

**IN THE STATE OF MISSOURI
WESTERN DISTRICT COURT OF APPEALS
AT KANSAS CITY, MISSOURI**

SAMUEL K. LIPARI)	Case No. WD70534
<i>Petitioner</i>)	(16th Cir. Case No. 0816-04217)
)	(Formerly Case No. WD70001)
<i>vs.</i>)	
)	
NOVATION, LLC; <i>et al</i>)	
<i>Respondents</i>)	

APPELLANT’S SUGGESTION OPPOSING APPELLATE JURISDICTION

The plaintiff/appellant Samuel K. Lipari, appearing *pro se* was unfamiliar with the effect of the Western District Court of Appeals’ controlling precedent in *Habahbeh v. Beruti*, 100 S.W.3d 851 (Mo. App., 2003) rendering the appeal premature and depriving this court of appellate jurisdiction.

The plaintiff /appellant agrees with the defendant appellee Lathrop& Gage LLP that there is no basis in the trial record to support an implied dismissal of the unserved defendant Robert Zollars who is expressly a defendant in the proposed amended petition and the plaintiff plans to utilize discovery to determine his whereabouts for service.

The Law of the Case doctrine prevents a change in the previous appellate determination in *Lipari v Novation LLC et al* Case No. WD70001 that a notice of appeal from the dismissal of fewer than all parties does not deprive jurisdiction of the trial court over the matter. The rule of the law of the case is that, in general, the decision of an appellate court is the law of the case on all points presented and

decided and remains the law of the case throughout all subsequent proceedings, both in the trial and appellate courts, and no questions involved and decided on the first appeal will be considered on a second appeal. *Id.*; *Kansas City v. Keene Corp.*, 855 S.W.2d 360, 366 (Mo. banc 1993).

Respectfully submitted,

S/Samuel K. Lipari
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing instrument was forwarded this 6th day of February, 2009, by first class mail postage prepaid to:

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HEALTHSYSTEM CONSORTIUM, VHA MID-AMERICA LLC, THOMAS
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OLIVERIUS, SANDRA VAN TREASE, CHARLES ROBB, MICHAEL TERRY,
COX HEALTH CARE SERVICES OF THE OZARKS INC., ST LUKE'S
HEALTH SYSTEM INC., STORMONT-VAIL HEALTHCARE INC., ROBERT
BAKER, CURT NONOMAQUE, GHX LLC, NEOFORMA INC.

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