

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

**SHAWNEE TERMINAL RAILROAD
CO., INC.,**

Plaintiff,

v.

J.E. ESTES WOOD CO., INC., *et al.*,

Defendants.

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CIVIL ACTION NO. 09-0113-KD-N

ORDER

After due and proper consideration of all portions of this file deemed relevant to the issues raised, and there having been no objections filed, the Report and Recommendation of the Magistrate Judge made under 28 U.S.C. § 636 and dated February 8, 2011 is hereby **ADOPTED** as the opinion of this Court.

It is **ORDERED** that the Defendant J.E. Estes Wood Co. Inc.'s Motion to Dismiss Count One (Doc. 67) is **GRANTED** and that Count One of the Plaintiff's Complaint is **DISMISSED**.

DONE and ORDERED this the **25th** day of **February 2011**.

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