

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-61607-CIV-ZLOCH

INTERMARINE, INC.,

Plaintiff/Counter-Defendant,

and

O R D E R

BANK OF AMERICA, N.A.,

Intervening Plaintiff,

vs.

THOMAS BAKER, in personam,
LINDA BAKER, in personam,
SUN BENGAL, O/N 1117103,
all her rigging, tackle,
apparel, furniture, engines,
nets, fishing gear, and
all other necessities
thereunto appertaining and
belonging, in rem,

Defendants/Counter-Plaintiffs.

THIS MATTER is before the Court upon Defendants Thomas and Linda Baker's Motion For Leave Of Court To Use The Rebuttal/Supplemental Expert Witness Report Of Joel Sparrow Dated November 4, 2008 (DE 99). The Court has carefully reviewed said Motion and the entire court file and is otherwise fully advised in the premises.

By prior Order (DE 91), the Court set a deadline of noon on October 22, 2008, for the Parties to exchange expert witness reports. Joel Sparrow's November 4, 2008, report was filed well

after the Court's deadline, and Defendants did not file a Motion to extend the Court's deadline. Defendants argue that the reason for their failure to timely file the report is because of the necessary to rebut the report of Roland R. Santos, Plaintiff Intermarine, Inc.'s expert.

Any damage to the vessel caused by the fire and the cost to repair it is the subject of the Defendants' Counterclaim (DE 25). The issue addressed by the untimely report of Joel Sparrow is the potential cost of repairing or replacing the vessel's engine as a result of the fire. Based on the posture of the claim for damage to the vessel, it is Defendants' burden to establish the costs of repair or replacement of the engine, not Plaintiff's. Defendants were required to submit their expert report on the estimated costs of repair or replacement by noon on October 22, 2008, if they were seeking to prove those costs by the testimony of an expert. Thus, the November 4, 2008, report of Joel Sparrow at issue is untimely. Moreover, it does not constitute a rebuttal to Plaintiff Intermarine, Inc.'s expert report. Therefore, the Court will deny the instant Motion.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED that Defendants Thomas and Linda Baker's Motion For Leave Of Court To Use The Rebuttal/Supplemental Expert Witness Report Of Joel Sparrow Dated November 4, 2008 (DE 99) be

and the same is hereby **DENIED**.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 12th day of November, 2008.



WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

All Counsel of Record