

14.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JOHN K. STOKES, SR., and
JOHN STOKES, JR.,

Plaintiffs,

v.

MARK EDWARD MCCANN and
PITT OHIO EXPRESS, LLC,

Defendants.



1:03CV00295

ORDER AND JUDGMENT

BEATY, District Judge.

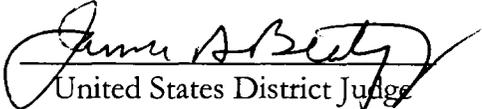
Before the Court is Defendants' Request for Reconsideration of the Order of the Court Dated November 24, 2003, Denying Defendants' Motion to Dismiss [Document #12] (hereinafter "Motion for Reconsideration"). Defendants' present Motion was filed with this Court on December 30, 2003. Defendants note therein that the Court, in a previous Order issued on November 24, 2003, denied Defendants' Motion to Dismiss [Document #3] which had requested that Plaintiffs' cause of action be dismissed for lack of subject matter jurisdiction, lack of personal jurisdiction, and improper venue, pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(3), respectively. The Court, however, found that Defendants' Motion should be denied as premature because Plaintiffs had filed a Motion to Amend [Document #9] in response to Defendants' Motion to Dismiss. In their Motion to Amend, Plaintiffs asserted that they should be allowed to file an amendment to their Complaint which would adequately address all of the issues raised by Defendants' Motion to Dismiss. Pursuant to Federal Rule of Civil Procedure 15(a), the Court in its November 24, 2003, Order granted Plaintiffs leave to amend their Complaint to address the deficiencies raised by Defendants' Motion to Dismiss. Plaintiffs, however, were further ordered to

file an Amended Complaint no later than twenty (20) days from the date of the entry of the Court's November 24, 2003, Order. The Court entered its Order without prejudice to Defendants' right to refile their Motion to Dismiss with respect to Plaintiffs' Amended Complaint.

As previously noted, Defendants filed their present Motion on the basis that Plaintiffs, as of December 30, 2003, had not filed an Amended Complaint as directed by the Court's November 24, 2003, Order. Defendants' Motion for Reconsideration was first submitted to this Court on April 1, 2004, and it appears from the record that Plaintiffs still have not filed an Amended Complaint. Except for granting Plaintiffs leave to amend their Complaint, the Court previously determined that Defendants' initial Motion to Dismiss raised valid grounds to divest this Court of subject matter jurisdiction, personal jurisdiction, and venue over Plaintiffs' claims. Because Plaintiffs have failed to amend their Complaint as ordered by the Court, Defendants' Request for Reconsideration of the Order of the Court Dated November 24, 2003, Denying Defendants' Motion to Dismiss [Document #12] is hereby GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs' cause of action is hereby DISMISSED.

This, the 13th day of April, 2004.


United States District Judge