

IN THE SUPREME COURT OF THE STATE OF NEVADA

MDB TRUCKING, LLC,

Appellant/Cross-Respondent,

vs.

VERSA PRODUCTS COMPANY,
INC.,

Respondent/Cross-Appellant.

Supreme Court Case No. 75022

Consolidated with Case Nos. 75319,
75321, 76395, 76396 and 76397.
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[District Court Case Nos.:
CV15-02349, CV16-00976 and
CV16-01914]

JOINT APPENDIX VOLUME 3 OF 18

Consolidated Appeals from the Second Judicial District Court,
Orders Granting Motion to Strike Cross-Claim and Orders
Denying Attorneys' Fees and Granting Reduced Costs,
The Honorable Judge Elliott A. Sattler, District Court Judge

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10
11 DISTRICT COURT

12 WASHOE COUNTY, NEVADA

13 ERNEST BRUCE FITZIMMONS and
14 CAROL FITZSIMMONS, Husband and
Wife,

15 Plaintiffs,

16 vs.

17 MDB TRUCKING, LLC, et. al.

18 Defendants.

19 AND ALL RELATED CASES.
20
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23

Case No. CV15-02349

Dept. 10

DEFENDANT/CROSS-
CLAIMANT/CROSS-DEFENDANT
VERSA PRODUCTS COMPANY, INC.'S
MOTION TO STRIKE
DEFENDANT/CROSS-
CLAIMANT/CROSS-DEFENDANT MDB
TRUCKING, LLC's CROSS-CLAIM
PURSUANT TO NRCP 35; OR IN THE
ALTERNATIVE, FOR AN ADVERSE
JURY INSTRUCTION

24 COMES NOW, Defendant/Cross-Claimant/Cross-Defendant VERSA PRODUCTS
25 COMPANY, INC., by and through its attorneys of record, Josh Cole Aicklen, Esq., David
26 B. Avakian, Esq. and Paige S. Shreve, Esq., of the law firm LEWIS BRISBOIS
27 BISGAARD & SMITH, LLP, and hereby request an Order dismissing Defendant/Cross-
28 Claimant/Cross-Defendant MDB TRUCKING, LLC's Cross-Claims against it, or in the

1 alternative issuing an adverse jury instruction.

2 This Motion is based upon the Memorandum of Points and Authorities; the Affidavit
3 of David B. Avakian, Esq. included herein; NRCP 37; NRS 47.250; the Exhibits attached
4 hereto; and any other evidence the Court may entertain at the Hearing on this Motion.

5 DATED this 15th day of May, 2017

6 Respectfully submitted,

7 LEWIS BRISBOIS BISGAARD & SMITH LLP
8
9

10 By /s/ David B. Avakian

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1 AFFIDAVIT OF DAVID B. AVAKIAN, ESQ. IN SUPPORT OF
2 DEFENDANT/CROSS-CLAIMANT/CROSS-DEFENDANT VERSA PRODUCTS
3 COMPANY, INC.'S MOTION TO STRIKE DEFENDANT/CROSS-CLAIMANT/CROSS-
 DEFENDANT MDB TRUCKING, LLC'S CROSS-CLAIM PURSANT TO NRCP 35; OR IN
 THE ALTERNATIVE, FOR AN ADVERSE JURY INSTRUCTION

4 STATE OF NEVADA)
5) ss.
6 COUNTY OF CLARK)

7 DAVID B. AVAKIAN, ESQ., being first duly sworn, deposes and states as follows:

8 1. I am a Partner at LEWIS BRISBOIS BISGAARD & SMITH LLP, and am duly
9 licensed to practice law in the State of Nevada.

10 2. I am competent to testify to the matters set forth in this Affidavit, and will do
11 so if called upon.

12 3. I am an attorney of record representing Defendant/Cross-Claimant/Cross-
13 Defendant VERSA PRODUCTS COMPANY, INC. in the subject lawsuit currently pending
14 in Department 10 of the Second Judicial District Court for the State of Nevada, Case
15 Number CV15-02349.

16 4. Attached hereto as Exhibit 1 is a true and correct copy of MDB's Cross-
17 Claim.

18 5. Attached hereto as Exhibit 2 is a true and correct copy of the Deposition
19 Transcript of MDB's PMK, Scott Palmer, Volume III.

20 6. Attached hereto as Exhibit 3 is a true and correct copy of the Deposition
21 Transcript of MDB's PMK, Scott Palmer, Volume II.

22 7. Attached hereto as Exhibit 4 is a true and correct copy of the Deposition
23 Transcript of MDB's PMK, Scott Palmer, Volume I.

24 8. Attached hereto as Exhibit 5 is a true and correct copy of the Declaration by
25 David R. Bosch, Ph.D.

26 9. Attached hereto as Exhibit 6 is a true and correct copy of MDB's Responses
27 to VERSA's Requests for Admissions.

10. Attached hereto as **Exhibit 7** is a true and correct copy of the Deposition Transcript of Tracy Shane.

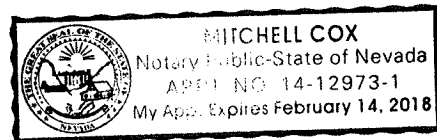
11. Attached hereto as **Exhibit 8** is a true and correct copy of the Deposition Transcript of Patrick Bigby.

FURTHER AFFIANT SAYETH NAUGHT.

~~DAVID B. AVAKIAN, ESQ.~~

SUBSCRIBED AND SWORN to before me
this 15th day of May, 2017.

NOTARY PUBLIC
In and for said County and State



1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Defendant/Cross-Claimant, MDB TRUCKING, LLC ("hereinafter referred to as
4 "MDB"), has brought Cross-Claims¹ against VERSA PRODUCTS COMPANY, INC.
5 (hereinafter referred to as "VERSA"), in which it asserts a contribution claim against
6 VERSA for a personal injury claims brought by Plaintiffs, Ernest Fitzsimmons and Carol
7 Fitzsimmons ("Fitzsimmons"); Angela Wilt ("Wilt"); Rosa, Benjamin, Cassandra and
8 Natalie Robles ("Robles"); Sonya Corthell ("Corthell"); Beverly, Patrick and Ryan
9 Crossland ("Crossland"); Olivia and Naykyla John ("John"); Kandise Baird ("Kins"); James
10 Bible ("Bible"); and Geneva Remmerde ("Remmerde") (collectively referred to as
11 "Plaintiffs"). See, MDB's Cross-Claim against VERSA, a true and correct copy attached
12 hereto as Exhibit 1. Plaintiffs were driving westbound on IR80 when a semi-trailer driven
13 by Daniel Koski and owned by Cross-Claimant MDB spilled gravel on the freeway,
14 causing multiple automobile accidents and the injuries alleged by the Plaintiffs. MDB's
15 contribution claim is based on its allegation that the inadvertent gravel dump was due to
16 an alleged "defect" with the VERSA valve on the subject trailer.

17 In discovery, *MDB admitted that the VERSA valve did not have any product defect*
18 *or design defect.* See Exhibit 2 at P. 97:16-25;98:1-17. MDB's forensic experts, are
19 *investigating "the sources of electro magnetic fields"* that could have "energized" the
20 valve at issue. See, Exhibit 5.

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22
23 ¹ There are a total of nine different lawsuits filed by the Plaintiffs. All except for two of the above mentioned
24 lawsuits have been consolidated for discovery and trial purposes. The remaining two cases, James Bible
25 (CV16-01914) and Geneva Remmerde (CV16-00976), have been consolidated for discovery purposes
only. VERSA is named as a direct defendant in all nine cases, except for Remmerde. VERSA is only a
Third-Party Plaintiff/Defendant in that case.

26 In all nine of the above-mentioned lawsuits, MDB filed cross-claims/third-party Complaints against
27 VERSA for equitable indemnity and contribution. VERSA filed a Motion to Dismiss MDB's Indemnity claim
28 against VERSA in all nine cases. The Court granted VERSA's Motion to Dismiss, leaving MDB with a
cross-claim for contribution only against VERSA.

1 Simply put, MDB had a duty to preserve all relevant evidence and it did not. MDB
2 was aware that the subject truck valve and trailers are critically relevant to this matter as
3 they are the centerpiece of the resulting litigation. Thus, because MDB was on notice
4 that the truck and trailers, including the valve components, were relevant to this litigation,
5 MDB had a pre and post litigation duty to preserve the evidentiary value contained within
6 the truck and trailers by removing such evidence from service.

7 However, MDB did not take the subject truck trailers and valve out of service after
8 the subject incident and continued to keep them in service for over two years after the
9 subject incident and a year and a half after the first lawsuit was filed. The only reason
10 MDB removed the subject truck and trailers out of service was because the experts in the
11 subject litigation removed the subject valve for destructive testing. See, Exhibit 3 at P.
12 84:19-24. Further, after the subject litigation and even after the first lawsuit was filed,
13 *MDB discarded the electrical component parts that are used in activating the subject*
14 *valve. See, Exhibit 3* at P. 169:16-22. In doing so, MDB intentionally spoliated critical
15 evidence that VERSA absolutely requires to defend against MDB's baseless cross-claim.

16 Therefore, and pursuant to NRCP 37, VERSA respectfully requests that the Court
17 strike MDB TRUCKING, LLC's Cross-Claims against VERSA, or in the alternative issue
18 an adverse jury instruction against MDB due to MDB's failure to preserve key evidence
19 that is crucial to VERSA's defense.

20 II. FACTUAL BACKGROUND

21 On March 6-8, 2017, VERSA took the deposition of MDB's 30(b)(6) witness, Scott
22 Palmer. During Mr. Palmer's deposition, he testified that the subject valve did not have a
23 defect. Mr. Specifically, Mr. Palmer testified:

24 Q. I'm going to ask you the same question again for after the
25 July 2014 incident on Trailer 6775. Did MDB in their investigation
26 after the dump-- again, this is right after, not since litigation-- did
 MDB find any defect with that Versa valve?

27 MR. PALMER: No. That remained in service until such time
28 litigation started.

1 Q. And on that same trailer, the same Versa valve, did MDB in
2 their investigation right after the subject incident -- again, pre-
3 litigation, right after -- did MDB discover any design defect with
4 the Versa valve?

5 MR. PALMER: No. But, once again, we weren't looking for any
6 sort of design defects or functionality defects. It worked.

7 Q. Okay.

8 MR. PALMER: To the best of our knowledge it still worked.

9 See, Exhibit 2 at P. 97:16-25;98:1-17.

10 Additionally, during Mr. Palmer's deposition, he testified that MDB performed
11 numerous repair work on the subject truck and trailers after the subject incident which
12 relate directly to providing electricity to the VERSA valve. Mr. Palmer testified to the
13 following repairs:

14 Q. MDBMAINT 129, can you -- we'll transition a little bit, but can you
15 start with the date of the work order and what this work order was for.

16 MR. PALMER: 12/18/14 is the date.

17 Q. And what was this work order for?

18 MR. PALMER: It was for the screws being loose on the four-way. So
19 they were tightened and tested.

20 Four-way -- the four-way cable refers to the leftover cable that plugs in the
21 front of the trailer that operates the Versa valves or operates whatever --
22 whatever particular trailer you plug it into, it operates something.

23 On end up, it operates the tailgate; on bottom dumps, it operates the Versa
24 valves that dump the trailers.

25 So it came in for the gates not operating with the switch. And one of the
26 wires was loose, so we tightened it in and put it back in service.

27 See, Exhibit 4 at P. 90:7-22.

28 Q. Okay. We can go to the next one.
Can you tell me the date on this one, please.

MR. PALMER: 2/5/15.

Q. And what is this work order for?

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MR. PALMER: We put a new driver's seat in it. And then we replaced the seven-way and four-way cords, cables, and replaced leaking axle flange gasket.

Q. Okay. So is this four-way cord different from the work order we discussed of the four-way plug in MDBMAINT 129?

MR. PALMER: No, it would be the same -- it would be the same cord. But this one, on the prior one, on 12/18/14, we replaced - we tightened the screws on the plug itself.

On this work order on 2/5/15, we actually replaced the seven-way cable and the four-way cable.

Id. at P. 91:10-23.

Q. Okay. And here, he replaced the four-way cord?

MR. PALMER: Yes, and the seven-way cord.

Id. at P. 92:6-7.

Q. Okay. I'm going to go to the next one. This would be MDBMAINT 160. Can you tell me the date on this one and what occurred, please.

MR. PALMER: It's August 5th, 2014. And Pat Bigby replaced the four-way socket on the front of 6773.

At least, I am assuming that's what he replaced. It could be the four-way socket on the front or the back. It doesn't distinguish between the two on this work order. But I'm assuming it's the one on the front. That's the one that gets unplugged and plugged all the time, and we replace them as soon as -- any issues whatsoever, we replace them.

Id. at P. 103:19-25;104:1-4.

Q. Okay. You can go to the next one. MDBMAINT 170, can you tell me the date and what occurred on this one, please.

MR. PALMER: 12/18/14. And this would have been another replace the four-way socket. And I didn't write on there either, where - whether it was the front or the rear, but I'm assuming it's the front again.

Id. P. 105:21-25;106:1-2.

1 Further, Mr. Palmer testified that it was normal for MDB to replace the four-way
2 socket that is used to send electricity to the VERSA valve at least every four to five
3 months. Id. at P. 106:14-17. In fact, Mr. Palmer even testified to replacing and discarding
4 the four-way plug and cords *four months* after the first lawsuit was filed:

5 Q. All right. We'll go to the next one. This is MDB 273. And can you tell
6 me the date on this one and what occurred.

7 MR. PALMER: 12/2/15?

8 Q. Uh-huh.

9 MR. PALMER: Replaced -- pulled out four-way plug. Replaced four-
10 way plug. Issues still exist. Found all wires pulled out of - at tractor. Also
11 reattach wires and tested okay.

12 Q. So this one indicates -- it says issues still exist. Was there -- is there
13 another work order that would have been performed indicating that there
14 was an issue there prior?

15 MR. PALMER: No, this is another -- this probably happened when the
16 driver came to the yard, unhooked his trailer and its hoses and electrical,
17 pulled out from underneath the trailer to hook up to a different trailer and
18 forgot to unhook his four-way. I don't have -- I don't know, and I don't have
19 a memory of that. That's probably what happened.

20 So the four-way stayed plugged into the trailer. When he pulled away, it
21 yanked -- pulled the plug off the end of the cord.

22 So if you read this, Pat put a new plug on the end of the cord, but it still
23 didn't work. And then he found out that it also pulled out the other end of the
24 wiring on the tractor, it pulled it that hard. So he reattached the wires on
25 both ends, and then it worked okay.

26 Q. Okay. So the -- Pat indicating issues still exist?

27 MR. PALMER: No, he said -- yeah, he replaced four-way plug, issues
28 still exist. Then he found all the wires pulled out at the tractor, also
reattached wires and tested okay.

Id. at P. 94:2-25;95:1-5.

29 Finally, MDB admits that the subject truck was not in the same condition as it was
30 at the time of the subject incident and the subject truck and trailers continued to be used
31 at the time MDB responded to VERSA's Requests for Admissions. Specifically, MDB
32 admitted:

1 REQUEST FOR ADMISSION NO. 13:

2 Admit that the Peterbuilt truck that allegedly spilled gravel on
3 the roadway in this case is not in the same exact condition as
 it was at the time of the subject incident.

4 RESPONSE TO REQUEST FOR ADMISSION NO. 13:

5 Admitted.

6 REQUEST FOR ADMISSION NO. 14:

7 Admit that the Ranco semi-trailer that allegedly spilled
8 gravel on the roadway in this case continues to be used
 since the subject incident.

9 RESPONSE TO REQUEST FOR ADMISSION NO. 14:

10 Admitted.

11 REQUEST FOR ADMISSION NO. 15:

12 Admit that the Peterbuilt semi-trailer that allegedly spilled
13 gravel on the roadway in this case continues to be used to
 haul trailers since the subject incident.

14 RESPONSE TO REQUEST FOR ADMISSION NO. 15:

15 Admitted.

16 See, Exhibit 6 at P. 4:8-22.

17 REQUEST FOR ADMISSION NO. 24:

18 Admit that you or someone on your behalf continued to use
19 and operate the subject VERSA valve on the same subject
 trailer from the time of the subject incident to the present.

20 RESPONSE TO REQUEST FOR ADMISSION NO. 24:

21 Admitted.

22 Id. at P. 6:8-12

23 REQUEST FOR ADMISSION NO. 26:

24 Admit that the subject VERSA valve has now been operated
25 hundreds of times after the subject incident.

26 RESPONSE TO REQUEST FOR ADMISSION NO. 26:

27 Admitted with the qualification that by the addition of the pin
28 lock system, MDB cannot determine when the VERSA valve
 may have failed by self-activating.

1 Id. at P. 6:18-23.

2
3 **III. LEGAL ARGUMENT**

4 **A. MDB Had a Legal Duty to Preserve All Relevant Evidence**

5 It is well established in Nevada that a party is entitled to have the jury instructed on
6 all of her case theories that are supported by the evidence. Bass-Davis v. Davis, 122 Nev.
7 442, 447, 134 P.3d 103, 106 (2006). Accordingly, even when an action has not been
8 commenced and there is only a potential for litigation, the litigant is under a duty to
9 preserve evidence which it knows or reasonably should know is **relevant to the action**.
10 Fire Ins. Exch. v. Zenith Radio Corp., 103 Nev. 648, 651, 747 P.2d 911, 914 (1987).

11 Thus, where a party is on notice of potential litigation, the party is subject to sanctions for
12 actions taken which prejudice the opposing party's discovery efforts. Fire Ins. Exch. v.
13 Zenith Radio Corp., 103 Nev. 648, 651, 747 P.2d 911, 914 (1987)

14 Here, as the Court is aware, the instant case does not involve a negligible fender
15 bender. Contrarily, this case involves a serious twenty car accident, resulting from when
16 one of MDB's trucks released a truckload of material onto a busy interstate highway. With
17 so many parties involved and due to the gravity of the event, *it is clear that MDB was on*
18 *notice that there was potential litigation on the horizon* where liability would be an issue.
19 MDB was well-aware that both police and EMT's were on scene and numerous people
20 were transported to local hospitals with serious injuries. Moreover, as MDB's truck,
21 trailers and the subject VERSA valve are the centerpiece of the resulting litigation, MDB
22 knew, or should have reasonably known, that the truck, trailers and valve were relevant to
23 the instant litigation. Thus, because MDB was on notice that the truck and trailers were
24 relevant to potential litigation, MDB had a pre-litigation duty to preserve the evidentiary
25 value contained within the truck, trailers and valve by removing such evidence from
26 service and continued use.

27 Moreover, as MDB's cross-claim against VERSA asserts that the subject valve
28 caused or contributed to the accident because it allegedly operated inadvertently, MDB

1 *was on notice and knew*, or should have reasonably known, *that any parts*, mechanical,
2 electrical, or otherwise, that are *related to the valve's operation*, (in any capacity), *are*
3 *relevant to the instant litigation*. Thus, because MDB was on notice that all parts related to
4 the subject valve were relevant to potential litigation, MDB had a pre and post litigation
5 duty to preserve the evidentiary value contained within such evidence by retaining the
6 evidence instead of conveniently discarding, and ultimately destroying, such critical
7 evidence.

8 Simply put, MDB's actions of not preserving the aforementioned evidence not only
9 goes staunchly against case law and the spirit of the discovery rules, but it also
10 *detrimentally affects VERSA's ability to defend itself* from MDB's baseless lawsuit by
11 removing crucial evidence that supports VERSA's liability theories. Accordingly, in the
12 interest of upholding the validity of Nevada's discovery rules and remedying the
13 outstanding injustice, both case law and statutory law dictate that this Court should
14 sanction MDB. Indeed, without an appropriate sanction, MDB's discovery violations
15 unfairly tip the scales of justice in MDB's favor.

16 **B. This Court Should Strike MDB's Cross-Claim Because of MDB's Discovery**
17 **Violations Pursuant to NRCP 37 and Prevailing Case Law**

18 ***1. MDB's Discovery Violations Are Abusive Litigation Practices***

19 Nevada allows for the dismissal of a case based upon an offending party's abuse
20 of discovery. GNLV Corp. v. Serv. Control Corp., 111 Nev. 866, 870, 900 P.2d 323, 325
21 (1995). Indeed, the Nevada Rules of Civil Procedure permit the Court to strike out
22 pleadings or dismiss an action entirely for discovery abuses. See NRCP 37(b)(2)(C).
23 Additionally, a district court has the inherent equitable power to dismiss actions as a
24 sanction for abusive litigation practices. Parkinson v. Bernstein, Nos. 59947, 61089, 2014
25 Nev. Unpub. LEXIS 2176, at *1 (Dec. 22, 2014).

26 Dismissal is a proper sanction where a plaintiff possesses the evidence at issue
27 but disposes of it before filing a complaint. CSA Serv. Ctr., LLC v. Air Design Sys., LLC,
28 No. 57674, 2013 Nev. Unpub. LEXIS 686, at *8 (May 31, 2013). Dismissal of a party's

1 complaint as a sanction does not need to be "preceded by other less severe sanctions."
2 CSA Serv. Ctr., LLC v. Air Design Sys., LLC, No. 57674, 2013 Nev. Unpub. LEXIS 686, at
3 *7 (May 31, 2013). A court's authority to impose sanctions "'is rooted in a court's
4 fundamental interest in protecting its own integrity and that of the judicial process."
5 Halverson v. Hardcastle, 123 Nev. 245, 261 n.26, 163 P.3d 428, 440 (2007) (quoting
6 Cummings v. Wayne County, 210 Mich. App. 249, 533 N.W.2d 13, 14 (Mich. Ct. App.
7 1995).

8 Here, MDB is knowingly pursuing a meritless claim against VERSA and,
9 disappointingly, MDB has destroyed evidence that VERSA could have used to dispel the
10 baseless claims. As the record unequivocally demonstrates, MDB's expert has asserted
11 that *the subject valve does not suffer from any design or manufacturing defect*. See,
12 Exhibit 2 at P. 97:16-25;98:1-17.

13 Again, MDB has readily admitted that there were no mechanical issues or defects
14 with the subject valve; *yet, MDB is still pursuing a claim* against VERSA under the pretext
15 that VERSA is somehow liable because an independent, inexplicable energy force
16 activated the subject valve. See, Exhibit 5.

17 To muddy the waters even more, MDB not only continued to operate the subject
18 truck, trailer, and valve at issue in this case, but MBD, *while on notice* to preserve
19 relevant evidence, *removed* and *threw away* the electrical components that control the
20 subject valve. See, Exhibit 3 at P. 169:16-22; Exhibit 6 at P. 4:13-22. Mr. Palmer testified
21 to the same:

22
23 Q. Okay. Did you save the plugs that you changed after the July 2014
24 event until the time that the forensic inspection, electrical inspection
had occurred?

25 MR. PALMER: No.

26 Q. What did you do with the plugs or any plugs that you changed on the
subject trailers?

27 MR. PALMER: We throw them in the garbage after that, yeah.

28 See, Exhibit 3 at P. 169:16-22.

1 To state the obvious, such electrical components support VERSA's defense that
2 something other than the valve itself (such as a defect or malfunction like the electrical
3 components MDB destroyed) activated the subject valve and caused the underlying
4 accident. Accordingly, applying Parkinson, because *MDB destroyed highly relevant*
5 *evidence that VERSA requires to prove the case is meritless*, this Court should strike
6 MDB's cross-claim against VERSA to curtail any further unnecessary litigation costs and
7 free up the Court's docket for cases with actual veracity.

8 ***2. A Young Factor Analysis Supports the Court Striking MDB's Cross-Claim***

9 While dismissal need not be preceded by other less severe sanctions, it should be
10 imposed only after thoughtful consideration of all the factors involved in a particular case.
11 See, Young v. Johnny Ribeiro Bldg., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). The
12 factors a Court may properly consider include, but are not limited to:

- 13 1) the degree of willfulness of the offending party;
- 14 2) the extent to which the non-offending party would be prejudiced by a lesser
15 sanction;
- 16 3) the severity of the sanction of dismissal relative to the severity of the
17 discovery abuse;
- 18 4) whether any evidence has been irreparably lost;
- 19 5) the feasibility and fairness of alternative, less severe sanctions, such as an
20 order deeming facts relating to improperly withheld or destroyed evidence to
21 be admitted by the offending party;
- 22 6) the policy favoring adjudication on the merits;
- 23 7) Whether sanctions unfairly operate to penalize a party for the misconduct of
24 his or her attorney; and
- 25 8) the need to deter both the parties and future litigants from similar abuses.

26 Id.

27 a. **MDB Willfully Destroyed Evidence Pertinent to VERSA's Liability**
28 **Defense**

29 The first factor of the Young analysis specifically addresses the degree of
30 willfulness of the offending party. Young, 106 Nev. at 93. The Nevada Supreme Court
31 found conduct willful when the violating party fails to disclose evidence in way that

1 demonstrates "active concealment" or appears to be "intentional or at least highly
2 reckless." N. Am. Props. v. McCarran Int'l Airport, No. 61997, 2016 Nev. Unpub. LEXIS
3 487, at *9 (Feb. 19, 2016)

4 Here, after being on notice to preserve all relevant evidence, MDB: 1)
5 compromised the evidence's integrity by continuing to operate the subject truck, trailers,
6 and subject valve for two years; and 2) actively destroyed evidence by removing and
7 trashing components involved with how the subject valve activates. See, Exhibit 3 at P.
8 169:16-22; Exhibit 4 at P. 84:19-24; Exhibit 6 at P. 4:13-22. MDB should have removed
9 the subject truck, trailers and valve from service immediately after the accidents to
10 preserve their condition as they existed at the time of the accident. However, MDB
11 continued to habitually use such evidence in its business operations, thus corrupting the
12 integrity of the evidence. Id. Consequently, MDB's tainting of the evidence created a
13 highly prejudicial situation for VERSA because MDB essentially destroyed the very
14 evidence VERSA requires to defend its case.

15 Moreover, knowing that MDB's main theory of liability against VERSA was that the
16 subject valve was somehow "energized," MDB removed and spoliated electrical parts that
17 activated the subject valve. See, Exhibit 5. Put simply, *MDB discarded the electrical*
18 *component parts that are used in activating the subject valve.* Such conduct appears
19 intentional or, at the very least, highly reckless considering the magnitude of the instant
20 case and the competing theories of liability. Moreover, such conduct appears intentional
21 or highly reckless when viewed in the proper context that such evidence supports
22 VERSA's defense that its valve functioned properly. Accordingly, applying Young and N.
23 AM. Props, because MBD's intentional or reckless conduct rises to a level of willfulness,
24 MBD's destruction of evidence and its failure to preserve the integrity of evidence weighs
25 in favor of this Court striking MDB's cross-claim against VERSA.

1 b. A Lesser Sanction Would Adversely Harm Versa Because it Would
2 Needlessly Increase Litigation Costs and Severely Prejudice
3 VERSA's Liability Defense

4 The second factor of the Young analysis specifically addresses the extent to which
5 the non-offending party would be prejudiced by a lesser sanction. See, Young, 106 Nev.
6 at 93. The Nevada Supreme Court looks to whether the problems caused by the
7 discovery violation are substantial and correctable when determining prejudice. N. Am.
8 Props. 2016 Nev. Unpub. LEXIS 487 at *9.

9 Here, a lesser sanction would prejudice VERSA for two reasons. First, a lesser
10 sanction would force VERSA to approach trial without crucial defense evidence while
11 simultaneously rewarding MDB for its conduct. Second, a lesser sanction needlessly
12 increases VERSA's litigation costs and does nothing to remedy the discovery abuses.
13 Versa is unable to test the electrical component parts to determine if there was a
14 malfunction which activated the valve. Accordingly, applying Young, because a lesser
15 sanction would not remedy MDB's spoliation of critical evidence, a lesser sanction will
16 only force VERSA to incur unnecessary and expensive litigation costs. Thus, this factor
17 strongly weighs in favor of the Court striking MDB's cross-claim.

18 c. Dismissal of MDB's Cross-Claim Balances the Harm of MDB's
19 Destruction of Evidence Necessary for VERSA to Assert a Proper
20 Defense

21 The third factor of the Young analysis addresses the severity of the sanction of
22 dismissal relative to the severity of the discovery abuse. See, Young, 106 Nev. at 93.
23 Courts have held that severe sanctions are warranted when the aggravating party
24 *violates both the letter and spirit* of the discovery rules. See, N. Am. Props, 2016 Nev.
25 Unpub. LEXIS 487 at *10.

26 Here, the instant discovery violations are a text book example of conduct that
27 violates both the letter and spirit of discovery: *MDB threw away key evidence that VERSA*
28 *needs to prove its case.* See, Exhibit 3 at P. 169:16-22. Such conduct has a nullifying
effect on VERSA's ability to defend itself in this matter. Essentially, MDB's destruction of

1 evidence functions indirectly as an informal dismissal of VERSA's defenses. Accordingly,
2 applying Young and N. Am. Props., because MDB's actions have a similar effect as a
3 dispositive Motion, dismissal of MDB's cross-claim is proportionate to MDB's discovery
4 abuses and, therefore, this factor weighs in favor of the Court striking MDB's cross-claim.

5
6 **d. Unquestionably, MBD Irreparably Destroyed Highly Relevant**
7 **Evidence**

8 The fourth factor of the Young analysis addresses whether any evidence has been
9 irreparably lost. Young, 106 Nev. at 93. Although evidence may not be irreparably lost,
10 the Court may hold this factor against the aggravating party if the abusive conduct greatly
11 undermines the utility of the subject evidence by robbing the aggrieved party of the
12 opportunity to carefully review and consider the evidence before trial. See, N. Am. Props.
13 2016 Nev. Unpub. LEXIS 487 at *11.

14 Here, this is an open and closed case - *MDB irreparably lost evidence*. See,
15 Exhibit 3 at P. 169:16-22. MDB threw away the electrical components that relate to the
16 core issue of why the subject valve activated. *Id.* Additionally, through the continued
17 used of the truck, trailers, and subject valve after the accident, MDB forever destroyed
18 VERSA's ability to investigate the condition of such evidence as it existed at the time of
19 the accidents. See, Exhibit 4 at P. 84:19-24; Exhibit 6 at P. 4:8-22. Accordingly, applying
20 Young and N. Am. Props., because MDB irreparably spoliated evidence, which unduly
21 prejudice VERSA, this factor strongly weighs in favor of the Court striking MDB's cross-
22 claim.
23

24 **e. An Alternative Sanction Would Not Be Fair to VERSA Since MDB's**
25 **Destruction of Evidence Has a Nullifying Effect on VERSA's**
26 **Defenses**

27 The fifth factor of the Young analysis addresses the feasibility and fairness of
28 alternative, less severe sanctions, such as an order deeming facts relating to improperly

1 withheld or destroyed evidence to be admitted by the offending party. Young, 106 Nev. at
2 93. The purpose of alternative sanctions is to restore the prejudiced party to the same
3 position it would have been absent the discovery violation. See, Turner v. Hudson Transit
4 Lines, 142 F.R.D. 68, 74 (S.D.N.Y. 1991).

5 Here, MDB's discovery violations have undermined VERSA's liability defenses by
6 destroying key evidence and, thus, such violations have created unequal footing in favor
7 of MDB as the parties approach trial. Although it is feasible to administer a lesser
8 sanction, it is both unquestionably unfair and economically unsound. The indirect
9 consequence of allowing a lesser sanction is that such action sends a message that the
10 discovery rules are only bark, with no bite. A lesser sanction will force VERSA to
11 approach trial with essential tools missing from its tool belt - the crucial evidence that
12 MDB destroyed. More importantly, as outlined above, a lesser adverse instruction
13 sanction requires additional unnecessary and costly litigation fees. Accordingly, applying
14 Young, as any other sanction would not be as fair as dismissing MDB's meritless cross-
15 claim, this factor strongly weighs in favor of the Court striking MDB's cross-claim.

16 f. Public Policy Favors Dismissing this Meritless Claim

17 The sixth factor of the Young analysis addresses the public policy favoring
18 adjudication on the merits. Young, 106 Nev. at 93. Although courts favor adjudicating
19 cases on their merits, gross discovery abuses will qualify as circumstances when case-
20 ending sanctions, or sanctions that effectively act as case-ending sanctions, are
21 appropriate. See, Foster v. Dingwall, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010) (not
22 hearing the case on its merits appropriate when relevant evidence been irreparably lost
23 due to the willful actions).

24 Here, under normal circumstances, policy favors that a Court adjudicate a
25 traditional case on its merits. However, the instant case is distinguishable from a
26 traditional case for two reasons. First, MDB's expert has readily admitted that the subject
27 valve has no design or manufacturing defects. See, Exhibit 2 at P. 97:16-25;98:1-17;
28 Exhibit 5; Exhibit 7 at P. 84:25;85:1-12; Exhibit 8 at P.118:6-19. Second, *MDB destroyed*

1 **key defense evidence**, which constituted a gross discovery abuse and created an unjust
2 chilling effect on VERSA's liability defenses. See, Exhibit 3 at P. 169:16-22; Exhibit 6 at
3 P. 4:8-22; P. 6:8-23. Accordingly, applying Young and Foster, because MDB's cross-
4 claim is meritless and MDB irreparably destroyed key defense evidence, this factor
5 strongly weighs in favor of the Court striking MDB's cross-claim.

6 g. Whether Sanctions Unfairly Operate to Penalize a Party for the
7 Misconduct of His or Her Attorney

8 The sixth factor of the Young analysis addresses whether sanctions unfairly
9 operate to penalize a party for the misconduct of his or her attorney. Young at 93.

10 Here, at this point in litigation, there is no evidence in the record to suggest that
11 MDB's counsel had an part in the destruction of the subject evidence. Accordingly,
12 applying Young, because ***MDB actively destroyed evidence on its own volition***, void of
13 counsel's misconduct, this factor strongly weighs in favor of the Court striking MDB's
14 cross-claim.

15 h. This Is a Perfect Example of the Abuses that Case Law and the
16 Discovery Rules seek to Prohibit and, thus, this Court Should Use
this Opportunity to Deter Future Similar Conduct

17 The last factor of the Young analysis addresses the need to deter both the parties
18 and future litigants from similar abuses. Young, 106 Nev. at 93. Courts have held that
19 discovery ***sanctions are applicable*** as to deterring future conduct ***when there is underlying***
20 ***abusive conduct at issue***. See, GNLV Corp., 111 Nev. at 871.

21 Here, MDB's conduct has undermined the Nevada's Rules of Civil Procedure and
22 the very spirit of discovery. This case stems from an accident ***involving multiple vehicles***
23 ***and serious injuries***. If ever there was a time to preserve evidence, this is the case.
24 However, MDB saw it fit to destroy critical defense evidence while on actual notice (i.e.
25 after the first Complaint was filed) that such evidence was relevant to the subject
26 litigation. See, Exhibit 3 at P. 169:16-22; Exhibit 6 at P. 4:8-22; P. 6:8-23. Allowing for
27 anything less than dismissal of MDB's cross-claim would establish an improper precedent
28 and could lead to a slippery slope of allowable discovery abuses. Accordingly, applying

1 Young and GNLV Corp., because the Court needs to deter similar future conduct
2 analogous to MDB's instant conduct, this factor strongly weighs in favor of the Court
3 striking MDB's cross-claim.

4 3. Nevada Statutory and Case Law Allows for a Rebuttable Presumption that
5 Evidence Willfully Suppressed Would Be Adverse to the Suppressing Party
6 if Produced

7 When evidence is willfully suppressed, NRS 47.250(3) creates a rebuttable
8 presumption that *the evidence would be adverse if produced*. Bass-Davis v. Davis, 122
9 Nev. 442, 448, 134 P.3d 103, 106 (2006). A rebuttable presumption is a rule of law by
10 which the finding of a basic fact gives rise to a presumed fact's existence, unless the
11 presumption is rebutted. Van Wart v. Cook, 557 P.2d 1161, 1163 (Okla. Civ. App. 1976).
12 However, the party seeking the presumption's benefit has the burden of demonstrating
13 that the evidence was destroyed with intent to harm. Bass-Davis v. Davis, 122 Nev. 442,
14 448, 134 P.3d 103, 107 (2006).

15 When such evidence is produced, the presumption that the evidence was adverse
16 applies, and the burden of proof shifts to the party who destroyed the evidence. Id. To
17 rebut the presumption, the destroying party must then prove, by a preponderance of the
18 evidence, that the destroyed evidence was not unfavorable. Id. If not rebutted, the fact-
finder then presumes that the evidence was adverse to the destroying party. Id.

19 Here, as addressed in the Young analysis, MDB willfully destroyed crucial
20 evidence that is pertinent to VERSA's liability defenses. See, Exhibit 3 at P. 169:16-22;
21 Exhibit 6 at P. 4:8-22; P. 6:8-23. With MDB's continual use of the subject truck, trailers,
22 and valve after the subject accident, MDB corrupted the integrity and value of such
23 evidence. Such continued use after being on notice to preserve evidence demonstrates
24 MDB's intent to harm the integrity of the evidence and harm VERSA's defense of the
25 case. Additionally, MDB's cognizant destruction of the key electrical components, that
26 cause the valve to activate, demonstrate by a preponderance of the evidence that MDB
27 intended to harm VERSA by destroying the evidence that supports VERSA's liability
28 defenses. Id. MBD may try to hide behind a procedural argument that it threw away the

1 critical evidence as part of its business operations; however, such an argument would
2 constitute a red hearing because MDB should not have even operated the subject truck,
3 trailers and valve to artificially create a situation that called for replacement and repair of
4 such components. *Id.* Accordingly, applying Bass-Davis, because MDB intentionally
5 suppressed and destroyed crucial evidence, this Court should advise the jury that such
6 evidence would be adverse against MDB if MDB had properly produced such evidence.

7 4. At a Minimum, Nevada Case Law Provides for an Adverse Inference
8 Instruction that the Evidence MDB Destroyed May Have Been Unfavorable
 to MDB

9 Unlike a rebuttable presumption, an adverse inference has been defined as "[a]
10 logical and reasonable conclusion of a fact not presented by direct evidence but which, by
11 process of logic and reason, a trier of fact may conclude exists from the established
12 facts." Bass-Davis v. Davis, 122 Nev. 442, 448, 134 P.3d 103, 107 (2006). An inference
13 simply allows the trier of fact to determine, based on other evidence, that a fact exists. *Id.*
14 *An inference should be permitted when evidence is negligently lost or destroyed, without*
15 *the intent to harm another party.* *Id.* at 449. The adverse inference provides the
16 necessary mechanism for restoring the evidentiary balance. *Id.* Generally, in cases based
17 on negligently lost or destroyed evidence, an adverse inference instruction is tied to a
18 showing that the party controlling the evidence had notice that it was relevant at the time
19 when the evidence was lost or destroyed. *Id.* at 450.

20 Here, in the event that the Court does not find that MDB willfully attempted to
21 suppress and destroy the subject evidence, the Court should at least remedy the current
22 inequity by issuing an adverse inference against MDB. The evidence demonstrates that
23 MDB at a minimum negligently destroyed evidence by continuing to operate the subject
24 truck, trailers and valve and discarded components that relate directly to how the valve
25 activates. See, Exhibit 3 at P. 169:16-22; Exhibit 6 at P. 4:8-22; P. 6:8-23. Accordingly,
26 although the current situation calls for the Court to order more severe sanctions, the
27 Court should at a minimum issue an adverse inference against MDB.

1 IV. CONCLUSION

2 Based on the foregoing, VERSA respectfully requests that the Court grant
3 VERSA's Motion and strike MDB's cross-claims, or in the alternative, issue an adverse
4 instruction against MDB.

5 AFFIRMATION

6 Pursuant to NRS 239B.030, the undersigned hereby affirms that this document
7 filed in this court does not contain the social security number of any person

8 DATED this 15th day of May, 2017

9 Respectfully submitted,

10 LEWIS BRISBOIS BISGAARD & SMITH LLP

11
12
13 By /s/ David B. Avakian

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EXHIBIT LIST

- Exhibit 1 MDB's Cross-Claim Against VERSA
- Exhibit 2 Deposition Transcript of Scott Palmer, Volume III
- Exhibit 3 Deposition Transcript of Scott Palmer, Volume II
- Exhibit 4 Deposition Transcript of Scott Palmer, Volume I
- Exhibit 5 Declaration by David R. Bosch, Ph.D
- Exhibit 6 MDB's Responses to VERSA's Requests for Admission
- Exhibit 7 Deposition Transcript of Tracy Shane
- Exhibit 8 Deposition Transcript of Patrick Bigby

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2017, a true and correct copy of MOTION TO STRIKE DEFENDANT/CROSS-CLAIMANT/CROSS-DEFENDANT MDB TRUCKING, LLC's CROSS-CLAIM PURSANT TO NRCP 35; OR IN THE ALTERNATIVE, FOR AN ADVERSE JURY INSTRUCTION was served via U.S. Mail addressed as follows:

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An Employee of
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EXHIBIT 1

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6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE

9 ERNEST BRUCE FITZSIMMONS and
10 CAROL FITZSIMMONS, Husband and
Wife,

11 Plaintiffs,

12 vs.

13 MDB TRUCKING, LLC; RMC LAMAR
14 HOLDINGS, INC.; VERSA PRODUCTS
COMPANY, INC.; DANIEL ANTHONY
15 KOSKI; ABC Corporations I-X, Black and
White Companies, and DOES I-XX,
16 inclusive,

17 Defendants.

18 AND RELATED CROSS-CLAIM AND
19 THIRD PARTY COMPLAINT.

Case No. CV15-02349

Dept. No. 15

20
21 **MDB TRUCKING, LLC'S CROSS-CLAIM AGAINST RMC**
22 **LAMAR HOLDINGS, INC. (fka RANCH MANUFACTURING COMPANY)**
AND VERSA PRODUCTS COMPANY, INC.

23 Defendant and Cross-Claimant, MDB Trucking, LLC, by and through its counsel of
24 record Thorndal Armstrong Delk Balkenbush & Eisinger hereby brings its cross-claim against
25 Cross-Defendants RMC Lamar Holdings, Inc. (fka Ranch Manufacturing Company) and Versa
26 Products Company, Inc.

THORNDAL ARMSTRONG
DELK BALKENBUSH
& EISINGER
6590 S. McCarran, Suite B
Reno, Nevada 89509
(775) 786-2882

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1 **FIRST CLAIM FOR RELIEF**

2 **(General Allegations)**

3 1. That Defendant/Cross-Claimant MDB Trucking, LLC was at all relevant times a
4 Nevada limited liability company authorized to conduct business within the state of Nevada.

5 2. That Cross-Defendants DOES 1-10 and BLACK AND WHITE COMPANIES are
6 sued herein under fictitious names and capacities of said Defendants are not known by Cross-
7 Claimant, who ask leave of this court to amend this Cross-Claim to set forth same as they
8 become known or ascertained.

9 3. Cross-Defendant RMC Lamar Holdings, Inc. (fka Ranch Manufacturing
10 Company) was at all relevant times hereto a Colorado corporation engaged in the business of
11 designing and manufacturing trailers and semi-trailers and placed same into the stream of
12 commerce and was doing business in the State of Nevada.

13 4. Cross-Defendant Versa Products Company, Inc. was at all relevant times hereto a
14 New Jersey Corporation engaged in the business of designing and manufacturing pneumatic air
15 solenoid valves specifically for bottom dump trailers and gate activated controls and placed into
16 the stream of commerce and was doing business in the State of Nevada.

17 5. A First Amended Complaint was filed on May 19, 2016 in the Second Judicial
18 District Court, Case No. CV15-02349, Department 15 in which the Plaintiffs Ernest Bruce
19 Fitzsimmons and Carol Fitzsimmons prayed for damages against Defendant MDB Trucking,
20 LLC alleging negligence with regard to an accident which occurred on July 7, 2014 where a
21 Ranco trailer owned by MDB Trucking, LLC spilled a load of gravel causing an accident and
22 injury which are claims presented by Plaintiffs.

23 6. That upon information and belief, the Ranco trailer was activated inadvertently
24 causing the gates of the semi-trailer to release the subject load of gravel on the highway and was
25 defective in part or in whole as designed by Defendant RMC Lamar Holdings, Inc. (fka Ranch
26 Manufacturing Company) (also known by the trade name and trademark Ranco).

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1 7. Cross-Defendant RMC Lamar Holdings, Inc. manufactured the subject Ranco
2 trailer in 2002 under the vehicle brand Ranco with vehicle identification number
3 1R9BP45082L008431 Idaho Plate #TE3528.

4 8. Cross-Claimant MDB Trucking, LLC was the last purchaser and end user of the
5 subject Ranco trailer.

6 9. On or about July 7, 2014, the Ranco trailer that left Cross-Defendant's control as
7 designed, assembled and manufactured by the Cross-Defendant was unreasonably dangerous and
8 defective in one or more of the following respects:

9 a. The semi-trailer was designed, assembled, and manufactured and/or
10 configured in such a manner that the Versa solenoid valve would activate inadvertently allowing
11 the gates to open and release the load carried by the trailer; and,

12 b. That the Ranco trailer was designed, assembled, manufactured, and/or
13 configured in such a manner that the Versa Valve was not equipped with a safety lock to prevent
14 inadvertent activation allowing the gates to open.

15 c. That Versa Valve manufactured an alternate safer design available in 2002
16 including a manual lock system.

17 10. On or about July 7, 2014, that Versa Valve solenoid control as a component to the
18 Ranco trailer was unreasonably dangerous and defective in one or more of the following respects:

19 a. The Versa Valve solenoid valve would activate inadvertently allowing the
20 gates to open and release the load carried by the trailer; and,

21 b. Versa Products Company, Inc. had a safer design available in the stream of
22 commerce on or before 2002 which employed a manual lock safety design that should have been
23 provided to its end use customers in lieu of the Versa Valve installed both at the time of the
24 manufacturer in 2002 and/or as a standard maintenance replacement in 2013.

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1 11. That to the extent Plaintiffs were injured as a proximate result of the unreasonably
2 dangerous conditions and defects at the time of manufacturing or negligent design, such is a
3 direct and proximate result of the negligence of the Cross-Defendants; and, any negligence that
4 exists as alleged by Plaintiffs is expressly denied. Cross-Defendants were actively negligent and
5 Cross-Claimant was passively negligent.

6 12. That Cross-Defendants breached a duty of care owed to the Cross-Claimant and
7 Cross-Defendants are required to indemnify and hold Cross-Claimant harmless with respect to all
8 the allegations and liabilities set forth in the Complaint filed in this matter.

9 13. Cross-Claimant has placed Cross-Defendant RMC Lamar Holdings, Inc. on notice
10 of the claims pending in this matter prior to initiation of litigation.

11 14. That Cross-Claimant has been required to expend costs and attorneys' fees in
12 defending the negligence claims in the First Amended Complaint on file herein and for
13 prosecuting the instant Cross-Complaint.

14 **FIRST CLAIM FOR RELIEF**

15 **(Implied Indemnification as to RMC LAMAR)**

16 15. Cross-Claimant repeats and realleges each and every allegation contained in
17 paragraphs 1-14 above as if more fully set forth herein.

18 16. Cross-Claimant is therefore entitled to complete indemnity against RMC Lamar
19 Holdings, Inc. with respect to all allegations or liabilities set forth in the First Amended
20 Complaint on file in this matter.

21 17. That Cross-Claimant is therefore entitled to total costs and fees expended in the
22 defense of the claims of negligence in this matter as well as prosecution of this Cross-Complaint.

23 **SECOND CLAIM FOR RELIEF**

24 **(Contribution as to RMC LAMAR)**

25 18. Cross-Claimant repeats and realleges each and every allegation contained in
26 paragraphs 1-17 above as if more fully set forth herein.

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1 19. Cross-Claimant is entitled to contribution from Cross-Defendant RMC Lamar
2 with respect to any settlement, judgment, awards, or any other type of resolution of the claims
3 brought forward by the Plaintiffs in their First Amended Complaint on file herein.

4 20. Cross-Claimant is therefore entitled to all costs and fees expended in the defense
5 of claims of negligence in this matter as well as prosecution of the Cross-Complaint.

6 **THIRD CLAIM FOR RELIEF**

7 **(Implied Indemnification as to VERSA)**

8 21. Cross-Claimant repeats and realleges each and every allegation contained in
9 paragraphs 1- 20 above as if more fully set forth herein.

10 22. Cross-Claimant is entitled to complete indemnity against Versa Products
11 Company, Inc. with respect to all allegations or liabilities set forth in the First Amended
12 Complaint.

13 23. That Cross-Claimant is therefore entitled to all costs and fees expended in the
14 defense of claims of negligence in this matter as well as prosecution of the Cross-Complaint.

15 **FOURTH CLAIM FOR RELIEF**

16 **(Contribution as to VERSA)**

17 24. Cross-Claimant repeats and realleges each and every allegation contained in
18 paragraphs 1-23 above as if more fully set forth herein.

19 25. Cross-Claimant is entitled to contribution from Cross-Defendant Versa Products,
20 Company, Inc. with respect to any settlement, judgment, awards, or any other type of resolution
21 of the claims brought forward by the Plaintiffs in their First Amended Complaint on file herein.

22 26. Cross-Claimant is entitled to all costs and fees expended in the defense of the
23 claims for negligence in this matter as well as prosecution of the Cross-Complaint.

24 WHEREFORE, Cross-Claimant demands judgment against Cross-Defendants as follows:

25 1. For implied indemnification with respect to all negligence claims brought against
26 Cross-Claimant in this matter;

27 2. For contribution with respect to all negligence claims brought against Cross-
28 Claimant in this matter;

- 1 3. For attorneys' fees and costs expended in this matter; and
2 4. For such other and further relief as this Court deems just and proper in the
3 premises.

4 DATED this 15th day of June, 2016.

5 THORNDAL ARMSTRONG
6 DELK BALKENBUSH & EISINGER

7 By: 

8 Katherine F. Parks, Esq., State Bar No. 6227

9 Brian M. Brown, Esq., State Bar No. 5233

10 Thierry V. Barkley, Esq., State Bar No. 724

11 6590 S. McCarran Blvd., Suite B

12 Reno, Nevada 89509

13 Attorneys for Defendant/Third-Party Plaintiff

14 MDB TRUCKING, LLC

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned hereby affirms that the preceding document filed in above-entitled court does not contain the social security number of any person.

DATED this 15 day of June, 2016.

**THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER**

By: 

Katherine E. Parks, Esq., State Bar No. 6227

Brian M. Brown, Esq., State Bar No. 5233

Thierry V. Barkley, Esq., State Bar No. 724

6590 S. McCarran Blvd., Suite B

Reno, Nevada 89509

Attorneys for Defendant/Third-Party Plaintiff

MDB TRUCKING, LLC

THORNDAL ARMSTRONG
DELK BALKENBUSH
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6590 S. McCarran, Suite B
Reno, Nevada 89509
(775) 786-2882

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal Armstrong Delk
3 Balkenbush & Eisinger, and that on this date I caused the foregoing MDB TRUCKING, LLC'S
4 CROSS-CLAIM AGAINST RMC LAMAR HOLDINGS, INC. (fka RANCH
5 MANUFACTURING COMPANY) AND VERSA PRODUCTS COMPANY, INC. to be
6 served on all parties to this action by:

7 _____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the
8 United States mail at Reno, Nevada.

9 ☒ Second Judicial District Court Eflex ECF (Electronic Case Filing)

10 _____ hand delivery

11 _____ electronic means (fax, electronic mail, etc.)

12 _____ Federal Express/UPS or other overnight delivery fully addressed as follows:

13
14 Joseph S. Bradley, Esq.
15 Bradley, Drendel & Jeanney
16 P.O. Box 1987
Reno, NV 89505
Attorney for Plaintiffs

17
18 Matthew C. Addison, Esq.
19 Jessica L. Woelfel, Esq.
McDonald Carano Wilson LLP
100 W. Liberty Street, Tenth Floor
Reno, NV 89501
Defendant RMC Lamar Holdings

20
21 Josh Cole Aicklen
22 David B. Avakian
Lewis Brisbois Bisgaard & Smith, LLP
23 6385 S. Rainbow Blvd., Suite 600
Las Vegas, NV 89118
24 *Defendant Versa Products Co., Inc.*

25 DATED this 15 day of June, 2016.

26
27 THORNDAL ARMSTRONG
DELK BALKENBUSH
& EISINGER
6590 S. McCarran, Suite B
Reno, Nevada 89519
(775) 786-2482

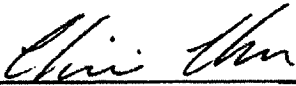
28 
An employee of Thorndal Armstrong
Delk Balkenbush & Eisinger

EXHIBIT 2

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6 Plaintiff,

7 vs.

Defendants.

15 /

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19 DEPOSITION OF SCOTT ALLEN PALMER

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24 REPORTED BY: CHRISTINA AMUNDSON

25 CCR #641 (Nevada)
CSR #11883 (California)

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Page 2

A P P E A R A N C E S

FOR PLAINTIFFS: (Via telephone)

BRADLEY DRENDEL & JEANNEY

BY: SARAH M. QUIGLEY, ATTORNEY AT LAW

6900 South McCarran Boulevard, Suite 2000

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775.775.525.9164

FOR MDB TRUCKING AND KOSKI:

THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER

BY: BRIAN M. BROWN, ATTORNEY AT LAW

THIERRY BARKLEY, ATTORNEY AT LAW

6590 South McCarran Boulevard, Suite B

Reno, NV 89509

775.786.2882

FOR DRAGON AND MODERN GROUP: (Via telephone)

GREENBERG TRAUERIG, LLP

BY: JACOB D. BUNDICK, ATTORNEY AT LAW

3773 Howard Hughes Parkway, Suite 400 N

Las Vegas, NV 89169

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Page 4

I N D E X

Volume III, Deposition of SCOT ALLEN PALMER

EXAMINATION BY

Ms. Woelfel

Mr. Bundick

Ms. Shreve

E X H I B I T S

EXH.

NO.

DESCRIPTION

PAGE

Exhibit 21

Work Orders, MDB 196

11

Exhibit 22

Work Order, MDB 356

20

Exhibit 23

Work Orders, MDB 161

23

Exhibit 24

Work Orders, MDB 031

28

Exhibit 25

ENGs Invoice

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Exhibit 26

MDB Dropped Load of Sand

46

7/7/14

Exhibit 27

Record of Annual Inspection

48

Exhibit 28

Driver/Vehicle Examination

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Report

Exhibit 29

Driver/Vehicle Examination

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Report

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Page 3

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A P P E A R A N C E S (Continued)

FOR RMC LAMAR HOLDINGS, INC:

McDONALD CARANO WILSON LLP

BY: JESSICA L. WOELFEL, ATTORNEY AT LAW

100 West Liberty Street, Tenth Floor

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775.788.2000

FOR VERSA PRODUCTS:

LEWIS BRISBOIS BISGAARD & SMITH LLP

BY: PAIGE S. SHREVE, ATTORNEY AT LAW

6385 South Rainbow Boulevard, Suite 600

Las Vegas, NV 89118

702.693.4317

ALSO PRESENT: Daniel Koski, Bill Carder

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Page 5

BE IT REMEMBERED that on Wednesday, March 8,

2017, commencing at 9:30 a.m. of said day, at

McDonald Carano Wilson LLP, 100 West Liberty Street,

Tenth Floor, Reno, Nevada, before me, CHRISTINA M.

AMUNDSON, a Certified Shorthand Reporter, personally

appeared SCOT ALLEN PALMER.

SCOT ALLEN PALMER,

called as a witness in the matter herein,

who, having been previously duly sworn, was examined

and testified as follows:

E X A M I N A T I O N

BY MS. WOELFEL:

Q Good morning, Scott.

A Good morning.

Q All right. My name is Jessica Woelfel and

we'll continue on from yesterday.

A Okay.

Q And you understand that you are still under

oath?

A Yes.

Q And that the same admonitions apply that

have applied over the course of the last two days?

A Yes.

Q Okay. And if you need a break at any time,

<p style="text-align: right;">Page 6</p> <p>1 just let me know, okay?</p> <p>2 A Okay.</p> <p>3 Q Okay. After we finished yesterday, did you</p> <p>4 go and search for any other documents at MDB?</p> <p>5 A No, I did not. I didn't have a chance. By</p> <p>6 the time I got my work done yesterday, it was pretty</p> <p>7 late.</p> <p>8 Q Okay. Did you have an opportunity to speak</p> <p>9 with anybody other than your attorneys about the</p> <p>10 deposition yesterday?</p> <p>11 A No.</p> <p>12 Q Or this morning?</p> <p>13 A No.</p> <p>14 Q Okay. So yesterday we were talking about</p> <p>15 gate chains underneath belly dumpers.</p> <p>16 Do you recall that conversation?</p> <p>17 A Yes.</p> <p>18 Q Okay. I want to ask you about a similar</p> <p>19 device. Are you aware of a pinning system that can</p> <p>20 be on belly dumpers or other types of dump trucks?</p> <p>21 A Yes.</p> <p>22 Q Do the lead trailers that MDB uses utilize</p> <p>23 a pinning system?</p> <p>24 A Yes, they do.</p> <p>25 Q Okay. And so was Trailer No. 6773</p>	<p style="text-align: right;">Page 8</p> <p>1 objection as to vague and foundation.</p> <p>2 BY MS. WOELFEL:</p> <p>3 Q Is the pinning device utilized in the same</p> <p>4 manner as the gate chains where it can control the</p> <p>5 size of the opening on a belly dumper?</p> <p>6 A Yes.</p> <p>7 Q I'm gonna go back to Exhibit 20.</p> <p>8 Do you have the original exhibits in front</p> <p>9 of you, by chance? So if you go to Exhibit 20 at</p> <p>10 the second page, which is Bates-labeled MDB 240 --</p> <p>11 A Okay.</p> <p>12 Q We talked about this document a little bit</p> <p>13 yesterday. I just wanted to get a little more</p> <p>14 detail from you. Under the "Work done" portion it</p> <p>15 says -- just to lay foundation, this is dated</p> <p>16 August 2nd, 2013, for Trailer No. 6775.</p> <p>17 Is that correct?</p> <p>18 A Yes.</p> <p>19 Q Okay. And this was the investigation of</p> <p>20 the unintentional gate opening that occurred in July</p> <p>21 of 2013. Is that correct?</p> <p>22 A Yes.</p> <p>23 Q Okay. And the work that you did is listed</p> <p>24 under -- or that someone at MDB did is listed under</p> <p>25 the work done. And one of the items listed says</p>
<p style="text-align: right;">Page 7</p> <p>1 utilizing a pinning system?</p> <p>2 A Yes, it does. Yes.</p> <p>3 Q Did it have one in July of 2013?</p> <p>4 A Yes.</p> <p>5 Q And did it have one in July of 2014?</p> <p>6 A Yes.</p> <p>7 Q And is it MDB's policy that the pinning</p> <p>8 system is activated on the -- I guess the smallest</p> <p>9 pin lock when MDB drivers are pulling that trailer?</p> <p>10 A No.</p> <p>11 Q When you drive a truck and pull a trailer</p> <p>12 that has a pinning system, do you have the pinning</p> <p>13 system locked in to prevent opening while you are</p> <p>14 pulling a trailer?</p> <p>15 A No.</p> <p>16 Q Why not?</p> <p>17 A I don't think that's what it was designed</p> <p>18 for.</p> <p>19 Q Would you agree that if you were to drive</p> <p>20 with a pinning system that it would prevent an</p> <p>21 inadvertent opening of a belly dumper?</p> <p>22 A Am I aware of that --</p> <p>23 Q Would you agree that --</p> <p>24 A Oh, yes, I would.</p> <p>25 MR. BROWN: I'm going to make a late</p>	<p style="text-align: right;">Page 9</p> <p>1 "Isolating dump coil circuit, removed coil hose."</p> <p>2 You know what, why don't you just read that for me</p> <p>3 because I'm having trouble reading the second</p> <p>4 sentence under "Work done."</p> <p>5 A It appears that it reads as "Isolating dump</p> <p>6 coil circuit, removed coil case ground from</p> <p>7 circuit."</p> <p>8 Q Can you tell me what that means? Can you</p> <p>9 describe for me the work that was done to isolate</p> <p>10 the dump coil circuit and then what specifically was</p> <p>11 done to remove the coil case?</p> <p>12 A Coil case ground.</p> <p>13 Q Ground. Yes. Thank you.</p> <p>14 A I cannot say for certain what he did.</p> <p>15 Q Do you know why this particular work was</p> <p>16 done?</p> <p>17 A Well, it was done in conjunction with</p> <p>18 preventing it from -- the gate from opening</p> <p>19 unintentionally.</p> <p>20 I believe Mr. Bigby removed the wire that</p> <p>21 goes directly from the case ground to the trailer --</p> <p>22 or I think he isolated it from the trailer and wired</p> <p>23 it directly to -- actually, I'm not sure what he</p> <p>24 did.</p> <p>25 Q Okay.</p>

