

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NATIONAL INDEPENDENT
TRUCKERS INS. CO.,

Plaintiff,

vs.

KELLY GADWAY and BRUCE
LARSON,

Defendants.

8:10-CV-253

MEMORANDUM AND ORDER

This matter is before the Court on the Court's own Memorandum and Order of March 12, 2012 (filing [99](#)), and Memorandum and Order of April 23, 2012 (filing [101](#)). In the March 12 memorandum and order, the Court directed the plaintiff to show cause, by an appropriate brief in opposition, why a partial summary judgment should not be entered against it. (Filing [99](#) at 13-14.) Neither party filed any response to the Court's show cause order, and in its April 23 memorandum and order, the Court entered summary judgment against the plaintiff on the terms explained in its March 12 order. The Court concluded that the plaintiff is not entitled to the relief sought in its complaint, and dismissed its complaint with prejudice. See filing [101](#).

In its April 23, 2012, order (filing [101](#)), the Court also ordered the parties to show cause why the only pending claim, Kelly Gadway's counterclaim, should not be dismissed without prejudice. Again, neither party has filed any response. And as explained in the April 23 order, in most cases, when federal and state claims are joined and the federal claims are dismissed on a motion for summary judgment, the pendant state claims are dismissed without prejudice to avoid needless decisions of state law, as a matter of comity and to promote justice between the parties. *Birchem v. Knights of Columbus*, 116 F.3d 310 (8th Cir. 1997); *Ivy v. Kimbrough*, 115 F.3d 550 (8th Cir. 1997); see also *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).

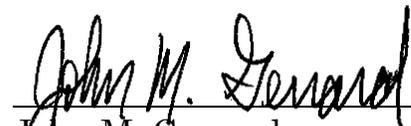
Having dismissed all claims over which it has original jurisdiction, the Court declines to exercise supplemental jurisdiction over Gadway's remaining state law claim. See [28 U.S.C. § 1367](#). The Court finds that Gadway's claim should be dismissed without prejudice to reassertion of that claim in a state court of appropriate jurisdiction. Accordingly,

IT IS ORDERED:

1. Kelly Gadway's counterclaim (filing [53](#)) is dismissed without prejudice to reassertion of that claim in a state court of appropriate jurisdiction.
2. A separate judgment will be entered.

Dated this 17th day of May, 2012.

BY THE COURT:



John M. Gerrard
United States District Judge