

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

B&B HARDWARE, INC.

PLAINTIFF

v.

4:10CV00317-BRW

FASTENAL COMPANY

DEFENDANT

ORDER APPOINTING SPECIAL MASTER

After giving the parties notice and an opportunity to be heard, I appoint John C. Everett as a Special Master under Fed. R. Civ. P. 53.

The Special Master is appointed to conduct such proceedings he deems necessary to hear and make rulings and orders on any discovery disputes that the parties are unable to resolve after first conferring in good faith. The Special Master is also authorized to make those findings of fact, conclusions of law, and rulings and orders that are reasonably necessary to effectuate his or the Court's orders relating to any discovery disputes.

The parties may not have *ex parte* communication with the Special Master, but no restrictions will apply to communications between the Special Master and the Court. All proceedings before the Special Master will be on the record. The Special Master will submit his rulings, orders, findings or conclusions in writing to the parties and to the Court. They will become a final order of the Court unless a party files a Request for Review within 14 days of the filing of the Special Master's decision. The Court may affirm, adopt, modify, reject, or reverse, in whole or in part, the rulings, orders, conclusions, or findings of the Special Master, or may resubmit the dispute to the Special Master with instructions.

The Court will decide *de novo* all objections to rulings, orders, and findings of fact made or recommended by the Special Master. The Court may set aside the Special Master's ruling on a procedural matter only for an abuse of discretion.

Each party is to forthwith send the Special Master \$2000.00 to be placed in his trust account. He is permitted to draw from it at the end of each month, with an itemized statement of fees and expenses sent contemporaneously to the lawyers for each party. Each party will forthwith send a check to the Special Master to bring the trust account to \$4000.00 forthwith or in no longer than 7 days.

Unless otherwise ordered by the Court, compensation and costs will be paid to the Special Master at the rate of \$350 per hour by the Parties. The Special Master will make a recommendation to the Court regarding what portion of these expenses and fees will be borne by each party.

The Court notes the previous filing by Mr. Everett of the affidavit required by Fed. R. Civ. P. 53(b)(3)(A) attesting that there are no grounds for his disqualification under 28 U.S.C. § 455.

IT IS SO ORDERED this 28th day of June, 2011.

/s/Billy Roy Wilson
UNITED STATES DISTRICT JUDGE