

No. 08-3187

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

**SAMUEL K. LIPARI,
Appellant,**

v.

**NEOFORMA, INC., ROBERT J. ZOLLARS, VOLUNTEER HOSPITAL
ASSOCIATION, CURT NONOMAQUE, UNIVERSITY HEALTH SYSTEM
CONSORTIUM, ROBERT J. BAKER, U.S. BANCORP N.A., U.S. BANK
NATIONAL ASSOCIATION, JERRY A. GRUNDHOFER,
ANDREW CECERE, PIPER JAFFRAY COMPANIES, ANDREW S. DUFF,
SHUGHART THOMSON & KILROY, WATKINS BOULWARE, P.C.,
and NOVATION, LLC
Defendants - Appellees,**

**Appeal from the United States District Court for the
District of Kansas, District Court Case No. 05-CV-2299CM
Hon. Carlos Murguia**

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CORPORATE DISCLOSURE STATEMENT

1. Appellee U.S. Bancorp does not have a parent corporation, and 10% or more of its stock is not owned by a publicly held corporation.
2. Appellee U.S. Bank National Association (“U.S. Bank”) is a national banking association, and it is wholly owned by U.S. Bancorp.
3. Appellee Piper Jaffray Companies is a wholly-owned subsidiary of Piper Jaffray Co., Inc., and 10% or more of Piper Jaffray Co., Inc.’s stock is not owned by a publicly held corporation.
4. Appellee Neoforma, Inc., at the time of the filing of the underlying Complaint, was an independent corporation. Subsequently, Neoforma was acquired by GHX, LLC and is now a wholly owned subsidiary of GHX, LLC. No owner of more than 10% of GHX, LLC is a public corporation.
5. Volunteer Hospital Association, Inc. (“VHA”) does not have a parent corporation, and 10% or more of its stock is not owned by a publicly held corporation.
6. University Health System Consortium (“UHC”) does not have a parent corporation, and 10% or more of its stock is not owned by a publicly held corporation.

7. Novation, LLC is wholly owned by VHA and UHC, and 10% or more of its stock is not owned by a publicly held corporation.

8. Shughart Thomson & Kilroy, P.C. does not have a parent corporation, and 10% or more of its stock is not owned by a publicly held corporation.

STATEMENT OF PRIOR/RELATED APPEALS

Appellant Samuel K. Lipari's ("Lipari") statement of prior or related appeals presents a much expanded discussion of his litigation history, as well as cases involving unrelated parties, only some of which is germane to this appeal. Nevertheless, the statement is inclusive of what appellees would disclose, with one critical exception: Lipari's list omits his prior appeal in this case. On September 8, 2006, Lipari and his now-dissolved corporation, Medical Supply Chain ("MSC") appealed the first of three motions to reconsider the judgment filed in this case. In that first appeal, as in this one, Lipari sought to overturn the 2006 dismissal of this action and to overrule the district court's refusal to substitute Lipari as party-plaintiff. This Court dismissed that prior appeal as untimely. *See Medical Supply Chain, Inc. v. Neoforma, Inc*, 508 F.3d 572 (10th Cir. 2007).

JURISDICTIONAL STATEMENT

The district court's jurisdiction existed under 28 U.S.C. § 1331 in that the Complaint alleged federal statutory causes of action. Appellees contend that this Court does not have appellate jurisdiction because of Lipari's lack of standing in this case and the untimeliness of his notice of appeal. Lipari claims that this Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

1. Does Lipari have standing to appeal, when he was not a party to the underlying judgment in the case?
2. Assuming Lipari has standing, does the law of the case doctrine prohibit him from reasserting the same issues he, and MSC, raised in their 2006 appeal which this Court dismissed?
3. Does this Court have jurisdiction over the appeal when Lipari's Notice of Appeal was filed several years after both the dismissal of the Complaint and the first Motion to Reconsider and more than 30 days after the second Motion to Reconsider on the same grounds?
4. Even if Lipari had standing to appeal and the appeal were timely, can this Court consider any issue beyond the propriety of the district court's decision on Lipari's latest Motion for Reconsideration?

5. Did the district court abuse its discretion in striking Lipari's motions to reconsider where there has been no newly discovered evidence or change in the relevant law and where granting the motions would serve no purpose because the relief sought is moot?

STATEMENT OF THE CASE

A. Nature of the Case

This appeal represents the latest legal maneuver in a litigation campaign waged by Lipari through his company Medical Supply Chain, Inc. ("MSC") in multiple venues for six years against these appellees as well as various other entities. Despite the Court's repeated judgments that MSC's claims are frivolous and sanctionable, Lipari has persisted in his attempts to relitigate the claims. In addition, Lipari has, at every turn, broadened his allegations of conspiracy so as to include the courts in which he has received unfavorable rulings and government officials at virtually every level of government. Lipari filed this appeal years after MSC and its counsel were sanctioned and MSC's claims were dismissed. Incredibly, Lipari filed the appeal in response to an order of the trial court admonishing Lipari, *who is neither an attorney nor a party in this case*, to cease further filings in this closed matter.

Since the 2006 dismissal of MSC's claims and the sanctions award against MSC, Lipari has sought two forms of relief: (1) to overturn the dismissal of his

claims and (2) to substitute himself as plaintiff after he caused MSC to be dissolved. He has sought that relief by filing three Motions to Reconsider (variously invoking Rule 59 and/or Rule 60 of the Federal Rules of Civil Procedure) and one prior appeal to this Court. This current appeal is yet another attempt to gain the same relief based on the same arguments as before. However, Lipari is not entitled to relief on the merits of his arguments, failed to timely seek an appeal on those grounds in 2007, and is again untimely now. Enough is enough.

Moreover, Lipari's arguments have not improved with either repetition or the passage of time. Lipari still seeks pointless relief based on largely incoherent arguments which, to the extent they can be understood, reflect a fundamental misunderstanding of the relevant law. As Lipari's brief recognizes, Federal Rules 59 and 60 authorize relief only in extraordinary circumstances. As enumerated above, MSC had full opportunity to litigate all of these issues and they were decided against the company. There has been no relevant change in the facts or the law that warrants reconsideration of the prior results in this Court and the court below. Indeed, giving Lipari's vague and unsubstantiated claims of "injustice" any further consideration would be a waste of the Court's resources, a blow to the finality of judgments, and an imposition of even more unnecessary cost and expenses on the parties (many of whom already have unsatisfied sanctions

judgments against MSC and its counsel). The appeal should be dismissed or, in the alternative, the result below should be affirmed.

B. Course of Proceedings

On October 22, 2002, Plaintiff in the case below, MSC, filed a Complaint in the U.S. District Court for the District of Kansas alleging numerous claims, including federal antitrust claims, arising from the alleged refusal of U.S. Bank to provide certain escrow account services. *See Medical Supply Chain, Inc. v. US Bancorp, et al.*, No. 02-2539-CM, 2003 WL 21479192, *1 (D. Kan., June 16, 2003) (“*Medical Supply I*”). On June 16, 2003, the district court dismissed the *Medical Supply I* Complaint. *Id.* This Court affirmed the dismissal and held that the appeal was not supported by law or facts. 112 Fed. Appx. 730 (10th Cir. 2004) (unpublished) (ordering MSC and its counsel to show cause why they should not be sanctioned).

On March 9, 2005, MSC filed this action, *Medical Supply II*, in the U.S. District Court for the Western District of Missouri. MSC’s complaint in this case reasserted its previously dismissed federal and state law claims. The Missouri federal court transferred this action to Kansas and, on March 7, 2006, that court entered an order dismissing MSC’s claims and granting motions for sanctions filed

by several of the appellees. *See Medical Supply Chain, Inc. v. Neoforma, Inc. et al.*, 419 F. Supp.2d 1316, 1335-36 (D. Kan. 2006).¹

On March 14, 2006, Lipari, the sole shareholder and CEO of MSC, who is neither a party nor an attorney representing a party, filed on behalf of himself and MSC a Motion For Reconsideration of the March 7, 2006 Order. *See Medical Supply Chain, Inc. v. Neoforma, Inc.*, 508 F.3d 572, 574 (10th Cir. 2007)(setting forth procedural history). Lipari was never substituted as a party and no attorney ever executed or adopted the Motion for Reconsideration.

On August 7, 2006, the district court entered an order striking the Motion for Reconsideration filed by Lipari. *Medical Supply Chain, Inc. V. Neoforma, Inc.*, 2006 WL 2570312 (D. Kan. Aug 07, 2006). The court found that Lipari was not a proper party to the action and that he could not represent MSC. *Id.* The district court also noted that MSC had a history of filing frivolous suits and pleadings and warned that “future attempts to resurrect this case could result in the court imposing additional sanctions.” *See id.* at *3.

On September 8, 2006, MSC’s attorney filed, on behalf of MSC and Lipari, a Notice of Appeal. In that appeal, MSC and Lipari sought to overturn the

¹ Medical Supply had also filed a lawsuit asserting similar causes of action against other parties. The district court likewise dismissed that suit and this Court affirmed. *See Medical Supply Chain, Inc. v. General Elec. Co.*, 2004 WL 956100 (D. Kan., Jan. 29, 2004), *aff’d in part, rev’d in part*, 144 Fed. Appx. 708 (10th Cir. 2005).

dismissal of the action and to overrule the district court's refusal to substitute Lipari as party-plaintiff. This Court dismissed that appeal as untimely. *See Medical Supply Chain, Inc. v. Neoforma, Inc.*, 508 F.3d 572 (10th Cir. 2007).

On February 13, 2008, Lipari filed a Rule 60(b) Motion again arguing that MSC's claims should be reinstated and that Lipari had standing to proceed on those claims. Among other things, Lipari's Rule 60(b) motion argued that the district court was biased against Lipari. *See App. Rec. at Docket Entry 122.* The district court struck the Rule 60(b) Motion on March 31, 2008, noting that "Mr. Lipari's actions and filings appear to violate Federal Rule of Civil Procedure 11(b)" and ordering him to show cause why he has not violated Rule 11(b). *See App. Rec. at Docket Entry 127.*

Instead of timely appealing his first Rule 60(b) Motion (or obeying the order to stop his frivolous filings), Lipari filed a second motion on April 8, 2008 and again argued, under both Rule 60(b) and Rule 59(e), that the case should be reopened with Lipari as plaintiff. *App. Rec. at Docket Entry 128.* On July 7, 2008, the district court struck from the record Lipari's second Rule 60(b) motion. *App. Rec. at Docket Entry 135.* Lipari now seeks to appeal the court's striking from the record of his April 8, 2008 Motion under Rule 60(b) and/or 59(e).

STATEMENT OF FACTS

Appellees disagree with Medical Supply's Statement of Facts. Instead of stating the factual background of the proceedings below, Medical Supply simply summarizes the conclusory allegations of its Complaint. This recitation is not only improper and insufficient, it is beside the point, as the adequacy of MSC's complaint is not at issue in this appeal. *See* Section IV *infra*. Thus, Appellees will not burden the court with a response to those allegations, but will simply refer to their prior brief in the first appeal of this case which responded to a similar recitation.

Only a few facts are relevant to this appeal. Lipari was the sole shareholder and CEO of MSC. Lipari caused MSC to bring this lawsuit against appellees. The district court dismissed MSC's claims because they were fundamentally flawed from a legal standpoint and they were frivolous. After MSC's federal claims were dismissed with prejudice by the trial court, Lipari sought to substitute himself as plaintiff and he sought a reconsideration of the dismissed claims.

Lipari argued that he was the proper plaintiff in the case because he dissolved MSC's corporate existence in January 2006 and that he, as sole shareholder of the dissolved corporation, should be permitted to proceed on the then-dismissed claims. The trial court struck Lipari's motion to reconsider, noting that Missouri law provided that MSC could proceed on its claims even after its

dissolution, and that substitution of parties would serve no purpose because the case had been dismissed and substitution of parties would not change that outcome. *See Medical Supply Chain*, 2006 WL 2570312 at *2. Lipari appealed the district court's ruling to this Court. This Court dismissed Lipari's appeal of that ruling.

