

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-CV-61503-WPD

IN ADMIRALTY

ROE BOAT, LLC,

Plaintiff,

v.

N&G ENGINEERING, INC.,

Defendant.

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

THIS CAUSE is before the Court upon the conclusion of the bench trial in this matter held on March 29, 2021-April 2, 2021. The Court received testimony from William Roe, Gabriel Savenco, Nick Simion, Jason Dunbar, Jerico Guerrero, Michael Hill, Michael DePinillos, Bruce Wayne Whitney, John Toth, Scott Kida, Constantinos Dimitrelos, and Brian Emond. The Court received exhibits in evidence and determined credibility of witnesses. The Court shall now make its findings of fact and conclusions of law. The findings of fact are based on the preponderance of the evidence.

**FINDINGS OF FACT**

1. On January 28, 2015, Plaintiff, Roe Boat, LLC. (“Roe Boat”) purchased a used, 12-year-old 55’ Sea Ray Sundancer vessel which it named *The Roe Boat* (the “Vessel”). The purchase price was \$280,000.
2. *The Roe Boat* was outfitted with Cummins QSM 11 M engines.
3. Prior to purchasing the vessel, Roe Boat engaged Defendant, N&G Engineering, Inc. (“N&G”) to conduct an engine survey. N&G was recommended by Scott Kida, the first captain

retained by Roe Boat, LLC for the Vessel.

4. Page Four of a survey report prepared by N&G on January 20, 2015 indicated an exhaust leak coming from the starboard engine's turbo or exhaust manifold.

5. N&G indicated that it constituted a fire hazard and recommended the leak be trouble-shooted and repaired as soon as possible.

6. Roe Boat documented the Vessel with the United States Coast Guard as a "Recreation" vessel and registered the Vessel with the State of Florida as a "pleasure" vessel. The certification from the Coast Guard expired on May 21, 2018.

7. Though documenting the Vessel with the Coast Guard as a recreation vessel and with the State of Florida as a pleasure vessel, Roe Boat offered the Vessel to the public for charters.

8. Roe Boat's principal, William Roe, also used the Vessel for pleasure.

9. The vast majority of the time the Vessel was used for commercial purposes and a small percent of the time it was used at Mr. Roe's pleasure.

10. Roe Boat never registered with the State of Florida to conduct business within the state.

11. For 2016, Roe Boat reported charter income of \$59,900 and business expenses of \$60,422.48 thereby posting a \$522.48 loss for the year.

12. For 2017, Roe Boat reported charter income of \$95,292 and business expenses of \$97,948 thereby posting a \$2,656 loss for the year.

13. This bare boat business was not a money-making proposition, but it did offset the cost of maintaining the Vessel that was still used for pleasure by Mr. Roe.

14. The Parties agree as to the work N&G was retained to perform. In April 2015, and in March 2016, Roe Boat retained N&G to perform yearly engine oil changes, in June 2015 to replace the starter solenoid, and in April and August 2016 to fix an exhaust leak.

15. In or about April 2015, Defendant was retained to perform the following:

- (a) Drain oil from port and starboard engine, fill engines with fresh oil, drain oil from both transmissions, fill transmissions with fresh oil, remove and replaced oil filters, fuel filters and racors ELEMENTS from both engines, install new filters, drain fuel from racor filters, installed back new elements, check zincs for both engines, check and add coolant to level for port and starboard engines;
- (b) Drain oil from gears, remove oil filters, install new filters oil, fill gears with fresh SAE 30 SHELL OIL, start engines and level up fluids;
- (c) Drain oil from generator, fill with fresh oil, remove and replace fuel filter, racor filter and oil filter, check hoses and clamps for generator, remove and replaced zinc for heat exchanger, prime fuel system and start; a
- (d) Remove air filter elements, clean and dry filters, Oil air filter elements, install back to engines, remove breather filters from breather, purchase and install new elements, check hoses and clamps, start engines and check.

16. Defendant was asked to perform, and performed the following repairs to the Vessel in or about June 2015:

- i. Drove to boat location, trouble shoot starboard engine start problem, drove to CUMMINS, purchase new start solenoid, return to the boat, remove solenoid and install new, start engine and check

17. In or about March 2016, Defendant was retained to perform the following:

- (a) Drain oil from port and starboard engine, fill engines with fresh oil, drain oil from both transmissions, fill transmissions with fresh oil, remove and replaced oil filters, fuel filters and racors ELEMENTS from both engines, install new filters, drain fuel from racor filters, install new elements, check zincs for both engines, remove raw water pump impellers, install new impellers, prime salt water system, check and add coolant tolevel for port and starboard engine;
- (b) Drain oil from gears, remove oil filters, install new filters oil, fill gears with fresh SAE 30 SHELL OIL, start engines and level up fluids;
- (c) Drain oil from generator, fill with fresh oil, remove and replace fuel filter, racor filter and oil filter, check hoses and clamps for generator, remove and replaced zinc for heat exchanger, prime fuel system and start; and(d)Remove heat exchanger cap from generator, clean heat exchanger in place, install new impeller for raw water pump, purchase and install new water pressure sensor

(old very corroded and cracked), prime fuel and water, start generator and run for test.

- (d) Although N&G recommended the starboard engine exhaust leak be repaired in January 2015, Roe Boat did not retain N&G to repair the exhaust leak for over 14 months.

18. Defendant was retained to perform the following repairs to the Vessel's starboard engine in or about April 2016:

- (a) Remove housing after cooler from starboard engine, remove exhaust riser, remove turbo compressor housing and cartridge, remove water lines for heat exchanger and gear oil cooler, remove units, remove exhaust manifold shield hot protector, remove all studs from exhaust manifold, prepare exhaust manifold for removal, remove exhaust manifold, order all parts for job, transport all coolers to specialized shop for cleaning;
- (b) Pick up all units from RADIATOR SHOP, pick up turbo from specialized shop, prime and paint units at the shop, drove to the boat, clean engine room area (covered in soot), clean gasket surfaces and prepare for installation; and
- (c) Transport all parts to the boat, install exhaust manifolds and trumpets, install exhaust shield and secure manifold, install heat exchanger, install gear oil coolers, install after cooler core and top housing, install TURBO and connect oil lines, install exhaust riser, install air separator and filter element, install all hoses and clamps, flush engine cooling system, fill engine with fresh CUMMINS coolant, clean job area, start engine and check, prepare boat for trip. In April 2016, N&G repaired the starboard engine exhaust leak.

19. N&G issued an invoice to Roe Boat in the amount of \$5,742 for the April 2016 starboard engine exhaust leak repairs which was paid.

20. Three months after the April repairs, on July 26, 2016, *The Roe Boat's* captain, Scott Kida, noticed exhaust residue on the starboard engine indicating an exhaust leak and notified N&G by stating, "Houston, we have a problem". The turbo was sent to another shop to be rebuilt.

21. It was determined that a stud connecting the exhaust manifold to the engine head sheared off, causing exhaust to leak in that area.

22. While making the second repair N&G's technician noticed the turbo was not acting properly and recommended that it be rebuilt. Roe Boat agreed.

23. Defendant was retained to perform the following repairs to the Vessel's starboard engine in or about August 2016, which included the following:

- (a) Remove housing after cooler from starboard engine, remove exhaust riser, remove turbo compressor housing and cartridge, remove water lines for heat exchanger and gear oil cooler, remove units, remove exhaust manifold shield hot protector, remove all studs from exhaust manifold, prepare exhaust manifold for removal, remove exhaust manifold, and order all parts for job;
- (b) Advised for turbo job needed, transport turbo to specialized shop for rebuilt to factory SPECS, pick up turbo, purchase gaskets and seals for mounting, drill and tap broken exhaust bolt from cylinder head, and prepare gasket surfaces for install; and
- (c) Transport EXHAUST MANIFOLD to the boat, install exhaust manifolds and trumpets with new EXHAUST BOLTS, install exhaust shield and secure manifold, install heat exchanger, install gear oil cooler, install after cooler core and top housing, install TURBO and connect oil lines, install exhaust riser, install air separator and filter element, install all hoses and clamps, fill engine with coolant, clean job area, start engine and check, return to the boat and replace fuel filter, and sea trial boat.

24. N&G finished repairs related to the new starboard engine exhaust leak and installed the rebuilt turbo in August 2016. N&G issued an invoice to Roe Boat in the amount of \$4,783 which Roe Boat paid.

25. In the Fall, 2016, William Roe found out that stewardesses were not being timely paid by Captain Scott Kida. A new captain, Bruce Whitney, was selected, who had different ideas regarding maintenance of the Vessel.

26. After August 2016, Roe Boat stopped using N&G to perform oil changes and engine repair work and started using a company called Stockless Management LLC.

27. Mr. Roe testified that there was no more work on the starboard engine after N&G was terminated. However, invoices from Stockless Management, LLC seem to contradict that assertion. A May 1, 2017 invoice indicates nothing was found regarding a "cable burn smell", but that they found a small leak on the circular pump on the starboard engine and would keep

monitoring the leak. (Defense Exhibit K). A July 8, 2017 invoice indicated that a new dipstick fitting was installed to avoid a leak on the starboard engine; the old oil was replaced. (Defense Exhibit M). So, after N&G last worked on the Vessel, Stockless Management, LLC worked on the boat six (6) times (Defense Exhibits H-M) and two of those times, they worked on the engine that later caught fire.

28. Roe Boat continued to utilize the Vessel for charter services and the personal use of William Roe without issue until Wednesday, July 26, 2017, when a fire started in the starboard engine room.

29. Eleven (11) months passed between the time N&G last performed its repairs and the fire.

30. At the time of the fire, the Vessel was on charter making its way to the Bahamas under the command of Captain Manuel Peru.

31. Roe Boat reported the fire to its property marine insurer who paid Roe Boat \$80,000 for the damages sustained by the fire.

32. Roe Boat agreed to reduce the amount claimed in this civil action by the amount recovered from its insurer.

33. On September 12, 2018, Roe Boat sold the Vessel to Mirage Yacht Inc. for \$82,500.

34. Roe Boat brought a lawsuit against N&G for Breach of Contract, Breach of Implied Warranty of Workmanlike Performance, and Negligence.

35. The Amended Complaint alleges N&G was negligent and/or performed the repairs in an unworkmanlike manner by: (1) routing a coolant overflow hose over the turbo, (2) failing to install a heat shield band; and, (3) improperly installing the heat shield. The Amended Complaint does not allege any other negligent and/or unworkmanlike acts performed by Defendant.

36. These allegations were based upon the opinions of Michael Hill, a fire cause and

origin expert, hired by Roe Boat's property insurer.

37. N&G's expert, John Toth, disagreed. Toth's manner of testifying did not help his credibility; he was argumentative and seemed not to understand the role of an expert witness; perhaps, he was not pre-tried adequately by defense counsel. However, the substance of his opinions made more sense than Hill's.

38. The port engine overflow hose did not have to pass over the hot side of the engine, where the starboard engine overflow hose did.

39. Another vessel was located with Cummins QSM 11 M engines wherein the overflow hose was routed over the starboard engine's turbo.

40. No credible evidence was submitted for the Court to find that N&G re-routed the overflow hose over, instead of under, the starboard engine or that if they did, that it was improper. Roe Boat did not demonstrate that the overflow hose should have been routed under the turbo.

41. Photographic evidence shows that the heat shield band, which Roe Boat alleges N&G failed to install, was partially consumed by the fire and the remnants were located laying on the deck under the turbo assembly. This photographic evidence also shows remnants of the tie wire used to secure the heat shield band still affixed to the turbo assembly, establishing that it had been reinstalled prior to the fire.

42. Roe Boat failed to demonstrate that the heat shield was installed improperly when N&G completed its repairs in August 2016.

43. Roe Boat alleged that there was gapping in the starboard engine's heat shield.

44. Roe Boat failed to demonstrate by a preponderance of the evidence that there were gaps in the heat shield prior to the fire.

45. Roe Boat also failed to demonstrate that if such a gap existed, estimated by Mr. Hill to be approximately dime-sized, that it constituted a negligent or un-workmanlike installation.

46. Additionally, Roe Boat has failed to carry its burden by demonstrating that any of the alleged improper repairs, whether taken separately, or in combination with one another, were the cause of the subject fire.

### **CONCLUSIONS OF LAW**

#### ***A. Claims***

1. A contract to repair a vessel is maritime in nature. *F.W.F., Inc. v. Detroit Diesel Corp.*, 494 F. Supp. 2d 1342, 1352 (S.D. Fla. 2007), *aff'd*, 308 Fed. Appx. 389 (11th Cir. 2009). Therefore, maritime law applies.

2. This is an action within the admiralty jurisdiction of this Court pursuant to the provisions of 28 U.S.C. §1333 and Federal Rule of Civil Procedure 9(h).

#### **i. Breach of Contract**

3. To prevail on a maritime breach of contract claim, Roe Boat must show: (i) there was a valid contract; (ii) there was a material breach of that contract by the Defendant, and (iii) Plaintiff sustained damages from Defendant's material breach of the contract. *F.W.F. Inc v. Detroit Diesel Corp.*, 494 F.Supp.2d 1342, 1360 (S.D. Fla. 2007), *aff'd* 308 Fed. Appx 389 (11th Cir. 2009).

4. Roe Boat must prove all elements of its claims by a preponderance of the evidence. *Offshore Specialty Fabricators, LLC. v. Dumas Inter., Inc.*, 982 F.Supp.2d 695, 700 (E.D. La. 2013); *Great American Ins. Co. v. Pride*, 847 F.Supp.2d 191, 203 (D. Me. 2012).

5. No written contract was produced into evidence, but the parties had entered into an oral contract for N&G to repair *The Roe Boat's* leaking starboard engine's exhaust system. *Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1249 (11th Cir. 2005) (asserting federal admiralty jurisdiction and considering a claim arising from an oral contact).

6. "Every contract involving the rendering of services includes the implied promise to



perform those services with reasonable care, skill, and safety.” *Vierling v. Celebrity Cruises, Inc.*, 339 F.3d 1309, 1315 (11th Cir. 2003). Because N&G allegedly breached its contract by performing negligently, and negligent performance of a contract is a breach of the implied warranty of workmanlike performance, see *id.*, the Court will analyze in the next section whether such a breach occurred.

7. Inasmuch as the Amended Complaint could be read that N&G breached the subject matter of the contract, i.e., repair of the leaking exhaust, no evidence has been submitted establishing that the starboard engine leaked exhaust after the N&G performed its last repair on the vessel in August of 2016.

8. Plaintiff also argued that Defendant modified an invoice after the fire to include “limited warranty” language. The Court views such evidence as evidence of a guilty state of mind. In criminal cases, unexplained flight or efforts to avoid prosecution are admissible to show a consciousness of guilt. But someone can run from the police for reasons other than being guilty of the crime suspected. The weight to be given such evidence is up to the finder of fact. See, *U.S. v. Simmerer*, 156 Fed Appx 124, 127 (11<sup>th</sup> Cir. 2005). Similarly, a repair shop could alter an invoice in a clumsy effort to avoid liability on a technical, legal ground rather than on the facts of the case. Here, the Court is not convinced that the invoice was altered after the fire. Moreover, the negative inference that would naturally be drawn from such a finding of alteration would still not change this Court’s findings of fact on causation.

## **ii. Breach of Implied Warranty of Workmanlike Performance**

9. The doctrine of warranty of workmanlike performance exists for every maritime contract under general maritime law. *Vierling v. Celebrity Cruises, Inc.*, 339 F.3d 1309, 1315-16 (11th Cir. 2003). The implied warranty of workman like performance “obligates... contractors to perform services with reasonable level of [c]ompetency and safety.” *Id.* (citing *Ryan Stevedoring*

*Co. v. Pan–Atlantic Steamship Corp.*, 350 U.S. 124, 132–35 (1956)). See also *Parfait v. Jahncke Serv., Inc.*, 484 F.2d 296, 301 (5th Cir. 1973).<sup>1</sup> As such, the oral contract between Roe Boat and N&G contained such an implied warranty.

10. “The implied warranty of workmanlike performance parallels a negligence standard.” *Arnold v. Heritage Enters. of St. Lucie LLC*, No. 13-14447-CIV, 2015 WL 10791990, \*7 (S.D. Fla. May 8, 2015). See also *Travelers Ins. Co. v. Commercial Cool-Temp Corp.*, No. 11-61748-CIV, 2012 WL 13134024, \*6 (S.D. Fla. Sept. 26, 2012) (holding that a tort-based claim of negligence is subsumed by a breach of implied warranty claim).

11. This warranty requires a repairman to perform his services with reasonable care, skill, and safety. *Vierling*, 339 F.3d at 1315.

12. Breach of the implied warranty must proximately cause the claimed damage. *Parfait*, 484 F.3d at 302.

13. “Causation under general maritime negligence law is similar to the common law which requires but for causation coupled with proximate or legal causation.” *Evans v. Nantucket Community Sailing, Inc.*, 582 F.Supp.2d 121, 144 (D. Mass. 2008) (citing 1 Thomas J. Schoenbaum, *Admiralty & Maritime Law* § 5–3 (2004)).

14. The fault must not only be “a but-for cause” but the “fault which produces liability must be contributory and proximate cause [of the injury.]” *Inter–Cities Navig. Corp. v. United States*, 608 F.2d 1079, 1081 (5th Cir. 1979). “In other words, [t]o give rise to liability, a culpable act or omission must have been a substantial and material factor in causing” the injury. *Id.*

15. Roe Boat cannot carry its burden where there is a tenuous connection between its theory of the fire’s cause, which is dependent on speculation and unproven facts. *Westinghouse*

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<sup>1</sup> The Eleventh Circuit adopted as binding precedent all decisions of the former Fifth Circuit issued prior to October 1, 1981. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

*Elec. Corp. v. M/V Leslie Lykes*, 734 F.2d 199, 214 (5th Cir. 1984).

16. Where there are opposing, but equally reasonable, theories regarding the cause of a maritime loss, one which sponsors a determination that the defendant is at fault and one which sponsors a determination that the accident was caused without defendant's fault, “the Court will not rely on ‘speculation’, but will find for the defendant.” *Marquette Transp. Co. v. Louisiana, Machinery Co., Inc.*, No. 00-1504, 2002 WL 1809092, \*14 (E.D. La. 2002) *aff’d* 367 F.3d 398 (5th Cir. 2004).

17. Although circumstantial evidence may in some cases be used to establish causation, the circumstances must nevertheless allow for a “strong inference[ ]” of causation. *See, Marquette*, 367 F.3d 398, 404 (5<sup>th</sup> Cir. 2004). Exclusivity of control or possession is an important factor courts must consider when determining whether circumstantial evidence of negligence or causation is sufficient. *Fairest–Knight v. Marine World Distributors, Inc.*, 652 F.3d 94, 101 (1st Cir. 2011); *Marquette*, 367 F.3d at 404.

18. N&G was last on board the vessel during the month of August 2016, some eleventh months prior to the July 26, 2017 fire. During that time the vessel and its engines were maintained by someone other than N&G. Moreover, the vessel was in the exclusive control of Captain Manuel Peru at the time of the fire. As such, it would not be appropriate under the facts of the case to find circumstantial evidence sufficient to prove causation.

19. Roe Boat’s breach of Implied Warranty of Workmanlike Performance specifically alleges N&G failed to properly perform repairs to the *Vessel* by “failing to ensure both heat shields on the turbo were properly reinstalled and that the radiator overflow hose was properly installed under the exhaust manifold.” Am. Compl., ¶ 26 [DE 23] .

20. Applying the facts above to the law, the Court finds Roe Boat failed to carry its burden of establishing that N&G failed to use reasonable care, skill, and safety.

21. Additionally, Roe Boat has failed to carry its burden that any of the alleged improper repairs, whether taken separately, on in combination with one another, was the cause of the subject fire.

### **iii. Negligence Claim**

22. Roe Boat's negligence claim mirrors its Breach of Contract and Breach of Workmanlike Performance claims as it alleges N&G failed to: (1) reinstall one of the heat shields; (2) failed to properly reinstall the other heat shield; and, (3) properly route the radiator overflow hose under the turbo and exhaust manifold. *See* Am. Compl., ¶¶ 30-31 [ DE 23].

23. As Roe Boat does not allege an independent tort claim, its negligence claim is subsumed within its breach of the implied warranty claim. *Travelers*, 2012 WL 1314024, \* 6 (citing *Diesel "Repower," Inc.*, 271 F.3d at 1326; *Employers Ins. of Wausau*; 866 F.2d at 766 (5th Cir. 1989) ("Whether the negligence alleged is in the performance of a contract for services, or in a contract for the sale of goods, the resulting economic loss is essentially the failure of the purchaser to receive the benefit of its bargain—traditionally the core concern of contract law.")). Notwithstanding this, as Roe Boat failed to carry its burden in establishing its Breach of Implied Warranty of Workmanlike Performance, it cannot prevail on its negligence claim as both claims are based upon the same allegations.

### **B. Damages**

24. Roe Boat's Amended Complaint seeks damages in the form of: (1) amounts paid to Defendant that it did not earn; (2) loss of use of the Vessel for charters and (3) loss of the value of the Vessel. *See* Am. Compl., ¶¶ 21, 27, 32 [DE 23]. Given the Court's findings on causation, the Court would normally skip a damages consideration. However, should the Eleventh Circuit disagree with the Court's causation findings, the Court now addresses damages.

#### **i. Amount Paid to N&G for Repair Work Which it did not Earn**

25. Roe Boat did not submit competent evidence of payment to N&G for the contract to repair the vessel's starboard engine's leaking exhaust for which it did not earn.

**ii. Loss of the Value of the Vessel**

26. The parties agree that the vessel was not a total or constructive loss.

27. The measure of damages where the vessel is not a total or constructive loss is the cost of reasonable repairs to bring the vessel to the condition it was just prior to the loss as well as reasonable loss of earnings during what would be the repair time. *See, The Baltimore*, 75 U.S. 377, 385 (1869) (“*Restitutio in integrum* is the leading maxim in such cases, and where repairs are practicable the general rule followed by the admiralty courts in such cases is that the damages assessed against the respondent shall be sufficient to restore the injured vessel to the condition in which she was at the time the collision occurred.”) The former Fifth Circuit explained the meaning of *restitutio in integrum*, in admiralty, as follows:

That doctrine, strictly construed, would limit damages to the difference in the value of the vessel before and after collision. However, that measure has long been equated with the cost of necessary repairs and the loss of earnings while they are being made.

*Delta Marine Drilling v. M/V Baroid Ranger*, 454 F.2d 128, 129 (5th Cir. 1972); *Bunge Corp. v. Am Commercial Barge Line Co.*, 630 F.2d 1236, 1241 (7th Cir. 1980) (stating that “it is well settled that damages of less than a total loss in admiralty are compensable solely by reference to the costs of repairs”); *MBH Maritime Interest LLC v. Manteiga*, 2018 A.M.C. 756 (S.D. Fla. 2018).

