

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

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	
v.)	Case No. 06-1012-CV-W-FJG
)	
U.S. BANCORP and)	
U.S. BANK NATIONAL ASSOCIATION,)	
)	
Defendants.)	

**DEFENDANTS' SUGGESTIONS IN OPPOSITION TO
PLAINTIFF'S MOTION TO STAY**

Like his motion to reconsider the Court's January 3, 2007 Case Management Order, the plaintiff again asks the Court to remand this case to state court or, at a minimum, hold off ruling the defendants' motion to dismiss. Defendants U.S. Bancorp and U.S. Bank National Association are not opposed to a stay of the discovery and other deadlines as would be required under the Court's Order requiring the parties to submit a joint proposed schedule. However, there is no reason to delay a ruling on the motion to remand or the defendants' motion to dismiss.

As before, the premise of plaintiff's motion is wrong. Plaintiff requests a stay because plaintiff believes this case should be remanded to Missouri state court. Contrary to plaintiff's argument, however, as set forth clearly in the removal papers as well as defendants' suggestions in opposition to the motion for remand, federal diversity jurisdiction plainly exists. Moreover, and also contrary to plaintiff's vituperative suggestion, the earlier case he mentions, bearing Case No. 05-0210-CV-W-ODS, which was transferred to the United States District Court for the District of Kansas on July 14, 2005, was identified as a related case in the Civil Cover Sheet, Form JS44, that was filed with the Clerk at the time of the removal. Finally, it is also clear that

the complaint removed to federal court here does **not** name Shughart Thomson & Kilroy, P.C. or any other Missouri citizen as a defendant.

Plaintiff expresses he is “confused and unjustly burdened” by having to respond to motions and other pleadings filed in his case. Perhaps his confusion derives from trying to keep straight which case is which given the number of times plaintiff has sued these defendants for the same alleged wrong. As discussed in the Defendants’ Suggestions in Opposition to Plaintiff’s Motion for Remand, this lawsuit is the *third* effort by Mr. Lipari or his company, Medical Supply Chain, Inc., to file identical claims for relief. In the first two cases, Medical Supply Chain, Inc. combined federal statutory causes of action with supplemental state law claims. In each of those prior instances, the lawsuits were dismissed. *See* 2003 WL 21479192 (D. Kan., June 16, 2003), *aff’d* 112 Fed. Appx. 730 (10th Cir. 2004); 419 F. Supp.2d 1316 (D. Kan. 2006), *appeal pending*, Case No. 06-3331 (10th Cir.). The instant lawsuit asserts solely the state law claims over which the Kansas District Court has twice declined supplemental jurisdiction but are based, factually, upon the same circumstances and operative facts under which the federal claims were dismissed with prejudice.

Plaintiff also suggests that this Court should refuse to consider any other action due to the pending Tenth Circuit appeal in *Medical Supply v. Novation, et al.*, Case No. 06-3331 (appealing the decision in 419 F. Supp.2d 1316 (D. Kan. 2006)). Plaintiff’s stated position is that the Court lacks jurisdiction in *this* case because there is appellate jurisdiction in *that* case. Plaintiff is wrong on several levels. First, *this* case (while alleging the same operative facts as the one on appeal) was filed separately by plaintiff. Second, the Tenth Circuit has no jurisdiction over *this* case which alleges the previously dismissed supplemental state law claims. Furthermore, this Court *does* have original diversity jurisdiction over these claims.

These defendants have already been put to much expense in defending three lawsuits, not only responding to various pleadings filed by Medical Supply Chain, Inc. or Mr. Lipari that have no basis in fact or law, but also having filed motions for sanctions in which the Kansas District Court has awarded defendants in the various cases nearly \$100,000 in their favor and against Medical Supply Chain, Inc. or its previous counsel. Given these circumstances, before the defendants or the *pro se* plaintiff are put to further expense of money and time, defendants would urge that the Court consider suspending its January 3, 2007 Order pending a ruling upon their motion to dismiss. While staying discovery to allow the Court time to decide the pending motions to remand and to dismiss would be efficient and economical under the circumstances, there is no legitimate reason to indefinitely stay the entire case based solely upon plaintiff's hope that his appeal may be successful.

/s/ Mark A. Olthoff

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing was filed via electronic case filing this 8th day of February, 2007, with a true and correct copy being delivered via United States mail, postage prepaid, to:

Mr. Samuel K. Lipari
297 NE Bayview
Lee's Summit, MO 64064

PLAINTIFF

/s/ Mark A. Olthoff

Attorney for Defendants