In 2007, Lipari filed a new lawsuit styled *Lipari v. US Bancorp, et al*, Case No. 07-CV-02146 (“*U.S. Bancorp*”).² In the *U.S. Bancorp* case, Lipari claiming that he was the assignee of MSC state law claims, sued some (but not all) of the appellees in this case. Thus far, the U.S. District Court of Kansas has permitted Lipari to proceed as plaintiff in the *U.S. Bancorp* case on the basis of the factual allegation that he is the assignee of the claims. Lipari argues that the limited ruling in the *U.S. Bancorp* case works an injustice in this case and therefore authorizes extraordinary relief. Specifically, Lipari argues that the court's ruling in *U.S. Bancorp* that Lipari could initiate a separate case as assignee of MSC's state law claims, necessarily means that the district court in this case abused its discretion in not permitting substitution of Lipari in this case. Lipari's argument conveniently omits the fact that, unlike the *U.S. Bancorp* case, MSC filed the present case prior to its dissolution. Lipari also does not mention that MSC's unassigned federal law

² The district court dismissed all but one of Lipari's claims. *See Lipari v. U.S. Bancorp*, 2008 WL 4190784 (D. Kan., Sept. 4, 2008). Lipari then filed a “stipulation of dismissal” as to the remaining count and has now filed an appeal of this separate case. *See Case No. 08-3287*.

claims were dismissed before he attempted to substitute himself as the plaintiff. The district court acted well within its discretion in striking Lipari's latest Rule 60 Motion.

SUMMARY OF THE ARGUMENT

For multiple independent reasons, this Court should dismiss this appeal, or, in the alternative, affirm the district court's striking Lipari's latest Rule 60 Motion. First, Lipari is not a party to this case and there is no reason to depart from the general rule that non-parties lack standing to appeal. Second, the Court should dismiss this appeal because Lipari has already appealed on these issues and that appeal was dismissed. Thus, Lipari's status as a non-party, and the legal insufficiency of MSC's claims, are the law of the case. Third, even putting aside the first appeal, this appeal is untimely because Lipari failed to file his Notice of Appeal within 30 days of the Court's striking of his February 13, 2008 Motion to Reconsider. Lipari's attempt to cure his untimeliness by filing yet another Motion to Reconsider on the same grounds and filing a notice of appeal within 30 days of the ruling on that motion does not cure the jurisdictional defect. Fourth, Lipari impermissibly seeks review of the merits of the prior dismissal, even though his appeal is from the denial of a motion to reconsider, rather than from the final judgment. Finally, the district court properly denied Lipari's Motions to

Reconsider, as there is no new evidence, change in law, or other reason to grant the motion. In fact, the granting of the motion would have merely resulted in the substitution of Lipari in a case in which all of the claims have been dismissed. In sum, this case is long over and this Court should put an end to Lipari's repeated attempts to re-litigate issues he has already lost.

STANDARD OF REVIEW

The abuse of discretion standard of review applies when this Court reviews the district court's decision to strike a motion for reconsideration. *McLeod v. Arrow Marine Transport, Inc.*, 258 F.3d 608, 617 (7th Cir. 2001). This abuse of discretion standard also applies to the review of the district court's orders denying substitution of plaintiff, *Prop-Jets, Inc. v. Chandler*, 575 F.2d 1322, 1324 (10th Cir. 1978).

ARGUMENT

I. LIPARI LACKS STANDING TO APPEAL

The first reason this appeal should be dismissed is because Lipari lacks standing to appeal. Lipari seeks to appeal the district court's refusal to reconsider a judgment in an action to which Lipari is not a party. This lawsuit was brought by MSC, not Lipari. The judgment dismissed MSC's claims, and sanctioned MSC and its counsel, not Lipari. After the dismissal of MSC's claims, Lipari has

repeatedly sought to be substituted in as plaintiff. This Court has dismissed his appeal of the district court's refusal to allow that substitution.

It is well-settled that, absent extraordinary circumstances, a non-party lacks standing to appeal.” *Hutchinson v. Pfeil*, 211 F.3d 515, 518 (10th Cir. 2000). The extraordinary circumstances that would permit a non-party to appeal are not present in this case. *See Coffey v. Whirlpool Corp.*, 591 F.2d 618, 619 (10th Cir.1979) (holding that insurer lacked standing to appeal where district court denied insured's motion to vacate dismissal to permit substitution of insurer as plaintiff). In *Hilao v. Estate of Marcos*, 393 F.3d 987 (9th Cir. 2004), the court noted that “equities support nonparty standing when a party has haled the non-party into the proceeding against his will, and then has attempted to thwart the nonparty's right to appeal by arguing that he lacks standing, or when judgment has been entered against the nonparty.” *Id.* at 992 (citations omitted). Lipari has not been haled into this case by appellees, nor is he party to the judgment—instead he has attempted, and failed, to inject himself into a case after the dismissal of MSC's claims.

