

**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. 08-3984</b>
	)	
<b>U.S. BANCORP and U.S. BANK</b>	)	
<b>NATIONAL ASSOCIATION,</b>	)	
	)	
<b>Appellees.</b>	)	

**REPLY IN SUPPORT OF APPELLEES' MOTION TO DISMISS  
APPELLANT'S "THIRD NOTICE OF APPEAL"**

Appellees file this Reply in support of their Motion to Dismiss Appellant's Third Notice of Appeal. Mr. Lipari's *ad hominum* attacks and false accusations aside, his opposition does not change the fact that this Court lacks jurisdiction over his appeal.

It is well settled that, after a district court grants a motion to transfer under 28 U.S.C. § 1404(a), "the physical receipt of the file in the transferee court is the event that signals the end of jurisdiction in the transferor court." *Integrated Health Services of Cliff Manor, Inc. v. THCI Co., LLC*, 417 F.3d 953, 957 (8th Cir., 2005). The Clerk of the Court for the District of Kansas received the physical transfer of this file on or about April 11, 2007. (*See* Exhibits D, E attached to Motion.) Mr. Lipari did not file this appeal until December 17, 2008, some twenty months later. Therefore, this Court lacks appellate jurisdiction.

To support his jurisdictional argument, Mr. Lipari primarily relies upon this Court's opinion in *Meat Price Investigators v. Spencer Foods, Inc.*, 572 F.2d 163 (8th Cir. 1978). But Mr. Lipari's reliance on this case is misplaced. In *Meat Price*

*Investigators*, the matter had been transferred under the multi-district litigation statute, 28 U.S.C. § 1407. This Court found that, because transfer was based under 28 U.S.C. § 1407, it had jurisdiction to review a subsequent order entered by the district court after transfer. *Id.* at 167.

The present matter is not part of any multi-district litigation and was transferred under 28 U.S.C. § 1404(a). Therefore, the *Meat Price Investigators* decision is not applicable. In fact, the *Meat Price Investigators* court acknowledged the general rule (cited above and quoted by Mr. Lipari in his Response) that physical transfer of the file pursuant to 28 U.S.C. § 1404(a) deprived the transferor circuit of jurisdiction. *Meat Price Investigators*, 572 F.2d at 167; *see also FMC Corp. v. Gloucester Eng'g Co.*, 830 F.2d 770, 771 (7th Cir. 1987).

Mr. Lipari's baseless attacks and false accusations do not help him in attempting to create appellate jurisdiction here. This circuit lost appellate jurisdiction on April 11, 2007 when the Clerk of the Court for the District of Kansas physically received the case file. Mr. Lipari's appeal of this case, if anywhere, must be in the Tenth Circuit Court of Appeals, 28 U.S.C. § 1294. This Court should therefore grant Appellees' Motion to Dismiss this appeal.

For these reasons, appellees U.S. Bancorp and U.S. Bank National Association request that this Court dismiss appellant's appeal and for such other relief as the Court deems just and proper.

/s/ Mark A. Olthoff

MARK A. OLTHOFF MO #38572  
SHUGHART THOMSON & KILROY, P.C.  
1700 Twelve Wyandotte Plaza  
120 W 12th Street  
Kansas City, Missouri 64105-1929  
(816) 421-3355  
(816) 374-0509 (FAX)

JAY E. HEIDRICK MO #54699  
SHUGHART THOMSON & KILROY, PC.  
32 Corporate Woods, Suite 1100  
9225 Indian Creek Parkway  
Overland Park, Kansas 66210  
(913) 451-3355  
(913) 451-3361 (FAX)

ATTORNEYS FOR APPELLEES  
U.S. BANCORP AND U.S. BANK  
NATIONAL ASSOCIATION

**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 12th day of January, 2009, to:

Mr. Samuel K. Lipari  
3520 NE Akin Boulevard  
Suite 918  
Lee's Summit, MO 64064

Appellant

/s/ Mark A. Olthoff

Attorney for Appellees U.S. Bancorp and  
U.S. Bank National Association