

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

JOAN VIOTTY,

Plaintiff,

1:06-cv-6

v.

THE BANK OF NOVA SCOTIA,

Defendant.

TO: Lee J. Rohn, Esq.
James Bernier, Jr., Esq.

ORDER DENYING DEFENDANT'S MOTION TO STRIKE

THIS MATTER came before the Court upon Defendant's Motion to Strike Rebuttal Report of Don Coker (Docket No. 81). Plaintiff filed a memorandum in opposition to said motion. The time for filing a reply has expired.

Defendant seeks to strike the rebuttal report of Plaintiff's expert Don Coker. Defendant asserts that the production of Mr. Coker's rebuttal report, on July 20, 2009, was untimely. Motion at 1. Defendant further charges that the report is more in the nature of a supplemental report than a rebuttal report. Motion at 2.

The Federal Rules of Civil Procedure allow thirty days for the disclosure of rebuttal evidence. Rule 26 provides, in pertinent part: "Absent a stipulation or a court order, the

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disclosures must be made: . . . (ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule 26(a)(2)(B), within 30 days after the other party's disclosure." Fed. R. Civ. P. 26(a)(2)(C).

In addition, the Rules allow expert reports to be supplemented as late as thirty (30) days before trial. Fed. R. Civ. P. 26(e)(2).

In the matter at bar, the Court did not set a specific rebuttal expert deadline. Both Defendant and Plaintiff agree that the rebuttal expert report at issue was produced on July 20, 2009, or twenty (20) days after Defendant's expert disclosure. Moreover, such disclosure was well in advance of thirty (30) days before trial. Consequently, the Court finds that the rebuttal report of Mr. Coker is not untimely.

Accordingly, it is now hereby **ORDERED** that Defendant's Motion to Strike Rebuttal Report of Don Coker (Docket No. 81) is **DENIED**.

ENTER:

Dated: September 8, 2009

/s/ George W. Cannon, Jr.
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE