

SUPERIOR COURT OF THE STATE OF GEORGIA  
COUNTY OF COBB

EDGAR "BO" POUNDS, individually and on )  
behalf of the estate of Mary Jean Pounds, )  
JOSEPH THOMPSON, FRANKLIN SMITH, )  
EAGLE EYE FORENSICS, LLC, DIANNE )  
BRACKIN, and WILLIAM SHARP, )  
Derivatively On Behalf of COBB ELECTRIC )  
MEMBERSHIP CORPORATION. )

Civil Action File No. 07-1-9408-48

Plaintiffs, )

vs. )

DWIGHT BROWN, DON BARNETT, )  
DAVID MCGINNIS, KAY ANDERSON, AL )  
FORTNEY, JR., FRANK BOONE, SARAH )  
BROWN, LARRY CHADWICK, HENRY )  
BALKCOM III, COBB ENERGY )  
MANAGEMENT CORPORATION and )  
DOES 1-15, inclusive, )

Defendants, )

-and- )

COBB ELECTRIC MEMBERSHIP )  
CORPORATION, a Georgia Corporation, )

Nominal Defendant. )

COBB COUNTY GA.  
FILED IN OFFICE  
2009 FEB - 1 PM 1:34  
J. G. O'Connell  
Clerk of Superior Court

**ORDER APPOINTING SPECIAL MASTER**

This action is before the Court on the Court's own motion. Appointing a Special Master to handle discovery is warranted by the expected volume of documents and the likelihood that *in camera* inspection may be needed to address privilege claims. The Court, with consent of the parties, HEREBY APPOINTS Judge Michael Stoddard as Special Master pursuant to O.C.G.A. § 9-7-2. Judge Stoddard, as Special Master, shall be subject to the terms and conditions set forth in this Order.

## Duties

The Special Master is hereby directed to proceed with all reasonable diligence to perform the following functions:

- A. Case Management: The Special Master shall have the authority to conduct scheduling conferences, establish case management orders and discovery schedules, and otherwise perform such acts necessary to expeditiously and efficiently move the case through the discovery process, including issues related to electronic data discovery and privilege.
- B. Pleadings and Correspondence: The Special Master shall maintain all pleadings and correspondence submitted by the parties in connection with the case. The Special Master shall forward the entirety of such documents to the Court at the conclusion of discovery or at reasonable and necessary junctures. Electronic copies in Word format shall be furnished to the trial judge via email to his staff attorney, Brittany N. Jones, Esq., at: [Brittany.Jones@cobbcounty.org](mailto:Brittany.Jones@cobbcounty.org).
- C. Conflict Resolution: The Special Master shall have the power to entertain all motions for relief brought by the parties concerning discovery, with or without a hearing, and shall issue written rulings thereon with all reasonable diligence upon submission to the Special Master. Included within the power to conduct hearings on motions shall be the power to receive testimony under oath before a court reporter, and to preside over the reception of evidence into the record.

D. Reports: The Special Master shall report to the Court on all matters within his jurisdiction within 60 days of the date of this Order, and shall monthly report to the Court on the progress of discovery in this case pursuant to O.C.G.A. §9-7-9. The Special Master shall make findings of fact and conclusions of law with respect to the matters presented by the parties. Unless directed by the Court or believed advisable by the Special Master, the report shall not be accompanied by a transcript of the proceedings, the evidence, or the exhibits. Such parts of the report, if any, that may be confidential shall be filed under seal pending further order of the Court.

E. Privilege Claims: Until directed otherwise by the Special Master or the Court, any person asserting a privilege shall create a privilege log that will specifically identify the document or other communication sought to be protected from disclosure, including:

the date, the person making the statement, the persons to whom or in whose presence the statement was made, other persons to whom the contents were or have been revealed, the general subject matter of the communication (unless itself claimed to be privileged), the particular privilege(s) or doctrine(s) upon which protection against disclosure is based, and any other circumstances affecting the existence, extent, or waiver of the privilege.

When appropriate, the Special Master may require that this documentation of claims of privilege be verified.

F. Settlement: The Special Master may serve as a mediator, if requested by the parties, to facilitate settlement of the case.

- G. Sanctions: The Special Master may award costs of motions and impose sanctions upon any party for failure to comply with discovery requirements. The Special Master may reapportion his fees when imposing sanctions.
- H. Other Duties: The Special Master may perform such other and further tasks not specifically enumerated above if such additional tasks are undertaken in furtherance of the above scope of appointment. The Special Master may perform additional tasks and functions (including, but not limited to, ruling on motions for non-discovery related injunctive relief) if the parties consent thereto, or if the Court, upon application of one of the parties, specifically appoints the Special Master to so act.

