
**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

LARRY KIRKBRIDE,

Plaintiff,

v.

TEREX USA, LLC, TEREX
CORPORATION, and DOES 1
THROUGH 5,

Defendants.

**MEMORANDUM DECISION AND
ORDER GRANTING MOTION IN
LIMINE TO EXCLUDE BELATEDLY
PRODUCED DOCUMENTS
(ECF No. 128)**

Case No. 2:10-cv-660-TC-EJF

District Judge Tena Campbell

Magistrate Judge Evelyn J. Furse


The Court GRANTS Plaintiff's Motion in Limine to Exclude Belatedly Produced Documents (ECF No. 128).

Defendant Terex USA, LLC ("Terex") belatedly disclosed certain documents to Plaintiff Larry Kirkbride. "If a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence . . . at a trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). Terex has not shown its failure was substantially justified or harmless. *See id.* From the briefing, the proposed demonstrative exhibits appear to be documents that Terex should have disclosed during discovery: Terex had these documents in its possession during discovery, and it intends to use them to support its case. *See* Fed. R. Civ. P. 26(a)(1)(A)(ii). The designation of the late disclosed documents as demonstrative exhibits does not ameliorate the harm caused from the failure to disclose during discovery. The Court therefore Grants Mr. Kirkbride's Motion in Limine.

The Court clarifies that this Order does not preclude Terex from using at trial the Social Security documents referenced in the Motion and Memoranda, because those documents are copies of documents already timely produced.

DATED this 9th day of September, 2013.

BY THE COURT:


Evelyn J. Furse
United States Magistrate Judge