

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

NORFOLK SOUTHERN RAILWAY)
COMPANY,)
)
Plaintiff,)

vs.)

CIVIL ACTION NO 06-0288-KD-C

ROLISON TRUCKING CO., LLC.,)
GAIL W. ROLISON, and RONNY P.)
JOHNSON,)
)
Defendants.)

ORDER

In September 2006, this action was stayed on the defendants’ motion (doc. 25). The last status report was received May 18, 2009 (doc. 42). The parties report that the case has now been tried and on May 7, 2009, the Circuit Court of Clarke County, Alabama entered judgment on the jury verdicts in favor of Rolison Trucking Co., LLC, Gail Rolison, and Ronny P. Johnson and against Norfolk Southern Railway Company.

Accordingly, the parties are **ORDERED** to show cause on or before **May 29, 2009** why the stay should not be lifted and this case dismissed. See Cashion v Torbert, 881 So. 2d 408, 414-415 (Ala. 2003) (explaining that an order is final for purposes of res judicata or estoppel even though an appeal is pending)(quoting Alabama Power Co. v. Thompson, 250 Ala. 7, 12, 32 So.2d 795, 800 (1947) (“In this jurisdiction a judgment will operate as res judicata or as estoppel notwithstanding an appeal when the appellate court action is based on a review of the record made below.”)) (citations omitted); see also O’Dell v. Doychak, 2009 WL 1211356, 1 (M.D. 2009) (“During the stay, the state court adjudicated the exact rights which O’Dell asked this Court to adjudicate in his original federal action filed in 2006. [] Thus, the original controversy

was fully resolved in state court, and dismissal of the federal action is now appropriate.”)
(citation omitted)

A hearing on this matter is scheduled for **June 18, 2009 at 2:00 p.m.** before the undersigned in Courtroom 5A of the United States District Court, 113 St. Joseph St., Mobile, Alabama 36602.

DONE this the 21st day of May, 2009.

s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE