

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

<b>SAMUEL K. LIPARI,</b>	)	
	)	
<b>Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 08-3087</b>
	)	
<b>U.S. BANCORP and U.S. BANK</b>	)	
<b>NATIONAL ASSOCIATION,</b>	)	
	)	
<b>Appellees.</b>	)	

**APPELLEES' REPLY SUGGESTIONS IN SUPPORT OF DISMISSAL**

This appeal should be dismissed. This case has not been pending in any district court within this circuit for nearly 18 months. Any opportunity the appellant may have had to file an appeal or extraordinary writ here has long since passed. For the reasons stated in appellees' motion, the Court should dismiss Mr. Lipari's appeal.

Moreover, the appellant's written response and authorities fully support dismissal here. Mr. Lipari acknowledges that the decisions of the United States District Court for the Western District of Missouri were interlocutory and not immediately appealable. (Appellant's Reply at pp. 3, 4.) He cites several cases supporting this proposition, which is one of the bases of the appellees' motion. The appellant's further suggestion, relying upon inapposite Missouri state law, that the partial dismissal of his claims by the Kansas District Court renders those claims appealable is also wrong. In any event, any appeal of those claims must be made to the Tenth Circuit Court of Appeals (in which the Kansas federal court is located).

Moreover, the authorities on which appellant relies to suggest that he cannot receive effective appellate review of the remand and transfer orders do not compel a different result. *United States v. Copley*, 25 F.3d 660 (8th Cir. 1994) involved an order of transfer involving a prisoner in the federal penal system. This Court did review the propriety of transfer by

considering the Missouri district court's denial of "retransfer." *Id.* at 662. Finding that the transferee court had not acquired jurisdiction because the case could not have originally been brought in Missouri, this Court vacated the denial and remanded the case to the North Carolina court. Similarly, in *St. Jude Medical, Inc. v. Lifecare Int'l*, 250 F.3d 587 (8th Cir. 2000), this Court discussed the district court's subject matter jurisdiction. While it was too late to review the denial of remand, this Court still considered whether there was subject matter jurisdiction over the parties and claims. Accordingly, depending upon what Mr. Lipari may assert as the purported errors, he may raise those issues in any appeal to the Tenth Circuit Court of Appeals. But otherwise, there is no absolute right for him to file an appeal in any court of his choosing and at any time he chooses.

Finally, appellant relies upon *Koehler v. Green*, 370 F. Supp.2d 904 (E.D. Mo. 2005) for his proposition that a transferee court is reluctant to review transfer orders of the transferor district court. However, as appellees pointed out in their motion, Mr. Lipari had an opportunity to request permission to file an interlocutory appeal and/or he could have sought mandamus prior to the physical transfer of the case. The court in *Koehler* noted these same mechanisms were available to the plaintiff there but who, like Mr. Lipari, failed to pursue those avenues. *Id.* at 906, n.1.

There simply are no grounds on which Mr. Lipari can pursue an appeal in this Court now. Accordingly, appellees' motion should be granted.

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**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that a true and correct copy of the above and foregoing was delivered via United States mail, postage prepaid, this 3rd day of October, 2008, to:

Mr. Samuel K. Lipari  
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Appellant

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