

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

|                                      |   |                     |
|--------------------------------------|---|---------------------|
| BRANDON JOE HARRIS, <i>et al.</i> ,  | ) |                     |
| Plaintiffs,                          | ) |                     |
|                                      | ) |                     |
| vs.                                  | ) | 1:07-cv-681-LJM-TAB |
|                                      | ) |                     |
| MIRACLE APPEARANCE                   | ) |                     |
| RECONDITIONING SPECIALISTS           | ) |                     |
| INTERNATIONAL, INC., <i>et al.</i> , | ) |                     |
| Defendants.                          | ) |                     |

**ORDER**

This case pends on Plaintiffs’ Emergency Final Three (3) Page Motion for Reconsideration. The Court acknowledges that it made a mistake in the dismissal of this matter. The Court has but two choices under the factual circumstances of this case: it must either deny Plaintiffs’ Motion to Amend and retain federal jurisdiction or it must remand the case to the state court from which it was removed. *See* Charles Alan Wright, Arthur R. Miller, Edward H. Cooper, FEDERAL PRACTICE AND PROCEDURE § 3723, at 595 (West 1998) (citing 28 U.S.C. § 1447(e)).

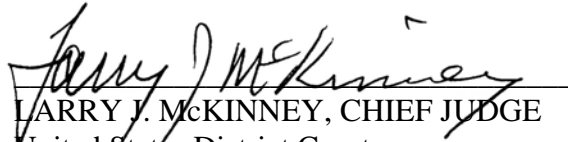
As stated in the Emergency Motion, “[o]n August 30, 2007, Plaintiff[s] moved for leave to file [their] Second Amended Complaint in order to destroy diversity and remove all federal questions....” While it is true that *Schillinger v. Union Pacific Railroad Co.*, 425 F.3d 330 (7<sup>th</sup> Cir. 2005), opines that: “When a plaintiff amends his complaint after removal in a way that destroys diversity, a district Court must consider the reasons behind the amendment in determining whether the remand is proper. If the plaintiff amended simply to destroy diversity the district court should not remand.” A closer reading of the case does teach that the two alternatives stated above are the only ones available and does not suggest the third, dismissal, which this Court imposed. The Court

granted the Motion to Amend for the reasons stated on the record and now **REMANDS** this case back to the Hamilton County Superior Court from which it was removed.

**CONCLUSION**

For the reasons stated herein, the Clerk of the Court is directed to strike the prior Judgment in this case (Docket No. 71), re-open this case, and then **REMAND** this cause to the Hamilton County, Indiana, Superior Court.

IT IS SO ORDERED this 3<sup>rd</sup> day of October, 2007.

  
LARRY J. MCKINNEY, CHIEF JUDGE  
United States District Court  
Southern District of Indiana

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