

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KURYAKYN HOLDINGS, INCORPORATED,

Plaintiff,

v.

DAVID C. ABBE d/b/a JUST IN TIME DISTRIBUTION
COMPANY,

Defendant and Counterclaimant,

v.

KURYAKYN HOLDINGS, INCORPORATED,
MOTORSPORT AFTERMARKET GROUP, INC.
TOM RUDD and TOM ELLSWORTH,

Counterclaim Defendants.

AMENDED
SCHEDULING ORDER

09-cv-702-wmc

At a March 20, 2013, status conference, the court ruled on all pending motions and established the following schedule:

- 1) Defendant and counter claimant David C. Abbe's renewed motion to expedite or permit Rule 27(c) deposition to preserve evidence (dkt. #140) is GRANTED;
- 2) On or before April 10, 2013, Abbe shall (a) file a brief and any supporting documents on whether his fraud counterclaim survived the court's recent award of partial summary judgment; or (b) notify the court that his is dropping this claim. Counterclaim defendants may have until May 1, 2013, to submit a response should Abbe choose the former route.
- 3) Between May 13, 2013, and May 31, 2013, Abbe shall be produced for a discovery deposition in the San Diego area at a date and time agreed upon by the parties. The deposition is limited to eight hours subject to extension only upon good cause shown. Plaintiff Kuryakyn Holdings, Inc. is responsible for arranging for a court reporter and covering that expense. Plaintiff shall notify the court of the date of the discovery deposition once scheduled and of the date of its completion.
- 4) At a date and time to be determined by the court, but at least one month after the discovery deposition, the court shall preside via videoconferencing over Abbe's follow up video deposition at the federal courthouse in San Diego, California for possible use at trial pursuant to Fed. R. Civ. P. 27(c). The court

will arrange for videoconferencing capabilities, but defendant and counter-claimant Abbe is responsible for arranging a court reporter and a videographer. Counsel for plaintiff may participate at the federal courthouse in San Diego or here in Madison.

- 5) At least one week before Abbe's trial deposition, (a) plaintiff shall provide the court and defendant with a copy of the transcript from Abbe's deposition testimony, along with all deposition exhibits; and (b) defendant shall provide the court and plaintiff with a copy of all exhibits it intends to use affirmatively at the deposition. Three days before Abbe's trial deposition, (a) plaintiff shall provide to the court and defendant any additional exhibits it intends to put into evidence, (b) plaintiff should provide to the court only any additional documents it intends to use solely for impeachment, unless plaintiff's counsel will not be present in San Diego for the trial deposition, in which case, impeachment documents must also be provided to opposing counsel at least one day before the deposition.
- 6) Deadline for Filing Any Additional Dispositive Motions: June 28, 2013; responses will be due July 19, 2013; and replies due July 29, 2013.
- 7) Discovery Cutoff: October 11, 2013.
- 8) Settlement Letters: October 11, 2013.
- 9) On or before Friday, October 18, 2013, the parties shall provide opposing counsel and the court:
 - a) Rule 26(a)(3) disclosures.
 - b) Motions in limine.
 - c) A short, written narrative statement of each expert's background and experience. These statements will be read to the jury and no proof will be received on the matters covered unless an objection to the narrative statement is filed within five (5) days of its receipt.
- 10) On or before Friday, October 25, 2013, the parties shall provide opposing counsel and the court:
 - a) Exhibit lists. Any exhibits not listed shall be excluded from admission into evidence except upon good cause shown.
 - b) A list of portions of depositions, to be offered into evidence at trial, by page and line references for witnesses unavailable at trial. Extensive reading from depositions is strongly discouraged. Toward that end, the proponent of a deposition may -- though is not required to -- prepare a written

narrative summary of some or all deposition transcripts the party intends to offer into evidence, with annotated page and line references in parenthesis after each sentence, in lieu of part or all of the narrative of questions and answers.

- c) Additional voir dire questions.
 - d) Proposed verdict forms.
 - e) Proposed jury instructions.
 - f) In addition to electronically filing voir dire questions, verdict forms and jury instructions, please submit to the court an electronic copy of each in Microsoft Word format to wiwd_wmc@wiwd.uscourts.gov.
- 11) On or before Friday, November 1, 2013, the parties shall provide opposing counsel and the court:
- a) Responses to motions in limine.
 - b) Objections to exhibits.
 - c) Responses to opposing parties' voir dire questions, verdict forms, and jury instructions.
 - d) Objections and counter designations to proffered deposition designations.
- 12) Counsel are directed to consult in good faith and reach resolution on the admissibility of exhibits to the extent possible. Each party shall file copies of any *contested* exhibits they intend to offer with the court by 12:00 p.m. on Thursday, November 7, 2013.
- 13) The final pre-trial conference shall be held on Tuesday, November 12, 2013, at 4:00 p.m.
- 14) The trial shall commence Monday, November 18, 2013, at 9:00 a.m. The parties shall meet with the court at 8:30 a.m. that morning for any matters that need to be brought to the court's attention.

Entered this 20th day of March, 2013.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge