

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TENNECO AUTOMOTIVE
OPERATING CO., INC.,

Plaintiff,

vs.

Case No. 08-CV-10467
HON. GEORGE CARAM STEEH

KINGDOM AUTO PARTS, et al.,

Defendants.

_____ /

ORDER ACCEPTING DECEMBER 18, 2008
REPORT AND RECOMMENDATION (#117) AND DENYING
PLAINTIFF TENNECO'S MOTION TO ENJOIN DEFENDANT KAP
FROM PROCEEDING WITH SECOND-FILED LAWSUIT (#70)

Magistrate Judge Mona Majzoub issued a December 18, 2008 Report and Recommendation recommending that plaintiff Tenneco Automotive Operating Co., Inc.'s motion to enjoin defendant Kingdom Auto Parts ("KAP") from proceeding in a second lawsuit, Kingdom Auto Parts v. Motor and Equipment Manufacturers Association, 08-13947 (E.D. Mich. 2008) (J. Murphy), be denied because the "first-to-file" rule does not warrant such relief. Magistrate Judge Majzoub reasons that, although Tenneco filed the instant lawsuit before KAP filed its complaint in Case No. 08-13947, the two actions are not "materially on all fours," they do not share nearly identical parties or claims, and both lawsuits are pending in the United States District Court for the Eastern District of Michigan.

"A judge of the court shall make a de novo determination of those portions of [a] report or specified proposed findings or recommendations to which objection is made." 28

U.S.C. § 636 (b)(1). Objections must be filed within 10 days after service of a Report and Recommendation. 28 U.S.C. § 636 (b)(1)(C). "A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id. A party's failure to object waives further judicial review. Thomas v. Arn, 474 U.S. 140, 149-155 (1985); Thomas v. Halter, 131 F.Supp.2d 942, 944 (E.D. Mich. 2001); 28 U.S.C. § 636(b)(1). Tenneco has not filed timely objections.

Having reviewed the December 15, 2008 Report and Recommendation, the court hereby ACCEPTS the Report and Recommendation as its own. Accordingly,

Defendant Tenneco's motion to enjoin defendant KAP from proceeding in a second lawsuit, Case No. 08-13947, is hereby DENIED.

SO ORDERED.

Dated: January 13, 2009

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 13, 2009, by electronic and/or ordinary mail.

s/Josephine Chaffee
Deputy Clerk