This case is very similar to *Marks v. U.S. West Direct*, 166 F.3d 1221, 1998 WL 856139 (10th Cir. 1998) (table, text in Westlaw). In that case, the appellant had sought to intervene in the case below and his intervention was denied by the district court. Appellant attempted to appeal that decision, as well as the district

court's decision on summary judgment. *Id.* at *1. This Court concluded that appellant's appeal on the denial of intervention was not timely and must be dismissed. *Id.* As a consequence, the appellant was a non-party to the case and lacked standing to appeal the decision on the merits. *Id.*

Similarly, this Court dismissed Lipari's prior appeal in 2007, which raised the issue of whether he should be made a party to the proceeding. Having lost that issue, Lipari remains a non-party to this case and lacks standing in this appeal.

II. LIPARI'S APPEAL RAISES NO NEW ISSUES AND INSTEAD SEEKS REVIEW OF ESTABLISHED LAW OF THE CASE

Lipari and MSC have already repeatedly raised and argued every substantive issue in this appeal multiple times in the district court and in their unsuccessful 2007 appeal in this Court. That this appeal covers well-plowed ground is obvious from the table of contents in Lipari's brief, in which he cross-references his current points of error with the points of error in his and MSC's 2007 appeal. The district court has repeatedly concluded that Lipari is not entitled to be a party to this case and this Court rejected his appeal on that ground. Lipari has repeatedly argued that the court's dismissal of MSC's claims was wrongful and this Court rejected an appeal on that ground. Thus, Lipari's status as a non-party and the legal invalidity of MSC's claims are established law of the case.

As this Court has observed "[t]he law of the case doctrine is a restriction self-imposed by the courts in the interests of judicial efficiency. It is a rule based

on sound public policy that litigation should come to an end, and is designed to bring about a quick resolution of disputes by preventing continued re-argument of issues already decided” *Fox v. Mazda Corp. of America*, 868 F.2d 1190, 1194 (10th Cir.1989) (citations omitted and internal quotations omitted). Issues become law of the case if they are decided by the lower court and not reached by the appellate process because of a failure to appeal them. *Aguinaga v. United Food and Commercial Workers Intern. Union*, 854 F. Supp. 757, 773 (D. Kan. May 1994), *aff’d*, 58 F.3d 513 (10th Cir. 1995).

This Court should reject Lipari’s attempt to revive these stale issues by his repeated filings of frivolous motions and appeals (in defiance of the district court’s orders that he stop). As discussed in more detail in Section V *infra*, Lipari raises no legitimate reason why these issues should be revisited again. Instead, Lipari seeks to compound the costs and expenses incurred by appellees as a result of MSC’s frivolous lawsuit by seeking to continue it for years after the final judgment. The law of the case doctrine stands as a safeguard against the use of the courts as an instrument of abuse.

III. LIPARI’S NOTICE OF APPEAL WAS UNTIMELY

This Court can exercise jurisdiction over this appeal only if Lipari’s Notice of Appeal is timely filed. *Allender v. Raytheon Aircraft Co.*, 439 F.3d 1236, 1239 (10th Cir. 2006). As the U.S. Supreme Court has noted, the 30 day deadline of

Federal Rule of Appellate Procedure 4 is both “mandatory and jurisdictional.” *Browder v. Director, Dept. of Corrections of Illinois*, 434 U.S. 257, 264 (1978) (noting that the purpose of the time limit is “to set a definite point of time when litigation shall be at an end, unless within that time the prescribed application has been made; and if it has not, to advise prospective appellees that they are freed of the appellant's demands.”) (citations and internal quotation omitted).

As noted on pages 7-8 *supra*, the Rule 60 Motion that is the subject of this appeal is actually the third such motion filed by Lipari on the same grounds in this case. However, even if the first motion to reconsider and the 2007 appeal from that motion are put aside and not considered for purposes of determining the timeliness of this appeal, Lipari’s Notice of Appeal is still untimely filed. The timeline of Lipari’s recent filings is as follows:

February 13, 2008	Lipari files Rule 60(b) Motion
March 31, 2008	District Court strikes Rule 60(b) Motion
April 8, 2008	Lipari files second motion on same grounds as February 13, 2008 motion
July 7, 2008	District Court strikes February 13, 2008 Motion
July 8, 2008	Lipari files Notice of Appeal

If Lipari had standing to seek appellate review of the denial of his Rule 60(b) motion, he was required to do so within 30 days of the order on his first Rule

60(b) motion, which was struck from the record on March 28, 2008. He failed to do so. Lipari cannot remedy that failure to timely file an appeal by filing a subsequent Rule 60(b) or Rule 59(e) motion and appealing the denial of the second motion. Courts have squarely rejected this gambit. In a similar case, the Fifth Circuit has noted that “[i]n effect, by filing a Rule 60(b) motion following the prior denial of an earlier virtually identical post-trial motion, [appellant] is using the second motion, which is under Rule 60(b), as an attempt to resurrect the then expired period in which to appeal the denial of the first motion. This procedural ploy cannot be allowed to succeed.” *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199, 1204 (5th Cir. 1993). *See also Murray v. District of Columbia*, 52 F.3d 353, 356 (D.C. Cir. 1995) (“Appellants' attempt to appeal the denial of their second [Rule 60(b)] motion is therefore nothing more than an untimely appeal of their first [Rule 60(b)] motion, and we will not indulge the ruse.”); *Logan v. Evans*, 86 Fed. Appx. 996 (7th Cir. 2004) (not selected for publication in the federal reporter, No. 03-1343)(rejecting attempt to appeal a second Rule 60(b) motion when no timely appeal was taken from the first Rule 60(b) motion).

Because Lipari failed to timely file his Notice of Appeal from the district court's March 28, 2008 denial of his Rule 60(b) Motion, this Court lacks jurisdiction over this appeal.

IV. LIPARI IS NOT ENTITLED TO A REVIEW OF THE MERITS OF THE DISTRICT COURT'S DISMISSAL OF MSC'S CLAIMS

Even if Lipari had standing and his appeal was timely, Lipari's attempt to re-argue the legal validity of his claims and to seek reinstatement of those claims via this appeal is improper. Much of Lipari's brief attempts to argue that the district court erred in dismissing MSC's Complaint in 2006. As a matter of law, this Court cannot reach the merits of that dismissal on this appeal. In order to raise the merits of the dismissal, Lipari would have had to timely appeal the final judgment in 2006, or timely appeal the denial of a Rule 59(e) motion filed within 10 days of the final judgment. *Hawkins v. Evans*, 64 F.3d 543, 546 (10th Cir. 1995) (holding that an appeal from the denial of a motion to reconsider construed as a Rule 59(e) motion permits consideration of the merits of the underlying judgment, while an appeal from the denial of a Rule 60(b) motion does not preserve the underlying judgment for appellate review).

Lipari did neither. Instead, he attempts to appeal two later motions to reconsider filed years after the rendition of judgment. As such, these later motions to reconsider do not raise for review the propriety of the dismissal of MSC's claims. *See Browder v. Director, Department of Corrections*, 434 U.S. 257, 263 n.7 (1978) ("an appeal from denial of Rule 60(b) relief does not bring up the underlying judgment for review"); *Fisichelli v. City Known as the Town of Methuen*, 884 F.2d 17, 19 (1st Cir. 1989) (holding that an appeal of a denial of a

motion to reconsider does not have a “Lazarus-like effect” and allow consideration of the underlying merits of the original motion.”).

Thus, on that basis alone, the Court should deny Lipari’s Points of Error III-VIII.

V. THE DISTRICT COURT PROPERLY STRUCK LIPARI’S RULE 59(E) AND 60(B) MOTIONS

Lipari argues that the district court abused its discretion in striking his two most recent motions to reconsider the district court’s conclusion that Lipari should not be substituted in for MSC as the plaintiff in this closed case. Lipari is wrong. There has been no new evidence or change in the law. Moreover, the substitution of Lipari as plaintiff would have been pointless when the court first denied it, and is equally pointless now.

