

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. 4:08-cv-03979-SWW-HDY

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 defined benefit plans maintained by defendants determined and paid. The matter was referred to Magistrate Judge H. David Young for further proceedings and recommendation.

Plaintiffs appeal [doc.#504] the Magistrate Judge's March 8, 2012 Order [doc.#487] that, *inter alia*, (1) denied plaintiffs' motion seeking an order requiring the plan administrator of the 1997 defined benefit plan to deposit \$2,820,000 into the plan and their amended motion seeking an order requiring the plan administrator of the 1997 defined benefit plan to deposit funds into the plan so that a balance of \$4,820,000 is created [doc.#'s 467 and 478]; (2) denied plaintiffs' motion requesting a finding that the residuary of the 1997 defined benefit plan be paid to the plaintiffs and "for payment of funds by the defendants in an amount sufficient to restore a \$3.0 residuary in the [plan]" [doc.#469]; and (3) denied plaintiffs' motion seeking an order requiring the repayment of funds paid to Nisbet and others from the 1997 defined benefit plan [doc.#472].¹ The Court has considered the arguments raised by plaintiffs and finds no basis for setting aside the Magistrate Judge's March 8, 2012 Order. Accordingly, the Court denies plaintiff's appeal of the Magistrate Judge's Order.

IT IS SO ORDERED this 23rd day of March 2012.

/s/Susan Webber Wright
UNITED STATES DISTRICT JUDGE

¹ This is plaintiffs' seventh appeal of an Order of the Magistrate Judge since March 2010. See document entries 268, 293, 368, 382, 394, and 421.