#### **Discovery Plan**

The Special Master shall meet with the parties to prepare an appropriate discovery plan, which shall include, but not be limited to all of the following:

- Scheduling depositions,
- Serving interrogatories, requests for production of documents and requests to admit,
- Establishing privilege logs, and
- Serving expert witness reports.

### **Conduct of the Parties**

The parties are instructed to cooperate with the Special Master in all respects, including, but not limited to, making available to the Special Master any facilities, files, databases, documents, or other materials the Special Master may request to fulfill the Special Master's duties. The parties need not file with the Court a duplicate of the documents submitted to the Special Master. The parties are not permitted to engage in *ex parte* communications with the Special Master or the Special Master's administrative staff, except as would be permitted with the Court or the Court's staff, or except as such communications may relate to settlement of the case where the Special Master has been asked to serve as mediator.

### **Appeals**

Any party may file an appeal to any order, finding, report or recommendation issued by the Special Master within 20 days of the report upon notice to all parties. The Court will determine whether, based on the reasons provided in the party's objection, if it is appropriate to review the Special Master's orders or report under a *de novo* or other appropriate standard.

### **Compensation of the Special Master**

The Court has considered the fairness of imposing the likely cost of the Special Master on the parties and has taken steps to protect against unreasonable expense and delay. In light of the determined need for the appointment of the Special Master, the Court concludes that the parties shall bear the cost of the Special Master on the following terms and conditions:


The Special Master shall charge an hourly rate of \$300.00 and shall keep account of all hours or quarter-hour fractions thereof, and any expenses incurred by the Special Master in the performance of the Special Master's duties. The Special Master will issue an invoice describing the work performed and the hours attributable to the work performed, plus the expenses incurred by item, to the parties on a monthly basis. The parties shall each pay their *pro rata* share of the invoice promptly and in no event more than 20 days from the issuance thereof. The *pro rata* share shall be paid as follows: one-third (1/3) by the Plaintiffs, one-third (1/3) by Cobb Energy Management Corporation and related Defendants and one-third (1/3) by Cobb EMC and related Defendants. The Special Master shall have the right to reallocate the fees and costs at his discretion. Each group, the Plaintiffs, Cobb Energy Management Corporation, and Cobb EMC, shall pay \$2500 into the registry of the court for use by the Special Master. Any dispute by any party over any aspect of the invoice shall first be raised informally with the Special Master for possible resolution. Then, the party disputing any aspect of the invoice may address such dispute to the Court by motion, to which the Special Master may respond.

### **Conflicts**

The Special Master, by accepting this appointment, represents to the Court that there are no matters within the scope of this appointment for which the Special Master could or should be disqualified, and that the Special Master accepts the terms and conditions of this appointment as set forth in this Order.

This Order shall be effective upon the submission by the Special Master of an affidavit accepting this appointment and disclosing whether there are any grounds for his disqualification.

SO ORDERED, this 31 day of January, 2008.



Judge I. Stephen Schuster  
Superior Court of Cobb County  
Cobb Judicial Circuit

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day mailed a copy of the foregoing Order to the following parties:

W. Pitts Carr David M. Cohen Carr & Palmer, LLP 10 North Parkway Square 4200 Northside Parkway Atlanta, Georgia 30327	Hylton B. Dupree Jr. Dupree & Kimbrough, LLP 49 Green Street P.O. Box 525 Marietta, Georgia 30061
Bruce P. Brown J. Patton Dycus McKenna Long & Aldridge LLP 303 Peachtree Street, Suite 5300 Atlanta, Georgia 30308	F. Barry McCabe Sutherland Asbill & Brennan LLP 999 Peachtree Street, NE Atlanta, Georgia 30309-3996
H. Scott Gregory, Jr. Brock, Clay, Calhoun & Rogers, P.C. 49 Atlanta Street Marietta, Georgia 30060	Michael Weinstock, Esq. Richard J. Capriola, Esq. Weinstock & Scavo, P.C. 3405 Piedmont Road, Suite 300 Atlanta, GA 30305
Robert B. Silliman Awtrey & Parker, PC 250 Lawrence Street Marietta, Georgia 30060	

This \_\_\_\_\_ day of \_\_\_\_\_ 2008.

\_\_\_\_\_  
Brittany N. Jones  
Staff Attorney to Judge J. Stephen Schuster  
Superior Court of Cobb County