

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

KENNITH McDOWELL, ROBERT *
MAULDING, LUTHER STRIPLING, *
RUDY KYLE, FRED DOLLAR, JAMES *
JOSLIN, JAMES MILNER, JOE ELLIS, *
DAVID ELLIS, DANIEL STRIPLING, and *
JANET STRIPLING, *

Plaintiffs, *

vs. *

No. 4:08cv003979 SWW

ELBERT PRICE, individually and as Trustee *
for these plans: Bud Price’s Excavating *
Service Inc. Profit-Sharing Plan, Bud Price’s *
Excavating Service, Inc. Retirement Plan, *
Price’s Utility Contractors, Inc. Retirement *
Plan and for six unnamed plans; MARY *
RUTH PRICE, individually and as Trustee *
for these plans: Bud Price’s Excavating *
Service, Inc. Profit-Sharing Plan, Bud Price’s *
Excavating Service, Inc. Retirement Plan, *
Price’s Utility Contractors, Inc. Retirement *
Plan and for six unnamed plans (Plans A-F); *
Bud Price’s Excavating Service, Inc. *
Profit-Sharing Plan; Price’s Utility Contractors, *
Inc. Retirement Plan; Bud Price’s Excavating *
Service, Inc. Retirement Plan; six unnamed *
plans (Plans A-F); Price’s Utility Contractors, *
Inc. as plan administrator for Price’s Utility *
Contractor’s Inc., Retirement Plan and up to *
six unnamed plans; Bud Price’s Excavating *
Service, Inc. as plan administrator of Bud *
Price’s Excavating Service, Inc. Profit- *
Sharing Plan, Bud Price’s Excavating Service, *
Inc. Retirement Plan, and up to six unnamed *
plans (A-F), *

Defendants. *

ORDER

Plaintiffs Kenneth McDowell, Robert Maulding, Luther Stripling, Rudy Kyle, Fred
Dollar, James Joslin, James Milner, Joe Ellis, David Ellis, Daniel Stripling, and Janet Stripling,

former employees or beneficiaries of former employees of defendants Bud Price's Excavating Service, Inc. and Price's Utility Contractors, Inc., bring this action pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001 *et seq.*, to have their benefits under certain profit sharing plans and/or defined benefit plans that were maintained by defendants determined and paid. The matter was referred to Magistrate Judge H. David Young for further proceedings and recommendation.

The parties subsequently filed cross-motions for summary judgment. On October 13, 2010, Judge Young filed Findings and Recommendation ("F&R") [doc.#334], in which he recommended that the parties' cross-motions for summary judgment be denied. By Order entered October 29, 2010, the Court declined to adopt the F&R and referred the matter back to Judge Young for further proceedings and recommendation. In so ruling, the Court noted that because Judge Young will consider many of the issues surrounding an accounting of the plaintiffs' interests in the plans in revisiting the parties' motions for summary judgment and preparing an F&R, the Court informed the parties that it is considering appointing Judge Young a special master in accordance with Rule 53 of the Federal Rules of Civil Procedure to perform an accounting, taking all appropriate measures to perform the assigned duty of determining plaintiffs' interests in the plans fairly and efficiently, after which he will issue an F&R for this Court's *de novo* review. The parties were given fourteen (14) days from the date of entry of the Order in which to be heard on the issue of appointing Judge Young a special master to perform an accounting.

The parties have timely weighed in on the issue of appointing Judge Young a special master and there are no objections. Defendants, however, correctly point out that they have

provided plaintiffs an accounting, albeit one plaintiffs claim to be inaccurate. Nevertheless, the correctness of the accounting defendants provided to plaintiffs is an issue that Judge Young will address on referral. In that respect, rather than appointing Judge Young a special master at this time, the Court will await Judge Young's F&R. The Court will address the issue of appointing Judge Young a special master to perform an accounting, if necessary, following receipt of Judge Young's F&R.

IT IS SO ORDERED this 19th day of November 2010.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE