

**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>)	

**MOTION UNDER FED. R. CIV. P. 59(e), TO ALTER OR AMEND JUDGMENT AND
TO STAY FURTHER PRETRIAL PROCEEDINGS**

Comes now the plaintiff Samuel K. Lipari appearing *pro se* and makes the following motion to reconsider the courts' memorandum and order on July 11th upholding the Magistrate's determination discovery and the resulting proceedings including the pre trial plan and dispositive motion schedule will not be suspended until this court has ruled on the outstanding protective order and discovery disputes.

STATEMENT OF FACTS

1. On April 30, 2008, plaintiff filed a Motion for Time to Extend Discovery (Doc. 74).
2. Defendant responded on May 15, 2008.
3. Magistrate Judge Waxse denied plaintiff's motion on June 3, 2008.
4. Plaintiff brought an objection to the Magistrate's order denying extension of discovery (Doc. 94).
5. The court over ruled the plaintiff's objection on July 11th one day after the plaintiff filed an appeal in this Article III case or controversy under its federal jurisdiction styling *MSCI v. Neoforma, et al.*
6. The denial of extension will prejudice the parties and squander the resources of the court by causing proceedings to occur before significant issues determining the claims being tried and the witnesses and evidence presented are resolved.
7. Some of the same issues including protection sought by the defendants on the motive for the defendants conduct described in the state complaint improperly before this court for want of federal jurisdiction outside of *MSCI v. Neoforma et al.*, overlap the discovery required by the plaintiff in all his claims against the defendants including those assigned from his dissolved corporation Medical Supply Chain, Inc. sought to be reconsidered in *MSCI v. Neoforma et al.*

8. The Tenth Circuit is likely to resolve the standing inconsistency in the rulings of this court regarding the plaintiff since the appeal was filed within thirty days from this court's disposition of the plaintiff's Rule 60b motion.

MEMORANDUM OF LAW

The court has motion pursuant to Fed.R.Civ.P. 59(e), to alter or amend the judgment:

“A motion to alter or amend presents the court with the opportunity to rectify manifest errors of law or fact and to review evidence newly discovered. *White v. New Hampshire Dep't of Employment Sec.*, 455 U.S. 445, 450-51, 102 S.Ct. 1162, 71 L.Ed.2d 325 (1982); *Brown v. Presbyterian Healthcare Servs.*, 101 F.3d 1324, 1332 (10th Cir. 1996), cert. denied, ___ U.S. ___, 117 S.Ct. 1461, 137 L.Ed.2d 564 (1997); *Barrett v. Fields*, 941 F.Supp. 980, 984-85 (D.Kan. 1996).”

Fields v. Atchison, Topeka, and Santa Fe Railway Company, 5 F.Supp.2d 1160 at 1161 (D. Kan., 1998).

The plaintiff has conformed to Rule 7.3 of the local rules for the District of Kansas. A Rule 59(e) motion may be granted if any of the following three conditions are presented to the court: (1) an intervening change in the controlling law; (2) the availability of new evidence; or (3) the need to correct clear error or prevent manifest injustice. *Brumark Corp. v. Samson Resources Corp.*, 57 F.3d 941, 948 (10th Cir.1995).

The plaintiff seeks relief from the striking of his motion for new trial based on (3) “the need to correct clear error or prevent manifest injustice.”

This court is in clear error, as was the magistrate in requiring the proceed with the magistrate's case management schedule when the plaintiff has received none of the documents or witness information required under Rule 26 to be disclosed by the defendants when they have specifically cited these documents and witnesses to be used in their defense.

The court has had repeated notice including the plaintiff's objection to the magistrate's order that the plaintiff has not received other documents requested in production from the defendants and that there has been effectively no discovery for the plaintiff in this case.

The court is acting in manifest injustice and open bias by avoiding ruling on the defendants' facially frivolous protective order requests and pushing the case forward in an effort to accomplish depriving the plaintiff of property through this proceeding without having to address the unlawfulness of the defendants' continuing wrongful conduct.

The manifest injustice is further aggravated by this court's lack of jurisdiction over this matter which was improperly removed from state court by the defendants who failed to follow controlling Tenth Circuit law for retaining federal jurisdiction over pendant state claims dismissed by this court in MSCI v. Neorform et al.

The parties and court have been under notice of the lack of jurisdiction. See exb. 1, Case 4:06-cv-01012-FJG Document 11, filed 01/04/2007.

The plaintiff now gives notice that this Article III controversy is now before the exclusive federal jurisdiction of the Tenth Circuit and incorporates by reference the authority for staying this proceeding contained in exb 2. Motion for Stay Pending Appeal.

Respectfully Submitted,

S/ Samuel K. Lipari

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served via email, on this 18th day of July, 2008 to:

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