23, 2006, United States District Court, Northern District of Illinois.

Union Electric Co., 350 Mo. 572, 166 S.W.2d 1065, 1068-69 (1942). That section of the Restatement provides for an absolute litigation privilege. Based on this reading of Missouri law, this Court applied the absolute litigation privilege in *Trachsel*. 883 F.Supp. at 442.

The litigation privilege is an absolute one. *Id.*; *DeCamp v. Douglas County Franklin Grand Jury*, 978 F.2d 1047, 1050 (8th Cir. 1992) ("Absolute immunity protects participants in judicial proceedings to help guarantee independent decision-making and prevent harassment and intimidation.").

The absolute litigation privilege is also recognized in Illinois, where Seyfarth Shaw's alleged misconduct occurred. *Cummins v. Heaney,* 2005 WL 2171066 (N.D. Ill. 2005); *Zanders v. Jones*, 680 F.Supp. 1236, 1238 (N.D.Ill. 1988); *Popp v. O'Neil*, 313 Ill.App.3d 638, 642, 730 N.E.2d 506, 510 (2000).

Thus, a basis for dismissing the Complaint against this defendant exists under the absolute litigation privilege.

Predicate Acts.

In order to state a claim for relief against a defendant under RICO, the plaintiff must allege specific acts representing "racketeering activities," i.e. criminal acts. *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989); *Harvey v. Harvey*, 931 F.Supp. 127 (D. Conn. 1996), aff'd 108 F.3d 329 (2d Cir. 1997); *Dempsey v. Sanders*, 132 F.Supp.2d 222 (S.D. N.Y. 2001); *Williams v. Dow Chemical Co.*, 255 F.Supp.2d 219 (S.D. N.Y. 2003). The claimed predicate acts must be pled with particularity, or the plaintiff will suffer dismissal. *Equitable Life Assurance Society v. Alexander Grant & Co.*, 627 F.Supp. 1023 (S.D. N.Y. 1985).

Notably, none of the acts of Seyfarth Shaw LLP alleged in the Complaint rises to the level of a criminal act. Obtaining a court order for Mr. Lipari to give his testimony, engaging in "ex parte" communications (which is of course denied), and even somehow "retaliating" against a non-party in some other litigation do not constitute criminal acts, and the Complaint does not claim them to be. Thus, the Complaint fails to state a claim under RICO, because it does not properly allege sufficient predicate acts by this defendant.

As noted above, plaintiff generally purports to assert a claim under "RICO," and even cites the general statute, 18 U.S.C. §1962 (Complaint, p. 20, Section VII., A., 1). However, despite its prolixity, the Complaint is totally void of any citation to the specific subsection of §1962 on which he purports to base his claims, leaving it for defendants and the Court to figure it out. At paragraph 116 of the Complaint, plaintiff apparently attempts to state a claim under all three substantive subsections of §1962, by claiming the defendants "directly or indirectly invested in" [§1962(a)], "maintains an interest in," [§1962(b)], "and or [sic] participates in" [§1962(c)] an enterprise.

A review of each of these subsections reveals no legal basis for a claim against Seyfarth Shaw LLP.

18 U.S.C. §1962(a).

In order to state a claim for relief under this subsection, the plaintiff must allege that the defendants "used" funds derived from the "racketeering activities" to invest in the "enterprise." *Guerrero v. Katzen*, 571 F.Supp. 714 (D. D.C. 1983), aff'd 249 U.S.App.D.C. 206, 774 F.2d 506 (1985); *Hemmings v. Barian*, 822 F.2d 688 (7th Cir. 1987).

In addition, the Complaint must allege *how* income derived from the racketeering activities were used to maintain defendants' interest in the "enterprise," and when it fails to do so, the

Complaint must be dismissed. *Crawford & Sons, Ltd. Profit Sharing Plan v. Besser*, 216 F.R.D. 228 (E.D. N.Y. 2003).

In the Complaint, plaintiff makes no allegation that the defendants used any funds from the alleged "racketeering activities" to invest in the enterprise, much less does he specify how such income was used. Indeed, he makes no mention of any funds supposedly derived by anyone from the alleged racketeering activities. Thus, there is no cognizable claim under 18 U.S.C. §1962(a).

18 U.S.C. §1962(b).

In order to state a claim for relief under this subsection, the plaintiff must allege injury to himself from the acquisition or maintenance of the " enterprise" by the defendants – separate from the injury resulting from the predicate acts themselves. Otherwise, the Complaint fails to state a claim on which relief may be granted. *Discon, Inc. v. NYNEX Corp.*, 93 F.3d 1055 (2d Cir. 1996), cert. den. 522 U.S. 809 (1997); *Allstate Insurance Co. v. Siegel*, 312 F.Supp.2d 260 (D.Conn. 2004).

The Complaint does not allege any injury or damage to the plaintiff from the acquisition or maintenance of the "enterprise," separate from any (alleged) injury from the predicate acts themselves, and so it fails to state a claim on which relief can be granted.

18 U.S.C. §1962(c).

In order to state a claim for relief under this subsection, the plaintiff must allege that the defendant exerted some control, or played an integral role, in the enterprise. *Guaranty Residential Lending, Inc. v. International Mortgage Center, Inc.*, 305 F.Supp.2d 846 (N.D. Ill. 2004); *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995), cert. den. 517 U.S. 1105 (1996).

The Complaint makes no allegation that Seyfarth Shaw LLP exerted any control or otherwise played an integral role in the alleged enterprise, and so the Complaint fails to state a claim on which relief may be granted against this defendant under subsection (c) of 18 U.S.C. §1962.

The "Enterprise" vs. the "Pattern."

Finally, in order to establish a cognizable claim for relief under either subsection (b) or subsection (c) of 18 U.S.C. §1962, the plaintiff must allege the existence of an "enterprise" which is separate and apart from the "pattern of racketeering activity" in which the enterprise (allegedly) engages. *Montesano v. Seafirst Commercial Corp.*, 818 F.2d 423 (5th Cir. 1987); *Old Time Enterprises, Inc. v. International Coffee Corp.*, 862 F.2d 1213 (5th Cir. 1989); *Parker & Parsley Petroleum Co. v. Dresser Industries*, 972 F.2d 580 (5th Cir. 1992); *First Capital Asset Management v. Satinwood*, 385 F.3d 159 (2d Cir. 2004); *Walsh v. America's Tele-Network Corp.*, 195 F.Supp.2d 840 (E.D. Tex. 2002); *Bruss Co. v. Allnet Communication Services*, 606 F.Supp. 401 (N.D. Ill. 1985).

Reading the Complaint most liberally for the plaintiff, he only alleges a disparate set of facts, in order to allege a "pattern" of "racketeering" activity. He makes no claim that the "enterprise" has any existence separate from this loose set of facts. Therefore, the Complaint fails to state a claim under RICO and should be dismissed.

III. PLAINTIFF LACKS STANDING.

In order to file any claim in federal court, the plaintiff must have standing. Dismissal is proper if the plaintiff lacks standing or the complaint evidences another insuperable bar to relief. See *Bowman v. Western Auto Supply Co.*, 985 F.2d 383, 384 (8th Cir.), cert. denied, 508 U.S. 957 (1993). In a RICO case, the requirement for standing is even more strict. The United States

Supreme Court has established a proximate cause standard when considering whether a plaintiff has standing to bring a RICO case.

> The RICO violation must be both the "but for" and proximate cause of the injury to the plaintiffs business or property. *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 268, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992). In other words, [Plaintiff] must show: (1) that but for Defendants' conduct of an enterprise through a pattern of racketeering, he would not have been injured; and (2) some direct relation between the injury asserted and the injurious conduct alleged. *Corley v. Rosewood Care Ctr., Inc. of Peoria,* 388 F.3d 990, 1005 (7th Cir.2004).

RWB Services, LLC v. Rally Capital Services, LLC, 502 F.Supp.2d 787, 791 (N.D. Ill. 2007). As the Eighth Circuit has observed:

> Plaintiffs have standing in a civil RICO case only if the RICO violations both factually and proximately caused injury to the plaintiffs' business or property. See *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 265-68 (1992). Proximate cause is a flexible common-law concept imported from tort law into RICO jurisprudence by way of the antitrust laws. See id. at 267-68. Since but-for causation, or causation in fact, has no logical ending point, the concept of proximate cause cuts off liability for those damages only distantly caused by a defendant's bad acts. Using proximate cause as a standing requirement in civil RICO cases is justified on three grounds. First, the proximate cause requirement reduces the need for apportioning between damages caused by the defendant's actions and damages caused by independent factors. Second, it prevents two or more parties along the chain of causation from obtaining duplicative recovery. Third, the need for deterrence can be met with recoveries by more directly injured parties. See id. at 269-70.

Newton v Tyson Foods Inc., 207 F.3d 444, 447 (8th Cir. 2000).

Standing to sue under RICO requires "some direct relation between the injury asserted and the injurious conduct alleged." *Lyons v Philip Morris Inc.*, 225 F.3d 909, 914 (8th Cir. 2000), quoting *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268 (1992) (RICO); see also

Associated Gen. Contractors, Inc. v. Carpenters, 459 U.S. 519, 540-45 (1983). Similarly, this Circuit has held:

> First, in examining the statutory language by reason of in § 1964(c), the Supreme Court held that, to have standing under RICO, the plaintiff must have been injured by conduct which constitutes racketeering activity, that is, RICO predicate acts, and not by other conduct of the defendant. See *Sedima* [*S. P. R. L.* v. *Imrex Co.*], 473 U.S. [479,] at 496-97 [(1985)], citing *Haroco, Inc. v. American National Bank & Trust Co.*, 747 F.2d 384, 398 (7th Cir. 1984), *aff'd*, 473 U.S. 606 (1985)). This was because the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern, for the essence of the violation is the commission of those acts in connection with the conduct of an enterprise. Id. at 497. The Supreme Court further refined the RICO standing requirement in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 266-68 (1992) (Holmes), by refusing to read RICO expansively to allow all factually injured plaintiffs to recover. The Court rejected but for causation and instead construed RICO to require proximate cause, that is, some direct relation between the injury asserted and the injurious conduct alleged.

Hamm v. Rhone-Poulenc Rorer Pharmaceuticals, 187 F.3d 941, 952 (8th Cir. 1999). See also, *Appletree Square I, Ltd. Partnership v. W.R. Grace & Co.*, 29 F.3d 1283 (8th Cir. 1994).

In *Lerner v. Fleet Bank, N.A.*, 318 F.3d 113 (2d Cir. 2003), cert. den. 540 U.S. 1012 (1993), the Court affirmed dismissal of a RICO complaint, where the alleged racketeering activities were not the proximate cause of the plaintiffs' alleged injuries.

Similarly, in the present case, there is absolutely no relation, much less a "*direct* relation," between the injuries alleged by the plaintiff (i.e. Medical Supply Chain's failure to enter into the medical supply business) and the alleged acts of Seyfarth Shaw in Illinois proceedings relating to Mr. Lynch or even in obtaining an order for Mr. Lipari (not Medical Supply Chain) to appear in Illinois to give his testimony.

Thus, plaintiff lacks standing to sue under RICO, and all claims against Seyfarth Shaw LLP should be dismissed.

IV. SEYFARTH SHAW LLP OWED NO DUTY TO PLAINTIFF.

According to the Complaint, Seyfarth Shaw LLP represented General Electric and General Electric Capital. Complaint, ¶¶123, 143. Plaintiff does not allege an attorney-client relationship between Seyfarth Shaw LLP and himself or Medical Supply Chain, Inc. Thus, plaintiff does not allege any legal basis for a duty owed by Seyfarth Shaw LLP to either himself or Medical Supply Chain, Inc. In the absence of such a duty, there can be no liability for a law firm's conduct.

This issue was specifically address by the Missouri Supreme Court in the case of *Donahue v. Shughart, Thomson & Kilroy, P.C.*, 900 S.W.2d 624, 628-29 (Mo. banc 1995). As recently observed by the Missouri Court of Appeals, *Donahue* established the following principles:

> The question of legal duty of attorneys to non-clients will be determined by weighing the following factors: (1) the existence of a specific intent by the client that the purpose of the attorney's services were to benefit the plaintiffs; (2) the foreseeability of the harm to the plaintiffs as a result of the attorney's negligence; (3) the degree of certainty that the plaintiffs will suffer injury from attorney misconduct; (4) the closeness of the connection between the attorney's conduct and the injury; (5) the policy of preventing future harm; and (6) the burden on the profession of recognizing liability under the circumstances. *Id.* at 629. "[T]he ultimate factual issue that must be pleaded and proved is that an attorney-client relationship existed in which the client specifically intended to benefit the plaintiff." *Id.* at 628.

Jackson v. Williams, Robinson, White, 230 S.W.3d 345, 350 (Mo. App. 2007)(affirming dismissal). See also, *Fox v. White*, 215 S.W.3d 257 (Mo. App. 2007)(affirming dismissal). *Mid-Continent Casualty Company v. Daniel Clampett Powell,* 196 S.W.3d 595 (Mo. App. 2006)(affirming summary judgment for defendant). None of these factors applies in the present case: (1) There was

no actual or alleged specific intent by the client (General Electric) that the purpose of the Seyfarth Shaw's services were to benefit Medical Supply Chain or Mr. Lipari. Indeed, they were the adverse party and its representative; (2) it could not have been actually or reasonably foreseeable that harm would result to Medical Supply Chain (or its Mr. Lipari) from any acts of negligence on the part of Seyfarth Shaw LLP; (3) there was no possibility, much less any degree of certainty that Medical Supply Chain would suffer injury from Seyfarth Shaw's (alleged) misconduct; (4) there was no connection between the Seyfarth Shaw's conduct and the injury alleged by Medical Supply Chain; (5) the policy of preventing future harm does not apply here; and (6) the recognition of liability under the circumstances would impose serious harm upon the profession.

Thus, in the absence of any such duty, the Complaint fails to state a claim on which relief may be granted against this separate defendant, Seyfarth Shaw LLP.

V. THE COMPLAINT IS BARRED BY COLLATERAL ESTOPPEL AND CLAIM PRECLUSION.

Plaintiffs' claim in this action arise mostly from actions which (supposedly) took place in other civil proceedings, specifically:

> Medical Supply Chain v. General Electric Co., Case No. 03-2324-CM, United States District Court, District of Kansas. Complaint, ¶8.
>
> Medical Supply Chain v. Neoforma, Case No. 05-0210-CV-W-ODS, United States District Court, Western District of Missouri. Complaint, ¶12.
>
> Rep MCR Realty, LLC v. Michael W. Lynch, Case No. 02 C 0399, United States District Court, Northern District of Illinois. Complaint, ¶¶142, 43.

The RICO claims asserted in the present Complaint could just as well have been asserted in those prior cases. The failure to assert them bars the claims, on the basis of collateral estoppel and

claim preclusion. *Misischia v. St. John's Mercy Health System*, 457 F.3d 800 (8th Cir. 2006); *Whitaker v. Ameritech Corp.*, 129 F.3d 952 (7th Cir. 1997); *Barkley v. Carter County State Bank*, 920 F.Supp. 1441 (E.D. Mo. 1996); *Henry v. Farmer City State Bank*, 808 F.2d 1228 (7th Cir. 1986); *Gray v. Coomer*, 706 F.Supp. 539 (W.D. Ky. 1988).

VI. THE COMPLAINT VIOLATES RULE 8, FRCP.

Rule 8(a), Federal Rules of Civil Procedure states: "A pleading . . . shall contain .. a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(e)(1) elaborates on the "short and plain requirement" in requiring each averment to be "simple, concise, and direct." To paraphrase Judge Murguia from his decision in *Medical Supply Chain v. Neoforma*, plaintiff's 69 page, 403 paragraph complaint "falls miles from Rule 8's boundaries." 419 F.Supp.2d at 1331. "In sum, plaintiff's complaint is so exceptionally verbose and cryptic that dismissal is appropriate." *Id.*

And dismissal in the present case is a realistic and viable option, authorized by law.

> *See United States ex re. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378-79 (7th Cir. 2003) (affirming dismissal of plaintiff's 155 page, 400 paragraph complaint, holding that "[l]ength may make a complaint unintelligible, by scattering and concealing in a morass of irrelevancies the few allegations that matter") (citing *In re Westinghouse Sec. Litig.*, 90 F.3d 696, 702-03 (3d Cir. 1996) (240 pages, 600 paragraphs); *Kuehl v. FDIC*, 8 F.3d 905, 908-09 (1st Cir. 1993) (43 pages, 358 paragraphs), *Michaelis v. Neb. State Bar Assoc.*, 717 F.2d 437, 439 (8th Cir. 1983) (98 pages, 144 paragraphs)).

Id., at 1331-1332. Rule 8 therefore justifies dismissal of the Complaint in the present case.

VII. CONCLUSION.

Based upon all the foregoing arguments and authorities, defendant Seyfarth Shaw LLP prays that the Complaint be dismissed against it, with prejudice, and that this defendant be awarded its costs herein incurred and expended.

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Certificate of Service

I hereby certify that on February 11, 2008, I electronically filed the foregoing with the clerk of the court using the CM/ECF system which will send a notice of electronic filing to the following:

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