<p style="text-align: right;">Page 10</p> <p>1 A I can't really say for sure.</p> <p>2 Q You didn't participate in these repairs.</p> <p>3 A No. I wasn't -- I actually didn't start</p> <p>4 work for them until about a week later.</p> <p>5 Q Okay, fair enough. You can put that</p> <p>6 exhibit away. If you could grab Exhibit No. 5.</p> <p>7 A Okay.</p> <p>8 Q Exhibit 5 is a document -- I'm looking at</p> <p>9 the first page Bates-labeled MDB maintenance 000144</p> <p>10 and the equipment number listed is 6773 and the date</p> <p>11 completed is August 11th, 2013. Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And this would be the lead trailer that Mr.</p> <p>14 Koski was pulling in July of 2013. Is that correct?</p> <p>15 A Yes.</p> <p>16 Q Okay. And this is work that was performed</p> <p>17 by you. Is that correct?</p> <p>18 A That is correct.</p> <p>19 Q Okay. Under the notes it says "Pulled out</p> <p>20 unused wire from" -- what's that word?</p> <p>21 A "Loom."</p> <p>22 Q -- "from loom and dissected."</p> <p>23 Is that right?</p> <p>24 A Yes.</p> <p>25 Q So it says "Pulled out unused wire from</p>	<p style="text-align: right;">Page 12</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q Okay. And 6774 is the second trailer in</p> <p>4 the series of three trailers that we've been</p> <p>5 discussing. Is that correct?</p> <p>6 A Yes, that's correct.</p> <p>7 Q So the first work order at the bottom says</p> <p>8 "Performed by Pat." And the date of this work order</p> <p>9 looks to be July 21st, 2013, with a date completed</p> <p>10 of August 2nd, 2013. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q Do you know if this work order was put</p> <p>13 together after the July 2013 dump incident or</p> <p>14 before?</p> <p>15 A It would appear that it was done after.</p> <p>16 Q So would that suggest to you that the</p> <p>17 July 2013 inadvertent dump occurred before</p> <p>18 July 21st 2013?</p> <p>19 A No. I think it's July 31st.</p> <p>20 Q Oh, you think that says "July 31st"?</p> <p>21 A I would think so.</p> <p>22 Q That would make some sense.</p> <p>23 A Yes.</p> <p>24 Q Thank you for clarifying that. I'm having</p> <p>25 trouble reading some of this writing.</p>
<p style="text-align: right;">Page 11</p> <p>1 loom and disconnected."</p> <p>2 Can you describe for me which wire you were</p> <p>3 pulling out that was unused and from where?</p> <p>4 A Oh, I can't explain where the wire went.</p> <p>5 All I know is when I pulled the 7-way receptacle out</p> <p>6 of the front of the trailer there was an unused wire</p> <p>7 in the loom that didn't go anywhere. It didn't go</p> <p>8 to the solenoid, it didn't go anywhere on the</p> <p>9 trailer, so I just pulled it out and got rid of it.</p> <p>10 Q Do you know what that unused wire was in</p> <p>11 there for?</p> <p>12 A No idea.</p> <p>13 Q Why did you pull it out?</p> <p>14 A Well, there's no reason to have it in there</p> <p>15 if it's not connected to anything.</p> <p>16 Q Was it causing any issue with the trailer?</p> <p>17 A No.</p> <p>18 Q I'm going to hand you a document I'll mark</p> <p>19 as Exhibit 21.</p> <p>20 (Deposition Exhibit 21 marked for</p> <p>21 identification.)</p> <p>22 BY MS. WOELFEL:</p> <p>23 Q These are work orders that are</p> <p>24 Bates-labeled MDB 196197, 204, 205, and 206, and</p> <p>25 they are each for Equipment No. 6774.</p>	<p style="text-align: right;">Page 13</p> <p>1 A I am too but I don't think -- I think it</p> <p>2 happened July 31st is the date. Yeah.</p> <p>3 Q Okay. So your reading on this work order</p> <p>4 is the date of the work order which was prepared by</p> <p>5 Pat is July 31st, 2013.</p> <p>6 A Yes.</p> <p>7 Q Okay, thank you. Can you tell me what this</p> <p>8 work order is for?</p> <p>9 A Okay. He rewired the dump valve circuit</p> <p>10 and this sort of is similar to what he did on the</p> <p>11 prior work order for 6775, about removing the coil</p> <p>12 case ground, and this kind of jars my memory of what</p> <p>13 he did.</p> <p>14 What he did was removed the ground wire</p> <p>15 from the coil that grounds to the trailer, so that</p> <p>16 the wires going to the trailer from the truck go</p> <p>17 directly from the truck straight to the valve</p> <p>18 without having any connection to the trailer --</p> <p>19 Q Okay.</p> <p>20 A -- because --</p> <p>21 Q Go ahead. Why did he do that?</p> <p>22 A He did it to prevent back-feeding through</p> <p>23 the ground. And on a Ranco trailer -- these</p> <p>24 particular Ranco trailers, they are not grounded</p> <p>25 through the trailer. There is no ground.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q Okay.</p> <p>2 A There is no ground from the truck directly</p> <p>3 to the trailer. They're all grounded through the</p> <p>4 wiring system.</p> <p>5 Q Okay. So this indicates a complete -- or</p> <p>6 this describes the complete rewiring job that was</p> <p>7 done on 6774 after -- or is this a portion of that?</p> <p>8 A Just a portion of that. Basically he just</p> <p>9 made sure that the wires, the 4-way wire, which is</p> <p>10 the wire that comes from the truck to the trailer,</p> <p>11 went directly to the Versa valve and didn't travel</p> <p>12 through the grounding, you know, the trailer body</p> <p>13 itself.</p> <p>14 Q Okay. Was there any indication that there</p> <p>15 had been some error or defect with the wiring that</p> <p>16 had occurred that suggested that Pat should remove</p> <p>17 and replace this wiring?</p> <p>18 A No. I think he did this at the same time</p> <p>19 he did 6774 and 6775 as a result of the inadvertent</p> <p>20 dumping to make sure that both trailers were wired</p> <p>21 correctly --</p> <p>22 Q Okay.</p> <p>23 A -- that --</p> <p>24 Q Go ahead. I apologize for interrupting</p> <p>25 you.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q Okay. Next page, MDB 197, this is for</p> <p>2 Equipment No. 6775, 6774 -- actually, why don't you</p> <p>3 tell me what equipment numbers this is for.</p> <p>4 A Okay. This is a work order completed on</p> <p>5 September 15th, 2013, and it's for the set of</p> <p>6 trailers, 6773, 6774, 6775.</p> <p>7 Q Okay. Can you describe for me what this</p> <p>8 work order is for?</p> <p>9 A Yes. I dropped a set of trailers in and I</p> <p>10 did a normal inspect and lube of all three trailers.</p> <p>11 So I inspected the trailers, lubed it, and at the</p> <p>12 same time I noticed that there were some lights that</p> <p>13 were possibly unplugged or -- the plugs weren't</p> <p>14 making good contact so I repaired those.</p> <p>15 There was ABS brake wire that was -- looked</p> <p>16 like the wire tie broke on it so I tied that up.</p> <p>17 And then also I replaced some zerk fittings on the</p> <p>18 back axle of 6775, three zerk fittings.</p> <p>19 Q Okay. If we can go to the next page, MDB</p> <p>20 204, can you tell me what dates this work was</p> <p>21 performed and on what piece of equipment?</p> <p>22 A This was performed February 13th, 2014,</p> <p>23 on Trailer 6774 and Pat worked on it. It says,</p> <p>24 "Troubleshoot in-op lights on trailer." So the</p> <p>25 driver said there was lights that were -- one</p>
<p style="text-align: right;">Page 15</p> <p>1 A There was no reason to have the coil ground</p> <p>2 to the trailer considering that the trailer did not</p> <p>3 get a ground from the truck so, therefore, it's sort</p> <p>4 of not being used as a ground so he removed it, the</p> <p>5 circuit.</p> <p>6 Q Okay. Did MDB maintain any of the wires or</p> <p>7 coil case grounds that they removed from this</p> <p>8 trailer?</p> <p>9 A No.</p> <p>10 Q Did they throw them away?</p> <p>11 A Yes.</p> <p>12 Q Did you do any testing on them at all after</p> <p>13 they were removed?</p> <p>14 A No. Basically he didn't really remove --</p> <p>15 actually physically remove anything from the Versa</p> <p>16 valve. He actually just took the wire that was</p> <p>17 coming from the coil that went to the trailer and</p> <p>18 disconnected -- there's two wires, one that goes</p> <p>19 directly and he just wired them together into the</p> <p>20 grounding system of the truck.</p> <p>21 Q Okay. I understand.</p> <p>22 A He didn't actually remove part of the</p> <p>23 valve.</p> <p>24 Q Just rewired?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 17</p> <p>1 particular light wasn't working so he found -- Pat</p> <p>2 found the male plug at the hitch broken, replaced</p> <p>3 the plug and tested. So on the rear of 6774 he put</p> <p>4 in a 7-way plug. Actually, it's kinda hard -- I</p> <p>5 think he actually did it on the front of 6774.</p> <p>6 Q Okay.</p> <p>7 A I'm sorry. The front, a 7-way plug on the</p> <p>8 front. I think he's talking about the hitch on the</p> <p>9 back of 6773.</p> <p>10 Q Okay. Go to the next page. MDB 205, and</p> <p>11 can you tell me the date of this work order, the</p> <p>12 equipment number, and what was occurring.</p> <p>13 A This is February 15th, 2014, Trailer 6774,</p> <p>14 and he replaced the rear 4-way socket and plug.</p> <p>15 Q Why?</p> <p>16 A It probably wasn't making good contact so</p> <p>17 there was not -- it wasn't -- we were not able to</p> <p>18 dump 6775 with the switch from inside the cab, so he</p> <p>19 replaced the 4-way socket and plug.</p> <p>20 Q Okay.</p> <p>21 A So its 4-way socket is on the rear of 6775,</p> <p>22 I believe. He doesn't make a note of where the plug</p> <p>23 is.</p> <p>24 Q But you would need that in order to --</p> <p>25 A Yeah. The plug is probably on the front of</p>

<p style="text-align: right;">Page 18</p> <p>1 6775. he doesn't designate which.</p> <p>2 Q Okay. And there's no name on the bottom of</p> <p>3 this sheet indicating who performed the work but</p> <p>4 you're presuming that it was Pat?</p> <p>5 A Oh, yeah, it was Pat. Yes.</p> <p>6 Q Okay. Go to MDB 206, the next page. This</p> <p>7 looks like it's a work order dated March 1, 2014.</p> <p>8 Is that right?</p> <p>9 A Yes.</p> <p>10 Q For 6774.</p> <p>11 A Yes.</p> <p>12 Q And the work order is by you and it looks</p> <p>13 like the work is performed by you. Is that correct?</p> <p>14 A Yes.</p> <p>15 Q And here can you tell me what is indicated</p> <p>16 on this work order?</p> <p>17 A The left rear subframe over the rear axle</p> <p>18 on the left side was cracked from damage caused by a</p> <p>19 broken spring.</p> <p>20 Q Okay. So the frame of the trailer was</p> <p>21 cracked?</p> <p>22 A The subframe.</p> <p>23 Q Okay. And it looks like you cut out the</p> <p>24 damaged area of the frame.</p> <p>25 A Yes. Had a new piece fabricated and welded</p>	<p style="text-align: right;">Page 20</p> <p>1 the trailer. It's not in the subframe underneath</p> <p>2 the trailer. So we would have -- I would have taken</p> <p>3 precautions to pull all the hoses out for the brakes</p> <p>4 and get them out of the way so that welding wouldn't</p> <p>5 cause damage to those, but there's no actual trailer</p> <p>6 wiring in that location.</p> <p>7 Q How far away is the trailer wiring from the</p> <p>8 location you were working on?</p> <p>9 A Oh, probably a foot away, and it's enclosed</p> <p>10 in the side frame rail of the trailer.</p> <p>11 Q Okay.</p> <p>12 A In fact, I think it actually is on the</p> <p>13 opposite side of the trailer in that particular</p> <p>14 instance.</p> <p>15 Q All right. I'm going to mark this next.</p> <p>16 (Deposition Exhibit 22 marked for</p> <p>17 identification.)</p> <p>18 BY MS. WOELFEL:</p> <p>19 Q This is a document Bates-labeled MDB 356</p> <p>20 and this is -- can you tell me the date of this?</p> <p>21 A August 5th, 2014.</p> <p>22 Q Can you tell me the piece of equipment that</p> <p>23 was being worked on?</p> <p>24 A It looks like truck 5693.</p> <p>25 Q Is that the truck that you drove?</p>
<p style="text-align: right;">Page 19</p> <p>1 it back into place. So the spring -- we had a</p> <p>2 spring break, the trailer would now fall down on the</p> <p>3 top of the spring, so the U-bolt caused a dent into</p> <p>4 the bottom of the frame, which cracked it, so we cut</p> <p>5 it out and replaced it.</p> <p>6 Q How large of an area did you cut out? How</p> <p>7 large of an area was damaged?</p> <p>8 A The actual damage area was only a few</p> <p>9 inches, a couple inches wide. But the piece I</p> <p>10 fabricated and put in there was probably 6 or</p> <p>11 8 inches wide by 6 or 8 inches high.</p> <p>12 Q Okay. Did you pull the main wiring harness</p> <p>13 on this trailer prior to repairing?</p> <p>14 A No. There's no wires in that location.</p> <p>15 Q Okay. Can you tell me exactly where the</p> <p>16 location is? I'm not sure if I have a photo. I'm</p> <p>17 trying to get a sense of where precisely the</p> <p>18 location of this work was on this trailer of.</p> <p>19 A Okay. It's on the rear of the trailer on</p> <p>20 the left side about a foot in from the side, so it's</p> <p>21 actually the subframe. It's not the actual frame of</p> <p>22 the trailer. It's the subframe that the axle and</p> <p>23 the springs bolt to.</p> <p>24 Q Okay.</p> <p>25 A So the wiring is actually in the frame of</p>	<p style="text-align: right;">Page 21</p> <p>1 A Yes.</p> <p>2 Q Okay. And this is a work order that you</p> <p>3 filled out?</p> <p>4 A No. This is a work order that Pat filled</p> <p>5 out. It was just -- when it says "By Scott" at the</p> <p>6 top, that means I am the one that brought it to his</p> <p>7 attention about the repairs.</p> <p>8 Q Okay. And why did the truck need to be</p> <p>9 repaired here?</p> <p>10 A He says that he troubleshooted intermittent</p> <p>11 first trailer gate function.</p> <p>12 Q What does that mean? Does that mean that</p> <p>13 the gate is not opening or closing properly?</p> <p>14 A I would -- before I read what he actually</p> <p>15 did to fix it, I would assume that that means that</p> <p>16 the driver's unable to operate the gate with the</p> <p>17 switch from inside the truck intermittently, so</p> <p>18 sometimes he could flip the switch and it would open</p> <p>19 and sometimes it wouldn't open.</p> <p>20 Q Do you have a recollection of the truck</p> <p>21 that you were driving having a switch problem in or</p> <p>22 around August of 2014? This is shortly after -- a</p> <p>23 month after your inadvertent dump of the sand truck.</p> <p>24 A I don't specifically remember this but it's</p> <p>25 not -- it's not uncommon.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q How often did you activate the dumping 2 mechanism from inside the truck?</p> <p>3 A How often did I?</p> <p>4 Q Yes. Because my recollection of your 5 testimony is that you would typically operate the 6 Versa valve manually.</p> <p>7 A Correct.</p> <p>8 Q So were there some instances where you 9 would operate it from inside the truck?</p> <p>10 A Yes, but not really in conjunction with 11 dumping it at the plant.</p> <p>12 Q What would it be in conjunction with?</p> <p>13 A Well, for instance, when we get back to the 14 yard sometimes you want to clean your trailers 15 out -- say you're gonna go haul gypsum or something 16 that you don't want any rock in and you're hauling 17 rock until you get back to the yard, you unpin your 18 gates, unpin all three gates and then you drive 19 through the yard.</p> <p>20 And then you would activate the 21 electrically as you're driving through the yard to 22 get any excess rock that might have been left over 23 in there out. So it's not something I typically do 24 when I'm dumping at the plant, but I would do it.</p> <p>25 And I also make sure my equipment's</p>	<p style="text-align: right;">Page 24</p> <p>1 work order?</p> <p>2 A Not necessarily.</p> <p>3 Q Okay.</p> <p>4 A Especially on a routine maintenance. He 5 might have filled it out in advance and handed it to 6 us and said, Go do this, and we just performed the 7 work.</p> <p>8 Q So this work order is indicative of one of 9 your routine maintenance checks on the trailers?</p> <p>10 A Yes, uh-huh.</p> <p>11 Q And would you and Pat typically do those 12 routine maintenance checks together?</p> <p>13 A Not always, not necessarily. Usually one 14 of us would be doing something else but sometimes we 15 would do it together.</p> <p>16 Q Next page, 170, can you tell me the date on 17 this work order and what it is for.</p> <p>18 A This is April 5th, 2014, on Equipment No. 19 6773, and this work was performed by Tracy and it's 20 a federal annual inspection.</p> <p>21 Q Okay. What does a federal annual 22 inspection involve? Can you describe what Tracy did 23 on this date in detail for me?</p> <p>24 A I actually believe that we do the -- well, 25 I don't believe it. We actually do do this as a</p>
<p style="text-align: right;">Page 23</p> <p>1 working, so whether I do it or not, I would still 2 check to make sure it's working. So I probably just 3 told him, Yeah, it's not working, so he went out and 4 put in a 4-way plug on the back of 5693.</p> <p>5 Q Okay. And this trailer had the manual 6 lockout that you had designed as of August 5th, 7 2014.</p> <p>8 A Yeah. Yes, it did.</p> <p>9 Q Okay.</p> <p>10 (Deposition Exhibit 23 marked for 11 identification.)</p> <p>12 BY MS. WOELFEL:</p> <p>13 Q Okay. This is a series of work orders 14 Bates-labeled MDB 161, 170, 176, and 186 for 15 Equipment No. 6773, and that would be the lead 16 trailer that Mr. Koski typically pulled.</p> <p>17 Is that correct?</p> <p>18 A That's correct.</p> <p>19 Q Okay. Can you tell me the date of the 20 first work order, MDB 161, and what this work order 21 is for.</p> <p>22 A August 24th, 2013, for Trailer No. 6773. 23 For some reason, this work order is made out by 24 Tracy and the work was performed by Pat and myself.</p> <p>25 Q Is it unusual that Tracy would fill out a</p>	<p style="text-align: right;">Page 25</p> <p>1 team, so we all go out and do it. But Tracy's 2 actually the lead guy on it so he's the one who 3 fills out the paperwork.</p> <p>4 Q When you say "we all go out and do it as a 5 team," who is on the team?</p> <p>6 A Myself and Pat.</p> <p>7 Q So you, Pat, and Tracy?</p> <p>8 A Sure, yeah.</p> <p>9 Q Do you do the annual inspections -- the 10 federal annual inspections for all of the trailers 11 on the same day?</p> <p>12 A No.</p> <p>13 Q Okay.</p> <p>14 A We do one -- annually whenever their 15 particular time comes up.</p> <p>16 Q Okay. And when that trailer's particular 17 time comes up, the three of you conduct that 18 inspection together.</p> <p>19 A Yes.</p> <p>20 Q Okay. So describe for me what you do in a 21 federal annual inspection.</p> <p>22 A Well, we actually have a federal annual 23 inspection report that we fill out that has all the 24 things you're required to check by law. So we do 25 all that, plus we check -- basically, it involves</p>

<p style="text-align: right;">Page 26</p> <p>1 checking lights, brakes, cracks in the trailer, 2 springs --</p> <p>3 Q Okay.</p> <p>4 A -- any safety issues that are related to 5 the trailer.</p> <p>6 Q Okay. And I see that this work order has a 7 total time on the bottom. It says a half.</p> <p>8 Does that indicate that the federal annual 9 inspection took approximately half an hour?</p> <p>10 A I would say -- I would assume so for one 11 trailer, yes.</p> <p>12 Q Do you check the wiring in your federal 13 annual inspection?</p> <p>14 A We check the function of the wiring system.</p> <p>15 Q Do you open up the plugs and look, you 16 know, for debris or corrosion to make sure the 17 connections are good?</p> <p>18 A We do where they plug in but we don't 19 actually physically remove the plugs from the 20 trailer. But we would unplug where one trailer 21 plugs to another trailer and check them, yes.</p> <p>22 Q Do you look at any of the hidden wiring?</p> <p>23 A No. The only time we would do that is if 24 we found a malfunction in the lights. Then we would 25 repair -- make the repairs.</p>	<p style="text-align: right;">Page 28</p> <p>1 or rear 4-way socket. On a lead trailer or middle 2 trailer there'd be a 4-way socket on the front and a 3 4-way socket on the back, so it's possible one of 4 these was for the front and one was for the rear.</p> <p>5 Q And each of those 4-way sockets that you 6 replaced you would have thrown away the old ones.</p> <p>7 A Yes.</p> <p>8 Q I think I have my last set of work orders 9 that we're going to go through, and I appreciate 10 your patience in walking through these with me. 11 Let's mark this as Exhibit 24.</p> <p>12 (Deposition Exhibit 24 marked for 13 identification.)</p> <p>14 BY MS. WOELFEL:</p> <p>15 Q All right. This is a series of work orders 16 Bates-labeled MDB 031, 073, 078, 081, 095, 101, 109, 17 119 and 155 and they all relate to Equipment No. 18 5694. Can you tell me what Equipment No. 5694 19 indicates?</p> <p>20 A Truck No. 5694 is MDB's truck that is a 21 2003 Peterbilt that was mainly operated by Daniel 22 Koski and it was operated by Dan Koski on the two 23 days that we had inadvertent dumps on the highway.</p> <p>24 Q Okay. And the first page, MDB 031, can you 25 tell me the date of this work order and what was</p>
<p style="text-align: right;">Page 27</p> <p>1 Q Okay. On to the next page, MDB 176, and 2 can you tell me the date and what was going on with 3 this work order.</p> <p>4 A Yes. This is August 5th, 2014, Trailer 5 6773. The trailer was inspected and lubed and 6 replaced the 4-way socket.</p> <p>7 Q Why did you need to replace the 4-way 8 socket?</p> <p>9 A They probably found that it was -- the pins 10 possibly were oxidized. I mean, I'm speculating.</p> <p>11 Q But that would be a typical reason why you 12 would replace a 4-way socket?</p> <p>13 A Yeah, or it could be loose. The pins could 14 be wore slightly.</p> <p>15 Q Okay. Next page, MDB 186. Same thing. If 16 you could tell me the date and what was occurring 17 here.</p> <p>18 A This is the date of December 18th, 2014, 19 Trailer 6773. The work was performed by myself and 20 I wrote down "Replace 4-way socket."</p> <p>21 Q And that would be probably the same reason 22 as you explained --</p> <p>23 A Yes. And, unfortunately, between these two 24 work orders it doesn't -- neither one of us 25 designated whether we were talking about the front</p>	<p style="text-align: right;">Page 29</p> <p>1 occurring here?</p> <p>2 A April 13th, 2013, is the date for 5694. 3 And the work order indicates that Tracy Shane would 4 have informed Pat that there was a repair issue on 5 5694 and Pat wrote down that he troubleshooted, "No 6 power at gate dump 4-way plug."</p> <p>7 Q What gate dump 4-way plug is this referring 8 to?</p> <p>9 A Okay. We're still talking about the same 10 4-way wire system that goes from the tractor all the 11 way through the trailers so we're talking about the 12 4-way plug, the 4-way sockets so it's all part of 13 the same system.</p> <p>14 What he's talking about in this particular 15 instance is the 4-way plug at the end of the 4-way 16 wire on the tractor itself before it plugs into the 17 first trailer 6773.</p> <p>18 Q Okay.</p> <p>19 A So he would have tested it with a test 20 light and found that with the dump switches in the 21 activated position would not be providing power to 22 the 4-way. So, in other words, it wouldn't be 23 providing power to the trailer when it was plugged 24 in.</p> <p>25 Q Okay. So when he activated the switches</p>

<p style="text-align: right;">Page 30</p> <p>1 from inside the cab, there was no power getting to 2 that first trailer.</p> <p>3 A Exactly.</p> <p>4 Q Okay. And what was the cause of the lack 5 of power?</p> <p>6 A Okay. He says he "found the switches wired 7 to light circuit."</p> <p>8 Q What's that mean?</p> <p>9 A I'm not sure.</p> <p>10 Q Okay. What's the next line say?</p> <p>11 A "Rewired switches to accessory." I can't 12 read that. "Wired ground to cab ground." Okay. I 13 understand that.</p> <p>14 Q What's that mean?</p> <p>15 A One of the wires -- so there's four wires 16 in the 4-way system. Three of the wires go to each 17 of the subsequent bottom of the trailers in the set 18 and one of the wires is a ground.</p> <p>19 So he took the wire that would come out of 20 the 4-way wire and wired it directly to the ground 21 inside the cab. I'm not sure why -- if it was not 22 grounded before, I'm not sure. It doesn't really 23 spell it out here. It says, "Also rewired 4-way 24 plug to incorporate third wire for triples." Okay.</p> <p>25 Q What does that mean?</p>	<p style="text-align: right;">Page 32</p> <p>1 a different manner so it worked.</p> <p>2 Q All right. Next page, MDB 073, can you 3 tell me the date of this work order and what work 4 was performed.</p> <p>5 A The date of the work order is July 26th, 6 2013, and it's for Equipment No. 5694.</p> <p>7 Q Okay.</p> <p>8 A And --</p> <p>9 Q What does that work order indicate was 10 occurring?</p> <p>11 A "Rewired gate switches," meaning the 12 switches that operate the bottom inside the cab of 13 the truck.</p> <p>14 Q And that would be the same wires that are 15 referenced on the April 13th work order?</p> <p>16 A Yes, uh-huh.</p> <p>17 Q That's a "yes"?</p> <p>18 A Yes.</p> <p>19 Q Thank you. Why did the gate switches need 20 to be rewired on this date?</p> <p>21 A This was following the first inadvertent 22 dumping of the material that Dan Koski had so, 23 apparently, that was actually July 26th. I still 24 don't -- are we still assuming we don't know the 25 exact date of that?</p>
<p style="text-align: right;">Page 31</p> <p>1 A So, apparently, at the time -- this might 2 have been prior to us operating that truck with the 3 set of triples --</p> <p>4 Q Okay.</p> <p>5 A -- so it's possible that --</p> <p>6 Q He was modifying it to work with a set of 7 triple trailers?</p> <p>8 A Instead of just a set of double trailers.</p> <p>9 Q So your reading of this is that MDB was 10 rewiring Truck No. 5694 so that it could pull a set 11 of triple belly dump trailers?</p> <p>12 A Right. That was after he repaired the wire 13 -- repaired the power issue.</p> <p>14 Q Okay. Do you know who drove Truck No. 5694 15 regularly before Mr. Koski was hired?</p> <p>16 A No.</p> <p>17 Q And the date of this work order is pretty 18 shortly after Mr. Koski was hired. Is that correct?</p> <p>19 A Yeah. Within 6 months.</p> <p>20 Q Okay.</p> <p>21 A So, apparently, the way I read that is when 22 we got the truck, whoever wired it initially or who 23 we got the truck from, the source of the power for 24 the switches was inadequate and he modified it so 25 that the source of the power came from the truck in</p>	<p style="text-align: right;">Page 33</p> <p>1 Q So when we were looking at some work orders 2 earlier you had indicated that you thought --</p> <p>3 A Well, I indicated it said "July 31st" but 4 that doesn't mean that was the date it happened. 5 I'm just assuming that it was right around the end 6 of the month.</p> <p>7 Q Okay. So as you look at this work order 8 today, MDB 073, it's your belief that this work 9 order occurred -- or this work order was for work 10 that occurred after the inadvertent dump in July of 11 2013?</p> <p>12 A Yes, might have been the same day.</p> <p>13 Q Are you certain that this rewiring work was 14 performed after the dump or could it have been 15 performed before?</p> <p>16 A I'm -- I'm certain that it happened 17 afterwards and that was the reason that they did 18 this.</p> <p>19 Q Were you working at MDB on July 26th, 2013?</p> <p>20 A No.</p> <p>21 Q Can you describe for me what work was 22 performed here?</p> <p>23 A Pat installed a master switch in the cab of 24 the truck and then ran the power and the ground to 25 the batteries as the source for the switches for the</p>

<p style="text-align: right;">Page 34</p> <p>1 bottom dump trailers.</p> <p>2 So, now, the source of the power, the</p> <p>3 ground and the positive, have to go through the</p> <p>4 master switch so the master switch has to be on in</p> <p>5 order to provide power now to the three subsequent</p> <p>6 dump switches.</p> <p>7 Q Okay.</p> <p>8 A And I believe -- and I do know for sure</p> <p>9 that's why they did that, because that's one of the</p> <p>10 first things they said that they did.</p> <p>11 Q Was install a master switch?</p> <p>12 A Yeah. I don't think -- yeah. Yes. That</p> <p>13 is what they did, yes.</p> <p>14 Q Okay. And there was also the red covers</p> <p>15 over the toggle switches that were installed as</p> <p>16 well. Is that correct?</p> <p>17 A Yeah. Over the three dump switches that</p> <p>18 originally had the covers, and then the master</p> <p>19 switch also has a cover so now there's four switches</p> <p>20 with covers.</p> <p>21 Q Okay. So the covers were there in July of</p> <p>22 2013.</p> <p>23 A For the three switches.</p> <p>24 Q Okay, thank you. Next page. This is MDB</p> <p>25 078. Can you tell me the date of this work order</p>	<p style="text-align: right;">Page 36</p> <p>1 ground from the truck or through the trailers, it</p> <p>2 makes the taillights and the marker lights flash</p> <p>3 with the flashers. They sorta dim at the same time</p> <p>4 that the turn signals flash and that indicates a</p> <p>5 poor ground.</p> <p>6 So he found there was a poor ground at the</p> <p>7 pogo stick at the 7-way plug and he replaced the</p> <p>8 7-way socket and the plug.</p> <p>9 Q Okay. Next page, MDB 081, can you tell me</p> <p>10 the date this work was completed and what was going</p> <p>11 on in this work order.</p> <p>12 A Okay. This is September -- it looks like</p> <p>13 September 15th, 2013, for Truck 5694, and this was</p> <p>14 performed by myself. And at this time it looks like</p> <p>15 the truck came in for normal inspection and during</p> <p>16 that time I found a few things wrong with the truck.</p> <p>17 So this time we replaced the -- I replaced</p> <p>18 the 7-way plug on the end of the cord going to the</p> <p>19 trailer, so that's actually on the other end of the</p> <p>20 cord that Pat Bigby would have just replaced a month</p> <p>21 before. It's on the other end of the cord.</p> <p>22 So I put a new 7-way on, replaced the</p> <p>23 pigtail on the left backup light on the back of the</p> <p>24 trailer -- back of the truck/tractor. Sorry.</p> <p>25 Adjusted the air suspension to proper height.</p>
<p style="text-align: right;">Page 35</p> <p>1 and what this was for?</p> <p>2 A This is on August 19th, 2013, for Truck No.</p> <p>3 5694.</p> <p>4 Q That's the date of completion of the work</p> <p>5 order, correct?</p> <p>6 A Yes.</p> <p>7 Q And the work order is dated August 17th,</p> <p>8 2013.</p> <p>9 A I'm not sure. It could be August 19th.</p> <p>10 Q It's hard to tell.</p> <p>11 A I can't imagine that he would take two days</p> <p>12 to get around to working on it.</p> <p>13 Q Okay.</p> <p>14 A Usually worked on it right away.</p> <p>15 Q Okay. And go ahead and describe for me</p> <p>16 what was going on here.</p> <p>17 A Unfortunately, it doesn't tell me which</p> <p>18 trailers he was pulling that day but I'm assuming</p> <p>19 that we can make the assumption that he was pulling</p> <p>20 the triples. It really doesn't matter which</p> <p>21 trailers he was pulling.</p> <p>22 But he's troubleshooting the "trailer</p> <p>23 lights flashing, poor ground," which means that if</p> <p>24 you turn your clearance lights, taillights on and</p> <p>25 then turn your 4-way flashers and you have a poor</p>	<p style="text-align: right;">Page 37</p> <p>1 Placed the pigtail on the right backup light and</p> <p>2 both stop turn tail lamps. Replace the license</p> <p>3 plate light.</p> <p>4 And then the air conditioning was not</p> <p>5 blowing properly so I pulled out the H -- the heater</p> <p>6 and air conditioning filter, blew it out, put it</p> <p>7 back in and then made a note that we actually needed</p> <p>8 to do a complete disassembly and clean -- and the</p> <p>9 evaporator and the heater core needs to be cleaned.</p> <p>10 Also removed the outside temperature gauge and took</p> <p>11 that in for warranty.</p> <p>12 Q Was this truck out of service for a while</p> <p>13 after this particular work order or did it go right</p> <p>14 back into service?</p> <p>15 A It went back into work. Everything was</p> <p>16 fixed properly.</p> <p>17 Q It seems like there was a lot of work on</p> <p>18 this truck on this day.</p> <p>19 A Well, it seems like it's a lot of work but</p> <p>20 it's only an hour or two worth of work. It's a</p> <p>21 bunch of miscellaneous housekeeping-type work.</p> <p>22 Q Okay. Next work order is MDB 095. Want to</p> <p>23 tell me the date completed and describe what was</p> <p>24 occurring here.</p> <p>25 A This is on October 20th, 2013, Truck 5694.</p>

<p style="text-align: right;">Page 38</p> <p>1 This work order -- this work was performed by 2 myself. And I replaced the engine brake switch, the 3 on/off switch and also installed a double-pull 4 single-throw switch to disconnect the ground and hot 5 from 4-way.</p> <p>6 Q On the bottom notes it says "Replacing 7 master switch with DPST switch." What is that?</p> <p>8 A Double-pull single-throw.</p> <p>9 Q And "to isolate" -- what's that word?</p> <p>10 A "Isolate ground from 4-way wire."</p> <p>11 Q Why don't you read me the entire sentence 12 under "Notes."</p> <p>13 A Okay. "Replace master switch with 14 double-pull single-throw switch to isolate ground 15 from 4-way when off. Does the same thing as 16 unplugging 4-way cord. Much easier."</p> <p>17 Q Is that -- why would you do that?</p> <p>18 A Why would I rewire it?</p> <p>19 Q Yeah.</p> <p>20 A Just another one of our continuing ideas of 21 trying to make sure that we don't have any kind of 22 electrical problem.</p> <p>23 Q Okay. And was this an MDB standard? Did 24 you do this type of rewiring on all of the trucks?</p> <p>25 A No. The only reason I did that is because</p>	<p style="text-align: right;">Page 40</p> <p>1 were performed every 10,000 miles.</p> <p>2 Q It's probably practically every other day 3 with the way you guys drive.</p> <p>4 A Yeah, right.</p> <p>5 Q And it looks like you also replaced a 4-way 6 socket.</p> <p>7 A Yes. I think we -- I'm not sure if you can 8 see it. We replace a lot of 4-way sockets and 7-way 9 sockets because we don't mess -- you know, if 10 there's any issues whatsoever, we just replace them.</p> <p>11 I know some companies that try to run them forever 12 but just -- we replace them.</p> <p>13 Q All right. Tell me about MDB 109.</p> <p>14 A I believe the date on this is 3/21/2014.</p> <p>15 Q It looks like that could be a "3" to me as 16 well, so we'll go with it.</p> <p>17 A Yeah, I think it is. By the mileage it 18 looks like it would be about right. And this is for 19 Truck 5694. Came in for repair. Apparently, I 20 informed Pat what the issue was and he did the work 21 and he replaced the center gate toggle switch cover.</p> <p>22 Q That red part that covers the toggle 23 switch?</p> <p>24 A Yes.</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 39</p> <p>1 this truck had a master switch in it but the master 2 switch originally -- which I didn't really see a 3 need for the master switch. They did that prior to 4 me coming to work there.</p> <p>5 But I started thinking as long as there's a 6 master switch that's interrupting the power going to 7 the 4-way, I might as well put a double-pull 8 single-throw switch in there and isolate the ground 9 circuit and the power, the positive and the negative 10 from the cord at the same time when it's off. Just, 11 you know, trying to be proactive and making sure 12 that we didn't have any problems.</p> <p>13 Q Okay. Let's go to the next page. MDB 101, 14 could you give me the date of completion of this 15 work order and what this work order is for.</p> <p>16 A November 12th, 2013, Truck 5694. Pat did 17 a PM 1.</p> <p>18 Q What is that?</p> <p>19 A Preventative maintenance 1, which would be 20 basically we come in and do an inspection, lube and 21 change the oil and filters, check the air filters, 22 versus a PM 2 where you would actually change the 23 fuel filters and coolant filter.</p> <p>24 Q And how often are PM 1s performed?</p> <p>25 A At that particular time we were -- they</p>	<p style="text-align: right;">Page 41</p> <p>1 A And resecured deck plate. The deck plate 2 was loose on the tractor.</p> <p>3 Q Go to the next page, 119. Describe this 4 work order for me.</p> <p>5 A This is June 25th, 2014, Truck 5694, work 6 was performed by Pat and Dan, evidently, told him 7 there's something wrong. Pat says "Troubleshoot in 8 op turn signals and 4-way flashers." So I'm 9 assuming he means the truck and the trailers had no 10 turn signals for 4-way.</p> <p>11 "Found low voltage at the switch. Traced 12 to fuse and fuse block. Replaced the fuse. Working 13 now. Unable to determine cause at this time." I 14 would assume that the cause was oxidation of the 15 fuse terminal -- in the fuse terminal and by pulling 16 the fuse out and putting it back in it made contact 17 and, therefore, it started to work.</p> <p>18 Q All right. Next page, MDB 155, can you 19 tell me the date of this work order and what this 20 involves.</p> <p>21 A The date is May 19th, 2013. This is for 22 Equipment No. 5694 and Trailer 6773, 6774, and 6775 23 as a unit.</p> <p>24 This was done by at the time our mechanic's 25 helper, Brandon Jones, and he would have brought the</p>

<p style="text-align: right;">Page 42</p> <p>1 trailers around to the shop and went and greased and 2 inspected them.</p> <p>3 Q So Brandon Jones was the mechanic's helper 4 at this time?</p> <p>5 A Yes.</p> <p>6 Q Is he still the mechanic's helper?</p> <p>7 A No.</p> <p>8 Q Do you know when Brandon Jones left MDB?</p> <p>9 A No. He wasn't there very long. He was 10 just basically helping out.</p> <p>11 Q Okay. And what did Brandon's inspection 12 involve?</p> <p>13 A Well, as you bring the truck in, you check 14 the belts, lights, you know, windshield wipers. You 15 get under the truck as you're greasing it and you 16 are -- as you're greasing it, you're checking for 17 any damage to any air hoses or anything under the 18 truck.</p> <p>19 You're checking brake shoes to make sure 20 that they're the right thickness. You're checking 21 for wheel seal leaks and so you're basically doing 22 -- it's almost as involved as doing an annual 23 inspection. You're checking everything.</p> <p>24 Q Okay. You're checking the wiring?</p> <p>25 A No. I mean, you're checking the</p>	<p style="text-align: right;">Page 44</p> <p>1 for repair work done on our Truck 5694. It looks 2 like the work was performed April 4th, 2013.</p> <p>3 Q Okay. So you had sent the truck out to 4 ENGS to be worked on?</p> <p>5 A Yes.</p> <p>6 Q Okay. So this was not work that was 7 performed in-house?</p> <p>8 A That's correct.</p> <p>9 Q And can you tell me why this truck was sent 10 out for repair?</p> <p>11 A Are you asking me what needed to be fixed 12 or why we would send it out rather than doing it 13 in-house?</p> <p>14 Q Why would you send it out versus doing it 15 in-house.</p> <p>16 A This was done prior to my coming to work 17 there. And prior to my coming to work there MDB 18 Trucking didn't have the electronic tools to hook up 19 to the ECM of the trucks to do diagnostics, so they 20 had to take it to either a dealer or somebody that 21 had those tools.</p> <p>22 Q And when you came onboard, did you have 23 your own tools that you brought with you?</p> <p>24 A Yes. I have a laptop that has software 25 that requires you hook up to Cummins or Caterpillar</p>
<p style="text-align: right;">Page 43</p> <p>1 functionality of the lights.</p> <p>2 Q Okay.</p> <p>3 A You're not actually checking the wiring.</p> <p>4 Q And are you checking the valves during an 5 inspection like this, Versa valves?</p> <p>6 A You don't actually -- you inspect the Versa 7 valve to make sure it's attached, I mean, but that's 8 usually never an issue.</p> <p>9 But at this time you would -- if there's 10 any water in the water separator going to the Versa 11 valve, you drain that and then you would fill up the 12 oilers to go into the Versa valves.</p> <p>13 Q Okay. Go ahead and set this exhibit aside.</p> <p>14 MS. WOELFEL: Why don't we take a 15 five-minute break.</p> <p>16 (Recess taken.)</p> <p>17 MS. WOELFEL: I'm going to mark this next 18 in order.</p> <p>19 (Deposition Exhibit 25 marked for 20 identification.)</p> <p>21 BY MS. WOELFEL:</p> <p>22 Q Scott, I've handed you a document MDB 27 23 and 28. Can you tell me what this document is?</p> <p>24 A This is an invoice from ENGS Motor Truck 25 Company specifically for a repair order, and it's</p>	<p style="text-align: right;">Page 45</p> <p>1 engines and do diagnostics.</p> <p>2 Q Okay. So tell me what work this work order 3 reflects.</p> <p>4 A It looks like it went in for 5 troubleshooting "Engine running rough." So they 6 hooked up -- it would have been a Caterpillar 7 electronic technician -- and checked for ECM -- 8 checked the ECM for any trouble codes.</p> <p>9 "Found inactive codes for all six 10 injectors. Run truck" -- it says "Run truck, all 11 codes became active. Check wiring harness. Check 12 okay. Check injectors. All injectors were okay. 13 Check ECM. Found ECM bad" -- I can't really read 14 that. "ECM bad" -- I guess, because it says "Needs 15 new ECM."</p> <p>16 Q What is "ECM"?</p> <p>17 A Electronic control module. That would be 18 the computer that's attached to the truck -- to the 19 engine that controls the electronics of the engine.</p> <p>20 Q Okay. And does it look like the ECM was 21 changed?</p> <p>22 A No. Well, wait a minute. For some reason 23 it says, "Reinstall drive line with new strap kit. 24 I'm not sure what that's got to do with the engine 25 running rough. I have no idea. But they put one</p>

<p style="text-align: right;">Page 46</p> <p>1 new strap kit on the yoke. Maybe they took the 2 drive line out to do this test. I have no idea. I 3 don't know why they would do that. Okay. No. 2, 4 "ECM. Removed wiring from ECM and removed ECM. 5 Installed isolater bushings on the new" -- okay. So 6 they did put a new ECM in. 7 "Installed isolater bushings on the new ECM 8 and installed the ECM. Reinstalled wiring, hooked 9 up to ECM program settings, see customer specs, run 10 truck, check for codes, no codes found. Customer 11 supplied the ECM." 12 Q So MDB supplied its own ECM to ENGS to 13 replace the old ECM with? 14 A That is correct. 15 Q Okay. 16 A That would be because ENGS is not an 17 authorized TEPS dealer for Caterpillar so that we 18 would have had to get the ECM directly from 19 Caterpillar. 20 Q I'll hand you another document. 21 (Deposition Exhibit 26 marked for 22 identification.) 23 BY MS. WOELFEL: 24 Q This is MD 335. It was part of MDB's 25 production. What is this document?</p>	<p style="text-align: right;">Page 48</p> <p>1 (Deposition Exhibit 27 marked for 2 identification.) 3 BY MS. WOELFEL: 4 Q This is a document MDB 11 and MDB 12. 5 Can you tell me what page one of this 6 document is? 7 A This is a record of annual inspection form 8 and it's dated April 26th, 2013, and it's for 9 Trailer No. 6775. 10 Q Okay. Can you tell me who performed this 11 inspection -- actually, it says the inspector's name 12 was Tracy Shane. Do you see that? 13 A Yes, I do. 14 Q Okay. I was thrown off because the bottom 15 just says "Shane." 16 A Right. I knew it was Tracy Shane. I just 17 wanted to make sure I was reading in the right spot. 18 Q Okay. And is this the typical form that 19 MDB would fill out for each truck or trailer during 20 the annual inspections? 21 A Yes. 22 Q The second page of the document -- actually 23 not part of the same document. It's just -- I don't 24 know why I have them attached but we'll go with it. 25 It's a Driver/Vehicle Examination Report.</p>
<p style="text-align: right;">Page 47</p> <p>1 A This is a portion of an equipment list that 2 only includes the truck that I was -- the truck and 3 trailers that I was driving the day that I had a 4 load inadvertently dump on the highway. So it lists 5 Unit 5693 as the power unit and then a set of 6 Trailer Nos. 6776, 6777, and 6778. 7 Q Do you know who prepared this particular 8 document? 9 A I would have. 10 Q Okay. Why did you prepare this document? 11 A I'm sure I was asked for it by our 12 attorneys. 13 MR. BARKLEY: You don't have to answer that 14 question. That's privileged communication. 15 BY MS. WOELFEL: 16 Q This is not a document that you just sort 17 of maintain in the course of business. 18 A No. I do retain this but not -- this is 19 just a selection of our equipment list. 20 Q Okay. 21 A So I do keep all this information. I just 22 printed out the portion that was related to the -- 23 Q To the July 7th, 2014, dump? 24 A Yeah. The truck that I was driving. 25 Q Okay.</p>	<p style="text-align: right;">Page 49</p> <p>1 Have you seen this document before? 2 A I'm pretty sure I have. 3 Q Okay. Can you describe for me what this 4 document is? 5 A This is a Driver/Vehicle Examination Report 6 that is provided by the highway patrol any time your 7 equipment -- any time you're pulled over and your 8 equipment is inspected or the driver is inspected or 9 maybe there's an accident or an incident on the 10 roadway. 11 Q Okay. And is this the Driver/Vehicle 12 Examination Report for the July 2014 inadvertant 13 dump? 14 A Yes. This is for -- the inspection date is 15 July 7th, 2014. This would have been just after 16 the inadvertent dumping when the highway patrol 17 would have contacted -- got in contact with Dan 18 Koski on the side of the highway and then did their 19 inspection. 20 Q Did the highway patrol ever come onto the 21 MDB site to inspect the truck at any other time? 22 MR. BROWN: Objection, asked and answered 23 yesterday. 24 THE WITNESS: I think I testified that I 25 think that they did come to the yard and inspect but</p>

<p style="text-align: right;">Page 50</p> <p>1 I can't say for sure. I know after the July 2013 2 incident they for sure came to our yard. I do 3 specifically remember seeing them there. But on 4 this particular time I just have a vague memory of 5 them coming to the yard and inspecting. 6 MR. BROWN: It's your record, counsel. 7 Since those are unrelated, do you want to make them 8 separate exhibits? 9 MS. WOELFEL: Yes. Let's make the second 10 page Exhibit 28. That will be easier. 11 (Deposition Exhibit 28 marked for 12 identification.) 13 MS. WOELFEL: This will be next in order. 14 (Deposition Exhibit 29 marked for 15 identification.) 16 BY MS. WOELFEL: 17 Q Go ahead and take a look at Exhibit 29. 18 It's MDB 149. Have you seen this document before? 19 A I don't believe I have but it's familiar as 20 far as what it contains. 21 Q Okay. And based on your review of it right 22 now, can you tell me what this document is? 23 A This is another Driver/Vehicle Examination 24 Report provided to us by the Nevada Highway Patrol 25 after a roadside inspection or vehicle stop. And I</p>	<p style="text-align: right;">Page 52</p> <p>1 just put the one trailer on there, that's all he 2 had. 3 Q Okay. Now, in your work on Trailer 6775 my 4 understanding is that you worked on that trailer and 5 you assisted in the rewiring process of that shortly 6 after you started working for MDB Trucking. 7 Is that correct? 8 A Yes. 9 Q Okay. And then you would perform some of 10 the routine maintenance on this trailer over the 11 course of the next year or so. Is that correct? 12 A Yes. 13 Q Okay. In your work on that Trailer 6775, 14 have you been able to identify any problems with the 15 way that that trailer was manufactured that you 16 believe contributed to the unauthorized dump in July 17 of 2013 or July of 2014? 18 MR. BROWN: I'm going to object it's beyond 19 the scope of the 30(b)6 notice and it's asking for 20 opinion that I don't think is proper of a 30(b)6 21 witness, to begin with, as opposed to an expert. 22 MS. WOELFEL: Well, he's here in his 23 personal capacity as well. 24 MR. BROWN: So he's here in his personal 25 capacity and you're asking him for opinion evidence.</p>
<p style="text-align: right;">Page 51</p> <p>1 believe -- I'm not sure if the date is 08/25/2013. 2 Is that what it looks like to you? 3 Q It's difficult to tell. I do not know. 4 A But either way, there's a check station 5 that's out at Wadsworth going eastbound on 80. And 6 every once in a while, say once a month they open it 7 for a day or so and they pull trucks in there 8 randomly and they inspect you. 9 This happened to be a Level 2 walk-around 10 inspection which means they just walk around the 11 truck and do just a cursory inspection. They don't 12 actually crawl under the truck and check brake 13 measurements and all that kinda stuff. They 14 basically make sure nothing's obviously wrong. And 15 this is for Truck 5694 and Trailer 6773. 16 Q So does that mean that 5694 was only 17 pulling a single trailer at this time? 18 A It would seem to indicate that but I don't 19 think so. I seriously doubt he was just pulling one 20 trailer out in that area. 21 Q Would that be unusual, to only be pulling 22 one trailer? 23 A Yes, out in that area. I mean, it's 24 possible. I can't say for sure. He could have 25 been. I would assume that if the highway patrol</p>	<p style="text-align: right;">Page 53</p> <p>1 Answer if you have one in your personal capacity. 2 BY MS. WOELFEL: 3 Q Do you want the court reporter to read back 4 the question? 5 A No. I understood. 6 Q Okay. 7 A In my opinion, to be honest -- 8 Q Yes. 9 A -- no. 10 Q Okay. Have you been able to -- well, let 11 me ask you this: If you had identified a problem 12 with the trailer, would you have authorized it to be 13 used? 14 A No, not until it was repaired. 15 Q In your work on Trailer 6775 have you been 16 able to identify any problems with the design of the 17 trailer that you believe contributed to the 18 unauthorized dumps in either July 2013 or July 2014? 19 A No. 20 MR. BROWN: Objection, calls for expert 21 opinion, calls for speculation, lack of foundation. 22 BY MS. WOELFEL: 23 Q Your answer was "no"? 24 A That is correct. No. 25 Q If you thought there was a problem with the</p>

<p style="text-align: right;">Page 54</p> <p>1 design of the Trailer 6775, would you have allowed 2 it to be used by your drivers? 3 A No. We would have made the necessary 4 repairs. 5 MS. WOELFEL: I don't have any additional 6 questions at this time. I will pass the witness to 7 somebody on the phone, perhaps. 8 Thank you for your time. I appreciate it. 9 MS. QUIGLEY: I don't have any questions. 10 MR. BUNDICK: I do have a question. 11 EXAMINATION 12 BY MR. BUNDICK: 13 Q Mr. Palmer, are you aware that your client 14 has a contribution claim against both Modern and 15 Dragon in this litigation? 16 MS. WOELFEL: Jacob, you're going to have 17 to speak up a little bit and slow down, because some 18 folks are having some trouble hearing. 19 MR. BUNDICK: Can you hear me now? 20 MS. WOELFEL: Yes. 21 BY MR. BUNDICK: 22 Q I just have a few questions. 23 My name is Jacob Bundick and I represent 24 the third-party defendants Modern Group and Dragon 25 LTD. How are you today?</p>	<p style="text-align: right;">Page 56</p> <p>1 BY MR. BUNDICK: 2 Q Sure. What facts does MDB have to support 3 the allegations in the third-party complaint that 4 Modern is responsible for contribution for MDB's 5 negligence and/or liability? 6 MR. BROWN: I'll lodge the same objections 7 to foundation and invasion of the attorney-client 8 privilege, and you cannot base your answer on 9 anything that your attorneys have told you. 10 THE WITNESS: I'm not sure I can answer the 11 question. I'm not sure I understand how to answer 12 the question. 13 BY MR. BUNDICK: 14 Q Mr. Palmer, I'm specifically asking, What 15 facts do you have to support MDB's allegations 16 against my client Modern that we are responsible for 17 contribution for MDB's own negligence and/or 18 liability? 19 MR. BROWN: I'm going to object as to -- 20 I'm going to object as to foundation, legal 21 conclusion. I'm also going to direct the witness to 22 continue not to answer based upon any information he 23 has been provided by his attorneys. 24 THE WITNESS: In that case I wouldn't be 25 able to answer the question.</p>
<p style="text-align: right;">Page 55</p> <p>1 A Good. How are you? 2 Q Good. Are you aware that your client, MDB, 3 has asserted third-party claims against my client 4 for contribution? 5 MR. BROWN: Objection, foundation. 6 THE WITNESS: Am I aware of that? I think 7 I am, yes. 8 BY MR. BUNDICK: 9 Q Yes. 10 A Yes. 11 Q And what facts does MDB have to support the 12 allegations in the complaint that Modern is 13 responsible for contribution to MDB for its own 14 negligence or liability? 15 MR. BROWN: Objection, calls for 16 speculation, also potentially impacts the 17 attorney-client privilege. 18 BY MR. BUNDICK: 19 Q You can answer the question. 20 MR. BROWN: Hang on a second. You're not 21 to say anything that you know based upon what you've 22 been told by your attorneys. 23 THE WITNESS: Okay. Can you repeat the 24 question, please? 25</p>	<p style="text-align: right;">Page 57</p> <p>1 BY MR. BUNDICK: 2 Q I'm going to ask you the same question. 3 What facts does MDB have to support the 4 allegations in the complaint that Dragon is 5 responsible for contribution for MDB's own 6 negligence and/or liability? 7 MR. BROWN: Okay. Objection, asked and 8 answered, same objection. He just said he couldn't 9 answer it. 10 THE WITNESS: I can't answer that question 11 yes or no. 12 BY MR. BUNDICK: 13 Q I'm asking related to my client Dragon. 14 MR. BROWN: Asked and answered now for the 15 third time. I'm directing him not to answer the 16 question at this point, if it's asked the same way 17 and we can move on. 18 BY MR. BUNDICK: 19 Q Mr. Palmer, I would ask that you answer the 20 question. 21 MR. BROWN: I'm directing him not to answer 22 based upon the attorney-client privilege that you've 23 asked the same question now the fourth time and he's 24 given you the answer. He does not know and he's not 25 going to base it on anything --</p>

<p style="text-align: right;">Page 58</p> <p>1 MR. BUNDICK: Are you answering for Mr. 2 Palmer, then? 3 MR. BROWN: No. I'm directing my objection 4 to you who has asked the question four times that 5 seeks to invade the attorney-client privilege and 6 he's already answered your question. 7 MR. BUNDICK: I'm not asking him to divulge 8 attorney-client privilege information. I'm asking 9 him what facts outside of anything that he's 10 discussed with you supports the allegation in the 11 complaint that my client Dragon is responsible for 12 contribution to MDB. 13 MR. BROWN: And what's nonresponsive to his 14 answer to that question that he gave already that 15 says that he can't answer that? 16 MR. BUNDICK: He answered that related to 17 Modern, not Dragon, sir. 18 BY MR. BUNDICK: 19 Q Mr. Palmer, is your answer the same for 20 Dragon? 21 A Yes. I don't know the answer to that 22 question. 23 MR. BUNDICK: That's all the questions I 24 have. 25 MS. SHREVE: I do have some followup</p>	<p style="text-align: right;">Page 60</p> <p>1 Q You didn't find anything wrong before you 2 put the new Versa valve on? 3 A Didn't find anything wrong with the 4 electrical connection, no. 5 Q How about in regards to after the July 2014 6 incident on the subject trailer? Did MDB inspect 7 the electrical connection to the Versa valve? 8 A We did a cursory check that we put the 9 lockout devices on there so at that point it became 10 not an issue. 11 Q You said a "cursory check"? 12 A Yes, a visual check. Just, basically, we 13 didn't do a complete investigation into it but we 14 did look to see if the wires were hooked up and 15 nothing looked out of place. 16 Q Can you open the belly dump without a Versa 17 valve? 18 A Are you meaning like a different type of 19 valve or without the valve? 20 Q Without the valve. 21 A If you remove the valve from the trailer, 22 could you open it? 23 Q Yes. 24 A You could manually supply air to it or open 25 the gates manually by pulling them on, I suppose.</p>
<p style="text-align: right;">Page 59</p> <p>1 questions but could we break for a second before we 2 start? 3 (Recess taken.) 4 BY MS. SHREVE: 5 Q Mr. Palmer, you understand you're still 6 under oath, correct? 7 A Yes. 8 Q Mr. Palmer, in the July 2013 incident did 9 MDB inspect the electrical connection to the Versa 10 valve? 11 A Before -- 12 Q After the July 2013 incident did MDB 13 inspect the electrical connection to the Versa 14 valve? 15 A It's my belief -- well, we changed the 16 Versa valve so we would have hooked up the 17 electrical connection to the new valve. 18 Are you talking about inspecting the 19 connection prior to removing the old valve? 20 Q Yes. Prior to removing the old valve, did 21 MDB inspect the electrical connection to the Versa 22 valve? 23 A I believe they did. I believe it was 24 connected. We didn't find anything wrong but we put 25 a new Versa valve on.</p>	<p style="text-align: right;">Page 61</p> <p>1 Q Okay. Would pulling on them manually be 2 the only way you could open them without having a 3 Versa valve or a valve on it? 4 A I'm not sure I -- it's a little broad as 5 far as -- the question's a little broad as far as 6 I'm not sure what you're getting at. 7 Q Okay. I'll try to ask it differently for 8 you. 9 If the belly dump does not have a Versa 10 valve on it, can the belly dump open? 11 A So what you're asking is if it had a 12 different manufacturer valve on there or the valve 13 just wasn't in place? 14 Q If it doesn't have a valve on it. 15 A If you took the valve off, you would have 16 no air pressure. Therefore, the gates would 17 probably -- wouldn't stay closed. There'd be no air 18 to keep the gates closed so the gates would be, 19 basically, in neutral. 20 Q Okay. And what happens when the gates are 21 in neutral? 22 A They just kinda hang down, depending on the 23 trailer. Depending on which particular trailer 24 you're talking about, the gates could stay closed. 25 If you pull them open, you could pull them open</p>

<p style="text-align: right;">Page 62</p> <p>1 fairly easily.</p> <p>2 Q So specifically Trailer No. 6775, if it</p> <p>3 does not -- if I recall what you said, if it doesn't</p> <p>4 have the air pressure, then it can go to neutral.</p> <p>5 Is that correct?</p> <p>6 MR. BROWN: Objection, foundation.</p> <p>7 THE WITNESS: Well, it takes air pressure</p> <p>8 to close the gates and to open the gates. So if you</p> <p>9 took the Versa valve out of the system, there would</p> <p>10 be no air pressure any longer so the gates would be</p> <p>11 basically -- there would be no pressure holding it</p> <p>12 closed or open. It would basically stay where it</p> <p>13 was.</p> <p>14 BY MS. SHREVE:</p> <p>15 Q So if the Versa valve lost pressure then,</p> <p>16 would the belly gates go to neutral?</p> <p>17 MR. BROWN: I'll object, lack of</p> <p>18 foundation, incomplete hypothetical. Probably</p> <p>19 beyond the scope of the notice. Answer if you can.</p> <p>20 THE WITNESS: That was probably a poor</p> <p>21 choice of words as far as "neutral." When I say</p> <p>22 "neutral," I don't mean the position of the actual</p> <p>23 gates themselves. I'm saying neutral as far as</p> <p>24 there's no pressure holding it one way or the other.</p> <p>25 There's nothing pushing the gates open or closed, so</p>	<p style="text-align: right;">Page 64</p> <p>1 Q So how many hoses are attached to the Versa</p> <p>2 valve -- or in Trailer 6775 when it's installed how</p> <p>3 many hoses are connected to the Versa valve?</p> <p>4 A I believe there's five hoses.</p> <p>5 Q Other than the five hoses, when installing</p> <p>6 the Versa valve on Trailer 6775 in 2013 did anything</p> <p>7 else have to be connected to the Versa valve?</p> <p>8 A Yes. The solenoid that activates the Versa</p> <p>9 valve to the open position via electricity has to be</p> <p>10 wired into the 4-way system of the -- the 4-way</p> <p>11 wiring system of the trailer.</p> <p>12 Q And is the solenoid that you just spoke</p> <p>13 about, is that a Versa product?</p> <p>14 A Yes.</p> <p>15 Q Okay. Does that solenoid come with the</p> <p>16 valve that was purchased August 1st, 2013?</p> <p>17 A Yes.</p> <p>18 Q All right. So you can correct me if I'm</p> <p>19 wrong. If I understand it correctly, you connect</p> <p>20 the 4-way plug to the solenoid -- is that</p> <p>21 correct? -- when you installed it in July 2013?</p> <p>22 A No. The 4-way wire comes from the tractor</p> <p>23 and it goes through all the trailers. And so by the</p> <p>24 time it gets to the last trailer, you still have the</p> <p>25 4-way wire running through the system, but there's</p>
<p style="text-align: right;">Page 63</p> <p>1 generally the gates would stay in a position they</p> <p>2 were.</p> <p>3 BY MS. SHREVE:</p> <p>4 Q Okay.</p> <p>5 A More likely if it's loaded than empty.</p> <p>6 Q Does MDB have to connect the Versa valve --</p> <p>7 so we'll talk specifically the 6775 trailer -- did</p> <p>8 MDB have to connect the Versa valve to anything in</p> <p>9 order for it to be used on the trailer?</p> <p>10 MR. BROWN: Object, foundation, vague as to</p> <p>11 time.</p> <p>12 BY MS. SHREVE:</p> <p>13 Q After the July 2013 incident when MDB</p> <p>14 installed the new Versa valve onto the Trailer 6775,</p> <p>15 did MDB have to connect the Versa valve to anything</p> <p>16 in order for it to be used in the trailer?</p> <p>17 A Yes. The Versa valve would have to be</p> <p>18 attached to the trailer, bolted to the trailer. And</p> <p>19 then the air supply line that comes out of the tank</p> <p>20 and goes to the filter and the oiler then goes to</p> <p>21 the input of the Versa valve.</p> <p>22 Then the hoses going to the open and closed</p> <p>23 positions on each cylinder come out of the Versa</p> <p>24 solve, so the hoses would have to be attached to the</p> <p>25 Versa valve in order for it to work.</p>	<p style="text-align: right;">Page 65</p> <p>1 only one wire hot in the ground wire in that</p> <p>2 particular 4-way in the back trailer. So there's</p> <p>3 two wires that could connect to the solenoid --</p> <p>4 Q Okay.</p> <p>5 A -- the hot wire and the ground wire.</p> <p>6 Q So when installing the Versa valve on</p> <p>7 Trailer 6775 in 2013, in order to install it to the</p> <p>8 trailer, it was bolted down and then five hoses and</p> <p>9 two wires were connected to the Versa product.</p> <p>10 A That's correct.</p> <p>11 Q Okay. Now, you said that there's two wires</p> <p>12 connected to the last trailer. And it made it seem</p> <p>13 like -- are there more wires that are connected to</p> <p>14 the first two trailers, the solenoid in the first</p> <p>15 two trailers?</p> <p>16 A No. To clarify that, the 4-way wire has</p> <p>17 three hot wires -- or hot wires when activated by</p> <p>18 the dump switches in the tractor and one ground</p> <p>19 wire.</p> <p>20 So one of those three hot wires goes to</p> <p>21 each trailer, so as it goes down the trailer -- and</p> <p>22 the front trailer would be, say, the green wire and</p> <p>23 the 4-way system would go to that solenoid. The</p> <p>24 next one would be the yellow wire and the next one</p> <p>25 would be the red wire, whatever wiring color</p>

