

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**MARK S. SMITH, JR.,**

**Plaintiff,**

**v.**

**WACKER NUESON CORPORATION,  
and WACKER NUESON SE,**

**Defendants.**

**No. 09-1064-DRH**

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**WACKER NUESON CORPORATION,  
and WACKER NUESON SE,**

**Third-Party Plaintiffs,**

**v.**

**FONTANA CONTRACTING COMPANY,  
and WESCON PRODUCTS COMPANY,  
a subsidiary of Latshaw Enterprises, Inc.,**

**Third-Party Defendants.**

**ORDER**

**HERNDON, Chief Judge:**

Now before the Court are Third-Party Defendant Fontana Contracting Company's September 29, 2010 motions to set aside default (Doc. 53) and for leave to file an answer (Doc. 54). As of today's date, Third-Party Plaintiffs Wacker Neuson Corporation and Wacker Neuson SE have not responded to the motions. Pursuant to **Local Rule 7.1(g)**, the Court considers the failure to respond as admissions of the

merits of the motions.<sup>1</sup> Thus, the Court **GRANTS** the motions. The Court **VACATES** the Entry of Default entered on September 17, 2010 (Doc. 49). Further, the Court **ORDERS** Fontana Contracting Company to file its answer to the Third-Party Complaint instanter.

**IT IS SO ORDERED.**

Signed this 18th day of October, 2010.

 David R. Herndon  
2010.10.18 10:34:10  
-05'00'

**Chief Judge**  
**United States District Court**

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<sup>1</sup>“Failure to file a timely response to a motion may, in the Court’s discretion, be considered an admission of the merits of the motion.” **Local Rule 7.1(g)**.