justification for the activity, there are limited legitimate justifications for the price-fixing and

collusive conduct, none of which are present here; and Respondents did not share substantial
financial risk and did not engage in clinical integration. Motion at 9-13, 17-22.

In its opposition to the motion for partial summary decision, with attached exhibits and
sworn statements, Respondents assert that disputed issues of material facts preclude granting
Complaint Counsel's motion for partial summary decision. Motion at 21-22. Respondents argue
that there is no horizontal agreement

Lobby, 477 U.S. at 256. The inferences to be drawn from the underlying facts must be viewed in the light most favorable to the nonmoving party. *Matsushita,* 475 U.S. at 587. Even if summary judgment is technically proper, sound judicial policy and the proper exercise of judicial

Browning, 610 F.2d 528, 536 (8th Cir. 1979); *State of New York v. Amfar Asphalt Corp.,* 1986 WL 27582, at *2 (E.D.N.Y. 1986); *In re Korean Air Lines Disaster of September 1, 1983, 597 F.*

IV.   GENUINE ISSUES OF MATERIAL FACT EXIST

As described above, the genuine issues of fact raised by the pleadings