

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	
and STATE OF NEBRASKA,)	
)	
Plaintiffs,)	8:11CV274
)	
V.)	
)	
STABL, INC.,)	ORDER
)	
Defendant.)	
)	

On April 12, 2013, Plaintiffs filed a motion requesting that the Court strike several of Defendant’s non-expert witnesses pursuant to [Fed. R. Civ. P. 37\(c\)\(1\)](#). ([Filing 92](#).) These witnesses include Mrs. Leon A. Johnson, Kristen Nazar, John Sterling, William McMurtry, Jack Wolfe, Ozzie Romero, and Scott Philippe.

Plaintiffs maintain that these individuals should be barred from testifying because they were not timely disclosed and Plaintiffs have no information regarding the possible content of their testimony. Plaintiffs claim that Defendant first named these individuals on its witness list for trial. Defendant did not list these witnesses on its initial disclosures or on any supplement thereto, and, according to Plaintiffs, did not identify them in response to any interrogatory. These witnesses were not deposed in this case and Defendant did not disclose the proposed topics of their testimony on its witness list.¹

Pursuant to [Fed. R. Civ. P. 26\(a\)\(1\)\(A\)](#), parties must disclose “the name and, if known, the address and telephone number of each individual likely to have discoverable information . . . that the disclosing party may use to support its claims or defenses . . .” Parties are under a duty to supplement these disclosures “in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect.” [Fed. R. Civ. P. 26\(e\)\(1\)](#). Under [Fed. R. Civ. P. 37\(c\)\(1\)](#), if a party fails to identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that witness to supply evidence at trial, unless the failure was substantially justified or is harmless.

¹ At the time Plaintiffs filed their motion to strike, trial was scheduled to occur on May 21, 2013. The trial date was subsequently moved to September 17, 2013, due to a conflict within the Court.

Defendant has not responded to Plaintiffs' motion to strike and has offered no explanation for its failure to timely identify these witnesses. Consequently, the motion to strike will be granted.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion to Strike Witnesses ([filing 92](#)) is granted. Defendant is hereby precluded from using any testimony or evidence from Mrs. Leon A. Johnson, Kristen Nazar, John Sterling, William McMurtry, Jack Wolfe, Ozzie Romero, and Scott Philippe at the trial of this case.

DATED May 29, 2013.

BY THE COURT:

**S/ F.A. Gossett
United States Magistrate Judge**