

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

MEDICAL SUPPLY CHAIN, INC.,)	
(Through assignee Samuel K. Lipari))	
SAMUEL K. LIPARI)	
<i>Plaintiff,</i>)	
v.)	Case No. 05-2299
NOVATION, LLC)	
NEOFORMA, INC.)	
ROBERT J. ZOLLARS)	
VOLUNTEER HOSPITAL ASSOCIATION)	
CURT NONOMAQUE)	
UNIVERSITY HEALTHSYSTEM CONSORTIUM)	
ROBERT J. BAKER)	
US BANCORP, NA)	
US BANK)	
JERRY A. GRUNDHOFFER)	
ANDREW CECERE)	
THE PIPER JAFFRAY COMPANIES)	
ANDREW S. DUFF)	
SHUGHART THOMSON & KILROY, P.C.)	
<i>Defendants.</i>)	

NOTICE OF APPEAL

Comes now the plaintiff Samuel K. Lipari, the assignee of all rights of the dissolved Missouri corporation Medical Supply Chain, Inc. and makes the following appeal from the trial court's denial of his Rule 60(b) motion on July 7, 2008 based on his lack of standing after determining that the plaintiff had standing as the assignee of all rights of the dissolved Missouri corporation Medical Supply Chain, Inc. in the same matter or Article III controversy under a different style or case number.

The plaintiff also appeals the order of sanctions or loss of future rights to seek redress imposed by the Hon. Judge Carlos Murguia for relying on Judge Carlos Murguia's own order determining his capacity.

An order denying a Rule 60(b) motion is a final order for purposes of appeal. *Mohammed v. Sullivan*, 866 F.2d 258, 260 (8th Cir. 1989). The US Court of Appeals for the Tenth Circuit has jurisdiction for review to determine that the discretion exercised by the court was not guided by erroneous legal conclusions. *United States v. Johnston*, 146 F.3d 785, 792 (10th Cir.1998) (quoting *Koon v. United States*, 518 U.S. 81, 100, 116 S.Ct. 2035, 135 L.Ed.2d 392 (1996)).

The plaintiff observes that the trial court's disposal of the motion for new trial appears to be in error and a reviewable abuse of discretion similar to that described in *Jennings v. Rivers*, 394 F.3d 850 (10th Cir., 2005) "[I]n the instant case, the district court has not evaluated the denial of plaintiff's Rule

60(b)(1) motion as to Mr. Howell under the appropriate standards.” The inconsistency of standing determinations in the same Article III matter or controversy appears to be the exceptional circumstances requiring relief.

Respectfully Submitted,

S/ Samuel K. Lipari

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CERTIFICATE OF SERVICE

I certify I have sent a copy via electronic case filing to the undersigned opposing counsel and via email on 7/10/08.

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S/ Samuel K. Lipari

Samuel K. Lipari