

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

BNSF RAILWAY COMPANY,

Plaintiff,

vs.

L.B. FOSTER COMPANY,

Defendant,

vs.

HERZOG SERVICES, INC.

Third Party Defendant.

**4:11CV3076**

**MEMORANDUM AND ORDER**

After conferring with the parties, Defendant L.B. Foster Company's Motion to Continue Trial and Extend Deadlines, (Filing No. 112), is granted in part and denied in part as follows:

- 1) The jury trial of this case is set to commence before Warren K. Urbom, Senior United States District Judge, in Courtroom 4, United States Courthouse, Lincoln, Nebraska at 9:00 a.m. on **June 17, 2013**, or as soon thereafter as the case may be called, for a duration of five (5) trial days. A conference with counsel will be held in Judge Urbom's chambers at 8:30 a.m. on the first day of trial. Jury selection will be held at commencement of trial.
- 2) The Pretrial Conference is scheduled to be held before the undersigned magistrate judge on **June 3, 2013 at 9:00 a.m.**, and will be conducted by WebEx conferencing. To facilitate this conferencing method, the parties' proposed Pretrial Conference Order and Exhibit List(s) must be emailed to [zwart@ned.uscourts.gov](mailto:zwart@ned.uscourts.gov), in either Word Perfect or Word format, by 5:00 p.m. on May 31, 2013. An email will be sent to counsel of record with the instructions and codes for participating in the pretrial conference by WebEx.
- 3) The telephonic conference previously scheduled to be held on December 18, 2012 is cancelled. A telephonic conference will be held before the undersigned magistrate judge on **March 12, 2013 at 1:30 p.m.** to discuss the status of case progression and potential settlement. Counsel for plaintiff shall place the call.

4) The deadline for completing written discovery under Rules 33 through 36 of the Federal Rules of Civil Procedure is May 3, 2013. Motions to compel Rule 33 through 36 discovery must be filed by April 19, 2013.

5) Expert Disclosures:

- Liability Experts:

As to BNSF Railway Company and L.B. Foster Company, the liability expert disclosures are complete.

As to Herzog Services, Inc., the deadline for complete liability expert disclosures, (both retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(B\)](#)), and non-retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(C\)](#)), are:

Herzog Services, Inc.:	February 1, 2013
Response experts/BNSF and L.B. Foster:	March 1, 2013

- Damage Experts:

As to all parties, the deadline for complete expert disclosures regarding the nature and extent of damages, (both retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(B\)](#)), and non-retained experts, ([Fed. R. Civ. P. 26\(a\)\(2\)\(C\)](#)), are:

L.B. Foster and Herzog:	February 1, 2013
BNSF Rebuttal expert:	March 1, 2013

6) The deposition deadline is May 3, 2013.

7) The deadline for filing motions to dismiss and motions for summary judgment is March 4, 2013.

8) The deadline for filing motions to exclude testimony on Daubert and related grounds is March 29, 2013.

November 21, 2012.

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge