IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GEETA CHHETRI and PRATIK CHHETRI,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

CIVIL ACTION NO.
1:14-CV-975-ODE

ORDER

This gross negligence case asserted against the United States of America ("Defendant") is before the Court on Defendant's Motion to Dismiss [Doc. 22] and Geeta Chhetri and Pratik Chhetri's ("Plaintiffs") Motion for Oral Hearing [Doc. 30]. For the following reasons, Defendant's Motion to Dismiss [Doc. 22] is GRANTED and Plaintiffs' Motion for Oral Hearing [Doc. 30] is DENIED.

I. Background

A. Procedural Background

This action arises out of a motor coach bus accident that occurred on May 31, 2011 [First Am. Compl., Doc. 15 ¶ 1]. On April 2, 2014, Plaintiffs filed their Complaint in this Court against Defendant, pursuant to the Federal Tort Claims Act ("FTCA"), for injuries sustained allegedly as a result of the negligence of the Federal Motor Carrier Safety Administration ("FMCSA"), an agency within the Department of Transportation ("DOT") [see generally Doc. 1]. On July 22, 2014, Plaintiffs filed their First Amended Complaint [Doc. 15]. On August 18,

2014, the Court granted a stay of this case pending the Court's decision on a yet-to-be-filed motion to dismiss [Doc. 21].

On September 5, 2014, Defendant filed the instant motion to dismiss for lack of subject matter jurisdiction and improper venue pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(3), respectively [Doc. 22; Doc. 22-1]. Defendant argues that this Court lacks subject matter jurisdiction as the FMCSA's allegedly negligent action falls within the discretionary function exception to the FTCA, 28 U.S.C. § 2680(a), or, alternatively, because Plaintiffs' claim fails to satisfy the FTCA's private liability analogue requirement, 28 U.S.C. § 1346(b) [Doc. 22-1 at 9-22]. Defendant also argues that venue is only proper in either Virginia, where the accident occurred, or Michigan, where the Plaintiffs' reside [Id. at 23-25]. Plaintiffs responded on October 30, 2014 [Doc. 26]. Defendant filed its Reply brief on December 8, 2014 [Doc. 31].

B. Statutory and Regulatory Background

Congress has tasked the Secretary of the DOT with "determin[ing] whether an owner or operator is fit to operate safely commercial motor vehicles, utilizing among other things, the accident record of an owner or operator operating in interstate commerce and the accident record and safety inspection record of such owner or operator." 49 U.S.C. § 31144(a)(1). To that end, the Secretary "shall maintain by regulation a procedure for determining the safety fitness of an owner or operator." Id. § 31144(b).

With respect to the owner or operators of commercial vehicles transporting passengers, "an owner or operator who the Secretary

determines is not fit may not operate in interstate commerce beginning on the 46th day after the date of such fitness determination and until the Secretary determines such owner or operator is fit." 49 U.S.C. § 31144(c)(2).

The Secretary's authority to regulate the procedures of such fitness determinations has been delegated to the FMCSA. See 49 U.S.C. § 113(f). The FMCSA has established a fitness determination procedure as directed by Congress. See 49 C.F.R. Pt. 385. Under this regulatory framework, a motor carrier may be "unrated," meaning that "a safety rating has not been assigned," or be rated "satisfactory,"[1] "conditional,"[2] or "unsatisfactory." 49 C.F.R. § 385.3. An "[u]nsatisfactory safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the fitness safety standard." Id. A motor carrier's safety rating is determined during a compliance review, which evaluates the carrier's compliance with the Federal Motor Carrier Safety Regulations, id. §§ 350-99, and Hazardous Materials Regulations, id. §§ 171-80. Id. §§ 385.5, 385.7, 385.9.

A commercial passenger carrier that receives an unsatisfactory safety rating is prohibited from operating a commercial motor vehicle in interstate or intrastate commerce

---

[1]A "[s]atisfactory safety rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in § 385.5." 49 C.F.R. § 385.3.

[2]A "[c]onditional safety rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in § 385.5 (a) through (k)." 49 C.F.R. § 385.3.

beginning on the 46th day after the date of the safety fitness determination. Id. § 385.13(a)(1); 49 U.S.C. § 31144(c)(3). A proposed "unsatisfactory" rating is provisional and does not become final until 45 days after the carrier receives written notice of the proposed rating. 49 C.F.R. §§ 385.11(c)(1), (d). A carrier may seek administrative review of a proposed or final safety rating within 90 days of its issuance. Id. § 385.15(c).

In addition to, or instead of, seeking administrative review under § 385.15, a carrier may request an upgrade of its safety rating based on steps the carrier has taken to correct violations found during the compliance review. Id. § 385.17(a). The carrier "must make this request in writing" and "must include a written description of corrective actions taken, and other documentation the carrier wishes the FMCSA to consider." Id. §§ 385.17(b), (c). Upon receipt of such a request, the agency determines whether "the motor carrier has taken the corrective actions required" and notifies the carrier in writing whether its safety rating has been upgraded. Id. §§ 385.17(h), (i).

While the filing of a request for upgrade does not stay the effective date of a final safety rating (i.e. the 46th day), at the time of the accident, § 385.17(f) read in part that, "[i]f the motor carrier has submitted evidence that corrective actions have been taken . . . and the FMCSA cannot make a final determination within the 45-day period, the period before the proposed safety

rating becomes final may be extended for up to 10 days at the discretion of the FMCSA." Id. § 385.17(f)(2011) (amended 2012).[3]

C. Factual Background[4]

On May 31, 2011, Plaintiffs were passengers on a Sky Express ("Sky") motor coach travelling from North Carolina to New York [First Am. Compl., Doc. 15 ¶ 1]. The coach overturned in Virginia after the driver fell asleep at the wheel [Id.]. As a result of the accident, Geeta Chhetri sustained a spinal cord injury rendering her permanently paralyzed, and Pratik Chhetri sustained serious injuries to his spine [Id.].

Sky was subject to regulation by the FMCSA as a private motor carrier of interstate transportation [Id. ¶ 6]. On April 7, 2011, FMCSA conducted a compliance review of Sky's operations [Id. ¶ 8]. Based on that review, Sky was assigned a proposed safety rating of "unsatisfactory" [Id. ¶ 9; Doc. 15-2]. On April 12, 2011, the FMCSA notified Sky of its rating in writing and informed it that the "unsatisfactory" rating would become final on May 28, 2011 at

---

[3]The amended § 385.17(f) deletes the 10-day extension language so that it reads: "The filing of a request for change to a proposed or final safety rating under this section does not stay the 45-day period specified in § 385.13(a)(1) for motor carriers transporting passengers or hazardous materials in quantities requiring placarding." 49 C.F.R. § 385.17(f).

[4]The facts are taken from the First Amended Complaint and the documents attached to it [Docs. 15, 15-1, 15-2, 15-3, 15-4, 15-5, 15-6 and 15-7]. See Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1369 (11th Cir. 1997) ("[W]here the plaintiff refers to certain documents in the complaint and those documents are central to the plaintiff's claim, then the Court may consider the documents part of the pleadings . . . ."); Fed. R. Civ. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.").

which time Sky would be prohibited from operating commercial motor vehicles in interstate commerce [Doc. 15-2].[5] The notice also provided Sky with information on how to request a safety rating upgrade under 49 C.F.R. § 385.17 and how to file an administrative appeal under § 385.15 [Id.].

After receiving its notice of proposed rating, Sky entered into an agreement with GGRC Inc., a transportation consulting company operated by George Gray ("Gray") [Doc. 15 ¶ 14]. On behalf of Sky, Gray submitted to Darrell Ruban ("Ruban"), Field Administrator of the FMCSA, a written upgrade request which detailed the procedures and actions Sky had already taken in order to achieve compliance with FMCSA regulations and those it intended to implement [Id.; Doc. 15-4]. A copy of this submission was sent to Chris Hartley ("Hartley"), the Division Administrator for the FMCSA [Doc. 15 ¶ 14].

On May 12, 2011, Hartley wrote a memorandum to Ruban stating that Sky's "corrective actions are not sufficient to correct the deficiencies discovered during the compliance review. Therefore, the agency will be conducting a Compliance Review prior to June 7, 2011" [Doc. 15-5]. Putting Hartley's memorandum into effect, Ruban wrote Sky two separate letters on May 13, 2011. The first notified Sky that the FMCSA "is denying your request" and informed it that the agency would be conducting a supplemental compliance review prior to June 7, 2011 [Doc. 15-6]. The second letter informed Sky that it had been granted an extension of time before

---

[5]The FMCSA also sent Sky a "Notice of Claim" which imposed financial penalties on Sky for its violations of FMCSA regulations [Doc. 15-3].

the "unsatisfactory" rating became final until June 7, 2011 "to provide additional time for the North Carolina Division to conduct a follow-up Compliance Review" and for Sky "to attain full compliance in areas in which they were found deficient during the most recent compliance review" [Doc. 15-7].

The motor coach accident in which Plaintiffs were injured occurred on May 31, 2011, during the extension period granted by the FMCSA [Doc. 15 ¶ 1].

Notice of Plaintiffs' claims was received by FMCSA and DOT as required by the FTCA on May 1, 2013, and those claims were denied in writing on October 28, 2013 [Id. ¶ 5; Doc. 15-1].

II. Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction

A. Standard of Review

A federal district court may only decide cases over which the court has subject matter jurisdiction. Baltin v. Alaron Trading Corp., 128 F.3d 1466, 1469 (11th Cir. 1997). Here, Plaintiffs allege jurisdiction pursuant to the FTCA, which is a limited waiver of the United States' sovereign immunity for causes of action sounding in tort. Indeed, the FTCA provides jurisdiction for torts committed by government employees acting within the scope of their employment: district courts have jurisdiction over "claims against the United States, for money damages . . . for . . . personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment. . . ." 28 U.S.C. § 1346(b)(1); Sheridan v. United States, 487 U.S. 392, 401 (1988).

The United States Court of Appeals for the Eleventh Circuit recognizes two types of attacks on subject matter jurisdiction in accordance with Rule 12(b)(1): facial and factual. Garcia v. Copenhaver, Bell & Assocs., 104 F.3d 1256, 1260-61 (11th Cir. 1997) (citing Lawrence v. Dunbar, 919 F.2d 1525, 1528-29 (11th Cir. 1990)). Facial attacks merely require a court to determine whether the plaintiff has alleged a sufficient basis for subject matter jurisdiction. Id. at 1261. Factual attacks, conversely, "challenge the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits, are considered." Id. (internal quotation marks omitted).

The standard applicable to a factual attack depends on whether the attack implicates the merits of the plaintiff's cause of action. Id. "If the facts necessary to sustain jurisdiction do not implicate the merits of plaintiff's cause of action, then . . . the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." Id. (internal quotation marks omitted). Furthermore, "no presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." Id. (internal quotation marks omitted). If, on the other hand, the jurisdictional challenge implicates an element of plaintiff's cause of action, then the court should "find that jurisdiction exists and deal with the objection as a direct attack on the merits" under Rule 12(b)(6) or Rule 56. Id. (internal quotation marks omitted).

B. Analysis

Defendant moves to dismiss the instant action pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction because Plaintiffs cannot establish that Defendant waived sovereign immunity under the FTCA. Defendant argues that the "discretionary function" exception to the FTCA, 28 U.S.C. § 2680(a), applies to the FMCSA's decision to extend Sky's operations, or, alternatively that Plaintiffs cannot satisfy the private liability analogue requirement of the FTCA, 28 U.S.C. § 1346(b).

The Court must "strictly observe[]" the "limitations and conditions upon which the Government consents to be sued" under the FTCA. Lehman v. Nakshian, 453 U.S. 156, 161 (1981) (internal quotation marks and citation omitted). Such conditions include the various exceptions contained in 28 U.S.C. § 2680, such as the "discretionary function" upon which Defendant relies.

1. Discretionary Function

The discretionary function exception provides that the Government is not liable for "[a]ny claim . . . based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." 28 U.S.C. § 2860(a). To show that a government employee's action is protected by this exception, Defendant must satisfy a two-prong test. Monzon v. United States, 253 F.3d 567, 570 (11th Cir. 2001). "First, the action must involve an element of judgment or choice." Id. (quoting Berkovitz v. United States, 486 U.S. 531, 536 (1988)) (internal quotation

marks omitted). Therefore, the exception does not apply "when a federal statute, regulation, or policy specifically prescribes a course of action for an employee to follow." Berkovitz, 486 U.S. at 536. And, second, the judgment must be "of the kind that the discretionary function exception was designed to shield." Monzon, 253 F.3d at 570 (quoting Berkovitz, 486 U.S. at 536) (internal quotation marks omitted).

Whether the FMCSA's action falls within the discretionary function exception does not implicate the elements of Plaintiffs' negligence action.[6] Therefore, the Court is "free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." Garcia, 104 F.3d at 1260-61 (internal quotation marks and citations omitted).

Turning to the first prong of the discretionary function exception--whether the action involves an element of judgment or choice, the plain language of the regulation makes clear that the decision Plaintiffs challenge was vested in the discretion of the FMCSA. See 49 C.F.R. § 385.17(f) (2011) ("[T]he period before the proposed safety rating becomes final may be extended for up to 10 days at the discretion of the FMCSA." (emphasis added)).

Plaintiffs argue, however, that this version of the regulation is invalid as contrary to the enabling statute, 49 U.S.C. § 31144, and that the Court should therefore strip the

---

[6] "It is well established that to recover for injuries caused by another's negligence, a plaintiff must show four elements: a duty, a breach of that duty, causation and damages." Johnson v. Am. Nat'l Red Cross, 276 Ga. 270, 272 (Ga. 2003) (quoting Royal v. Ferrellgas, Inc., 254 Ga. App. 696, 698 (Ga. Ct. App. 2002)) (internal quotation marks omitted).

regulation of its discretionary extension provision [Doc. 26 at 7-13]. Defendant contends that this Court lacks jurisdiction to determine the validity of the regulation pursuant to the Hobbs Act, 28 U.S.C. § 2342. This Court agrees that it lacks jurisdiction to address the validity of § 385.17(f) as it read in 2011.

The Hobbs Act reads in relevant part that "[t]he court of appeals . . . has exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of . . . all rules, regulations, or final orders of the Secretary of Transportation issued pursuant to . . . subchapter III of chapter 311 . . . ." 28 U.S.C. § 2342(3)(A). Section 385.17(f) therefore falls under this jurisdictional restriction, as it was a regulation promulgated pursuant to the Secretary's authority to prescribe minimum safety standards and to determine safety fitness for commercial motor vehicles under 49 U.S.C. § 31144. See 65 Fed. Reg. 50,919-01 (Aug. 22, 2000). Precedent for the United States Court of Appeals for the Eleventh Circuit makes clear that "to ask the district court to decide whether the regulation[] [is] valid violates the statutory requirements" of § 2342. Mais v. Gulf Coast Collection Bureau, Inc., 768 F.3d 1110, 1120 (11th Cir. 2014) (internal quotation marks and citation omitted) (holding district court lacked jurisdiction under the Hobbs Act to invalidate FCC ruling which served as Government's defense against plaintiff's Telephone Consumer Protection Act claim).

Plaintiffs cite to two non-binding cases to support their argument that this Court may consider the validity of a regulation despite the Hobbs Act in the context of an FTCA claim. However,

these cases do not support the wide holding Plaintiffs ascribe to them. First, neither relies upon the Hobbs Act, but rather the jurisdictional restrictions of the Federal Aviation Act. Second, the circumstances of the cases cited by Plaintiffs is distinguishable from the case at bar.

In Merritt v. Shuttle, Inc., 245 F.3d 182 (2d Cir. 2001), the Second Circuit held that the Federal Aviation Act, 49 U.S.C. § 46110(a), which grants exclusive jurisdiction to the courts of appeals to determine the validity of Federal Aviation Administration ("FAA") orders did not preclude a pilot's FTCA claim for injuries sustained as a result of the FAA's negligence in failing to provide him with accurate weather information prior to takeoff. Id. at 189-91. The court, however, based its conclusion on the fact that the pilot's claim did not challenge or arise from the FAA Order suspending his pilot's license for taking off in dangerous weather, but rather from the FAA's prior action in failing to relay the forecast to him. Id. Here, Plaintiffs claims arise directly from actions taken by the FMCSA pursuant to § 385.17(f), the challenged regulation.

The D.C. Circuit similarly held that the same statute[7] did not preclude a pilot's FTCA claim against the FAA for negligently denying him airman medical certificates on multiple occasions. Beins v. United States, 695 F.2d 591, 597-600 (D.C. Cir. 1982). The Government in that action argued that the Air Surgeon's medical certificate determinations were orders of the FAA and

[7]49 U.S.C. § 46110 was originally codified at 49 U.S.C. § 1486. 49 U.S.C. § 46110 note.

therefore were not reviewable. Id. at 597. The court determined, however, that the statute precluded judicial review only of "whether the agency action was in excess of statutory jurisdiction and authority, without observance of procedure required by law, . . . or otherwise not in accordance with law." Id. at 598. Because a finding of negligence under the FTCA was a conceptually distinct inquiry, the court did not find the statute to be a bar to subject matter jurisdiction. Id. In the instant case, Plaintiffs ask us to perform exactly the type of validity determination that is barred under the Hobbs Act (as well as the statute at issue in Plaintiffs' cited cases)--whether the FMCSA's regulation was in excess of its statutory authority. Thus, the Hobbs Act serves as a jurisdictional bar to the validity inquiry sought by Plaintiffs.

Therefore, because the Court lacks jurisdiction to determine the validity of § 385.17(f), the Court must proceed with its discretionary function analysis based on the regulation as it stood in 2011. Plaintiffs alternatively challenge that the FMCSA still lacked discretion under the original § 385.17(f) to extend Sky's operation because the two conditions precedent laid out in the regulation had not been met.[8]

To utilize the discretion vested in the FMCSA to extend a carrier's operation under § 385.17(f), two conditions must be present: (1) "the motor carrier has submitted evidence that

---

[8]Plaintiffs also contend that the FMCSA granted the extension under 49 C.F.R. § 385.17(g), which relates to general freight carriers [Doc. 26 at 15-18]. However, Defendant has always maintained that the extension was granted under § 385.17(f).

corrective actions have been taken" and (2) "the FMCSA cannot make a final determination within the 45-day period." 49 C.F.R. § 385.17(f) (2011). Plaintiffs argue (1) that Sky's submission did not constitute evidence of corrective action because it did not address certain areas of deficiency, and (2) that the FMCSA had made a final determination regarding Sky's upgrade request as of May 13, 2011 [Doc. 26 at 19, 21-23].[9]

Turning first to Sky's submission, it is clear that the submission details corrective action already taken by Sky (such as signing with a new drug testing company, barring drivers below the required English proficiency level from driving, creating a new driver safety policy, and adding additional drivers), as well as corrective action the company intended to take but had not yet implemented, like requiring English classes for its drivers, ensuring future drivers' files are reviewed prior to performing their duties, etc. [see Doc. 15-4]. While the submission did not address every violation ascribed to Sky, the language of § 385.17(f) does not require that level of specificity to trigger the FMCSA's exercise of discretion, despite Plaintiffs'

---

[9]Relying upon 49 C.F.R. § 385.17(c), Plaintiffs also argue that because Sky operations did not meet the required safety standard when it sought the upgrade, it was not eligible for an extension [Doc. 26 at 19-21; Gallaghan Decl., Doc. 26-1 ¶ 11]. However, the Court interprets 49 C.F.R. § 385.17(c) as requiring a motor carrier to show its operations currently meet the safety standard in order to receive the requested rating upgrade. The fact that § 385.17(f) requires as a condition precedent that the FMCSA cannot make a determination within the 45-day period certainly contemplates the possibility that the FMCSA could find, after the ten day extension, that the submitted corrective action, while partially ameliorative, does not bring the carrier into full compliance, resulting in a denial of the requested upgrade.

protestations to the contrary [Gallaghan Decl., Doc. 26-1 ¶ 15]. Section 385.17(f) merely requires the carrier to have submitted "evidence that corrective actions have been taken." 49 C.F.R. § 385.17(f) (2011). It does not specify to what extent corrective action is required. The FMCSA must utilize its expertise in determining whether the evidence submitted by the carrier is sufficient to warrant an extension, an upgrade, or a denial. See § 385.17 (2011).

Turning to whether the FMCSA had indeed reached a final decision regarding Sky's safety rating on May 13, 2011, the Court finds that the FMCSA letters are potentially conflicting. However, when read in conjunction with one another, it becomes clear that the FMCSA Regional Administrator did not find Sky's evidence of corrective action submitted on May 11, 2011 sufficient to upgrade its safety rating at that time but wished to conduct an additional compliance review prior to June 7, 2011[10] to determine whether Sky warranted a safety rating upgrade [Doc. 15-5 at 1]. Consideration of this additional compliance review is permitted under § 385.17(d) which authorizes the FMCSA to consider "any additional relevant information" in making a final determination on a request for upgrade. Thus, the Field Administrator's two May 13, 2011 letters, the first denying the upgrade request based on the evidence submitted and the second granting a ten-day extension pending a supplemental compliance review prior to

[10]June 7, 2011 falls ten days after May 28, 2011, the original date upon which Sky operations would be prohibited. Clearly, the Regional Administrator also intended the grant of a ten-day extension.

June 7, 2011 [Docs. 15-6 & 15-7], reflect that the FMCSA had not yet made a final determination regarding Sky's upgrade request and wanted to receive additional information before reaching its ultimate conclusion.

Therefore, the Court concludes that the two required conditions of § 385.17(f) had been met, and that FMCSA utilized its discretion in granting the 10-day extension to Sky in compliance with that regulation. Accordingly, the Court concludes that the first prong of the discretionary function test--that the action involve an element of judgment or choice--has been satisfied.

The Court now turns to the second prong of the discretionary function analysis, whether the act of discretion was "of the kind that the discretionary function exception was designed to shield." Monzon, 253 F.3d at 570 (quoting Berkovitz, 486 U.S. at 536). The actions of Government agents "in furtherance of the policies which led to the promulgation of the regulation" are protected. United States v. Gaubert, 499 U.S. 315, 324 (1991). "[T]he very existence of the regulation [which allows the employee discretion] creates a strong presumption that a discretionary act authorized by the regulation involves consideration of the same policies which led to the promulgation of the regulations." Id.

The purpose of the regulations located in 49 C.F.R. Pt. 385 were to "determine the safety fitness of motor carriers, . . . to direct motor carriers to take remedial action when required, and to prohibit motor carriers receiving a safety rating of 'unsatisfactory' from operating a CMV." 49 C.F.R. § 385.1(a). Clearly, the 10-day extension was granted to determine Sky's

safety fitness and to allow it to take required remedial action. The FMCSA made a discretionary decision involving the safety and policy considerations imbued within the statute and its regulations. Such a decision is therefore protected.

Accordingly, the discretionary function exception applies in this instance, and the case must be dismissed for lack of subject matter jurisdiction because there has been no waiver of sovereign immunity. Thus, Defendant's Motion to Dismiss for lack of subject matter jurisdiction [Doc. 22] is GRANTED.

2. Private Liability Analogue Requirement

Because the Court has concluded that the FMCSA's actions are protected under the discretionary function exception of the FTCA, the Court need not consider whether Plaintiffs' claim satisfies the private liability analogue requirement of the FTCA.

III. Defendant's Motion to Dismiss for Improper Venue

Likewise, this Court need also not consider Defendant's motion to dismiss for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3). Defendant's motion to dismiss for improper venue is therefore DISMISSED AS MOOT.

IV. Plaintiffs' Motion for Oral Hearing

Plaintiffs move for an oral hearing before this Court to "assist the Court in its consideration of the issues raised by Defendant's Motion" [Doc. 30-1 at 4] The Court exercises its discretion and chooses not to conduct an oral hearing regarding these issues. Accordingly, Plaintiffs' Motion for Oral Hearing [Doc. 30] is DENIED.

V. Conclusion

For the reasons set forth above, Defendant's Motion to Dismiss [Doc. 22] is GRANTED, as this Court lacks subject matter jurisdiction. Additionally, Plaintiffs' Motion for Oral Hearing [Doc. 30] is DENIED. The Clerk is hereby DIRECTED to close this case.

SO ORDERED, this 19 day of December, 2014.

ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE