

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PHILLIP ALBERTERNST,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:10-CV-642 JCH
)	
CHRISTOPHER E. HUNT, et al.,)	
)	
Defendants.)	

**PLAINTIFF'S MOTION TO STRIKE
DEFENDANTS CHRISTOPHER E. HUNT, WILLIAM S. ROWE AND
ST. CHARLES COUNTY, MISSOURI'S EXPERT, STEVE IJAMES
AND FOR SANCTIONS**

COMES NOW Plaintiff Phillip Alberternst ("Plaintiff"), and moves this Court, to Strike Defendants' Christopher E. Hunt ("Defendant Hunt"), William S. Rowe ("Defendant Rowe") and St. Charles County, Missouri's ("Defendant St. Charles County") Expert, Steve Ijames and for Sanctions and states to this Court the following:

1. On September 16, 2010 this Honorable Court entered a Case Management Order (the "CMO"). (*See* Doc. 29).
2. Paragraph 3(c) of Section I of the CMO set forth particularly:

"Defendant shall disclose all expert witnesses and shall provide the reports required by Rule 26(a)(2), Fed.R.Civ.P., no later than **May 27, 2011**, and shall make expert witnesses available for depositions, and have depositions completed, no later than **June 24, 2011.**" (*emphasis in original*)."
3. Defendants Hunt, Rowe and St. Charles County did not disclose an expert or provide reports by May 27, 2011, nor did they file a Motion to extend said deadline.
4. On September 1, 2011 Plaintiff's undersigned counsel received an electronic mail message from Defendants Hunt, Rowe and St. Charles County's counsel notifying of the retention

of expert Steve Ijames and attaching to said message Mr. Ijames cover letter and report. (*See Plaintiff's Exhibit 1 attached hereto*).

5. On September 1, 2011 Defendants Hunt, Rowe and St. Charles County's counsel also sent an electronic message with an unsigned Microsoft Word document consisting of an unsigned amended interrogatory answer designating Steve Ijames as an expert¹.

6. Defendants Hunt, Rowe and St. Charles County's designation of expert Steve Ijames was made over three (3) months after the deadline set by this Honorable Court.

7. The striking of or excluding testimony of expert Steve Ijames is a proper remedy for Defendants Hunt, Rowe and St. Charles County's untimely disclosure. (*See Harris v. Steelweld Equipment Co., Inc.*, 869 F.2d 396, 399 (8th Cir. 1989)(*citing Simplex, Inc. v. Diversified Energy Systems Inc.*, 847 F.2d 1290 (7th Cir.1988)).

8. The CMO also states that, "Failure to comply with any part of this order may result in the imposition of sanctions."

9. Plaintiff's undersigned counsel has spent 0.9 hours on preparing this Motion and 0.4 hours in conducting case research on this Motion for a total of 1.3 hours.

10. Plaintiff's undersigned counsel's hourly rate is \$250.00/hour and the total billed on this motion is \$325.00.

11. Plaintiff requests that this Court strike Defendants Hunt, Rowe and St. Charles County's expert Steve Ijames and award him his attorney's fees incurred for the filing of this Motion.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests this Court to grant his Motion to Strike Defendants Hunt, Rowe and St. Charles County's Expert Steve Ijames and for

¹ As of this 13th day of September, 2011 Plaintiff's undersigned counsel has not received a hardcopy of the amended interrogatory answer signed under oath.

Sanctions and for such other and further relief as this Honorable Court deems just and proper under the circumstances.

Respectfully submitted,

SCHOTTEL & ASSOCIATES, P.C.

BY: s/James W. Schottel, Jr.

James W. Schottel, Jr. #51285MO
906 Olive St., PH
St. Louis, MO 63101
(314) 421-0350
(314) 421-4060 facsimile
jwsj@schotteljustice.com

Attorney for Plaintiff
Phillip Alberternst

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2011, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Joann Leykam
jleykam@sccmo.org

Attorney for Defendants
Christopher E. Hunt
William S. Rowe
St. Charles County, Missouri

Michael D. Hart
mhart@shercorwin.com

Attorney for Defendant
Dion E. Wilson

Robert J. Krehbiel
rkrehbiel@kkhbb.com

Attorney for Defendant
City of Lake Saint Louis, Missouri

s/James W. Schottel, Jr.