

July 22, 2008

Jay,

I filed a motion to stay and a motion to reconsider the ruling not to modify the magistrate's schedule pending resolution of the protective orders since there is no discovery yet and you have not even provided me the documents you cite in your proposed defense exhibits as required under Rule 26. Your firm and clients were on notice they needed to retain these electronic documents. ¹There is no way I can prepare a pretrial order.

All this is moot however because this case or controversy is in appeal and the district court has lost jurisdiction over the matter unless it proceeds contrary to a prior order of the Tenth Circuit on the same issue between the same parties

“Plaintiff then filed a combined motion for new trial/amendment of judgment and for retrial on the denial of the preliminary injunction. This timely filed motion effectively suspended the finality of the district court's judgment.”

MSCI v US Bancorp et al. See attachment 1.

I caution you that you have sought sanctions against me for documents I served on both you and Magistrate Waxse and that you have compounded that unethical behavior by failing to understand the contract for providing escrow accounts I am suing US Bancorp over which was signed under Federal statute and Missouri case law precedent is not the escrow deposit agreement that was never acted on by any of my candidates after US Bancorp under the advice of Shughart, Thomson & Kilroy.P.C. repudiated their contract with Medical Supply Chain, Inc. to provide escrow accounts. Despite the lack of diligence or education to be an attorney this appears to demonstrate, you sought sanctions against me for not providing you legal conclusions in response to your interrogatories. The documents you and Magistrate Waxse received were attachments to the controlling legal authorities for my position and supporting my claims.

The sanctions you obtained from Magistrate Waxse are in the nature of sanctions for stating there are private rights of action under the USA PATRIOT Act, sanctions for bringing antitrust action for damages after the damages become ripe and sanctions for not stating elements of claims that are clearly stated in a complaint where the table of contents state they are located. In short they expressly contradict controlling Tenth Circuit and US Supreme Court law.

If this action proceeds with Shughart, Thomson & Kilroy.P.C. continuing to demonstrate in their pleadings expectations of one sided rulings in contradiction to the rules of federal

¹ Audio recording of first case management conference for Magistrate Waxse
<http://www.medicalsupplychain.com/pdf/Suggart%20Thompson%20Kilroy%20Steven%20Ruse%20Mark%20Olthoff%20Conversion.wav>

procedure or clearly established case law and a continuing appearance of bias, I will be forced to make a criminal referral. See exb 2. AG Statute

Sincerely,

Samuel K. Lipari

cc Magistrate Waxse

Organized Crime Control Act of 1970 reserves admission of persons to Witness Protection Program to discretion of Attorney General, as is compensation paid to such persons; nowhere does statute or regulations expressly or by implication establish right that plaintiffs be paid any-

thing and, on contrary, it is clear that determinations regarding eligibility for participation in Program in range of benefits to be afforded those who are permitted to participate are completely discretionary function with named officials. *Doe v United States* (5/16/80, Ct Cl) 27 Cr L 2328.

§ 525. Procurement of law books, reference books, and periodicals; sale and exchange

In the procurement of law books, reference books, and periodicals, the Attorney General may exchange or sell similar items and apply the exchange allowances or proceeds of such sales in whole or in part payment therefor.

(Sept. 6, 1966, P. L. 89-554, § 4(c), 80 Stat. 615.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 341e.	July 28, 1950, ch. 503, § 3, 64 Stat. 330.

The words "Attorney General" are substituted for "Department of Justice".

§ 526. Authority of Attorney General to investigate United States attorneys, marshals, and trustees, clerks of court, and others

(a) The Attorney General may investigate the official acts, records, and accounts of—

- (1) the United States attorneys, marshals, trustees, including trustees in cases under title 11 [11 USCS §§ 101 et seq.]; and
- (2) at the request and on behalf of the Director of the Administrative Office of the United States Courts, the clerks of the United States courts and of the district court of the Virgin Islands, probation officers, United States magistrates, and court reporters;

for which purpose all the official papers, records, dockets, and accounts of these officers, without exception, may be examined by agents of the Attorney General at any time.

(b) Appropriations for the examination of judicial officers are available for carrying out this section.

(Sept. 6, 1966, P. L. 89-554, § 4(c), 80 Stat. 615; Nov. 6, 1978, P. L. 95-598, Title II, §§ 219(a), (b), 220, 92 Stat. 2662; Oct. 27, 1986, P. L. 99-554, Title I, Subtitle C, § 144(c), 100 Stat. 3096.)

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

F I L E D
United States Court of Appeals
Tenth Circuit

DEC 10 2003

PATRICK FISHER
No. 02-3443 Clerk

MEDICAL SUPPLY CHAIN, INC.,

Plaintiff-Appellant,

v.

US BANCORP, NA.; US BANK PRIVATE
CLIENT GROUP; CORPORATE TRUST;
INSTITUTIONAL TRUST AND CUSTODY;
MUTUAL FUND SERVICES, LLC.; PIPER
JAFFRAY; ANDREW CESERE; SUSAN PAINE;
LARS ANDERSON; BRIAN KABBES;
UNKNOWN HEALTHCARE SUPPLIER,

Defendants-Appellees.

(D.C. No. 02-CV-2539-CM)

(D. Kan.)

ORDER AND JUDGMENT^(*)

Before **EBEL**, **PORFILIO**, and **McCONNELL**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously to grant the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This appeal is taken from an order of the district court denying plaintiff's two motions for a preliminary injunction. Our jurisdiction was invoked under 28 U.S.C. § 1292(a)(1), which provides for interlocutory appeals from district court orders granting or denying injunctions.

Following the district court's denial of the injunction, and while this case was pending on appeal, the district court entered a final judgment dismissing plaintiff's action. Plaintiff then filed a combined motion for new trial/amendment of judgment and for retrial on the denial of the preliminary injunction. This timely filed motion effectively suspended the finality of the district court's judgment. The district court has recently denied plaintiff's motion, and plaintiff has filed a new notice of appeal, our No. 03-3342, seeking review of the district court's dismissal of its action.

"[M]ootness is a matter of jurisdiction, [and] a court may raise the issue sua sponte." *McClendon v. City of Albuquerque*, 100 F.3d 863, 867 (10th Cir. 1996). Because the district court has now dismissed the action, this interlocutory appeal is moot. *See Sac & Fox Nation v. Cuomo*, 193 F.3d 1162, 1168 (10th Cir. 1999)

(dismissing interlocutory appeal from denial of preliminary injunction where district court subsequently dismissed complaint); *see also Atomic Oil Co. of Okla. v. Bardahl Oil Co.*, 419 F.2d 1097, 1102 n.9 (10th Cir. 1969) (noting order granting or denying preliminary injunction merges into decree granting or denying permanent injunction, and where both orders are appealed, former will be dismissed).

Accordingly, we DISMISS the appeal as moot.

Entered for the Court

Michael W. McConnell

Circuit Judge

FOOTNOTES

Click footnote number to return to corresponding location in the text.

^{*} This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

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URL: <http://ca10.washburnlaw.edu/cases/2003/12/02-3443.htm>.