

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

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TILSTRA DAIRY EQUIPMENT, LTD.,

Plaintiffs,

v.

BOU-MATIC, LLC,

Defendant.

FINAL PRETRIAL CONFERENCE  
ORDER

12-cv-827-bbc

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On April 30, 2014, the court held the final pretrial conference. Both sides were represented by counsel. By way of brief overview:

The court granted defendant's motion to remove plaintiff Sid Tilstra from the case caption for lack of prudential standing, *see Rawoof v. Texor Petroleum Co., Inc.*, 521 F.3d 750, 756-57 (7<sup>th</sup> Cir. 2008). The Clerk of Court is directed to amend the case caption accordingly.

The court denied defendant's motion to strike the plaintiff's expert report on damages.

The court granted the parties' joint request not to bifurcate the trial of liability from damages; the jury will consider both issues on one verdict form.

The court denied defendant's motion to preclude Sid Tilstra from providing testimony regarding his state of mind.

In response to the parties' disputes over the admissibility of specified portions of the video depositions, the court provided general guidance as to what was relevant and why.

In discussion with the parties, the court fine-tuned the voir dire questions and introductory jury instructions, copies of which are attached to this order.

We also discussed the final instructions and the verdict form, which have not been finalized and which are not attached to this order. In response to defendant's suggestion, raised for the first time at the conference, that sometimes money damages are not the appropriate

remedy for the anticipatory breach of a contract, the court is unimpressed, both because its come too late and because it does not appear to be an accurate statement of the law. *See, e.g., Menako v. Kassien*, 265 Wis. 269, 273 (1954) (“The rule is well established that the anticipatory breach or repudiation of the terms of a contract by one party thereto gives to the other the right to rescind *and sue for his damages*,” emphasis added).

Jury selection and trial will begin on May 5, 2014, either following Judge Crabb’s jury pick in *Arrigo v. Link Stop*, 12-cv-700, or at 9:00 if the *Arrigo* lawsuit settles over the weekend. We will seat a jury of eight with no alternates. The parties predict that the trial may spill into Thursday, May, 8, 2014, although they should be prepared to close on Wednesday, May 7, 2014 if the trial moves quickly.

***Please note:*** Prior to our jury pick, the court will hold a brief status conference with counsel to discuss and resolve any last-minute issues. If *Arrigo* has not settled, then we will begin at 9:30 a.m. If *Arrigo* has settled, then we will begin at 8:30 a.m. Counsel are responsible for keeping track of their place in line on Monday.

Entered this 2<sup>nd</sup> day of May, 2014.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge