

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

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

This matter is before the Court on Defendant’s Motion for Continuance; Request for Leave to File Opposition Expert Reports/Designations and Daubert Motions; Request for Hearing; Motion in Limine; and Clarification of Pre-Trial Order Setting Length of Trial ([filing 114](#)). The motion will be denied.

Trial is scheduled to begin in this case on September 17, 2013. Defendant requests that the Court continue the trial of this matter and give Defendant additional time to conduct discovery and file motions pertaining to expert witnesses. Alternatively, Defendant asks that the Court exclude the testimony of two of Plaintiffs’ expert witnesses.

In support of its motion, Defendant argues that Plaintiffs’ expert, Dr. Joan Meyer, issued a supplemental expert report on July 2, 2013, which substantially and materially alters her previous report served on April 30, 2012. Defendant maintains that it should be given more time to depose Dr. Meyer, submit reports refuting her updated findings and file a Daubert motion seeking to exclude her testimony.

Similarly, Defendant maintains that Plaintiffs’ expert Mark Klingenstein’s Supplemental Declaration is inadmissible. Klingenstein’s Declaration ([filing 70](#)) was submitted by Plaintiffs in support of their Motion for Summary Judgment. Defendant argues that the Declaration contains materially new statements. Defendant also contends that Klingenstein’s findings are unreliable.

Moreover, Defendant contends that each experts' supplemental report is untimely. Dr. Meyer's initial report was served on April 30, 2012, and her supplemental report was served on July 2, 2013. Klingenstein's report was served on April 30, 2012, and his Supplemental Declaration was submitted on March 19, 2013. Defendant argues that the deadline for supplementation of expert reports was April 21, 2013, or thirty-days before the original trial setting of May 21, 2013.¹

Having considered the totality of the circumstances and the arguments advanced by the parties, the Court will deny Defendant's motion. Dr. Meyer's supplemental report was provided to Defendant in early July of this year. At the time the supplement was served, Plaintiffs' counsel provided defense counsel dates and times that Dr. Meyer would be available for deposition. ([Filing 119](#).) However, Defendant elected to not depose Dr. Meyer at any time. Upon receiving and reviewing Dr. Meyer's supplemental report in July, Defendant surely could have attempted to exclude her opinions. Instead, Defendant waited until two weeks before trial to request a continuance and ask that deadlines be extended to allow for additional expert discovery and motions. Defendant clearly did not act diligently in seeking to refute Dr. Meyer's opinions or exclude her testimony. Also, there is nothing before the Court at this time which indicates that Defendant is prejudiced by an updated expert report that has been in its possession for over two months.

The issues Defendant raises with Klingenstein's Declaration have previously been addressed by the Court, and will not be rehashed at this time. In her Memorandum and Order on Plaintiffs' Motion for Partial Summary Judgment, Chief United States District Judge Laurie Smith Camp stated: "The matters Klingenstein addressed in his Supplemental Declaration are made in response to the allegations and issues [Defendant] raised for the first time in its brief opposing the Summary Judgment Motion, and nothing causes the Court to believe [Defendant] has suffered from surprise or prejudice because of Klingenstein's Supplemental Declaration. Therefore, [Defendant's] objection to Klingenstein's Supplemental Declaration will be overruled . . ." ([Filing 98](#).)

¹ On April 24, 2013, trial of this case was continued to September 17, 2013. ([Filing 97](#).)

Accordingly,

IT IS ORDERED that Defendant's Motion for Continuance; Request for Leave to File Opposition Expert Reports/Designations and Daubert Motions; Request for Hearing; Motion in Limine; and Clarification of Pre-Trial Order Setting Length of Trial ([filing 114](#)) is denied.² Defendant's Motion for Time to Reply to Plaintiffs' Opposition to Defendant's Motion for Continuance ([filing 120](#)) is denied.

DATED September 6, 2013.

BY THE COURT:

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

² Defendant has requested clarification of the estimated length of trial. The parties' estimated length of trial is included in the Court's Order on Final Pretrial Conference ([filing 113](#)). The Court's docket sheet has been modified to accurately reflect this estimate.