

**IN THE UNITED STATES COURT
DISTRICT OF KANSAS**

SAMUEL K. LIPARI,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 2:07-cv-02146-CM
)	
U.S. BANCORP and)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
<i>Defendants.</i>)	

PLAINTIFF’S ANSWER TO DEFENDANTS’ RULE 59 RESPONSE

Comes now the plaintiff Samuel K. Lipari appearing *pro se* and makes the following answer to the defendants’ reply to plaintiff’s motion to alter or amend judgment.

1. The plaintiff sought to stay proceedings in this action pending appeal.
2. The defendants were unsuccessful in getting the appeal dismissed. See exb. 1 August 11 Order of the Tenth Circuit Court of Appeals.
3. This action is the same matter in controversy before the appellate court by virtue of being the concurrent Missouri state court proceeding improperly removed to federal court during federal jurisdiction over all pendant state claims in the US Court of Appeals for the Tenth Circuit which now has reacquired appellate jurisdiction over the matter.

In *Little Rock School District v. Armstrong*, No. 02-3867EA (8th Cir., 2004) the Eighth Circuit was required to determine if a “mandamus proceeding in 1987 involved the same ‘matter in controversy’ as the present questions before the court for purposes of 28 U.S.C. § 455(b)(2). The court’s analysis would find that because the state law claims are consistent and unchanged (and as yet never ruled on), the present action is the same “matter in controversy” as *MSCI v. Neoforma et al* now on appeal. See exb 1.

Respectfully Submitted,

S/ Samuel K. Lipari

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CERTIFICATE OF SERVICE

I certify I have sent a copy to the undersigned opposing counsel via electronic filing on 8/18/08.

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S/ Samuel K. Lipari

Samuel K. Lipari

UNITED STATES COURT OF APPEALS August 11, 2008
FOR THE TENTH CIRCUIT Elisabeth A. Shumaker
Clerk of Court

MEDICAL SUPPLY CHAIN, INC.,

Plaintiff,

v.

No. 08-3187

NEOFORMA, INC, et al.,

Defendants - Appellees,

SAMUEL K. LIPARI,

Interested Party- Appellant.

ORDER

The court reserves judgment on the motion to dismiss filed by the appellees. The matter will be referred to the panel assigned to hear this appeal on the merits.

Briefing on the merits shall proceed. The appellant shall file his opening brief within 40 days of the date of this order. Subsequent briefing shall proceed in

accordance with the schedule set forth in the Tenth Circuit Rules.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in cursive script that reads "Ellen Rich Reiter".

Ellen Rich Reiter
Deputy Clerk/Jurisdictional Attorney