

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BNSF RAILWAY COMPANY,)
)
 Plaintiff,)
)
 v.)
)
 L.B. FOSTER COMPANY)
)
 Defendant and)
 Third Party Plaintiff)
)
 v.)
)
 HERZOG SERVICES, INC.)
)
 Third Party Defendant)
)

4:11CV3076

MEMORANDUM AND ORDER ON
THIRD PARTY COMPLAINT

On January 8, 2013, I granted L.B. Foster’s motion for summary judgment against the plaintiff, BNSF Railway Company. (ECF No. 136.) All of the plaintiff’s claims have been resolved in L.B. Foster’s favor. (See generally id.) I have not yet entered a final judgment, however, because L.B. Foster’s third party complaint against Herzog Services, Inc., remains pending. (ECF No. 59.) The third party complaint states, “[I]n the event Plaintiff shall recover from L.B. Foster, Inc., L.B. Foster, Inc. seeks indemnification, contribution and an allocation of fault to be entered against Herzog Services, Inc. and such other and further relief as the Court may deem just and equitable.” (Id. at 2.) There appear to be no other viable claims by or against BNSF Railway Company, L.B. Foster, or Herzog Services. Thus, it is likely that the third party complaint is now moot, and a final judgment may be entered in this case.

IT IS ORDERED that within twenty days of the date of this order, L.B. Foster must show cause why its third party complaint against Herzog Services should not be dismissed as moot, and why a final judgment should not be entered in this case.

Dated January 22, 2013.

BY THE COURT

A handwritten signature in cursive script, reading "Warren K. Urbom", is written over a horizontal line.

Warren K. Urbom
United States Senior District Judge