As Lipari recognizes, Fed. R. Civ. P. 60 (b)(6) exists only to provide relief in extraordinary circumstances. None of the points raised by Lipari in this appeal rise to the level of extraordinary circumstances to justify vacating the judgment in this case. “Exceptional circumstances are not present every time a party is subjected to potentially unfavorable consequences as a result of an adverse judgment properly arrived at. . . . [Plaintiff] had a full and fair opportunity to litigate his claim. The district court properly found that he [was not entitled to relief]. Accordingly, [plaintiff] is not entitled to relief under Fed. R. Civ. P. 60(b)(6).” *Atkinson v. Prudential Property Co.*, 43 F.3d 367, 373-74 (8th Cir. 1994).

While Lipari argues that he may proceed *pro se* as the alleged assignee of Medical Supply's claims, this is neither an error in law nor newly discovered evidence. In prior filings, Lipari made this same argument based on the same evidence that MSC had been dissolved. The Court rejected this argument and Medical Supply's appeal was dismissed. Mr. Lipari cannot re-litigate the issue through successive motions under Rules 59(e) or 60(b). *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000) (holding that motions under Rules 59(e) and 60(b) "are inappropriate vehicles to reargue an issue previously addressed by the court when the motion merely advances new arguments, or supporting facts which were available at the time of the original motion."); *see also Borrero v. City of Chicago*, 456 F.3d 698 (7th Cir. 2005).

Mr. Lipari now argues that his Rule 60(b) motions should have been granted based on an alleged change in law evidenced by the district court's decision in *Lipari v. US Bancorp, et al*, Case No. 07-CV-02146. In that case, the district court held that Lipari may proceed *pro se* on MSC's state law claims as the alleged assignee of all assets from MSC. According to Lipari, this result is different than the one in this case that denied substitution of parties, and was brought about due to the June 4, 2007 Supreme Court decision in *Erickson v. Pardus*, 127 S. Ct. 2197 (2007) (discussing Rule 8 pleading standards in a *pro se* case).

But there is no intervening change in law based upon *Erickson* or the decision in *Lipari* that compels re-litigation of the issues here. The different results in those cases occurred because of the distinct circumstances of the two cases. Lipari, himself, is the named plaintiff in the most recent case and the court found there existed sufficient factual allegations for Lipari, as alleged assignee of corporate assets, to appear *pro se* as the named plaintiff in that action. Lipari originated that action and there was no motion, order, or appeal concerning substitution of parties. In contrast, this lawsuit was originated by the corporate entity MSC and the dissolution of Medical Supply Chain (during the case) does not automatically substitute Lipari as the plaintiff.³ The procedural posture in this case was the determination of whether the court should exercise its discretion to allow a party substitution under Federal Rule of Procedure 25(c), which was not at issue in the *Lipari v. US Bancorp* case.

Moreover, reconsideration of this issue is properly denied on an entirely independent ground: it would serve no purpose. As the district court observed in its decision on the first motion to reconsider, substitution of Lipari would not change the fact that the lawsuit is over and these frivolous claims were dismissed.

³ Missouri law states that a dissolved corporation may continue business in the name of the corporation to wind up its business and affairs. *See* R.S.MO. §§ 351.476, 351.486.

See Medical Supply Chain, 2006 WL 2570312 at *2. Because both MSC and Lipari are precluded from revisiting the merits of the claims in this case, it makes no real difference whether the court would have made Lipari a party to this case or not. Instead of presenting this Court with an extraordinary case for relief, Lipari continues to engage in an extraordinary waste of judicial resources in his repeated filings on this issue. The district court judgment should be affirmed.

CONCLUSION

This appeal should be dismissed as untimely and/or because Lipari lacks standing to bring it. In the alternative, the district court's judgment should be affirmed because the district court acted well-within its discretion in striking Lipari's Motions to Reconsider.

ORAL ARGUMENT NOT REQUESTED

Appellees state that oral argument is unnecessary in this appeal. Prior related appeals have been decided without oral argument. This appeal does not raise any new or novel issues about which oral argument may be beneficial to the Court.

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CERTIFICATE OF COMPLIANCE
PURSUANT TO RULE 32(a)

As required by Fed. R. App. P. 32(a)(7)(C), I certify that this brief is proportionally spaced (Times New Roman in 14 point) and contains 4,703 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). I relied on my word processor to obtain the count and it is Microsoft Office Word 2003. I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

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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 electronic mail and United States mail, postage prepaid, this 22nd day of October, 2008, to:

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