UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 07-61607-CIV-ZLOCH

INTERMARINE, INC.,

Plaintiff/Counter-Defendant,

and

OMNIBUS ORDER

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 necessaries
thereunto appertaining and
belonging, in rem,

Defendants/Counter-Plaintiffs.

_____/

THIS MATTER is before the Court upon Intervening Plaintiff Bank of America, N.A.'s Motion For Leave To File Cross-Claim Against Intermarine, Inc. As Substitute Custodian Of Vessel M/V Sun Bengal (DE 71), Defendants/Counter-Plaintiffs' Motion For Leave To File A Supplemental Counterclaim (DE 72), Intervening Plaintiff Bank of America, N.A.'s Unopposed Motion For Leave To File Amended Exhibit List (DE 76), Defendants' Motion To Strike Plaintiff's Expert Witness (DE 57), and Defendants' Motion To Strike Plaintiff's Expert Witness (DE 58). The Court has carefully

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

reviewed said Motions and the entire court file and is otherwise fully advised in the premises.

Plaintiff filed its Complaint (DE 1) on November 8, 2007, and this case was initially set for Pretrial Conference on July 18, 2008, with discovery to close five days prior to Pretrial Conference. On July 2, 2008, the Parties informed the Court that a fire occurred on Defendant Sun Bengal that same day, necessitating a continuance of the discovery deadline to investigate the damage and assess the impact of the fire on this case. Thereafter, the Court extended discovery for the purpose of investigating the fire until Monday, August 25, 2008. See DE 55, ¶ 4. The Court also permitted the Parties to file an Amended Joint Pretrial Stipulation by noon on Friday, August 29, 2008.

As a result of the fire, Defendants and Intervening Plaintiff seek to file negligence claims against Intermarine. Upon review of the applicable standard and given the facts alleged in the claims, the Court finds they are properly brought as part of this litigation. Thus, the Court will deem these claims timely filed and set the Parties on a briefing schedule to ensure a full and fair opportunity to investigate and defend these claims.

Additionally, Defendants filed identical Motions To Strike Plaintiff's Expert Witness (DE Nos. 57 & 58). In the Motions, Defendants argue that the Court should strike Plaintiff's expert

Kurt Merolla due to Plaintiff's failure to include a list of all cases within the last four years in which Mr. Merolla testified at deposition and/or trial and Plaintiff's failure to include a list of Mr. Merolla's publications for the past ten years. In response, Plaintiff asserts that Mr. Merolla has neither testified nor published any articles within the respective time periods. Therefore, Defendants have not been prejudiced and the Motions will be denied.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. That Intervening Plaintiff Bank of America, N.A.'s Motion For Leave To File Cross-Claim Against Intermarine, Inc. As Substitute Custodian Of Vessel M/V Sun Bengal (DE 71), Defendants/Counter-Plaintiffs' Motion For Leave To File A Supplemental Counterclaim (DE 72) be and the same are hereby **GRANTED**, and the Court deems the Cross-Claim Against Intermarine, Inc. (DE 71, Ex. A) and Counter-Plaintiff's Supplemental Counterclaim Against Counter-Defendant Intermarine, Inc. (DE 72-2) timely filed;

2. Intervening Plaintiff Bank of America, N.A.'s Unopposed Motion For Leave To File Amended Exhibit List(DE 76) be and the same is hereby **GRANTED**;

3. Intermarine, Inc. shall file its Answer to the claims referenced in Paragraph 1 by noon on Friday, September 19, 2008;

4. All Motions related solely to the claims referenced in Paragraph 1 shall be filed by noon on Friday, October 10, 2008, and Responses to said Motions shall be due by noon on Tuesday, October 21, 2008;

5. That Defendants' Motion To Strike Plaintiff's Expert Witness (DE 57), and Defendants' Motion To Strike Plaintiff's Expert Witness (DE 58) be and the same are hereby **DENIED**; and

6. The Court shall Re-Set Pretrial Conference by separate Order.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 10th day of September, 2008.

WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

All Counsel of Record