

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

MEDICAL SUPPLY CHAIN, INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 05-CV-0210-CV-ODS
)	
NOVATION, LLC, et al.,)	
)	
Defendants.)	

**DEFENDANTS’ JOINT SUGGESTIONS IN OPPOSITION TO DEFENDANT’S
MOTION FOR RECONSIDERATION OF ORDER TRANSFERRING VENUE**

Plaintiff’s Motion for Reconsideration of Order Transferring Venue (“motion to reconsider”) offers nothing warranting reconsideration of this Court’s June 15, 2005 Order. As the Court found, the United States District Court for the District of Kansas is familiar with the substance of plaintiff’s claims asserted in this lawsuit and the interests of justice are served by transfer. Plaintiff’s motion should be denied.

ARGUMENT

Plaintiff asserts a number of arguments in support of its motion, including that neither *res judicata* nor collateral estoppel bar plaintiff’s claims, especially those state law claims dismissed without prejudice (motion to reconsider, p. 3); that an action for injunction does not preclude a separate cause of action seeking damages (*id.* at pp. 3-4); that damages in contemplation by the parties will not be reduced in Kansas (*id.* at p. 4), and; the defendants were properly served with process (*id.* at pp. 4-5). None of these arguments, even those somehow tangentially related to the issue of transfer, merit the Court’s reconsideration of its Order transferring this case. *See U.S. v. Metro Interior, Inc.*, 1993 WL 305960, *1-2 (W.D.Mo. 1993).

Plaintiff's argument concerning the application of collateral estoppel or *res judicata* to its claims in this lawsuit is irrelevant to this Court's Order granting transfer. This Court based its Order transferring the matter to the District of Kansas, at least in part, on that Court's "extensive experience with the almost identical previous lawsuit and in the interest of justice . . ." (June 15, 2005 Order, at p. 2.) Whether *res judicata* or collateral estoppel applies to plaintiff's claims in this lawsuit is a substantive legal issue to be addressed by the Kansas District Court and is irrelevant to this Court's decision to transfer the matter to Kansas.

Plaintiff also argues that the claims asserted in this case are "new" and based on conduct occurring after the Kansas District Court dismissed its earlier lawsuit. (Motion to reconsider, at p. 1.) In fact, all of plaintiff's claims arise out of the same set of operative facts and most of plaintiff's "new" allegations are simply recycled from its first lawsuit against many of the same defendants. The Kansas District Court (and the Tenth Circuit Court of Appeals) reviewed the parties' extensive briefs regarding the sufficiency of these claims before entering its Order dismissing plaintiff's lawsuit. Further, while plaintiff argues that the Kansas District Court abused its discretion in dismissing this lawsuit when first brought there (motion to reconsider, p. 2) as this Court noted in its Order, plaintiff's "disappointment with the result . . . does not give [it] the right to file an almost identical second cause of action, and moreover, does not entitle a party to forum shop." (June 15, 2005 Order, at p. 2.) That plaintiff was unsuccessful in Kansas federal court is also an insufficient basis for moving this Court to *reconsider* its Order transferring venue.

Plaintiff's next two arguments, that supposed damages will not be reduced in Kansas (motion to reconsider, p. 4) and that the defendant hospitals and their officers are subject to Kansas long-arm jurisdiction (*id.* at pp. 4-5), must also fail. These issues are entirely unrelated to this Court's Order granting transfer and are insufficient to warrant reconsideration.

For all of these reasons, defendants collectively request the Court deny plaintiff's Motion for Reconsideration of Order Transferring Venue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing document was filed electronically with the above-captioned court, with notice of case activity to be generated and sent electronically by the Clerk of said court (with a copy to be mailed to any individuals who do not receive electronic notice from the Clerk) this 11th day of July, 2005, to:

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