

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011845

10/17/2016

HONORABLE KERSTIN LEMAIRE

CLERK OF THE COURT
A. Arnold
Deputy

DONA LISA JOHNSON

JAMES ROBERT ECKLEY

v.

BERNARD POTOFF, et al.

LYN ANNE BAILEY

CYNTHIA BRUCE
651 AVENIDA DEL NORTE
SARASOTA FL 34242
MARIA R KUPILLAS
RICHARD V MACK
ROBERT J SPURLOCK

RULING

The Court has read and reviewed Defendants' Motion to Strike. The Motion was fully briefed and the Court has reviewed all the of pleadings and their attachments. The Court has also considered the legal file in this matter, the applicable case law, statutes and rules of the Court. On September 15, 2016, the Court heard counsels' oral arguments on the Motion and took the matter under submission.

The crux of this motion arises out of Plaintiffs' disclosure of two expert opinions in *Plaintiffs' Fourth Supplemental Disclosure Statement* entered on July 26, 2016. Pursuant to the Scheduling Order entered by the Court on October 20, 2015, the deadline to disclose the identities and opinions of Plaintiffs' experts was November 20, 2015. Plaintiffs have already submitted expert opinions on the November 20, 2015.

Plaintiffs contend that opinions of two additional estimators included in their July 26th supplemental disclosure are admissible. Their claim rests heavily on the procedural status of the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011845

10/17/2016

case in that there is sufficient time for defense to prepare a defense and rebuttal to the supplementary opinions which place a lower value on damages and repairs. Moreover, they argue that no violation of the Single Expert Rule has occurred as they intend to use each estimator as a fact witness.

In light of the information brought before us, the Court finds that the supplementary opinions submitted on July 26, 2016 are untimely. Plaintiff knew or should reasonably have known of its expert disclosure deadline.

The Court also finds that the Defendants are unduly prejudiced in the matter. Consideration of Plaintiffs' additional opinions would place an unreasonable burden on the Defendants to prepare a defense in the wake of trial. The Court determines and sets deadlines to avert this very prejudice.

For these reasons, IT IS ORDERED granting Defendants' Motion to Strike.

The Court has also reviewed Defendants' Application for Attorneys' Fees and Costs re Motion to Strike Additional Declaration of Tony Hecht Dated June 15, 2016, Plaintiff's Response in opposition filed October 6, 2016, and the Reply filed October 10, 2106.

As Defendants were the prevailing party in this matter, IT IS ORDERED awarding attorneys' fees in the amount of \$2000.00.