

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CIVIL NO. 1:08CV395

GEORGE W. WILSON, et al.,)
)
 Plaintiffs,)
)
 Vs.)
)
 NORFOLK SOUTHERN RAILWAY)
 COMPANY,)
)
 Defendant.)
 _____)

**MEMORANDUM AND
ORDER OF DISMISSAL**

THIS MATTER is before the Court on the Magistrate Judge's Memorandum and Recommendation, filed December 30, 2008.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On December 30, 2008, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding Defendant's

motion to dismiss or, in the alternative, to stay action for referral to the Surface Transportation Board. The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 10 days of service of the Recommendation; the period within which to file objections expired on January 23, 2009.¹ No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the Defendant's motion to dismiss be allowed.

IT IS, THEREFORE, ORDERED that the Defendant's motion to dismiss is **ALLOWED**, and this action is hereby dismissed without prejudice as preempted.

IT IS FURTHER ORDERED that the Defendant's alternative motion to stay is **DENIED** as moot.

¹ Objections were originally due January 20, 2009; however, Plaintiffs timely requested an extension of time to January 23, 2009, and such was granted. **See Order, filed January 9, 2009.**

Signed: January 26, 2009

A handwritten signature in black ink, appearing to read "Lacy H. Thornburg", written over a horizontal line.

Lacy H. Thornburg
United States District Judge

