

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

| | | |
|-----------------------------------|---|-------------------------|
| SAMUEL K. LIPARI, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | Case No. 08-3428 |
| |) | |
| U.S. BANCORP and U.S. BANK |) | |
| NATIONAL ASSOCIATION, |) | |
| |) | |
| Appellees. |) | |

APPELLEES’ REPLY SUGGESTIONS IN SUPPORT OF DISMISSAL

This appeal should be dismissed. This case has not been pending in any district court within this circuit for over 18 months. Any opportunity the appellant may have had to file an appeal or extraordinary writ here has long since passed. For the reasons stated in appellees’ motion, the Court should dismiss Mr. Lipari’s appeal.

Moreover, the appellant’s written response and authorities fully support dismissal here. Mr. Lipari acknowledges that the decisions of the United States District Court for the Western District of Missouri were interlocutory and not immediately appealable. (Appellant’s “Reply” at pp. 7-8.) He cites several cases supporting this proposition, which is one of the bases of the appellees’ motion. Mr. Lipari’s opportunity to seek relief in this Court, if any, passed very long ago. *See Koehler v. Green*, 370 F. Supp.2d 904, 906 n.1 (E.D. Mo. 2005) (noting that review might be possible under a writ of mandamus or certification of the order for immediate review if timely requested). Now, any appeal of a final judgment (which may include these arguments) must be made to the Tenth Circuit Court of Appeals (in which the Kansas federal court is located).

There simply are no grounds on which Mr. Lipari can pursue an appeal in this Court now. Accordingly, appellees’ motion should be granted.

/s/ Mark A. Olthoff

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that a true and correct copy of the above and foregoing was delivered via United States mail, postage prepaid, this 6th day of November, 2008, to:

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Appellant

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