28. The cost of repairs can be recovered even if the repairs are never made. *The Tug Jane S.v. Bordahain Shipping Co.*, 418 F.2d 306, 307 (5th Cir. 1969); *United Overseas Export Lines, Inc.v. Medluck Compania Maviera, S.A.*, 785 F.2d 1320, 1327 (5th Cir. 1986); *The Hygrade No. 24 v. The Dynamic*, 233 F.2d 444, 448 (2d Cir. 1985).

29. Roe Boat does not claim repair costs as an item of damage as such repair cost damages are not plead in the Amended Complaint. Further, Roe Boat did not proffer competent,

admissible testimony on the repair costs of the Vessel.<sup>2</sup>

**iii. Loss of Use for Charters**

30. A vessel owner is entitled to seek lost profits should the vessel not be rendered a total or constructive total loss. *See, Delta Marine Drilling*, 454 F.2d at 129.

31. The time period for which lost profits may be award is the period of time reasonably necessary to make repairs. *Gaines Towing and Transp., Inc. v. Atlantia Tanker Corp.*, 191 F.3d 633, 636 (5th Cir. 1999); *Bouchard Transp. Co. Inc. v. Tug Ocean Prince*, 691 F.2d 609, 612 (2d Cir. 1982). *See also, Great Lakes Business Trust v. M/T Orange Sun*, 855 F.Supp.2d 131, 153 (S.D.N.Y. 2012)(finding lost profits are not awardable for any detention period beyond that which the repairs “reasonably” could have been completed); *Midwest Marine, Inc. v. Sturgeon Bay Shipbuilding & Dry Dock Co.*, 247 F. Supp. 283, 291 (E.D. Wis. 1965)( Finding the plaintiff “has the burden of showing that the amount of time expended for repairs was necessary.”)

32. The repairs necessary to the *Roe Boat* to bring it back to its pre-loss condition could have been reasonably completed in sixty (60) days.

33. Roe Boat failed to produce evidence establishing the amount of the profits it lost for the sixty (60) days it would have taken to repair the vessel had Roe Boat elected to repair the vessel. Indeed, the Court has found that the bare boat operation was a losing proposition, utilized to offset the costs of owning a partial pleasure boat. Finally, the Court finds that the pre-fire value of the vessel was \$292,000. Roe realized \$66,175 from the sale of the vessel; he realized \$80,000 from insurance and spent another \$8,244. If the Court were to have awarded damages, it would have been for no more than \$137,581.

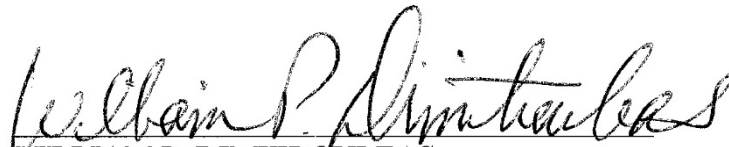
**CONCLUSION**

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<sup>2</sup> In its Omnibus Order on Motions in Limine, the Court limited Plaintiff’s expert Jason Dunbar to testifying on the likely price reduction for the Vessel as described in his report, noting that Mr. Dunbar himself stated he was not qualified to provide a quote for the likely cost to repair the Vessel. [DE 66].

Based on the foregoing findings of fact and conclusions of law Plaintiff Roe Boat LLC failed to demonstrate by the preponderance of the evidence that N&G's lack of due care was the actual or proximate cause of the fire. Accordingly, judgment shall be entered in favor of Defendant N&G in a separate order pursuant to Federal Rule of Civil Procedure 58(a).

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, this 8<sup>th</sup> day of April, 2021.

  
WILLIAM P. DIMITROULEAS  
United States District Judge

Copies furnished to:  
All Counsel of Record