<p style="text-align: right;">Page 66</p> <p>1 designation that we use.</p> <p>2 Q Okay. So I'm just trying to make sure I</p> <p>3 understand this correctly from how you're explaining</p> <p>4 it. So there's a 4-way wire that comes from the</p> <p>5 truck. Is that correct?</p> <p>6 A Correct.</p> <p>7 Q And it has three hot, one for each, and one</p> <p>8 of them is for each trailer, correct?</p> <p>9 A Correct.</p> <p>10 Q Do all of those wires travel through each</p> <p>11 trailer?</p> <p>12 A Yes. They would have to to get from --</p> <p>13 yes. Yes.</p> <p>14 Q Okay. So when you detach a trailer, what</p> <p>15 happens to that wire if you -- let me rephrase that.</p> <p>16 When you detach Trailer 6775 from 6774,</p> <p>17 what happens with the wire that is going to the</p> <p>18 Versa valve on 6775?</p> <p>19 A It stays with 6775. It's hardwired from</p> <p>20 the trailer. The 4-way wire in that trailer into</p> <p>21 the solenoid where it goes out through the front of</p> <p>22 the trailer, down the draw bar, there's a plug on</p> <p>23 the end of that that gets unplugged from the back of</p> <p>24 6774 and that stays with the trailer. That all</p> <p>25 stays with 6775.</p>	<p style="text-align: right;">Page 68</p> <p>1 A Correct.</p> <p>2 Q Okay. And those wires that are in the -- I</p> <p>3 don't know if it's in or on, which one it should be</p> <p>4 -- but in or on the truck, are those Versa Valves'</p> <p>5 products?</p> <p>6 A No.</p> <p>7 Q Earlier you testified that there was a</p> <p>8 rewiring of Truck 5694 after the July 2013 incident.</p> <p>9 Before MDB rewires the truck and trailers,</p> <p>10 is that wiring what is on truck and Trailer 5693 in</p> <p>11 July 2014? Do you need me to re-word it? That was</p> <p>12 terrible.</p> <p>13 A I think I know what you're saying. Are you</p> <p>14 saying is the wiring configuration of 5693 the same</p> <p>15 or similar to 5694's wiring prior to the 2013</p> <p>16 incident?</p> <p>17 Q Yes. How the wiring was before MDB rewired</p> <p>18 it in 2013 --</p> <p>19 A Yes.</p> <p>20 Q -- is that wiring the wiring that is</p> <p>21 consistent with Truck 5693 or is it the post-wiring</p> <p>22 -- the rewiring MDB did that's on Truck 5693?</p> <p>23 MR. BROWN: I'm going to object. Vague.</p> <p>24 It may only be vague to me, but I'm lost.</p> <p>25 THE WITNESS: I think I know what you're</p>
<p style="text-align: right;">Page 67</p> <p>1 Q Okay. Are the five hoses that are</p> <p>2 connected to the Versa valve, are they Versa valve's</p> <p>3 products?</p> <p>4 A I highly doubt it.</p> <p>5 Q Did those five hoses come with the purchase</p> <p>6 of the Versa valve on August 1st, 2013?</p> <p>7 A No.</p> <p>8 Q The two wires that are attached to the</p> <p>9 Versa valve, are those Versa product? Are they</p> <p>10 owned by -- do you know if they manufactured those</p> <p>11 wires?</p> <p>12 A I don't know if they manufacture them but</p> <p>13 they came with the valve, yes.</p> <p>14 Q Okay. So the two wires that connect --</p> <p>15 that go through the truck --</p> <p>16 A Oh, no. I'm sorry.</p> <p>17 Q Okay.</p> <p>18 A There's two -- there's a pigtail of two</p> <p>19 wires coming off the solenoid when you buy it.</p> <p>20 Q Okay.</p> <p>21 A And when you splice that into our wiring,</p> <p>22 that's where it becomes our wiring at that point.</p> <p>23 Q Okay. So there's two wires on the Versa</p> <p>24 valve that are attached to the wires that are on the</p> <p>25 truck or in the truck.</p>	<p style="text-align: right;">Page 69</p> <p>1 getting at. Truck 5694, I don't believe, was ever</p> <p>2 -- I mean, sorry. Truck 5693, I don't believe, was</p> <p>3 ever rewired. So the wiring on Truck 5694 prior to</p> <p>4 the rewiring after the first incident in July of</p> <p>5 2013 would have been similar to the current wiring</p> <p>6 on Truck 5693.</p> <p>7 But, you know, no truck is gonna be</p> <p>8 identical the way they're wired but there is no</p> <p>9 master switch in 5693 so it would be similar to</p> <p>10 that, yes.</p> <p>11 BY MS. SHREVE:</p> <p>12 Q You said no wiring would be identical.</p> <p>13 Why is that?</p> <p>14 A Well, you used to be able to order trucks</p> <p>15 from the factory with dump switches, and I don't</p> <p>16 know that you can anymore -- no, I think you can.</p> <p>17 You can still get them from the factory with dump</p> <p>18 switches.</p> <p>19 So some trucks come from the factory with</p> <p>20 dump switches already installed as an option and</p> <p>21 some trucks -- well, other trucks that weren't</p> <p>22 necessarily intended to haul bottom dumps and</p> <p>23 somebody would retrofit them with switches for</p> <p>24 bottom dumps. And so depending on where you</p> <p>25 acquired the truck from and if you got it new or</p>

<p style="text-align: right;">Page 70</p> <p>1 used and who originally did the wiring, it could be 2 slightly different.</p> <p>3 But all of the trucks that I know of all 4 have a similar installation process. All the 5 switches are guarded somehow to keep it from 6 inadvertently activating the switch while you're 7 driving down the road and pretty sure all of them 8 get their power now from un-switch power.</p> <p>9 BY MS. SHREVE:</p> <p>10 Q Okay. So if you do not activate the Versa 11 valve on Trailer 6775 manually, am I correct that 12 the only other way to activate it is electrically? 13 Is that correct?</p> <p>14 A Yes, that is correct.</p> <p>15 Q Okay. And where does that electricity come 16 from in activating it if you are activating it 17 electrically?</p> <p>18 MR. BROWN: I'll object, foundation.</p> <p>19 THE WITNESS: We're still talking about it 20 comes from the -- the power unit, the tractor? Is 21 that what you're -- it comes from whatever truck 22 just happens to be pulling that trailer. That's 23 where the power comes from, via the switches, yes.</p> <p>24 BY MS. SHREVE:</p> <p>25 Q So for Trailer 6775 the only way for</p>	<p style="text-align: right;">Page 72</p> <p>1 BY MS. SHREVE:</p> <p>2 Q Okay. So when installing the Versa valve 3 in 6775, if the two wires from the trailer were not 4 attached to the Versa valve, could the Versa valve 5 be activated electrically with the switch?</p> <p>6 MR. BROWN: I'm going to -- go ahead.</p> <p>7 THE WITNESS: Can you please clarify when 8 you say "attached to the trailer"? You're talking 9 attached to the trailer wiring?</p> <p>10 BY MR. SHREVE:</p> <p>11 Q The trailer wiring, yes.</p> <p>12 A That would be correct, yes. It could not, 13 not from the tractor, no.</p> <p>14 Q You said "not from the tractor."</p> <p>15 Yesterday you testified that MDB shares a 16 shop with Western Nevada Transport since July 2014. 17 Is that correct?</p> <p>18 A I believe I said --</p> <p>19 Q I'm sorry. January 2014.</p> <p>20 A Yes, that is correct.</p> <p>21 Q Okay. Could MDB have placed a Versa valve 22 owned by Western Nevada Transport on the trailer 23 inadvertently instead of the one that was purchased 24 on August 1st, 2013?</p> <p>25 A That would have been prior to this.</p>
<p style="text-align: right;">Page 71</p> <p>1 electricity to get to the Versa valve is from 2 activating the switch?</p> <p>3 MR. BROWN: I'm gonna object, lack of 4 foundation, beyond the scope. You're asking for an 5 expert opinion.</p> <p>6 THE WITNESS: I can actually answer that 7 question.</p> <p>8 BY MS. SHREVE:</p> <p>9 Q I'm going to reask it. When MDB was 10 installing -- strike that. I'll let you answer my 11 previous question.</p> <p>12 A The answer to that question is no, not 13 necessarily. That's the \$64,000 question.</p> <p>14 Q Okay. How else can electricity activate 15 the Versa valve that you're aware of?</p> <p>16 MR. BROWN: Objection, foundation, calls 17 for expert opinion.</p> <p>18 THE WITNESS: Well, I'm not -- I'm not an 19 expert on electrical fields, but there is a theory 20 that possibly it could be contributed to electricity 21 from static electricity possibly in the trailers, 22 possibly from surrounding areas, electrical storms. 23 We're not sure. But in my opinion that is what 24 could have caused these trailers to open.</p> <p>25</p>	<p style="text-align: right;">Page 73</p> <p>1 Q So no?</p> <p>2 A Pardon?</p> <p>3 Q So is that a "no"?</p> <p>4 A We didn't share the shop with them at that 5 particular time, so no.</p> <p>6 Q Okay. I'm going to go to Exhibit 17 -- 7 actually, before I reference Exhibit 17, I just 8 wanted to get one more question.</p> <p>9 When installing the Versa valve in 10 July 2013 on Trailer 6775, if the two wires from the 11 Versa valve were not connected to the wires in the 12 truck, could the Versa valve be activated manually?</p> <p>13 A Yes.</p> <p>14 Q Is there any other way that the Versa valve 15 could have been activated if the two wires were not 16 connected to the wires in the truck?</p> <p>17 MR. BROWN: Calls for speculation, 18 foundation.</p> <p>19 BY MS. SHREVE:</p> <p>20 Q That you're aware of, that you have 21 knowledge of.</p> <p>22 A So the question is, Can it be activated 23 electrically if they're not hooked to the trailer?</p> <p>24 Q No. The question is if the two wires on 25 the MDB valve are not connected to the two wires in</p>

<p style="text-align: right;">Page 74</p> <p>1 the truck, what are the ways the valve can be 2 activated?</p> <p>3 MR. BROWN: Object, asked and answered.</p> <p>4 THE WITNESS: If the wires are not 5 connected from the solenoid from the Versa valve to 6 the wiring system of the trailer's tractor, the only 7 other way for us to activate it purposefully is 8 manually.</p> <p>9 BY MS. SHREVE:</p> <p>10 Q Okay. Now I'm going to Exhibit 17. This 11 is the Driver/Vehicle Inspection Report.</p> <p>12 Based on this inspection report, would 13 there be a work order for this?</p> <p>14 A Are you talking about any --</p> <p>15 Q Sorry. The first page in the Exhibit 17 16 dated 8/19/2015. This is for Tractor 5694 and 17 Trailer 6775.</p> <p>18 A There should be one, and I'm assuming there 19 is one, but sometimes it's not always. Certainly 20 there would be a work order. For instance, if -- 21 sorry.</p> <p>22 Q No. Go ahead.</p> <p>23 A For instance, if somebody writes up that 24 the driver's side load light not working and the guy 25 walks out to the truck and sees the wire unplugged</p>	<p style="text-align: right;">Page 76</p> <p>1 produced there was not a work order for this event 2 or this day --</p> <p>3 A Okay.</p> <p>4 Q -- so I'm just trying to make sure that we 5 have all the work orders --</p> <p>6 A Correct.</p> <p>7 Q -- since it's my understanding you don't 8 keep all of these Driver/Vehicle Inspection Reports.</p> <p>9 A Not past a certain time.</p> <p>10 Q Right, okay. Earlier you testified that 11 you believed the highway patrol did an inspection at 12 the yard following the 2013 incident.</p> <p>13 Did I understand that correctly?</p> <p>14 A Yes, I believe so. I might not have been 15 there that day and ...</p> <p>16 Q And what makes you believe that you think 17 this occurred?</p> <p>18 A Well, I know that when Mr. Koski lost the 19 first load in 2013 they did come to the yard and do 20 an inspection. I saw them there. So I'm only 21 assuming that that's what happened.</p> <p>22 I've worked at other companies when there's 23 an accident that somebody was injured in and the 24 highway patrol usually comes by the next day and 25 does a complete inspection of the vehicle. So I'm</p>
<p style="text-align: right;">Page 75</p> <p>1 and plugs it in, he may not fill out a work order. 2 Just basically you sign it off saying it was fixed. 3 So it is possible that a work order isn't produced 4 on some sort of minor instance like that.</p> <p>5 Q But this specific one, is this a minor 6 instance that a work order would not be done on?</p> <p>7 A It could be. I mean, you could go out and 8 the plug might not have been plugged in on one of 9 the trailers so the mechanic plugged it in all the 10 way and then it worked and he may not have filled 11 out a work order. I can't say for sure one way or 12 the other if he did.</p> <p>13 Q Okay. When you say "plugged in" are you 14 talking about for the cab switch not opening gate? 15 You're saying that if he just went and plugged it 16 in, then that would be the issue and it would be 17 solved and he wouldn't do a work order.</p> <p>18 Is that correct?</p> <p>19 A It's possible, yeah.</p> <p>20 Q Does MDB keep any records for when drivers 21 fill out vehicle inspection reports and they don't 22 actually have to do any, I guess, maintenance to 23 where they would have to fill out a work order?</p> <p>24 A No.</p> <p>25 Q The reason I ask that is what has been</p>	<p style="text-align: right;">Page 77</p> <p>1 only assuming that that's what happened. That's 2 what I think I heard. But I may not have been there 3 that day and actually witnessed it.</p> <p>4 Q So you said you saw highway patrol come and 5 do an investigation in the yard following the 2013 6 incident.</p> <p>7 A That is correct.</p> <p>8 Q Did this occur on the day of the 2013 9 incident?</p> <p>10 A I believe it was the next day.</p> <p>11 Q Okay. So were you employed with MDB at 12 that time?</p> <p>13 A No. But I was around.</p> <p>14 Q Okay. And why were you around?</p> <p>15 A Because I was trying to go to work there. 16 I know everybody that works there. So I was in and 17 out of the yard a lot and I remember them -- I 18 wasn't actually employed with them then but I was 19 talking to them about what was going on with these 20 trailers.</p> <p>21 And I was getting ready to cut -- I had 22 actually given, I think, 2 weeks' notice at my prior 23 job so I was getting ready to come to work there and 24 so I was starting to get involved in the company at 25 that time, yes.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q Okay. And do you know if the highway 2 patrol following their investigation provided MDB 3 with any paperwork?</p> <p>4 A I would imagine they would have.</p> <p>5 Q Okay. And what would MDB have done with 6 that paperwork?</p> <p>7 A It would be somewhere in a file, I would 8 imagine. But that would have been Tracy Shane. I 9 could go back and see if I could find it.</p> <p>10 Q Okay, thank you. Yesterday you testified 11 that you keep handwritten notes -- correct? -- 12 maintenance notes. Sorry.</p> <p>13 A I wouldn't really say they're notes. It's 14 when you work on a truck and you got oily hands you 15 write everything on a piece of scratch paper and 16 then transfer it to -- when you get done and wash 17 your hands, then you take that information and you 18 transfer it to the work order.</p> <p>19 Q And does Pat do the same thing as you?</p> <p>20 A Oh, yeah.</p> <p>21 Q Do you know if Pat keeps his handwritten, I 22 guess --</p> <p>23 A I know that he does not.</p> <p>24 Q Okay. Are the work orders filled out after 25 the work is complete?</p>	<p style="text-align: right;">Page 80</p> <p>1 have just tightened the bolts up. He doesn't 2 remember. He didn't really remember what exactly he 3 did. He was guessing.</p> <p>4 Q If you were -- if you were just tightening 5 the bolts on something, does MDB indicate they 6 reattached an item versus tightening screws?</p> <p>7 A No -- oh, yes, yes, I would. I would make 8 that distinction. But it's possible that the bolts 9 were loose and corroded so he removed the bolts and 10 put new bolts in. But it doesn't -- I don't know. 11 I'm speculating. It doesn't show any new bolts 12 installed so I really can't say.</p> <p>13 Q Okay. Can we go to Exhibit 21, please.</p> <p>14 A Okay.</p> <p>15 Q Earlier I believe you indicated that you'd 16 be rewiring the dump circuit because the Trailer 17 6774 did not activate with the switch.</p> <p>18 A Are we talking about Exhibit MDB 196?</p> <p>19 Q Oh, strike that. Go to MDB 205. I believe 20 that's where it was spoken about. Sorry about that.</p> <p>21 If I recall correctly, I believe you 22 testified that you likely would have replaced the 23 4-way socket and plug because Trailer 6774 would not 24 have been activated by the switch would be a reason. 25 Is that correct?</p>
<p style="text-align: right;">Page 79</p> <p>1 A Yes.</p> <p>2 Q Okay.</p> <p>3 A Well, I take that back. Sometimes 4 depending on what you're doing, sometimes you start 5 your work order. When you start, like, a PM, you'll 6 start your work order and have it on the back of 7 your truck, back of the vehicle, or on a table and 8 you kinda fill it out as you go --</p> <p>9 Q Okay.</p> <p>10 A -- but most of the time it's filled out 11 after the fact.</p> <p>12 Q I'm going to go to another exhibit. I 13 believe it's -- so Exhibit 7, if you want to open 14 it. Yesterday you indicated that you had a 15 conversation with Pat Bigby in regards to this work 16 order. Is that correct?</p> <p>17 A Which one?</p> <p>18 Q Oh, I'm sorry. MDB 000240. Sorry.</p> <p>19 A Yes, I did.</p> <p>20 Q And if I recall correctly, yesterday you 21 testified that Pat Bigby indicated that he believes 22 it was just tightening the bolts of the Versa 23 valves. Is that correct?</p> <p>24 A I think what he told me was that it must 25 have been something to that effect, that he must</p>	<p style="text-align: right;">Page 81</p> <p>1 A I would imagine that's the original 2 symptom, yes.</p> <p>3 Q Okay. And if that was the symptom, can 4 Trailer 6775 still be activated by --</p> <p>5 A Yeah.</p> <p>6 Q -- its own switch?</p> <p>7 A Yes, it could be. Not necessarily but it 8 could be, yes.</p> <p>9 Q So it's possible, then, that if the switch 10 isn't working for one trailer, it can still work for 11 a trailer behind it.</p> <p>12 A Absolutely, yes.</p> <p>13 Q Is the wiring different for a truck that 14 pulls two trailers versus a truck that pulls three 15 trailers?</p> <p>16 A I'm not sure. No. I mean, it would -- not 17 really. The truck that normally pulls three 18 trailers would just have two switches instead of 19 three switches and one of the wires in the 4-way 20 just wouldn't be hot for the third trailer.</p> <p>21 Q So Exhibit 24, MDB 073 -- and this work 22 order is where you referenced that you installed -- 23 that you were assuming it went from a two-trailer to 24 a three-trailer. Is that correct?</p> <p>25 A No. No. This is the work order that there</p>

<p style="text-align: right;">Page 86</p> <p>1 comes off the batteries, which goes, I think -- I 2 believe it goes to a circuit breaker on the frame 3 rail.</p> <p>4 Q Okay.</p> <p>5 A That's all factory wiring, yeah.</p> <p>6 Q Okay. Now, in regards to the July 2013 7 dump, do you know if MDB was issued, I guess, a 8 D.O.T. violation for that dump?</p> <p>9 MR. BROWN: Objection, vague.</p> <p>10 BY MS. SHREVE:</p> <p>11 Q I'm asking this to try to narrow the date 12 of the July 2013 incident based on Exhibit 15. So 13 I'm just trying to see if it would have received one 14 of the violations to where we could at least narrow 15 down one of the potential dates in July.</p> <p>16 A Is that the one that's July 26th in that 17 exhibit?</p> <p>18 Q So this would be Exhibit 15. It's the 19 safety measurement system.</p> <p>20 A Oh, yes. And what date is there on that?</p> <p>21 MR. BROWN: Here (indicating).</p> <p>22 BY MS. SHREVE:</p> <p>23 Q So in this report it lists dates of 24 violations for the truck.</p> <p>25 A Okay.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q So would it be safe to say, then, the 2 July 2013 incident likely would have occurred on 3 July 25th, 2013, July 30th, 2013, or 4 July 31st, 2013, based on those being the only 5 dates in July that the subject truck had a report 6 issued?</p> <p>7 MR. BROWN: Objection, foundation, 8 speculation.</p> <p>9 THE WITNESS: First of all, I guess I 10 didn't realize we didn't know the exact date. I 11 probably could have done a little research to figure 12 that out.</p> <p>13 But based on my reading this report now 14 that's in front of me, it is very hard to figure out 15 if the lines you're looking at are below or above 16 the dates.</p> <p>17 My opinion from looking at this, 18 July 25th would have been the date that the load 19 was spilled. That would be my best guess, opinion, 20 is July 25th, based on all the other evidence I've 21 looked at here.</p> <p>22 BY MS. SHREVE:</p> <p>23 Q Okay. Would you agree that same truck had 24 a report done on July 30th, 2013, and July 31st, 25 2013?</p>
<p style="text-align: right;">Page 87</p> <p>1 MR. BROWN: Can you say what page you're 2 looking at for the record.</p> <p>3 MS. SHREVE: Sorry. MDB 008.</p> <p>4 THE WITNESS: Okay.</p> <p>5 BY MS. SHREVE:</p> <p>6 Q So I'm asking if it would have received a 7 violation to where we would be able to at least 8 narrow some dates down.</p> <p>9 Because it looks like the subject truck had 10 in July 2013 -- there's two different dates -- or, 11 sorry, three different dates for violations or 12 inspection report numbers.</p> <p>13 A Yes. They're inspection report numbers. 14 They're not necessarily violations.</p> <p>15 Q Right. Sorry.</p> <p>16 A But --</p> <p>17 Q Would they have an inspection report done 18 on that July 2013 incident?</p> <p>19 A Yes. Any time the highway patrol stops 20 you, they give you one of those sheets.</p> <p>21 Q Okay.</p> <p>22 A I shouldn't say "every time," but I would 23 imagine they do --</p> <p>24 Q Okay.</p> <p>25 A -- most times.</p>	<p style="text-align: right;">Page 89</p> <p>1 A Yes, it would have had one done. Yes.</p> <p>2 Q Okay. If we could go to Exhibit 2, please. 3 Go to MDB 474, please. What is the date of this 4 Driver's Daily Log Sheet?</p> <p>5 A July 25th, 2013.</p> <p>6 Q This is one of the dates listed on the 7 report that we just spoke about, correct?</p> <p>8 A Yes.</p> <p>9 Q And based off of this sheet, is there 10 anything on here that indicates that this was the 11 day that the dump occurred?</p> <p>12 A Can somebody refresh my memory about 13 something? I don't know if anybody knows this 14 answer.</p> <p>15 Q Sure.</p> <p>16 A On the July 2013 incident was rock dumped 17 that day or sand? Does anybody -- I don't know if--</p> <p>18 MR. BROWN: I don't think anyone at this 19 table can help.</p> <p>20 THE WITNESS: All right. Well, based on 21 this report, it doesn't indicate that there was any 22 -- that this is the day but it does indicate that it 23 could be that day.</p> <p>24 BY MS. SHREVE:</p> <p>25 Q Now, if you turn that page to MDB 475, does</p>

<p style="text-align: right;">Page 90</p> <p>1 this -- it looks like it was for 7/25/2013 for the 2 subject truck and trailer.</p> <p>3 Does this indicate whether or not this was 4 the day that the trailer had a dump?</p> <p>5 A Once again, there's nothing on here that 6 actually spells it out that something happened. 7 Tracy at the time didn't make any notes on here, but 8 I do see that he was using that truck and those 9 trailers that day.</p> <p>10 Q Now, if rock or if something was dumped out 11 of the truck, would there be a note like there was 12 for July 7th, 2014, that the load is less than 13 what was picked up?</p> <p>14 A You're referring to the scale ticket being 15 changed or whatnot?</p> <p>16 Q Yes.</p> <p>17 A You would think so, yes, but not 18 necessarily. He might have called Cemex and said 19 this is what happened and they might have said, oh, 20 don't worry about it. I can't -- I'm speculating 21 but it could have been. I mean, it's possible that 22 we didn't actually make any adjustments to the tag.</p> <p>23 Q Okay. If you go back to Exhibit 24 and go 24 to MDB 073 --</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 92</p> <p>1 certain that the master switch was put in after the 2 dump on the road. So what we're looking at is we 3 can either make the assumption that July 25th was, 4 in fact, the date that he did it.</p> <p>5 The master switch was put in the following 6 day on July 26th, which sounds probably like the 7 scenario that happened, or this date is incorrect.</p> <p>8 Q That was going to be my next question, is 9 it possible that the date --</p> <p>10 A But I know for a fact that the dump 11 switches were put in -- the master dump switch was 12 put in after his first incident.</p> <p>13 Q Okay. Now, you're saying it's possible 14 that the date could be incorrect.</p> <p>15 Could the miles be incorrect as well, then?</p> <p>16 A No.</p> <p>17 Q Okay. So if you go to Exhibit 2 --</p> <p>18 A So you're putting your detective skills to 19 work here on the mileage, I'm assuming.</p> <p>20 Q I am. You are assuming correctly. I'm 21 trying to get this down, since we don't know the 22 date. In the event it's later, we don't have to do 23 that.</p> <p>24 A Right, that's good.</p> <p>25 Q Okay. So if you go to MDB 471, what's the</p>
<p style="text-align: right;">Page 91</p> <p>1 Q -- if this occurred -- since we don't know 2 the actual date and it's possible it could have 3 occurred on July 30th or July 31st -- if this 4 was done prior to the dump, what would be the 5 reasoning behind that?</p> <p>6 I know you explained that this work 7 order -- you were under the impression it was for 8 before the dump. But now that we know it's possible 9 the dump could have occurred on July 30th or 10 July 31st, why would he have rewired the gate 11 switches?</p> <p>12 A I'm not -- are you saying that I thought 13 this work order originally was from before?</p> <p>14 Q Yes. Earlier when you were testifying you 15 were talking about this work order, and you 16 testified that you believed the rewiring occurred 17 after.</p> <p>18 A Yes.</p> <p>19 Q But based on the evidence before, it looks 20 like it could have been possible that it occurred on 21 July 30th or July 31st. So this would have 22 occurred, then, before the July 2013 dump.</p> <p>23 So what would be the reasoning this would 24 have been done?</p> <p>25 A To my knowledge -- okay. I know for</p>	<p style="text-align: right;">Page 93</p> <p>1 date on this daily driver sheet?</p> <p>2 A Oh, the date on this is July 29th, 2013.</p> <p>3 Q Okay. And what is the starting odometer on 4 this log sheet?</p> <p>5 A 396,989 miles.</p> <p>6 Q Now, is that the same mileage that is 7 listed on Exhibit 24, MDB 073?</p> <p>8 A Yes, it is.</p> <p>9 Q Okay. I'll represent to you there is 10 not -- a driver's daily sheet for July 26th was not 11 produced.</p> <p>12 Now, would that be because the truck was in 13 service that day, if that date of July 26th, 2013, 14 is correct?</p> <p>15 A The truck was not in service?</p> <p>16 Q Correct.</p> <p>17 A That is correct.</p> <p>18 Q So, then, would it be possible that this 19 date of July 26th, 2013, would be correct if the 20 miles are the same as the starting odometer of 21 July 29th, 2013?</p> <p>22 A I'm sorry. I was thinking.</p> <p>23 Q It's fine. So for Exhibit 24, MDB 073, is 24 it possible that the date of 7/26/2013 is correct 25 since the miles of 396,989 is consistent with the</p>

<p style="text-align: right;">Page 94</p> <p>1 starting odometer in Exhibit 2, MDB 471, for 2 July 29th, 2013?</p> <p>3 A That would be the assumption I would make, 4 yes.</p> <p>5 Q Okay.</p> <p>6 A And as far as a July 26th truck report -- 7 or daily driver sheet missing?</p> <p>8 Q And would that be because it was actually 9 getting maintenance performed on it that day?</p> <p>10 A Well, no. I would say there's one missing 11 because there's a gap in the mileage.</p> <p>12 Q Okay.</p> <p>13 A And is it possible I was asked to produce 14 Dan Koski's -- I'm not sure if I was asked to 15 produce -- were we asked to produce Dan Koski's?</p> <p>16 Q It was for the truck and the trailer.</p> <p>17 A Okay. There might be a missing truck 18 report that somebody else drove the truck on Friday, 19 yeah. But we have established that yes, July 26th 20 sounds like the right date.</p> <p>21 Q Okay. Would you drive the truck on the day 22 it is getting serviced?</p> <p>23 A Oh, yes, definitely.</p> <p>24 Q Okay. But it is possible that that date of 25 July 26th is correct, then?</p>	<p style="text-align: right;">Page 96</p> <p>1 extent that it would call for any type of 2 attorney-client privilege that's occurred since the 3 commencement of the litigation.</p> <p>4 You understand that?</p> <p>5 THE WITNESS: Not exactly, but --</p> <p>6 MR. BROWN: If you determine there was a 7 defect before the litigation, you can answer the 8 question. But if it's something that I've told you 9 afterwards, you don't need to say.</p> <p>10 THE WITNESS: Okay.</p> <p>11 BY MS. SHREVE:</p> <p>12 Q So in July 2013, right after the incident 13 and your investigation into it --</p> <p>14 A Yes.</p> <p>15 Q -- which would be before this litigation 16 commenced, so your knowledge at that point, did MDB 17 determine that there was any defect with the Versa 18 valve?</p> <p>19 A The original Versa valves that was 20 installed on that date was actually never tested. 21 That is in my opinion -- in our opinion that there 22 was nothing wrong with the valve. We didn't -- I 23 mean, we didn't actually do a thorough testing but 24 we didn't find anything wrong as far as ...</p> <p>25 Q Okay.</p>
<p style="text-align: right;">Page 95</p> <p>1 A Yes.</p> <p>2 Q Okay. So if that date is correct and this 3 occurred prior to the July dump because it's 4 possible that we have established it could have been 5 on July 30th or July 31st, 2013, do you know why 6 they would have installed the master switch before?</p> <p>7 A No. I don't know why they wouldn't have. 8 Now --</p> <p>9 Q Do you know why there would have been a 10 rewiring of the gate switch that day?</p> <p>11 A I'm sorry. Rewiring the switch on 12 July 26th?</p> <p>13 Q Yes. If it occurred before the July 2013 14 incident.</p> <p>15 A No. There would be no reason for it.</p> <p>16 Q You're not aware of any reason?</p> <p>17 A No.</p> <p>18 Q Okay. After the July 2013 incident, did 19 MDB in their investigation into it find any defect 20 with the Versa valve?</p> <p>21 MR. BROWN: Can you read the question back?</p> <p>22 THE REPORTER: "Q. Okay. After the 23 July 2013 incident, did MDB in their investigation 24 into it find any defect with the Versa valve?"</p> <p>25 MR. BROWN: I'm going to object to the</p>	<p style="text-align: right;">Page 97</p> <p>1 A Yeah.</p> <p>2 Q And how about MDB's investigation right 3 after the July 2013 incident -- again, this is that 4 time after, not since litigation has commenced -- 5 did MDB find that there was anything wrong with the 6 design -- did they find there was a defect with the 7 design of the Versa valve?</p> <p>8 MR. BROWN: Objection, foundation, 9 speculation.</p> <p>10 THE WITNESS: It's not something we tried 11 to determine, so I guess the answer would be no but 12 we didn't actually try to determine that. And we're 13 still using the same valve so I don't think there 14 was a design flaw, necessarily.</p> <p>15 BY MS. SHREVE:</p> <p>16 Q I'm going to ask you the same question 17 again for after the July 2014 incident on Trailer 18 6775. Did MDB in their investigation after the dump 19 -- again, this is right after, not since litigation 20 -- did MDB find any defect with that Versa valve?</p> <p>21 A No. That remained in service until such 22 time litigation started.</p> <p>23 Q And on that same trailer, the same Versa 24 valve, did MDB in their investigation right after 25 the subject incident -- again, pre-litigation, right</p>

<p style="text-align: right;">Page 98</p> <p>1 after -- did MDB discover any design defect with the 2 Versa valve?</p> <p>3 MR. BROWN: Objection, foundation.</p> <p>4 THE WITNESS: No. But, once again, we 5 weren't looking for any sort of design defects or 6 functionality defects. It worked.</p> <p>7 BY MS. SHREVE:</p> <p>8 Q Okay.</p> <p>9 A To the best of our knowledge it still 10 worked.</p> <p>11 Q So it worked as you expected it to work, 12 then?</p> <p>13 A Well, at that -- yeah. I would imagine. 14 After that time we had lockout devices in there so 15 we wouldn't be able to tell if it inadvertently 16 opened after that incident, but as far as I know, we 17 could find nothing wrong with the valve.</p> <p>18 Q Okay. And I'm going to ask the same 19 questions with regards to the sand truck as well for 20 the truck you were driving and the trailer, 6778, on 21 the July 2014 day.</p> <p>22 Did MDB in their investigation find any 23 defect with the Versa valve?</p> <p>24 A No.</p> <p>25 Q Okay. And the same goes for the Trailer</p>	<p style="text-align: right;">Page 100</p> <p>1 up a little bit, please.</p> <p>2 MR. BUNDICK: Sure. Let me take you off 3 speaker phone.</p> <p>4 Hello?</p> <p>5 MS. WOELFEL: Go ahead.</p> <p>6 BY MR. BUNDICK:</p> <p>7 Q Mr. Palmer, in your opinion how is my 8 client Modern Group responsible for the accident 9 that occurred in July 2013?</p> <p>10 MR. BROWN: I'll object again to the extent 11 it would call for an invasion of the attorney-client 12 privilege and beyond the scope of the 30(b)6 13 notification.</p> <p>14 To the extent that your knowledge is based 15 upon what you've been told by your attorney, don't 16 answer the question. If you have knowledge beyond 17 that, feel free to give it to him.</p> <p>18 THE WITNESS: If you're asking for my 19 opinion, I don't really --</p> <p>20 BY MR. BUNDICK:</p> <p>21 Q Do you have knowledge outside of what you 22 discussed with your attorney?</p> <p>23 A Pardon?</p> <p>24 MR. BROWN: We can't hear you.</p> <p>25 MS. SHREVE: If you could talk slower.</p>
<p style="text-align: right;">Page 99</p> <p>1 6778. After the July 2014 incident did MDB find any 2 defect in the design of the Versa valve after their 3 investigation?</p> <p>4 MR. BROWN: Objection, foundation.</p> <p>5 THE WITNESS: But, once again, we didn't do 6 an investigation of it. We have found -- we haven't 7 looked for it but we have found no indication of a 8 defect.</p> <p>9 MS. SHREVE: I think that's all the 10 questions I have right now. I will pass the 11 witness. Jessica, do you have any followup.</p> <p>12 MS. WOELFEL: No, I have no other followup. 13 I'm good.</p> <p>14 MS. SHREVE: Does anyone on the phone have 15 any followup questions?</p> <p>16 MS. QUIGLEY: No.</p> <p>17 MR. BUNDICK: Yeah, I have one.</p> <p>18 FURTHER EXAMINATION</p> <p>19 BY MS. BUNDICK:</p> <p>20 Q Mr. Palmer, this is Jacob Bundick and I 21 represent Modern Group and Dragon Ltd.</p> <p>22 In your opinion how is Modern responsible 23 for the --</p> <p>24 MS. WOELFEL: The chiropractor couldn't 25 hear you. Would you be able to talk slower and talk</p>	<p style="text-align: right;">Page 101</p> <p>1 BY MR. BUNDICK:</p> <p>2 Q Mr. Palmer, can you answer the question 3 without divulging attorney-client privilege 4 information?</p> <p>5 A If I remember the question, I don't have an 6 opinion of why -- I don't have an opinion of that. 7 You're asking for my opinion and I don't have one.</p> <p>8 Q You do not have an opinion. Thank you.</p> <p>9 MR. BUNDICK: I have no further questions.</p> <p>10 MR. BROWN: I have no questions.</p> <p>11 MS. WOELFEL: We've completed this witness' 12 deposition. Thank you for your time.</p> <p>13 THE WITNESS: Thank you.</p> <p>14 MR. BROWN: I know you don't send 15 originals, but I'll take the copy for signature.</p> <p>16 MS. WOELFEL: We've all ordered copies of 17 the transcript.</p> <p>18 THE REPORTER: Counsel on the phone, are 19 you ordering copies of the transcript, or no?</p> <p>20 MS. QUIGLEY: Yes, I'll take an E-tran.</p> <p>21 MR. BUNDICK: Yes, for E-Transcript.</p> <p>22 (Whereupon, deposition was concluded at 23 12:19 p.m.) 24 -o0o- 25</p>

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<p>1 STATE OF NEVADA)</p> <p style="padding-left: 100px;">) ss.</p> <p>2 COUNTY OF WASHOE)</p> <p>3</p> <p>4 I, CHRISTINA AMUNDSON, a duly commissioned and</p> <p>5 licensed court reporter, Washoe County, State of</p> <p>6 Nevada, do hereby certify:</p> <p>7 That I reported the taking of the deposition of</p> <p>8 SCOT ALLEN PALMER, commencing on Wednesday, March 8,</p> <p>9 2017, at 9:30 a.m.</p> <p>10 That prior to being examined, the witness was</p> <p>11 duly sworn to testify to the truth. That I</p> <p>12 thereafter transcribed my said shorthand notes into</p> <p>13 typewriting and that the typewritten transcript of</p> <p>14 said deposition is a complete, true, and accurate</p> <p>15 transcription of said shorthand notes.</p> <p>16 I further certify that I am not a relative or</p> <p>17 employee of an attorney or counsel of any of the</p> <p>18 parties, nor a relative or employee of an attorney</p> <p>19 or counsel involved in said action, nor a person</p> <p>20 financially interested in the action.</p> <p>21</p> <p>22 DATED: At Reno, Nevada, this 14th day of March</p> <p>23 2017. <u>Christina Amundson</u></p> <p>24 CHRISTINA AMUNDSON CCR #641</p> <p>25</p>	<p style="text-align: center;">ERRATA SHEET</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">Page</th> <th style="width: 5%;">Line</th> <th style="width: 40%;">Should read:</th> <th style="width: 50%;">Reason for Change:</th> </tr> </thead> <tbody> <tr><td>1</td><td></td><td></td><td></td></tr> <tr><td>2</td><td></td><td></td><td></td></tr> <tr><td>3</td><td></td><td></td><td></td></tr> <tr><td>4</td><td></td><td></td><td></td></tr> <tr><td>5</td><td></td><td></td><td></td></tr> <tr><td>6</td><td></td><td></td><td></td></tr> <tr><td>7</td><td></td><td></td><td></td></tr> <tr><td>8</td><td></td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td><td></td></tr> <tr> <td>18</td> <td>Date:</td> <td colspan="2"></td> </tr> <tr> <td>19</td> <td></td> <td colspan="2" style="text-align: center;">Signature of Witness</td> </tr> <tr> <td>20</td> <td></td> <td colspan="2"></td> </tr> <tr> <td>21</td> <td></td> <td colspan="2" style="text-align: center;">Name Typed or Printed</td> </tr> <tr><td>22</td><td></td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td><td></td></tr> </tbody> </table>	Page	Line	Should read:	Reason for Change:	1				2				3				4				5				6				7				8				9				10				11				12				13				14				15				16				17				18	Date:			19		Signature of Witness		20				21		Name Typed or Printed		22				23				24				25			
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<p style="text-align: right;">Page 103</p> <p style="text-align: center;">ERRATA SHEET</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I declare under penalty of perjury that I have read the</p> <p>6 foregoing _____ pages of my testimony, taken</p> <p>7 on _____ (date) at</p> <p>8 _____ (city), _____ (state),</p> <p>9</p> <p>10 and that the same is a true record of the testimony given</p> <p>11 by me at the time and place herein</p> <p>12 above set forth, with the following exceptions:</p> <p>13</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">Page</th> <th style="width: 5%;">Line</th> <th style="width: 40%;">Should read:</th> <th style="width: 50%;">Reason for Change:</th> </tr> </thead> <tbody> <tr><td>14</td><td></td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td><td></td></tr> </tbody> </table>	Page	Line	Should read:	Reason for Change:	14				15				16				17				18				19				20				21				22				23				24				25																																																								
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EXHIBIT 3

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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ERNEST BRUCE FITZSIMMONS and Case No. CV15-02349
CAROL FITZSIMMONS, husband and Department No. 10
wife, Plaintiffs,

vs.

MDB TRUCKING, LLC; et al.,
Defendants.

_____/

AND RELATED THIRD-PARTY MATTERS
AND CONSOLIDATED CASE.

_____/

CONTINUED DEPOSITION OF PMK OF MDB TRUCKING

SCOTT ALLEN PALMER

March 7, 2017

Reno, Nevada

Volume II

REPORTED BY: CONSTANCE S. EISENBERG, CCR #142, RMR, CRR
Job No. 378331

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<p>1 A P P E A R A N C E S</p> <p>2 For the Plaintiff:</p> <p>3 (Appearing telephonically)</p> <p>4 BRADLEY, DRENDEL & JEANNEY</p> <p>5 BY: SARAH MARIE QUIGLEY, ESQ.</p> <p>6 6900 S. McCarran Blvd, Ste. 2000</p> <p>7 Reno, Nevada 89509</p> <p>8 775-335-9999</p> <p>9 Fax 775-335-9993</p> <p>10 Sarahquigley@bdjlaw.com</p> <p>11 For MDB TRUCKING, LLC, & DANIEL KOSKI:</p> <p>12 THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER</p> <p>13 BY: BRIAN M. BROWN, ESQ.</p> <p>14 AND THIERRY BARKLEY, ESQ. (a.m. session)</p> <p>15 6590 S. McCarran Blvd., Suite B</p> <p>16 Reno, Nevada 89509-6112</p> <p>17 775-786-2882</p> <p>18 Fax 775-786-8004</p> <p>19 Bmb@thorndal.com</p> <p>20 For RMC LAMAR HOLDINGS, INC.:</p> <p>21 MCDONALD CARANO WILSON LLP</p> <p>22 BY: JESSICA L. WOELFEL, ESQ.</p> <p>23 100 W. Liberty Street, Tenth Floor</p> <p>24 Reno, Nevada 89501</p> <p>25 775-788-2000</p> <p>775-788-2020</p> <p>Jwoelfel@mcwlaw.com</p> <p>For VERSA PRODUCTS COMPANY, INC.:</p> <p>LEWIS, BRISBOIS, BISGAARD & SMITH, LLP</p> <p>BY: PAIGE S. SHREVE, ESQ.</p> <p>6385 South Rainbow Blvd., Suite 600</p> <p>Las Vegas, Nevada 89118</p> <p>702-898-3383</p> <p>Fax 702-893-3789</p> <p>Paige.Shreve@lewisbrisbois.com</p>	<p>1 INDEX</p> <p>2 EXAMINATION PAGE</p> <p>3 SCOTT ALLEN PALMER 5</p> <p>4 EXAMINATION BY MS. SHREVE 5</p> <p>5 EXAMINATION BY MS. WOELFEL 138</p> <p>6 EXHIBITS</p> <p>7 DESCRIPTION PAGE</p> <p>8 NUMBER</p> <p>9 EXHIBIT 8 Work orders, Equipment No. 5693 6</p> <p>10 EXHIBIT 9 Work orders, Equipment No. 6777 9</p> <p>11 EXHIBIT 10 Work orders, Equipment No. 6778 14</p> <p>12 EXHIBIT 11 Invoice, ENGS Motor Truck Co. 53</p> <p>13 EXHIBIT 12 Warnings/Versa Products 62</p> <p>14 EXHIBIT 13 Invoice, Western Nevada Transport 67</p> <p>15 EXHIBIT 14 Equipment lease 68</p> <p>16 EXHIBIT 15 SMS inspection reports 91</p> <p>17 EXHIBIT 16 Koski employment file 105</p> <p>18 EXHIBIT 17 Driver's vehicle inspection reports 132</p> <p>19 EXHIBIT 18 Inspector qualifications, 136</p> <p>20 certification</p> <p>21 EXHIBIT 19 Work orders, Equipment 6777, MDB 388, 178</p> <p>22 394, 400</p> <p>23 EXHIBIT 20 Work orders, Equipment No. 6775 185</p> <p>24 Note: Original Exhibits retained in binder at Sunshine Litigation</p> <p>25 Services.</p>
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<p>1 For THE MODERN GROUP AND DRAGON ESP, LTD.:</p> <p>2 (Appearing telephonically)</p> <p>3 GREENBERG TRAUIG, LLP</p> <p>4 BY: JACOB D. BUNDICK, ESQ.</p> <p>5 3373 Howard Hughes Parkway, Ste. 400 N</p> <p>6 Las Vegas, Nevada 89169</p> <p>7 702-792-9002</p> <p>8 Bundickj@gtlaw.com</p> <p>9 Also present:</p> <p>10 DANIEL KOSKI</p> <p>11 (a.m. session)</p> <p>12 BILL CARTER</p>	<p>1 BE IT REMEMBERED that on Tuesday, March 7, 2017, at the hour</p> <p>2 of 9:45 a.m. of said day, at the offices of McDonald Carano</p> <p>3 Wilson, 100 W. Liberty St., 10th Floor, Reno, Nevada, before me,</p> <p>4 CONSTANCE S. EISENBERG, a Nevada Certified Court Reporter,</p> <p>5 personally appeared SCOTT ALLEN PALMER, who was by me previously</p> <p>6 duly sworn, and was examined as a witness in said cause.</p> <p>7 -o0o-</p> <p>8</p> <p>9 SCOTT ALLEN PALMER</p> <p>10 called as a witness, having been previously</p> <p>11 duly sworn, testified as follows:</p> <p>12</p> <p>13 MS. SHREVE: We can go on the record.</p> <p>14 Good morning, Mr. Palmer.</p> <p>15 THE WITNESS: Good morning.</p> <p>16 MS. SHREVE: Do you understand you are still under oath</p> <p>17 today?</p> <p>18 THE WITNESS: Yes.</p> <p>19</p> <p>20 EXAMINATION</p> <p>21 BY MS. SHREVE:</p> <p>22 Q Yesterday, I gave you some general rules of a</p> <p>23 deposition. Do you remember those rules?</p> <p>24 A Yes.</p> <p>25 Q Do you need me to repeat those rules or go over them</p>

<p style="text-align: right;">Page 6</p> <p>1 again?</p> <p>2 A No.</p> <p>3 MS. SHREVE: Okay. Perfect.</p> <p>4 So we will begin with the next exhibit, which is</p> <p>5 Exhibit 8. And this will be the work orders for Equipment Number</p> <p>6 5693, which will be the -- I guess we're labeling it the sand</p> <p>7 truck, so which would be your truck that you drove that day.</p> <p>8 THE WITNESS: Okay.</p> <p>9 (Exhibit 8 marked for identification.)</p> <p>10 BY MS. SHREVE:</p> <p>11 Q So we'll do the same thing, kind of what we did</p> <p>12 yesterday with these work orders. Please just state the date of</p> <p>13 the work order and what was done with this work order.</p> <p>14 A Okay. The date is August 5th, 2014. The work order is</p> <p>15 for Truck 5693.</p> <p>16 And it's troubleshoot intermittent first trailer gate</p> <p>17 function, found wire not secured, replaced plug with -- oh,</p> <p>18 Phillips plug.</p> <p>19 So the mechanic, Pat, put a new four-way plug on the end</p> <p>20 of the cord on the tractor.</p> <p>21 Q Similar to the four-way plugs that we discussed</p> <p>22 yesterday?</p> <p>23 A Uh-huh, exactly the same.</p> <p>24 Q So then we'll go to the next one, which is MOEMISUP 62.</p> <p>25 Can you please tell me the date and what this work order is for.</p>	<p style="text-align: right;">Page 8</p> <p>1 A It would -- it should, yes. Did it happen? I'm not</p> <p>2 sure.</p> <p>3 Q Okay. We'll go to the next work order, which is</p> <p>4 MOEMISUP 68. Can you please tell me the date on this work order</p> <p>5 and what occurred.</p> <p>6 A The date of the work order is May 18th, 2015, for</p> <p>7 Truck 5693. It says replace VVA sensor connector and add coolant.</p> <p>8 Q And what is the VVA sensor connector?</p> <p>9 A I actually remember this particular event because I'm</p> <p>10 the one that wrote it up.</p> <p>11 It would have been -- the truck would have come with a</p> <p>12 "check engine" light on. We would have hooked the computer to it.</p> <p>13 It would have gave us a code, I think it's 95, which indicates the</p> <p>14 variable valve actuator sensor has a high or low voltage.</p> <p>15 And Pat determined that it was the connector at the end</p> <p>16 of the wire going into the sensor.</p> <p>17 This is on the engine.</p> <p>18 Q Okay.</p> <p>19 A This is on the valve train internal to the engine under</p> <p>20 the valve cover.</p> <p>21 Q Okay. Perfect. Let's go to the next order, which is</p> <p>22 MOEMISUP 83. Can you please tell me the date completed on this</p> <p>23 work order and what occurred.</p> <p>24 A This is on November 29th, 2015; Truck 5693. And I did</p> <p>25 this work order. And I replaced the seven-way plug at the trailer</p>
<p style="text-align: right;">Page 7</p> <p>1 A The date is March 23rd, 2015, for Truck 5693 again.</p> <p>2 Troubleshoot, gate not working with switch and also adjust clutch.</p> <p>3 Gates were working when checked out. Four-way plug from</p> <p>4 tractor to trailer ground had some corrosion. Replace four-way</p> <p>5 plug.</p> <p>6 Also noticed feedback at plug, traced to light wiring in</p> <p>7 dash. Unplugged jumpers, recommend rewiring switches. He put a</p> <p>8 new four-way plug and also adjusted the clutch.</p> <p>9 Q What is meant by noticed feedback at plug, traced to</p> <p>10 light wiring at dash?</p> <p>11 A I believe on that particular truck -- actually, I'm not</p> <p>12 sure.</p> <p>13 I think that particular truck had lights in the dash</p> <p>14 that told you whether the switch is on or off, and it might have</p> <p>15 been some sort of a feedback between the light and the plug.</p> <p>16 Q And when you say "the switch is on or off," what switch</p> <p>17 are you specifically talking about?</p> <p>18 A Okay. One of the dump switches for one of the trailers,</p> <p>19 whether it be the first, the second or the third trailer.</p> <p>20 Q Okay. And does this indicate whether -- it says</p> <p>21 recommended rewiring switches. Does it indicate whether there was</p> <p>22 a rewiring of switches?</p> <p>23 A It does not indicate that on this particular work order.</p> <p>24 Q When you recommend rewiring switches, does it usually</p> <p>25 happen after or -- no, I guess.</p>	<p style="text-align: right;">Page 9</p> <p>1 end of the seven-way cord.</p> <p>2 Q Okay. Again, this is --</p> <p>3 A Just another seven-way.</p> <p>4 Q -- the seven-way plug that we've seen in previously in</p> <p>5 other work orders?</p> <p>6 A Yes.</p> <p>7 MS. SHREVE: All right. We will go on to the next</p> <p>8 exhibit, which will be Exhibit 9.</p> <p>9 (Exhibit 9 marked for identification.)</p> <p>10 BY MS SHREVE:</p> <p>11 Q And this is in regard to Equipment 6777, which would be</p> <p>12 the second trailer on the sand truck that we're calling it --</p> <p>13 A That is correct.</p> <p>14 Q -- that you were driving that day.</p> <p>15 A That is correct.</p> <p>16 Okay. This is February 20th, 2014; Trailer 6777.</p> <p>17 Troubleshoot air loss.</p> <p>18 They found the rear gate cylinder on this trailer -- the</p> <p>19 gate -- meaning the cylinder that opens up the gates -- leaking,</p> <p>20 bypassing air at the QR valve.</p> <p>21 He disassembled the cylinder, put a packing kit in it,</p> <p>22 reinstalled the cylinder and tested it, and it cured the air leak.</p> <p>23 Q Okay. We will go on to the next one, if you can tell me</p> <p>24 the date completed on this one and what occurred, please.</p> <p>25 A This is on April 16th, 2014; Trailer 6777. Versa valve</p>

<p style="text-align: right;">Page 10</p> <p>1 handle loose, and air spring action on lever not working</p> <p>2 correctly.</p> <p>3 Remove Versa valve, disassemble, found accumulator rubber</p> <p>4 bad. Swapped accumulator with one from another valve. Clean the</p> <p>5 inside of valve and accumulator, oil with air tool and reassemble.</p> <p>6 Also adjust handle not to tighten. Test. All okay.</p> <p>7 Q Okay. On this one, it says that you removed and</p> <p>8 disassembled the Versa valve, correct?</p> <p>9 A Correct.</p> <p>10 Q And it says you swapped the accumulator with another</p> <p>11 valve?</p> <p>12 A The rubber inside the accumulator.</p> <p>13 Q Okay. And do you know which valve you switched it out</p> <p>14 with?</p> <p>15 A No.</p> <p>16 Q Do you keep records of which one you would have switched</p> <p>17 it out with?</p> <p>18 A No. It would have been a valve that would have been</p> <p>19 removed. It's probably a used valve that had been sitting around</p> <p>20 in the shop, might not have even been our valve.</p> <p>21 Q Would it have been a Versa valve?</p> <p>22 A Oh, absolutely, yeah.</p> <p>23 Q When you take valves, Versa valves, out of your -- out</p> <p>24 of a trailer, what do you do with them? Do you keep them, or do</p> <p>25 you throw them away?</p>	<p style="text-align: right;">Page 12</p> <p>1 Q Do you recall seeing any other Versa valve around other</p> <p>2 than the one that was taken off of 6775 from the -- around</p> <p>3 August 2013?</p> <p>4 A Do I remember seeing any other valves around in our</p> <p>5 shop?</p> <p>6 Q Yes, that could have possibly been one that you would</p> <p>7 have used.</p> <p>8 A I don't recall. I don't think so.</p> <p>9 Q Okay. All right. I'm going to go to the next one. I'm</p> <p>10 going to come back later and ask some more on that one, but I'll</p> <p>11 move to the next work order, which is MOEMAINT 000321.</p> <p>12 Can you tell me the date completed on this one and what</p> <p>13 occurred.</p> <p>14 A December 1st, 2014; Equipment Number 6777 again.</p> <p>15 Troubleshoot gates not closing with switch. Found accumulator</p> <p>16 Versa valve not functioning. Replaced Versa valve.</p> <p>17 Okay. There's another one I must not have remembered.</p> <p>18 Q So would this be the same Versa valve that was in the</p> <p>19 previous work order we just spoke about, the MOEMAINT 315?</p> <p>20 A No, this would be the new Versa valve.</p> <p>21 Q So was the Versa valve, then, replaced -- because --</p> <p>22 sorry to go back -- strike that.</p> <p>23 To go back to the previous one, MOEMAINT 315, it does</p> <p>24 not appear that you actually replaced the Versa valve. It</p> <p>25 appears, from my understanding, that you did some maintenance on</p>
<p style="text-align: right;">Page 11</p> <p>1 A Well, we haven't had too many that we've taken off. In</p> <p>2 fact, this is actually contrary to what I said yesterday where we</p> <p>3 don't repair them. Apparently, I forgot about this.</p> <p>4 This is actually -- this accumulator valve is actually</p> <p>5 attached to the side of the Versa valve. So I guess I didn't</p> <p>6 think about it as being actually taking a Versa valve apart.</p> <p>7 But I guess it would be considered a part of the Versa</p> <p>8 valve. It's not part of the main spool of the Versa valve, in</p> <p>9 other words.</p> <p>10 Q How many Versa valves -- you just testified that you</p> <p>11 haven't taken many off. How many would you say you've taken off</p> <p>12 of trailers at MDB?</p> <p>13 A Other than the two that we took off for --</p> <p>14 Q Yes, other than the two that you took off -- that the</p> <p>15 experts took off for testing of the valve.</p> <p>16 A Yes, other than those, I don't think we took off more</p> <p>17 than one or two.</p> <p>18 Q Would you know which trailer you would have taken those</p> <p>19 valves off of?</p> <p>20 A I would say the only one that I know for sure of, since</p> <p>21 my time there, was the one taken off of 6775 and replaced with a</p> <p>22 new valve in October -- October -- I think it was August of 2013,</p> <p>23 that first incident.</p> <p>24 In fact, that might be the valve that I took the</p> <p>25 accumulator rubber out of, because we saved that valve.</p>	<p style="text-align: right;">Page 13</p> <p>1 it; is that correct?</p> <p>2 A That is correct, changed the rubber in the accumulator</p> <p>3 portion of the valve.</p> <p>4 Q So then on the MOEMAINT 321, before you replaced the</p> <p>5 Versa valve -- is that the same Versa valve --</p> <p>6 A Oh, yes, this -- I'm sorry. Yes. I would imagine that</p> <p>7 it probably still had a problem with it not -- not sealing</p> <p>8 correctly. So we just put a new Versa valve on it at that time.</p> <p>9 Q And it looks like this order was -- I know it says it</p> <p>10 was performed by Pat, but it was, I guess, maybe requested by you;</p> <p>11 is that correct?</p> <p>12 A Yes.</p> <p>13 Q Do you recall how you became aware of this issue?</p> <p>14 A I would have become aware of it from the driver or I</p> <p>15 might have been the driver. I would have to go back and look at</p> <p>16 the records to see who was driving the truck right before this</p> <p>17 date.</p> <p>18 That, either way, whether it was myself or another</p> <p>19 driver, a driver would have said the gates are opening with the</p> <p>20 switch, but they are not closing with the switch, which,</p> <p>21 generally, means the accumulator is not holding air.</p> <p>22 So seeing as how we already tried to fix it once, we</p> <p>23 just -- I told Pat just replace it, put a new valve on it.</p> <p>24 MS. SHREVE: Okay. All right. And I'm probably going</p> <p>25 to come back to these when I have additional questions, but for</p>

<p style="text-align: right;">Page 14</p> <p>1 now, we'll just continue down the work order. 2 (Exhibit 10 marked for identification.) 3 BY MS SHREVE: 4 Q All right. So we're now going to go to Exhibit 10, 5 which is Equipment Number 6778, which would be the trailer that 6 you were driving on the day of the subject incident that had sand 7 in it which spilled on the highway. 8 Is that correct? 9 A Yes. 10 Q So the first one is MDEMSUP 94. Can you please tell me 11 the date and explain what "B & L" means on your work orders. 12 A July 17th, 2013, is the date of the work order. And 13 it's for Equipment Number 6778 performed by Pat. 14 And as you can see, the boxes "inspect" and "lube" are 15 checked. And he writes B & L, which is a synonym for inspection, 16 but he puts brake and lube. 17 Essentially, he's inspecting the brakes and lubing it, 18 same thing. 19 Q Perfect. 20 We'll go to the next one, MDEMSUP 99. Can you please 21 tell me the completed date and what occurred on this day. 22 A Okay. The date is October 25th, 2013; again, 23 Trailer 6778. Replaced four-way plugs, replace four-way plugs and 24 sockets on trailers. 25 Q Okay. Again, this is the same four-way plugs --</p>	<p style="text-align: right;">Page 16</p> <p>1 A The bottom of the gates, the gates that open up to dump 2 the load. 3 Q Okay. Okay. And that's the last one for that exhibit. 4 That's all the maintenance records for right now. I'm 5 going to switch gears a little bit. 6 And if I am correct, there were three unintentional 7 dumpings that occurred since you -- or, while at MDB that you are 8 aware of. 9 A Yes. One happened about a week before I came to work 10 there and two happened while I was there. 11 Q Okay. And for each of them, did you have to fill out -- 12 does MDB require any kind of a report to be filled out about the 13 dumping of these trailers? 14 A No. 15 Q Do you have to -- 16 A Are you talking about an internal report? 17 Q Yes. 18 A No. 19 Q Do you have to fill out an external report? 20 A Not that I know of. 21 Q Do you notify the client as to, I guess, why their load 22 didn't arrive on time? 23 A Oh, absolutely. 24 Q Okay. And how do you notify them? 25 A Well, all these happened when Tracy Shane was</p>
<p style="text-align: right;">Page 15</p> <p>1 A Yes. 2 Q -- that we talked about? 3 A Yes. 4 Q Let's go to the next one, MDEMAINT 000336. Can you 5 please me the completed date on this one and what occurred. 6 A December 1st, 2014; Trailer 6778. And Pat reattached 7 the safety pin to Versa valve. 8 This would have been something that I would have told 9 him. Basically, the safety pin that locks the handle on the Versa 10 valve from opening, there's a safety wire that attaches it to the 11 trailer that keeps -- so you don't lose it when you remove it, was 12 broken. 13 So he just put a new safety cable on there so we don't 14 lose the pin. 15 Q Okay. So can we go to the next one, which is 16 MDEMSUP 107. And can you tell me the date on this one and what 17 occurred, please. 18 A October 23rd, 2015; Trailer 6778. Reseal front gate 19 cylinder. Remove cylinder, replace barrel and seals, reinstall 20 and tested okay. 21 So we moved the front gate cylinder off of the gates, 22 disassembled it, but a new barrel on or two, put a new seal kit in 23 and reassembled. 24 Q Okay. When you say "the gates," what gate are you 25 specifically talking about?</p>	<p style="text-align: right;">Page 17</p> <p>1 dispatching. He would have just called and told them. I think we 2 talked about that yesterday. One of the tags was changed then. 3 Q So it would be typical to change the tag if there was a 4 dump -- 5 A Yes. 6 Q -- to reflect -- 7 A Yes. 8 Q When the incident occurred in July 2013, did you -- did 9 MDB notify anyone from Versa about the incident that occurred? 10 A Not to my knowledge, no. 11 Q How about the subject incident on July 7th, did they 12 notify -- did MDB notify anyone from Versa valve in regards to the 13 gravel truck or trailer? 14 A No, I do not believe so. 15 Q And then the same question -- 16 MR. BROWN: You are talking about, obviously, at the 17 time that it occurred? 18 MS. SHREVE: At the time that it occurred, yes. 19 Obviously, they now are aware, but at the time that it occurred. 20 THE WITNESS: No I don't think so. 21 BY MS SHREVE: 22 Q Other than this lawsuit, has MDB notified Versa of the 23 incident that occurred on July 7th, 2014? 24 A I do not believe so. 25 Q The same question is going to be, again, for the sand</p>

<p style="text-align: right;">Page 18</p> <p>1 truck that you were driving on the day of the subject incident, 2 did anyone from MDB, at the time of the incident or right after 3 the incident, notify Versa of what occurred? 4 A No, I do not believe so. 5 Q And then other than this lawsuit, did they -- did MDB 6 notify Versa of what occurred? 7 A No, I do not believe so. 8 I do know that I have personally called Versa and tried 9 to get ahold of somebody to talk to me about it, and they always 10 act like they don't know anything, they have never heard of this 11 happening before. So -- 12 Q And when you say you personally called, as an employee 13 of MDB? 14 A Oh, yeah. Yes. 15 Q Okay. 16 A But not specifically to any of these specific -- I 17 didn't -- didn't notice them about these specific incidences. 18 Q Okay. So can you tell me when you called, 19 approximately? 20 A I don't recall. 21 I do remember calling Versa and saying I would like to 22 talk to somebody about this, and they put me in touch with 23 somebody. And they said, yeah, we never heard of this happening 24 before. 25 So -- and I know other people have called them, and</p>	<p style="text-align: right;">Page 20</p> <p>1 Q What are the other companies? 2 A Capurro Trucking, Lakeside Specialized Transportation. 3 I'm not sure if Harco Company -- actually, it's Harco Trucking 4 now. I'm not sure if they have. 5 I'm trying to think of the other companies. 6 I can't think of them off the top of my head. 7 Q And how do you have knowledge of gates opening at other 8 companies? 9 A News travels fast. And you can still drive out on the 10 highways and see all the loads sitting on the side of the highway. 11 So it's not hard to imagine. 12 One of them actually happened -- one of Lakeside's loads 13 they lost actually happened when they were hauling for us. 14 Q And when did that occur? 15 A That would have been early 2013. I'm assuming. I'm 16 just guessing at that. 17 Q And did you have any conversations with anyone from 18 these companies about the openings of the truck -- or trailer? 19 A I've spoken to people at these companies about it, yes, 20 not in an official manner, but -- 21 Q Do you recall who you spoke with specifically in regards 22 to these incidents? 23 A No. 24 Q Do you recall what they said about the incidents that 25 occurred?</p>
<p style="text-align: right;">Page 19</p> <p>1 pretty much -- I just kind of figure we're on our own in that 2 area. 3 Q Do you -- did this phone call happen before the 4 August 2013 incident? 5 A No. 6 Q Did this phone call happen before the July 7th, 2014, 7 incident? 8 A Possibly. I don't know. 9 Q How many times did you call Versa? 10 A Probably just once. 11 Q Okay. And do you recall who you spoke with? 12 A No. 13 Q Do you recall what you specifically said to them? 14 A Basically, that we've had -- that the industry out here 15 have had a lot of gates opening, and if they -- if they know 16 anything about anything that they can do to help us with it. 17 And they responded that they didn't really know anything 18 about it. 19 Q Okay. You just testified that you had a -- you've had a 20 lot of gates opening. Are you aware of other gates opening? 21 A When I say we've had a lot of gates opening, I'm saying 22 in this area, other companies. 23 Q Are you aware of other companies that have had gates 24 opening? 25 A Absolutely.</p>	<p style="text-align: right;">Page 21</p> <p>1 A The only -- the conversation would have been what are 2 you guys doing about solving the problem. And everybody, 3 basically, is in the same position we are where nobody knew what 4 to do. That was the conversation. 5 Q Did anybody -- did anyone indicate as to what they 6 believe caused the dumping? 7 A They did not indicate what caused it. They only 8 indicated nobody knows what's causing it. 9 Q Did they indicate whether they investigated it? 10 A No. Oh -- no, I'm sure they did, but they did not 11 indicate that. 12 Q So your conversation that you had when you called 13 somebody at Versa, did they direct you to contact anybody else? 14 A No. I talked to somebody. I got the impression they -- 15 my advice that I got from people, when I said I was going to call 16 them, they said you are not going to get an answer from them. And 17 that was pretty much how I felt when I talked to them. 18 Q And do you know who told you that you wouldn't get an 19 answer from Versa? 20 A Oh, people in the industry, like -- Pat, like, works 21 with them. They are not going to say anything. 22 And after talking to them, I mean, what are they going 23 to say, yeah, we have a problem with these valves, sure, we know 24 all about it. I mean, what are they going to say? 25 You know, without -- it was a somewhat informal</p>

<p>1 conversation.</p> <p>2 Q So Pat Bigby is one of the people --</p> <p>3 A Uh-huh.</p> <p>4 Q -- that said that to you?</p> <p>5 MR. BROWN: Say "yes" or "no," please.</p> <p>6 BY MS. SHREVE:</p> <p>7 Q Yeah, can you --</p> <p>8 A Oh.</p> <p>9 MR. BROWN: Say "yes" or "no."</p> <p>10 THE WITNESS: Oh. Yes.</p> <p>11 BY MS. SHREVE:</p> <p>12 Q And do you know anybody -- can you recall any other</p> <p>13 names?</p> <p>14 A No.</p> <p>15 Q So Pat Bigby is the only one you recall saying that?</p> <p>16 A Yes, that I recall.</p> <p>17 Q Do you know if Pat Bigby called Versa?</p> <p>18 A No, I don't believe so.</p> <p>19 Q Did he give you any explanation as to why he believed</p> <p>20 that, I guess, Versa wouldn't give you any information?</p> <p>21 A I believe the point he was trying to get across is they</p> <p>22 are not going to admit to anything.</p> <p>23 Q Did he indicate why he felt that way?</p> <p>24 A No.</p> <p>25 Common sense, I would imagine.</p>	<p>Page 22</p> <p>1 they just as soon don't want to say anything. I mean, I don't</p> <p>2 think they were hiding anything, but they just --</p> <p>3 Q What gave you the impression that they -- or actually,</p> <p>4 strike that.</p> <p>5 What do you mean by they didn't want to say anything?</p> <p>6 A I just got the impression after talking to them -- I</p> <p>7 mean, I didn't push it that hard. I just tried to talk to</p> <p>8 somebody about seeing if I could get some information from</p> <p>9 somebody about if they have anybody looking into this or if they</p> <p>10 had any problems in the country where they can give me some</p> <p>11 insight on what to do.</p> <p>12 And they pretty much didn't offer up any help. They</p> <p>13 didn't seem that they were -- maybe the guy I talked to just</p> <p>14 didn't really know that they were having problems or if there was</p> <p>15 a problem.</p> <p>16 But I left it at that. I didn't really push it that</p> <p>17 hard, because at that particular time, I still don't -- we still</p> <p>18 didn't know what was causing this.</p> <p>19 Q Do you know what phone number you called from Versa?</p> <p>20 A Oh, I do not remember. I probably looked it up on</p> <p>21 Google.</p> <p>22 Q Do you know which department you would have called?</p> <p>23 A No.</p> <p>24 Q Did you specifically tell them about any of the</p> <p>25 incidents that you -- that MOB had experienced?</p>
<p>Page 23</p> <p>1 Q But to your knowledge, he didn't call Versa himself?</p> <p>2 A I don't think he did, no.</p> <p>3 Q Are you aware of anybody that did call Versa besides</p> <p>4 yourself?</p> <p>5 A I'm speculating, maybe Lakeside or Capurro called them.</p> <p>6 I'm not sure.</p> <p>7 I have no idea if they did.</p> <p>8 Q So no one specifically told you that they reached out to</p> <p>9 Versa about --</p> <p>10 A That's correct.</p> <p>11 Q Did you send Versa Valve a letter or any other</p> <p>12 communication other than that one phone call?</p> <p>13 A No.</p> <p>14 Q Okay. And you don't recall the day, correct, that you</p> <p>15 called Versa?</p> <p>16 A No.</p> <p>17 Q And you don't recall who you spoke with from Versa?</p> <p>18 A No.</p> <p>19 Q I'm sorry, what exactly -- what specifically do you</p> <p>20 remember that Versa said to you when you called them?</p> <p>21 A I don't remember exactly. All I know is, it was</p> <p>22 somewhat of an informal call. I thought I would give it a shot,</p> <p>23 call and see if I could talk to somebody, if anybody knows</p> <p>24 anything about this.</p> <p>25 And I -- I pretty much got the impression that they --</p>	<p>Page 25</p> <p>1 A No.</p> <p>2 Q Did you ask them in regards to what type of valve should</p> <p>3 be used on a trailer?</p> <p>4 A No. This was a couple of years ago, so I'm having a</p> <p>5 hard time exactly recalling.</p> <p>6 But I do know I was going through a process of trying to</p> <p>7 investigate this, and I do remember calling them. That's all --</p> <p>8 basically, that's all I remember. And I remember the phone call</p> <p>9 that just really didn't get me any information.</p> <p>10 Q Okay. And you said you went through a process of</p> <p>11 investigating this. What was the process you went through?</p> <p>12 A Oh, I did some Internet searches to see if I could find</p> <p>13 any other instances around the country of gates opening, and I</p> <p>14 didn't really -- I didn't really find anything.</p> <p>15 That didn't really lead to any -- any -- any insight</p> <p>16 into what was going on.</p> <p>17 Q Okay. Other than Internet searches, what else did you</p> <p>18 do to investigate?</p> <p>19 A I talked to some of the other people.</p> <p>20 Q And do you recall --</p> <p>21 A That was probably later in 2015 that I did that.</p> <p>22 Q That you did the investigating into it?</p> <p>23 A Yes.</p> <p>24 Q Okay.</p> <p>25 A I don't remember what day -- what time it was, actually.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q Okay. And when you said you called people, do you</p> <p>2 remember who you called?</p> <p>3 A No.</p> <p>4 Q Would they have been other trucking companies?</p> <p>5 A Yes, competitors.</p> <p>6 Q So other than the Internet searching and making phone</p> <p>7 calls to the competitors, did you do anything else in</p> <p>8 investigating?</p> <p>9 A No, I do not believe so.</p> <p>10 Pretty much after the 2014 incident, we pretty much gave</p> <p>11 up on figuring out why it opened. We put the gate locks in, and</p> <p>12 at that point, it becomes not an issue on why they opened, because</p> <p>13 they can't open now.</p> <p>14 So that would -- you know, so everything I did would</p> <p>15 have been prior to that, which would have been almost three years</p> <p>16 ago.</p> <p>17 So a lot of it is informal. Just when you talk to</p> <p>18 somebody, you know, initially, you say, hey, what are you guys</p> <p>19 doing, do you have any problems, you know. It's just informal.</p> <p>20 So I don't remember exactly what I would have talked</p> <p>21 about it to them about.</p> <p>22 Q Okay. So are you saying this investigation would have</p> <p>23 occurred before the 2014 incident. Is that what you were saying</p> <p>24 there?</p> <p>25 A No, it would have been after.</p>	<p style="text-align: right;">Page 28</p> <p>1 Q So no one specifically told you with certainty that that</p> <p>2 trailer had -- that the trailers had Versa valves on them, the</p> <p>3 ones that had --</p> <p>4 A I don't recall that, but I knew they were all Ranco</p> <p>5 trailers and I'm pretty sure all Ranco trailers have Versa valves.</p> <p>6 Q How do you know they were Ranco trailers?</p> <p>7 A Just because that's the type of trailers that these</p> <p>8 companies operate.</p> <p>9 Q Is Ranco the only type of trailer that --</p> <p>10 A Manufacture --</p> <p>11 Q -- that has the belly dump?</p> <p>12 A No.</p> <p>13 Q What are the other manufacturers, other than Ranco?</p> <p>14 A I'm sorry?</p> <p>15 Q Other than Ranco, what are the other manufacturers that</p> <p>16 the trailers could have been?</p> <p>17 A I can't even think of any other ones that these other</p> <p>18 competitors operate. Pretty much everybody runs Ranco in this</p> <p>19 area.</p> <p>20 Q And what are other valves other than Versa valves that</p> <p>21 could have been on --</p> <p>22 A I know Wabco makes a valve, but I haven't seen any of</p> <p>23 those in use since -- for 20 years, too much, you know. Many</p> <p>24 newer trailers don't usually come with those. And it is possible,</p> <p>25 but not likely.</p>
<p style="text-align: right;">Page 27</p> <p>1 Q Okay.</p> <p>2 A I don't know. I don't know exactly, you know, the</p> <p>3 timeline. It would have been before or after. It could have been</p> <p>4 either one. I just know it's been something that I've always been</p> <p>5 curious about.</p> <p>6 Q Okay. Did you do any investigation after the 2013</p> <p>7 incident?</p> <p>8 A Yes.</p> <p>9 Q Okay. What did you do after the 2013 incident?</p> <p>10 A Just talked to some of the people in the industry. I</p> <p>11 think that's probably when I called Versa.</p> <p>12 I don't know. I don't think anybody called Ranco. I</p> <p>13 don't really remember too much about it because I never really</p> <p>14 received any valuable information from anything I investigated.</p> <p>15 Q So you said you did not call Ranco. Is that --</p> <p>16 A I don't believe I did, no.</p> <p>17 Q Do you know if anybody else did?</p> <p>18 A I don't think so.</p> <p>19 Q Do you know for a fact that the unintentional openings</p> <p>20 on other trucks or other trailers occurred with a Versa valve?</p> <p>21 A Yes.</p> <p>22 Q And how do you know that?</p> <p>23 A Just common knowledge I suppose. All the trailers that</p> <p>24 are in this town, almost -- I would say 98 percent of them have</p> <p>25 Versa valves on them.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q Do you know what models of the Versa valves were on all</p> <p>2 of the trailers that did unintentional dumping?</p> <p>3 A I can't say for certain, but I would be almost sure they</p> <p>4 are the exact valve that we have on our trailers.</p> <p>5 Q And why would you be almost sure about that?</p> <p>6 A Because that's what all the trailers in this area come</p> <p>7 with.</p> <p>8 I've been doing this for 30 years, and pretty much</p> <p>9 everybody runs the same valve.</p> <p>10 There's only two different configurations I've seen in</p> <p>11 this area for Versa, and they are both identical. One just</p> <p>12 happens to be a -- mounts on a manifold, and one is a direct</p> <p>13 mount.</p> <p>14 But they are the same -- same design valve. Just the</p> <p>15 way they mount, it's only two different.</p> <p>16 Q So in your 30 years, have you seen any other valve on a</p> <p>17 trailer than -- other than the Versa valve?</p> <p>18 A Yes.</p> <p>19 Q Do you see a lot of them, a lot of -- in your past 30</p> <p>20 years of experience, seen a lot of other valves, other than Versa</p> <p>21 valves on trailers?</p> <p>22 A Not a lot in percentage to the Versa valves, no, not in</p> <p>23 the last, say, 15 years.</p> <p>24 Q So what would be your estimate of the percentage that</p> <p>25 have Versa valves?</p>

<p>Page 30</p> <p>1 A Currently in operation?</p> <p>2 Q That you've seen in your 30 years that operate it.</p> <p>3 A Oh, maybe -- how many percentage -- what's the</p> <p>4 percentage of Versa valves or the other valves?</p> <p>5 Q The Versa valves.</p> <p>6 A I would say in all the years I've been doing this,</p> <p>7 probably 90 percent.</p> <p>8 Q And you said in about 30 years you've been doing this,</p> <p>9 or 20? Sorry.</p> <p>10 A I've been doing this since '80 -- 1980 probably. So</p> <p>11 that would be what, 35 years.</p> <p>12 Q So in your 35 years, you've seen approximately</p> <p>13 90 percent of the trailers have Versa valves on them?</p> <p>14 A Yes.</p> <p>15 Q And in your 35 years, you are aware, based on your</p> <p>16 testimony yesterday, of, roughly, a dozen unintentional openings</p> <p>17 that have occurred?</p> <p>18 A That's at least.</p> <p>19 Q Is that number more?</p> <p>20 A It could be. I mean, we're talking about ones that I've</p> <p>21 had firsthand knowledge of.</p> <p>22 Q Yeah.</p> <p>23 A Ones I've seen. And there are also ones that you know</p> <p>24 that happened. You've seen evidence. You know that they</p> <p>25 happened.</p>	<p>Page 32</p> <p>1 before?</p> <p>2 A Yes.</p> <p>3 Q Okay. And on the ones you've seen, how did you know</p> <p>4 those were Versa valves on the trailer? Did you see the Versa</p> <p>5 valve?</p> <p>6 A Actually, yes.</p> <p>7 Q And you also said there's times you see evidence of a</p> <p>8 dumping.</p> <p>9 A Yes.</p> <p>10 Q What type of evidence do you see?</p> <p>11 A When you drive out the highway and you see big rocks on</p> <p>12 the side of the road that you know somebody was hauling in to</p> <p>13 Nevada Cement, for instance, that don't belong on the side of the</p> <p>14 highways, because the accident -- it was accidentally dumped on</p> <p>15 the side of the road and NDOT came along and pushed it off.</p> <p>16 And there's still evidence of it sitting there. The</p> <p>17 rock is still sitting there on the side of the road ten years</p> <p>18 later, because they don't remove it, they just push it off the</p> <p>19 side of the road into the borrow pit.</p> <p>20 Q Is there any way that rock could come on the side of the</p> <p>21 road other than an unintentional dumping?</p> <p>22 A Not that particular rock.</p> <p>23 Q Why is that?</p> <p>24 A It's clinkers from the cement plant, coming from a</p> <p>25 specific location. I mean, somebody would have had to dump it</p>
<p>Page 31</p> <p>1 So we're talking about a different -- ones I've</p> <p>2 personally actually seen happen, just a few of them, but ones that</p> <p>3 I've -- I have firsthand knowledge of, there's probably at least a</p> <p>4 dozen.</p> <p>5 Q When you say "a few," how many do you consider to be a</p> <p>6 few, because I know some people --</p> <p>7 A Three or four.</p> <p>8 Q Okay. And you said you have firsthand knowledge from --</p> <p>9 about a dozen; is that correct?</p> <p>10 A Uh-huh.</p> <p>11 Q In your 35 years?</p> <p>12 A Yes.</p> <p>13 Q Okay. And how did you get that firsthand knowledge of</p> <p>14 those dozen?</p> <p>15 A I've seen -- driven by where they have dumped the loads</p> <p>16 on the highway. I've been following trucks that dump loads in</p> <p>17 front of me on the highway.</p> <p>18 I've been associated with three of them that -- with our</p> <p>19 company. I've seen evidence of, you know, other companies that</p> <p>20 have actually -- I mean, you could still go out on the highways</p> <p>21 and see where the asphalt is still in the middle of the highway</p> <p>22 five years later.</p> <p>23 You can still see evidence of where it was dumped. And</p> <p>24 you hear about it right away.</p> <p>25 Q Okay. You said you've seen trailers dump on the highway</p>	<p>Page 33</p> <p>1 there. I can't imagine somebody intentionally dumping it there.</p> <p>2 Q But that's possible?</p> <p>3 A Very, very unlikely.</p> <p>4 Q But possible?</p> <p>5 A Yes.</p> <p>6 And the cars that drove over the top of it and wiped out</p> <p>7 their oil pans probably wouldn't be too happy that the guy did it</p> <p>8 on purpose.</p> <p>9 Q I would hope he wouldn't, but it's -- anything is</p> <p>10 possible.</p> <p>11 A Yeah.</p> <p>12 Q And so, say, the dozen in your 35 years that you are</p> <p>13 aware of, do you know who manufactured those trailers?</p> <p>14 A I've seen Fruehauf trailers that have dumped. I've seen</p> <p>15 Beall trailers that have dumped. I've seen Ace -- I believe</p> <p>16 Ace -- maybe not Ace.</p> <p>17 Q And in all of these that you have firsthand knowledge</p> <p>18 of, do you know the manufacturer of the truck that was pulling the</p> <p>19 trailer?</p> <p>20 A The majority of them would have been Peterbilts.</p> <p>21 Q And of these dozen in your 35 years, are you aware of</p> <p>22 how many trailers were being pulled by the truck?</p> <p>23 A I knew that one for sure was one trailer, a semi</p> <p>24 trailer. And all the rest of them were at least two trailers.</p> <p>25 Q Do you know approximately how many were two versus</p>

<p style="text-align: right;">Page 34</p> <p>1 three?</p> <p>2 A The only one I have firsthand knowledge of that are</p> <p>3 three trailers are the ones that we dumped. Not that many people</p> <p>4 run three trailers.</p> <p>5 Q Do you ever run more than three trailers?</p> <p>6 A No.</p> <p>7 Q Okay. On the ones that had two trailers, do you know of</p> <p>8 whether it was the first or second trailer that was -- caused the</p> <p>9 dump?</p> <p>10 A No, I don't recall that, other than the one that I know</p> <p>11 that dumped in front of me on the highway was the rear trailer.</p> <p>12 Q Okay. So that's the only one that you actually saw that</p> <p>13 there was a Versa valve on?</p> <p>14 A Yes.</p> <p>15 Q Do you recall who manufactured that truck?</p> <p>16 A Peterbilt.</p> <p>17 Q Do you recall who manufactured that trailer?</p> <p>18 A Ranco, Ranch Manufacturing. I'm not sure. They changed</p> <p>19 names a few times, but Ranco trailer is what it is, yes.</p> <p>20 Q Do you recall when that was?</p> <p>21 A No, I do not.</p> <p>22 Q Do you recall if it was before 2013?</p> <p>23 A Yes, it was.</p> <p>24 I believe it was.</p> <p>25 Q So was it before you were employed with MDB?</p>	<p style="text-align: right;">Page 36</p> <p>1 I understand you are just trying to get a feel.</p> <p>2 But you can answer if you can. So go ahead.</p> <p>3 THE WITNESS: Are you specifically talking about trucks</p> <p>4 configured with bottom dumps?</p> <p>5 BY MS. SHREVE:</p> <p>6 Q Yes.</p> <p>7 A Yes, I would say there are hundreds of trucks in the</p> <p>8 Western Nevada, Northern Nevada area that travel hauling materials</p> <p>9 daily, five, six days a week.</p> <p>10 Q Okay. So in your past 35 years, there's been -- trucks</p> <p>11 are driving, approximately 100 a day, six days a week, for the</p> <p>12 past 35 years then, roughly?</p> <p>13 A That's a good -- yes.</p> <p>14 Q So I can't do math that quick, but it's a lot of trucks?</p> <p>15 A Yes.</p> <p>16 Q And with all of those belly dump trucks, you are only</p> <p>17 aware of 12 times that this occurred?</p> <p>18 A I wouldn't necessarily say that. You mean my personal</p> <p>19 knowledge of it?</p> <p>20 Q Yes, that you are aware of an unintentional belly dump</p> <p>21 opening.</p> <p>22 A Personally, yes, I only know of 10, 15, 20, something</p> <p>23 like that. But that's not -- yeah, that's all I personally would</p> <p>24 know about.</p> <p>25 Q Right. So your personal knowledge of the three that</p>
<p style="text-align: right;">Page 35</p> <p>1 A I think it was, yes.</p> <p>2 MS. SHREVE: Do you mind if we take a break for a second</p> <p>3 and go off the record.</p> <p>4 (A discussion was held off the record.)</p> <p>5 MS. SHREVE: Let's go back on the record again.</p> <p>6 BY MS SHREVE:</p> <p>7 Q Mr. Palmer, you understand you are still under oath</p> <p>8 after this break, correct?</p> <p>9 A Yes.</p> <p>10 Q I'm just going to do a couple more questions in regards</p> <p>11 to the dumps that you have seen or are aware of.</p> <p>12 Now, in your 35 -- roughly, 35 years of experience, how</p> <p>13 many trucks would have been driving, that you would have seen --</p> <p>14 like how many trucks a day drive in Nevada, carrying trailers</p> <p>15 of -- belly dump trailers?</p> <p>16 A On an average day?</p> <p>17 Q Yes.</p> <p>18 A Are you saying, like, in this area, how many a day?</p> <p>19 Hundreds of them.</p> <p>20 Q Hundreds of them?</p> <p>21 A Yes.</p> <p>22 Q And then are hundreds of them driven every day, or is it</p> <p>23 five days a week, like Monday through Friday, or is it seven days</p> <p>24 a week?</p> <p>25 MR. BROWN: I'm going to just object as to foundation.</p>	<p style="text-align: right;">Page 37</p> <p>1 occurred at MDB, correct?</p> <p>2 A Uh-huh.</p> <p>3 MR. BROWN: Asked and answered.</p> <p>4 BY MS. SHREVE:</p> <p>5 Q The one that you actually observed have a belly dump on</p> <p>6 the highway, correct? You observed one belly dump on the highway;</p> <p>7 is that correct?</p> <p>8 A I've seen, actually, two. I've seen one in California</p> <p>9 dump as well. Maybe I'm getting off track here.</p> <p>10 Q I'm just going over the ones that you say you have</p> <p>11 knowledge -- you testified that you had knowledge of unintentional</p> <p>12 belly dumps occurring, correct?</p> <p>13 A Yes.</p> <p>14 Q I'm trying to understand your knowledge of the belly</p> <p>15 dumps that occurred.</p> <p>16 A Yes.</p> <p>17 Q Okay. You had said there was three that you are aware</p> <p>18 of from MDB. And earlier, you testified you actually observed one</p> <p>19 occur. Is it more than one that you actually observed?</p> <p>20 A Yes.</p> <p>21 Q Okay. How many have you actually observed in your 35</p> <p>22 years?</p> <p>23 A Are we talking about actually occurred while it's</p> <p>24 happening?</p> <p>25 Q Yes, that you actually observed the belly dump opening</p>

<p>Page 38</p> <p>1 and the items in the truck come out.</p> <p>2 A Two.</p> <p>3 Q Where did these two incidents occur that you just spoke</p> <p>4 about that you actually observed the belly dump opening and the</p> <p>5 items that were in the trailer come out of the trailer?</p> <p>6 A One of them occurred on Interstate 80 going eastbound at</p> <p>7 the top of Patrick Hill, so just about a quarter of a mile west of</p> <p>8 the Patrick exit, Interstate 80.</p> <p>9 Q Do you recall approximately what year that happened?</p> <p>10 A No, I do not.</p> <p>11 Q Was it before 2013?</p> <p>12 A It would be a guess, but I would say more than likely.</p> <p>13 Q Were you working at MDB at the time of that?</p> <p>14 A I do not think so.</p> <p>15 Q And what was the make of this truck that was pulling the</p> <p>16 trailers?</p> <p>17 A Peterbilt.</p> <p>18 Q How many trailers was it pulling?</p> <p>19 A Two.</p> <p>20 Q What -- do you know the makes of the trailers?</p> <p>21 A Yes.</p> <p>22 Q How do you know the make of the trailers?</p> <p>23 A I could see them.</p> <p>24 Q What were the make of the trailers?</p> <p>25 A Ranco.</p>	<p>Page 40</p> <p>1 Q Okay. Do you recall what valves were on that truck?</p> <p>2 A They appeared to be Versa valves.</p> <p>3 Q So you don't know for sure, you just -- or did you see</p> <p>4 it, that it was a Versa valve, in fact?</p> <p>5 A Well, I remember driving by and looking at the trailer</p> <p>6 and trying to discern whether it was a Versa valve, and it did</p> <p>7 appear to be a Versa valve, yes.</p> <p>8 Q Okay. Why were you trying to discern if it was a Versa</p> <p>9 valve?</p> <p>10 A Because we have -- this was after the first incident we</p> <p>11 have. So we're always -- everybody is always trying to figure out</p> <p>12 what's going on, what happened, why did this guy dump his load,</p> <p>13 what happened.</p> <p>14 Q Okay. So just to recap, we have -- to make sure we're</p> <p>15 not missing any, we have the three from MDB and the two you</p> <p>16 actually observed which we just spoke about on 80 eastbound and</p> <p>17 then the one in December 2013, correct?</p> <p>18 A Yes.</p> <p>19 Q Did you observe any other ones of the actual belly dump</p> <p>20 opening and --</p> <p>21 A No.</p> <p>22 Q So in your 35 years, hundreds of trucks being driven,</p> <p>23 you've only actually seen it occur twice, but you have knowledge</p> <p>24 of three times at MDB, so a total of five times of what you</p> <p>25 actually observed in your time at MDB; is that correct?</p>
<p>Page 39</p> <p>1 Q And what were the valves on the trailers?</p> <p>2 A Versa.</p> <p>3 Q And how do you know they were Versa?</p> <p>4 A Two reasons. One, I actually saw the valve. And the</p> <p>5 other reason is that all the Ranco trailers owned by</p> <p>6 Lakeside Specialized Transportation have Versa valves on them, to</p> <p>7 my knowledge.</p> <p>8 Q Okay. And was it the first or second trailer that had</p> <p>9 the belly dump on this specific?</p> <p>10 A Second trailer.</p> <p>11 Q And then what was the second incident you actually</p> <p>12 observed occur where the belly dump opened up and the items in the</p> <p>13 trailer dumped on the ground?</p> <p>14 A Okay. That would have been probably December 2013. It</p> <p>15 would have -- on Highway 99 heading southbound near -- south of</p> <p>16 Woodland, California, near Woodland, California.</p> <p>17 Q Okay. And what was the make of this truck?</p> <p>18 A I do not recall that.</p> <p>19 Q What was the make of the trailers?</p> <p>20 A I do not recall that.</p> <p>21 Q How many trailers?</p> <p>22 A Two.</p> <p>23 Q Do you recall if it was the first or second trailer that</p> <p>24 dumped?</p> <p>25 A I believe it was the second trailer.</p>	<p>Page 41</p> <p>1 MR. BROWN: Objection, asked and answered.</p> <p>2 BY MS. SHREVE:</p> <p>3 Q Is that correct?</p> <p>4 A It is correct.</p> <p>5 Q Okay.</p> <p>6 A But I think it's a little skewed because I'm not</p> <p>7 watching the other hundred trucks every day. I'm just -- I can</p> <p>8 only watch so many trucks a day, so I can't be everywhere, or I</p> <p>9 might have seen all the other ones open.</p> <p>10 Q Right. But that's what you've seen?</p> <p>11 A Yes.</p> <p>12 Q So when you -- how many times have you installed a</p> <p>13 Versa?</p> <p>14 A Personally?</p> <p>15 Q Yes.</p> <p>16 A Probably ten or more times.</p> <p>17 Q How many times has a Versa valve been installed at MDB?</p> <p>18 A Four to five times.</p> <p>19 Q And who was installed those valves?</p> <p>20 A I believe Pat Bigby installed them all. This is since</p> <p>21 my time there.</p> <p>22 Q And have you ever installed a Versa valve at MDB?</p> <p>23 A I do not believe I did.</p> <p>24 Q Would anybody else other than Pat Bigby install a</p> <p>25 valve -- or, Pat Bigby and yourself install a Versa valve on a</p>

<p style="text-align: right;">Page 42</p> <p>1 trailer?</p> <p>2 A I don't believe so, not after my time there.</p> <p>3 Q What sort of information would an MDB employee need to</p> <p>4 know when they are installing a new Versa valve on a trailer?</p> <p>5 MR. BROWN: Well, object, vague, overbroad.</p> <p>6 Answer if you can.</p> <p>7 BY MS. SHREVE:</p> <p>8 Q I can re-ask it if you need me to.</p> <p>9 A I'm not sure what you are asking. You would need to</p> <p>10 know that it needs to be replaced and replace it.</p> <p>11 Are you talking about what does he -- how -- what does</p> <p>12 he need to know how to do it?</p> <p>13 Q Yes. So I'm talking specifically with just installing a</p> <p>14 valve on to the trailer.</p> <p>15 Is there any specific knowledge you would need to know</p> <p>16 to install a valve, a Versa valve?</p> <p>17 A If you are asking me is it difficult or is it highly</p> <p>18 technical to install a valve? No, it's not. It's very easy.</p> <p>19 Q So there's no training that you would need to have on</p> <p>20 installing a valve, a Versa valve?</p> <p>21 A You wouldn't want to let somebody install it that's not</p> <p>22 a mechanic. So if you have your 20, 30 years experience as a</p> <p>23 mechanic, yes, you could do it. It's very simple.</p> <p>24 Q Okay. And why is it that you wouldn't want someone</p> <p>25 other than a mechanic installing the Versa valve?</p>	<p style="text-align: right;">Page 44</p> <p>1 Q So who installed the Versa valve on Trailer 6775 in</p> <p>2 August 2013?</p> <p>3 A Pat Bigby.</p> <p>4 Q Had he ever installed a Versa valve prior to the</p> <p>5 installation of that valve on August of 2013?</p> <p>6 A I'm quite certain that he has, but I can't testify that</p> <p>7 for sure he has; that he's worked with other companies that have</p> <p>8 Versa valves, so I'm sure, along the course of his experience, he</p> <p>9 has done that.</p> <p>10 Q Do you know if he was provided any training on</p> <p>11 installing the Versa valve?</p> <p>12 A I do not think so, no.</p> <p>13 Q Have you ever provided any training on installing a</p> <p>14 Versa valve?</p> <p>15 A No.</p> <p>16 Q So after the incident that occurred on July -- in</p> <p>17 July 2013, who made the decision to purchase a new valve to put in</p> <p>18 Trailer 6775?</p> <p>19 A We're talking about the 2013 incidence?</p> <p>20 Q Correct.</p> <p>21 A That was before I came to work there, where I believe</p> <p>22 Tracy Shane was the manager at the time and Pat Bigby was the</p> <p>23 mechanic. Pat Bigby would have said we're going to put a new</p> <p>24 valve on it, and Tracy said okay and ordered the valve.</p> <p>25 Q And who determined what valve to -- in 2013, after the</p>
<p style="text-align: right;">Page 43</p> <p>1 A No difference than you wouldn't want anybody working on</p> <p>2 your car that's not a mechanic. I mean, if they are not</p> <p>3 mechanically inclined, you don't want them.</p> <p>4 Q So a mechanic would need to know specific information of</p> <p>5 how to install a Versa valve?</p> <p>6 A They would have to have basic mechanical knowledge.</p> <p>7 Q Okay. So then would it be fair to say that you wouldn't</p> <p>8 need anything other than basic mechanical knowledge to install a</p> <p>9 Versa valve?</p> <p>10 A It would be fair to say that, yes.</p> <p>11 Q Do you know who designed this system that -- in which</p> <p>12 the Versa valve is a component of?</p> <p>13 MR. BROWN: Objection, vague, foundation.</p> <p>14 THE WITNESS: Can you rephrase that --</p> <p>15 BY MS. SHREVE:</p> <p>16 Q Sure.</p> <p>17 A -- maybe a little bit differently.</p> <p>18 Q What is the Versa valve connected to?</p> <p>19 A The Versa valves that we have installed on our trailers</p> <p>20 operate the gates that open and close to dump your load, hooked to</p> <p>21 the air cylinders and the air supply tank.</p> <p>22 Q Okay. So do they work as a system, the Versa valve with</p> <p>23 the hose and the tank, then, to open the gate?</p> <p>24 A I don't know if it's a specifically designed system, but</p> <p>25 I guess they work in concert with each other, yes.</p>	<p style="text-align: right;">Page 45</p> <p>1 2013 incident, who determined what valve to replace the Versa</p> <p>2 valve with on the 6775 trailer?</p> <p>3 A Do you mean which model valve?</p> <p>4 Q Which model, which brand. Who determined which -- what</p> <p>5 valve they were going to use to replace the Versa valve that was</p> <p>6 on Trailer 6775?</p> <p>7 A It would have been Pat Bigby.</p> <p>8 Q And why was it determined to -- strike that.</p> <p>9 What valve was purchased to install on Trailer 6775</p> <p>10 after the 2013 -- July 2013 incident?</p> <p>11 A It would have been a Versa valve with the same model</p> <p>12 number and part number that was currently installed on the</p> <p>13 trailer.</p> <p>14 Q And why was it decided to use that, to purchase that</p> <p>15 Versa valve to install it on the trailer?</p> <p>16 A Why was it -- can you repeat the question, please.</p> <p>17 Q Sure.</p> <p>18 Why was it determined to purchase the Versa valve that</p> <p>19 was the same as the one that was on Trailer 6775?</p> <p>20 A You mean why did we replace it with the exact same model</p> <p>21 number that was on the trailer?</p> <p>22 Q Yes.</p> <p>23 A A couple of reasons.</p> <p>24 One is, as I said before, almost every trailer in this</p> <p>25 area has a Versa valve to control the gates. So therefore, the</p>

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1 suppliers that you go to, to purchase valves from, stock the Versa
2 valve. They wouldn't stock any other type of valve.
3 The other reason is, a Versa valve bolts on. There are
4 some modifications you have to make to adapt a different valve to,
5 say, the system that's already in place.
6 And that would liken it to, you know, why would you buy
7 a Toyota fender for your Toyota if -- when you smash your fender.
8 You are going to buy what -- what -- keep what the car came with,
9 is what you are going to replace the part with. You'll go back to
10 what it came with standard.
11 **Q How do you -- do you know that the Trailer 6775 was**
12 **built with a Versa valve in it?**
13 A I don't know. I would assume that it was, yes.
14 **Q Do you have any records that it was?**
15 A No, I don't have any of the original purchase records or
16 the build sheet on that particular trailer.
17 **Q Do you know if the Versa valve on Trailer 6775 had been**
18 **replaced prior to the July 2013 incident, between the time it was**
19 **manufactured and then?**
20 A No, I do not know, have knowledge of that.
21 **Q Is the Versa valve used with a compressed air system?**
22 A Yes.
23 **Q Is the Versa valve used with an industrial hydraulic**
24 **fluid system?**
25 A I guess you could say that, yes.

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1 **Q Can you explain to me the procedure on how to replace a**
2 **Versa valve on a trailer as was done on 6775.**
3 MR. BROWN: Can you identify the topic in the 30(b) (6)
4 notification that this would fall under?
5 MS. SHREVE: Sure. One second.
6 Well, it would be maintenance, service and repairs of
7 how to -- how he repaired the Versa valve on to the trailer, or
8 maintenance.
9 MR. BROWN: How he installed it on it?
10 MS. SHREVE: I mean, that would be in your maintenance.
11 He has maintenance records of installing the new --
12 MR. BROWN: Right.
13 MS. SHREVE: -- valve, correct?
14 MR. BROWN: I mean, it seems to me you are asking his
15 personal knowledge, almost as, like, an expert witness, as opposed
16 to -- as to the person most knowledgeable within MDB Trucking.
17 I'll go ahead and let you answer the question.
18 MS. SHREVE: And Number 12 is MDB's installation of the
19 valve on the trailer. So I'm not asking as to personal knowledge,
20 I'm asking as how MDB installed this valve on the trailer.
21 MR. BROWN: Okay.
22 THE WITNESS: So the question is, how do you physically
23 replace the valve, how would we have physically replaced the
24 valve?
25 ///

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1 BY MS. SHREVE:
2 **Q Yes.**
3 A This particular valve has three mounting bolts. You
4 unbolt -- you remove the air lines from the valve, remove the
5 electrical connection to the solenoid, and then you unbolt the
6 three bolts and you remove it. It's that simple.
7 And then you reverse that process to install a new one.
8 **Q Okay. So can you explain how MDB installed the new**
9 **Versa valve on Trailer 6775.**
10 A After the removal of the old valve?
11 **Q Yes.**
12 A We would have just bolted the new valve on and then
13 taken the fittings off of the original valve, install those into
14 the new valve, hook the hoses up to the fittings and connect the
15 wires back to the solenoid and, you know, tighten the three bolts
16 up that hold the Versa valve to the trailer.
17 **Q When MDB installed the Versa valve on Trailer 6775, did**
18 **you have to check the pressure of the system when you are**
19 **installing it?**
20 A Yeah, after you install the valve and test it, yes, you
21 would have to check to make sure there's -- everything is working
22 correctly.
23 **Q Did MDB check the pressure of the Versa valve before**
24 **they installed the new one on Trailer 6775?**
25 A Did we check the pressure before removed the old valve?

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1 **Q Yes.**
2 A I think so. I'm sure there was no problem, though.
3 **Q Did MDB check the filtration of the system before**
4 **installing the Versa valve?**
5 A I'm not sure if we did or not. It's something that we
6 do routinely. All there is, is a water separator on there that
7 filters out water, if it gets any water in there, and that's
8 usually never a problem.
9 **Q Did MDB check that before replacing the valve on**
10 **Trailer -- before removing the valve on 6775?**
11 A I don't think so. We would have checked it prior to
12 that under routine maintenance, yes, but not immediately prior to
13 removing the valve.
14 **Q Did you check it immediately after you installed the**
15 **valve on 6775?**
16 A Well, I can't testify to what Pat Bigby did, but, yes,
17 I'm sure he would have. That's standard routine.
18 When you hook it all back up, you check the oiler, make
19 sure the oiler has got oil in it, the filter is clean, it has
20 pressure and everything operates correctly.
21 **Q Would there be any records to indicate this occurred?**
22 A I don't think so.
23 **Q Does MDB have knowledge regarding the specifications of**
24 **Versa's product in regard to temperature?**
25 A I have read those before in the literature that's

<p style="text-align: right;">Page 50</p> <p>1 supplied with the Versa valve, but I could not tell you what those 2 are right now.</p> <p>3 Q Does Pat Bigby know it, since he was the person that did 4 the installation? And we're talking specifically about the 5 installation of -- MDB's installation of the Versa valve on 6 Trailer 6775.</p> <p>7 A Yes, he would have known at that time.</p> <p>8 Q How about the specifications for the pressure for the 9 Versa valve for installing it on 6775?</p> <p>10 MR. BROWN: I'm going to object to the extent it calls 11 for speculation.</p> <p>12 THE WITNESS: I would imagine he did. If it's in the 13 literature, he would have known that, reading the literature 14 before installing the valve.</p> <p>15 BY MS. SHREVE:</p> <p>16 Q Are you the person most knowledgeable about the 17 installation of Versa valve 6775 on the subject trailer?</p> <p>18 A In 2013?</p> <p>19 Q Yes.</p> <p>20 A I would say I have equal knowledge to what Pat has, but 21 I didn't actually install it.</p> <p>22 Q Okay.</p> <p>23 MR. BROWN: He's also been disclosed as a fact witness, 24 Pat Bigby, as the one that has replaced it. And he is the most 25 knowledgeable here to talk about the policies and procedures in</p>	<p style="text-align: right;">Page 52</p> <p>1 MR. BARKLEY: Okay. I will note for the record that 12 2 does not talk about specifications of the manufacturer.</p> <p>3 MR. BROWN: I guess what you are asking him -- are you 4 asking him if he can quote all the specifications of every Versa 5 product that he could install in the truck without looking at the 6 documents? I mean, is that what you are asking him?</p> <p>7 MS. SHREVE: I'm asking him if, during the installation 8 of the Versa valve on Trailer 6775, whether there was knowledge of 9 the specifications of temperature, and the second was pressure.</p> <p>10 This one is now lubrication.</p> <p>11 MR. BROWN: Okay.</p> <p>12 MS. SHREVE: So it's in regards to the installation, if 13 they --</p> <p>14 MR. BROWN: Okay. I understand.</p> <p>15 MS. SHREVE: Okay?</p> <p>16 BY MR. BROWN:</p> <p>17 Q So I'll go back. 18 So for the installation of the -- for the installation 19 of the Versa valve on Trailer 6775, the person installing the 20 product know the specifications of the Versa product in regards to 21 the lubrication?</p> <p>22 A If, in fact, the literature spelled that out in the 23 Versa product box when we received the valve, then the person that 24 installed the valve would have known that.</p> <p>25 When I say the person -- I'm specifically talking about</p>
<p style="text-align: right;">Page 51</p> <p>1 general, business acumen. So -- MDB, in regard to the maintenance 2 issue.</p> <p>3 MS. SHREVE: And I'm talking about Number 11, which says 4 MDB's installation of the product on 6775, is what I'm 5 specifically talking about. Knowing the specifications for the 6 Versa product for installing it, is what I'm speaking about.</p> <p>7 MR. BROWN: Right. I understand. I'm just making a 8 record that we're complying with the 30(b)(6) and our knowledge of 9 fact witnesses as well.</p> <p>10 MS. SHREVE: I'm sorry, I'm going to ask you to repeat. 11 What was the last question that I had asked? 12 (The last question and answer were read by the reporter.)</p> <p>13 BY MS. SHREVE:</p> <p>14 Q How about specifically, Versa's specifications regarding 15 lubrication of the valve when installing it on Trailer 6775?</p> <p>16 This goes to Versa's -- sorry. This goes to MDB's 17 knowledge of --</p> <p>18 MR. BARKLEY: Which category, Counsel?</p> <p>19 MS. SHREVE: Number 11, installation of the Versa valve.</p> <p>20 MR. BROWN: No, that's the decision to purchase subject 21 valve.</p> <p>22 MS. SHREVE: Oh, sorry. Do I have the wrong number? 23 Maybe it's 12. Sorry, I wasn't finished with my question.</p> <p>24 MR. BROWN: I know.</p> <p>25 MS. SHREVE: Sorry, it's Number 12, not 11.</p>	<p style="text-align: right;">Page 53</p> <p>1 Pat Bigby. And I'm making the assumption based on the fact that 2 he does things the same way I do them, and I -- we read the 3 instructions.</p> <p>4 So if there's anything in there about the pressure or 5 the oil or whatever, he would have known that.</p> <p>6 Q Okay. I'm going to ask the same question in regards to 7 the filtration. I'm guessing your answer would be the same as 8 well?</p> <p>9 A The same, yes.</p> <p>10 However, I don't know that it would have made any 11 difference whether you knew it or not. I mean, you are replacing 12 a valve with the same valve that came off it.</p> <p>13 So you are not -- if I put a new alternator on the car 14 that's identical to the one that came off the car, I'm assuming it 15 was engineered correctly to be on the car to begin with. That's 16 somewhat of an assumption I'm making when I'm putting the new one 17 on.</p> <p>18 MS. SHREVE: Okay. So I'm going to go back to actually 19 purchasing the Versa valve that was installed on Trailer 6775. 20 And I'm going to mark this as Exhibit 11. 21 (Exhibit 11 marked for identification.)</p> <p>22 BY MR. BROWN:</p> <p>23 Q So this is Bates number MDB 016. Can you tell me what 24 this document is.</p> <p>25 A It is an invoice from ENGS Motor Truck Company, dated</p>

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1 July 31st, 2013. And it's for the purchase of a side port Versa
2 valve. And this would have been the valve that we would have put
3 on Trailer 6775 after the first incidence in 2013.

4 Q Is there anywhere on this invoice that indicates that
5 this was the valve that was put on Trailer 6775?

6 A There's a purchase order number, customer order number,
7 6775.

8 Q Okay. And so your customer order is reflective of what
9 equipment number the purchase is for?

10 A Yes.

11 Q Okay. Earlier, you testified that it was decided to
12 purchase the Versa valve because that is what was on it, correct,
13 previously?

14 A Yes, that is what I testified to earlier, yes.

15 It's also that's what we want. That's -- yeah, we want
16 Versa valve. I mean, there's no reason why we don't want to put
17 back on what was on there.

18 Q Was this the first time that a Versa valve was purchased
19 from MDB -- that MDB purchased a Versa valve?

20 A I have no idea.

21 Q And where was the Versa valve purchased from?

22 A Are you talking about who did we purchase it from?

23 Q Yes. Who did MDB purchase the valve from?

24 A ENGS Motor Truck Company.

25 Q How did you decide to purchase the Versa valve from

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1 ENGS Motor Company?

2 A Because at the particular time, they were our prime
3 supplier and they stocked the valve. And we called them, and they
4 said, yeah, we have one in stock, we'll send it over.

5 Q So you've dealt the ENGS Motor Truck previously?

6 A Yes, for many years, yeah, since 2010.

7 Q Do you still do business with ENGS Motor Company or
8 Motor Truck Company?

9 A Yes, but they are no longer really in the parts
10 business. So we don't -- they have a limited parts -- they don't
11 do that much parts -- outside part sales now, but we do still do
12 business with them on occasion.

13 Q When did they stop providing as many parts, I guess?

14 A About six months ago, I think they downsized.

15 Q And who do you deal with at ENGS Motor Truck Company?

16 A Personally, I deal with Clayton or Jake.

17 Q Does Clayton have a last name?

18 A I'm sure he does.

19 Q Do you know it?

20 A No.

21 Q What about Jake?

22 A I don't know what Jake's last name is either, no.

23 Q How often does MDB purchase products from ENGS Motor
24 Truck Company?

25 A Currently or at this particular time?

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1 Q At this particular time.

2 A Probably three or four times a week.

3 Q Did you or did MDB ask ENGS Motor Company about
4 purchasing another valve, other than the Versa valve?

5 A No.

6 Q Did MDB ask ENGS Motor Truck Company about purchasing a
7 different type of Versa valve?

8 A A different model number of Versa valve?

9 Q Yes, a different model.

10 A No, we did not.

11 Q And why did you not ask ENGS Motor -- or, why did MDB
12 not ask ENGS Motor Truck Company about purchasing a different
13 model number of a Versa valve?

14 A More than likely, because this has been the standard
15 valve I've seen used for all -- for 35 years I've been around.
16 And that's what everybody uses, and that's what people stock and
17 sell, and that more than likely, we would not have thought about a
18 different style of Versa valve.

19 Q Okay.

20 A The availability of a different style.

21 Q At the time of the purchase of this Versa valve, was MDB
22 aware of any other models of the Versa valve that would have fit
23 in the Trailer 6775?

24 A Prior to the purchase of this valve?

25 Q Yes.

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1 A Can you repeat the question.

2 Q Sure.

3 A Are you specifically talking about MDB Trucking or
4 myself?

5 Q Yes, you're -- to clarify, you are speaking on behalf of
6 MDB Trucking, so any knowledge that MDB Trucking would have
7 through its employees or whoever it would be.

8 A No, I don't think MDB Trucking knew this.

9 Q Were you aware, then, of another model of Versa valve
10 that would fit in the trailer at this time?

11 A No. I'm just aware of other -- I just -- I'm aware of
12 the vast array of valves that Versa produces and the
13 configurations it can be ordered in for different applications.

14 But as far as I know, this is the valve that is used for
15 bottom dump trailers.

16 Q Is this still the valve that is used, to your knowledge,
17 for bottom dump trailers?

18 A I would say it is still a valve used for bottom dump
19 trailers.

20 Q So is there another valve, then, that is used for bottom
21 dump trailers?

22 A Is there another Versa valve?

23 Q Yes.

24 A Yes, another model of Versa valve that's used for bottom
25 dump trailers, yes.

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1 Q When did you become aware of this other model that is
2 used on bottom dump trailers?
3 A In 2014.
4 Q Do you know when in 2014?
5 A April?
6 Q So you were aware of this prior to the July 7th, 2014,
7 incident that occurred?
8 A That a different model Versa valve was available?
9 Q Yes.
10 A I should -- well, I would say that prior to that, yes, I
11 did know of trailers that came with a different style valve, yes,
12 similar style valve, but slightly different, yes.
13 Q Do you know the style number, by chance?
14 A Oh, no, I do not.
15 Q I was thinking you probably didn't have that
16 memorized --
17 A No.
18 Q -- but figured I would ask.
19 When MDB purchased the valve on August 1st, 2013, did
20 the valve come with any, I guess, literature with it?
21 A I can't speak for that particular valve. But the valves
22 I've seen, other valves I've opened up in the box that were still
23 sealed in the box, had literature in them, yes.
24 Q Was this valve still sealed in the box when you
25 received -- when MDB received the valve?

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1 A I can't say it was. I would imagine it was, but I can't
2 say.
3 Q Do you know of anyone who would have knowledge of that?
4 A I don't think so. I don't think anybody would remember
5 that.
6 Q If the Versa valve did come sealed in a box and it came
7 with literature, would you keep that -- would MDB keep that
8 literature?
9 A No, not in 2013.
10 Q Does MDB usually keep the literature that comes with the
11 product that they have?
12 A If it comes with a service or repair manual or a parts
13 manual, we would keep that. But most everything we do is online.
14 So, now, with the Internet, all these manuals are
15 available online. So if you have a problem, you need to work on
16 something later, you can always -- you have easy access to it from
17 the different manufacturers.
18 So instead of having a whole library of paper or
19 literature that you are trying to find something, it's much easier
20 just to have your catalogs online.
21 So, no, we would not keep the stuff.
22 Q Okay.
23 A Finding it would be kind of a chore when you needed it,
24 so --
25 Q And I just want to clarify. If it was service or

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1 maintenance, you said you would keep it?
2 A Oh, if something comes with an actual maintenance
3 manual, we would keep it. But if it just comes with installation
4 instructions, we've already installed it, we are done with that.
5 Q Did this Versa valve product come with any maintenance
6 or service instructions?
7 A I don't recall.
8 Q Okay. If it did, would MDB have that?
9 A Not from this original valve, no.
10 Q Okay. Why would they not keep it from this one, if you
11 just testified that you would keep service and maintenance
12 manuals, or that MDB would keep service and maintenance manuals?
13 A Okay. If it did come with that, then we would have
14 saved it, but I do not believe it did.
15 Q Okay. What about warranty information regarding the
16 Versa valve, did it come with any?
17 A I do not recall.
18 Q If you purchased -- if MDB purchases a product, do they
19 keep a copy of the warranty information, if it comes with one?
20 A I would say that sometimes.
21 Q What are the occasions that would be the "sometimes"?
22 A I would imagine, how much the item cost. If it's a
23 starter that costs \$200 and comes with the warranty information,
24 no, we don't save that. Trying to get warranty on a starter,
25 yeah, good luck.

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1 So it's not really an issue for us to actually keep the
2 warranty information.
3 Q Okay. So what would, then, be, I guess -- if you are
4 indicating it's based off, likely, the dollar amount, what would
5 be the dollar amount to where you would keep a warranty?
6 A I don't know, maybe a couple of thousand dollars. I
7 guess it would be an item-by-item basis, depending on what it is.
8 I mean, generally, all of our vendors take care of the
9 warranty information. So if it's got a 90-day warranty, we call
10 up the dealer, and they say, yeah, well, how long is my warranty
11 on it, 90 days. Okay, well, it's within 90 days, take care of the
12 warranty for you.
13 It's not something we have got to deal with the
14 manufacturer, so it's not something we are all that concerned
15 about.
16 Q When you say you call the dealers, are the dealers the
17 company that manufactured it or the company you purchased the
18 product from?
19 A For instance, ENGS Motor Truck Company --
20 Q Uh-huh, yes.
21 A -- if we bought this Versa valve and it failed, which,
22 highly unlikely, but if it failed within a couple of weeks, we
23 call them up and they get us another one.
24 They would take care of the warranty. We would never do
25 anything about it. So we don't deal with factory warranties too

<p style="text-align: right;">Page 62</p> <p>1 much.</p> <p>2 Q So then if this product did come with a warranty, you</p> <p>3 would not have kept it?</p> <p>4 A No, I seriously doubt it.</p> <p>5 Q Does MDB read the warranties that come with their</p> <p>6 products?</p> <p>7 A Once again, I don't think so.</p> <p>8 Q Does MDB read any of the warnings that would come with</p> <p>9 their product?</p> <p>10 A Yes.</p> <p>11 MS. SHREVE: With the product.</p> <p>12 I am going to do the -- our next exhibit, which would be</p> <p>13 Number 12.</p> <p>14 (Exhibit 12 marked for identification.)</p> <p>15 BY MS SHREVE:</p> <p>16 Q This is MDB 722.</p> <p>17 This was a document that was produced by MDB regarding</p> <p>18 warranty of the Versa valve.</p> <p>19 Does this document look familiar to you?</p> <p>20 A Yes, it does.</p> <p>21 Q Did you -- did MDB read this document prior to</p> <p>22 installing the Versa valve on the subject Trailer 6775 in</p> <p>23 August 2013?</p> <p>24 MR. BROWN: Objection, lack of foundation.</p> <p>25 THE WITNESS: I seriously doubt that we did, because</p>	<p style="text-align: right;">Page 64</p> <p>1 packaged.</p> <p>2 Q Is there a reason why you would have kept this one, but</p> <p>3 not the one from the purchase of the August -- was it 1st, 2013?</p> <p>4 A No, other than the box, I still have the box for that.</p> <p>5 Q Okay. Is there a reason you kept the box for this one?</p> <p>6 A It probably had the old valve stuck in it. That's the</p> <p>7 only thing I can think of.</p> <p>8 Q And was that valve purchased through ENG -- or</p> <p>9 ENG'S Motor Truck Company?</p> <p>10 A I don't believe so.</p> <p>11 You are talking about the --</p> <p>12 Q The valve that came with this.</p> <p>13 A I do not think so, no.</p> <p>14 Q Do you know who you would have purchased it from, if it</p> <p>15 wasn't ENG'S Motor Truck Company?</p> <p>16 A I believe it was purchased through Peterbilt Truck Parts</p> <p>17 and Equipment Company.</p> <p>18 Q Is there a reason you would have purchased it through</p> <p>19 them, instead of ENG'S Motor Truck Company?</p> <p>20 A The reason would be, if you call up ENG'S and they say</p> <p>21 no, we don't have one and you call up Peterbilt and they say yeah,</p> <p>22 we have one, and we need one, because we need to replace it today.</p> <p>23 So that would be the reason.</p> <p>24 Q When you purchased your parts, do you purchase them new?</p> <p>25 A All of our parts?</p>
<p style="text-align: right;">Page 63</p> <p>1 this is dated same date. This particular one is dated July</p> <p>2 of 14th, it appears. So it would have been -- it would have been</p> <p>3 this -- whatever Versa was putting in their valve at the time.</p> <p>4 I don't know if it was this exact one at that particular</p> <p>5 time. You would have to show me the one that came with that, for</p> <p>6 me -- but, yes, this looks familiar to every one I've ever read.</p> <p>7 I don't know about the exact language. Maybe in July</p> <p>8 '14, they changed the language.</p> <p>9 BY MR. BROWN:</p> <p>10 Q Okay. So this did not come with the Versa valve that</p> <p>11 was purchased on August 1st, 2013?</p> <p>12 A I do not think so.</p> <p>13 Q Okay.</p> <p>14 A I think it came with one of the other valves that we</p> <p>15 purchased.</p> <p>16 Q Okay. And you kept this in regards to a different valve</p> <p>17 that you purchased then; is that correct?</p> <p>18 A Yes. I mean, Versa could provide -- maybe Versa could</p> <p>19 provide me with the one that came with the one in 2013, because</p> <p>20 I -- it could be the same as this. I don't know.</p> <p>21 Q Yeah, I --</p> <p>22 A Yeah, I'm not asking you to do that. I'm just saying --</p> <p>23 Q Yeah, I don't know. That's why I was asking you whether</p> <p>24 the Versa valve actually came packaged. We don't know that.</p> <p>25 A I don't know that. I can't imagine it would not come</p>	<p style="text-align: right;">Page 65</p> <p>1 Q If you were -- when you purchase Versa valves, do you</p> <p>2 purchase Versa valves new?</p> <p>3 A Oh, yes. Yes.</p> <p>4 Q Do you know who originally owned Trailer 6775?</p> <p>5 A No.</p> <p>6 If I understand the question, you mean who originally</p> <p>7 purchased it?</p> <p>8 Q Yes, who originally -- I'm sorry.</p> <p>9 A Maybe I do. Maybe Western Nevada Transport is who we</p> <p>10 purchased it from. I do believe they bought them new, but I can't</p> <p>11 say for sure.</p> <p>12 Q When you say you purchased them from --</p> <p>13 A Well --</p> <p>14 Q -- lease -- do you mean who you lease it from? Is</p> <p>15 that --</p> <p>16 A Yeah, let me restate that, when SKS purchased them from</p> <p>17 WNT and leased them to MDB Trucking.</p> <p>18 I do believe that Western Nevada Transport is the</p> <p>19 original owner of those trailers, but I could be wrong. I'm just</p> <p>20 making that assumption.</p> <p>21 Q MDB leased Trailer 6775 from Western Nevada Transport,</p> <p>22 correct?</p> <p>23 A For a period of time, yes.</p> <p>24 Q Did MDB lease 6775 brand-new?</p> <p>25 A No.</p>

<p style="text-align: right;">Page 66</p> <p>1 Q Does MDB have the history of Trailer 6775 prior to</p> <p>2 leasing the trailer?</p> <p>3 A Are you talking maintenance records?</p> <p>4 Q Maintenance records, yes.</p> <p>5 A No. I do not have them.</p> <p>6 Q Did MDB inquire as to any of the maintenance that</p> <p>7 occurred on Trailer 6775 prior to leasing the trailer?</p> <p>8 A Did we inquire about that when we leased them or at any</p> <p>9 time?</p> <p>10 Q When you first leased the --</p> <p>11 A I do not know. I wasn't there at that particular time.</p> <p>12 But I would imagine -- we purchased them from</p> <p>13 Western Nevada Transport, and they do maintenance and they -- the</p> <p>14 same way we do it. They are a reputable company. I'm sure they</p> <p>15 were maintaining them correctly.</p> <p>16 But when we first leased them, we would have went</p> <p>17 completely through them, make sure they are fit for service.</p> <p>18 Q If Western Nevada would have provided MDB with</p> <p>19 maintenance records of the trailers prior to leasing it, would MDB</p> <p>20 keep those records?</p> <p>21 A Well, yes.</p> <p>22 Q Does MDB have any of those records?</p> <p>23 A No.</p> <p>24 MS. SHREVE: I'm going to go to the next exhibit.</p> <p>25 Let's do Exhibit 13.</p>	<p style="text-align: right;">Page 68</p> <p>1 Q Okay. So the truck was separate from the trailers?</p> <p>2 A The transaction to purchase it --</p> <p>3 Q Yes.</p> <p>4 A -- from SKS? Yes.</p> <p>5 MS. SHREVE: All right. I'm going to go to -- actually.</p> <p>6 Can we take another break?</p> <p>7 (A discussion was held off the record.)</p> <p>8 MS. SHREVE: Never mind. We're not going for a break.</p> <p>9 Are you guys still there on the phone?</p> <p>10 MR. BUNDICK: Yeah.</p> <p>11 MS. QUIGLEY: Yeah.</p> <p>12 MS. SHREVE: Are we still on the record?</p> <p>13 So I'm going to do this next exhibit, which will be</p> <p>14 Exhibit 14.</p> <p>15 (Exhibit 14 marked for identification.)</p> <p>16 BY MS. SHREVE:</p> <p>17 Q This is MDB 726 through 731. Will you take a moment and</p> <p>18 look at this.</p> <p>19 Does this look familiar to you?</p> <p>20 A Yes.</p> <p>21 Q And what is this document?</p> <p>22 A This is an equipment lease agreement between</p> <p>23 SKS Corporation and MDB Trucking, LLC.</p> <p>24 Q And how long is this lease for?</p> <p>25 A Looks like it's a 12-month lease.</p>
<p style="text-align: right;">Page 67</p> <p>1 (Exhibit 13 marked for identification.)</p> <p>2 BY MS SHREVE:</p> <p>3 Q This is MDB 723. Have you seen this document before?</p> <p>4 A Yes, I have.</p> <p>5 Q What is this document?</p> <p>6 A It's an invoice from Western Nevada Transport to</p> <p>7 SKS Corporation for the purchase of two sets of Ranco trailers.</p> <p>8 And these would be our Trailers 6773, 6774, 6775, 6776, 6777, and</p> <p>9 6778.</p> <p>10 Q Do you lease the truck that pulls the trailer separate</p> <p>11 from the trailers?</p> <p>12 Like, does -- sorry, strike that. That's kind of a bad</p> <p>13 question.</p> <p>14 Who owns Truck --</p> <p>15 A 5694?</p> <p>16 Q Yes. I'm confusing all the numbers.</p> <p>17 A SKS Corporation.</p> <p>18 Q Okay.</p> <p>19 MR. BUNDICK: Can you say that name again. I'm sorry, I</p> <p>20 didn't hear it.</p> <p>21 MS. SHREVE: SKS Corporation.</p> <p>22 BY MR. BROWN:</p> <p>23 Q Did SKS Corporation purchase the truck from</p> <p>24 Western Nevada Transport?</p> <p>25 A No.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q Did MDB renew this lease after the 12 months?</p> <p>2 A I would imagine so, yes.</p> <p>3 Q Does MDB keep records of all of their lease agreements?</p> <p>4 A I would say yes.</p> <p>5 Q Does MDB have a lease agreement for Trailer 6775?</p> <p>6 A We do have -- there is an equipment lease. Are you</p> <p>7 asking for the particular document?</p> <p>8 Q Would MDB have retained the lease agreement document?</p> <p>9 A Its actual document?</p> <p>10 Q For Trailer 6775.</p> <p>11 A We should have, yes. If I'm not mistaken, we could not</p> <p>12 produce that; is that correct?</p> <p>13 Q Correct.</p> <p>14 A Okay. So it got lost or -- apparently. I don't know.</p> <p>15 Q So you don't have that lease agreement -- or, MDB does</p> <p>16 not have --</p> <p>17 A I do not have it, no.</p> <p>18 Q Who -- strike that.</p> <p>19 Does SKS Corporation perform any maintenance on the</p> <p>20 trailers MDB leases?</p> <p>21 A No.</p> <p>22 Q Does SKS Corporation ask for any documents from MDB</p> <p>23 regarding any maintenance and repairs done on the trailers that</p> <p>24 they lease?</p> <p>25 A Not specifically. But MDB Trucking and SKS Corporation</p>

<p style="text-align: right;">Page 70</p> <p>1 are owned by -- have the same common ownership, so the records are 2 easily available to them.</p> <p>3 Q So if SKS Corp. wanted to have any records regarding the 4 maintenance on a trailer that was leased, they could just pull it 5 from MDB?</p> <p>6 A Exactly, yes.</p> <p>7 Q Did SKS Corp. provide MDB with any suppliers' or 8 manufacturers' warranties that came with the trailer or the 9 trailers leased?</p> <p>10 A No.</p> <p>11 Q Does MDB typically lease their trailers?</p> <p>12 A Yes.</p> <p>13 Q Does MDB lease all of their trailers from 14 SKS Corporation?</p> <p>15 A To my knowledge, yes, they do.</p> <p>16 Q Does Equipment Number 5695 -- is it always connected 17 with Trailer 6773, 6774 and 6775?</p> <p>18 A I think you said 5695. I think you mean --</p> <p>19 Q 5694.</p> <p>20 A Yeah. Is it always connected with those trailers?</p> <p>21 Q Yes.</p> <p>22 A No.</p> <p>23 Q When is it not connected to those trailers?</p> <p>24 A When it's pulling another trailer, getting worked on.</p> <p>25 Q How often does it occur that it pulls -- that Truck 5694</p>	<p style="text-align: right;">Page 72</p> <p>1 incident to present day, would the percentage be the same, about 2 40 percent of the time, it's disconnected, or less or more?</p> <p>3 A Probably more.</p> <p>4 Q And why would it be more?</p> <p>5 A It has to do with what particular driver would be 6 assigned to that truck. So if that particular driver is, say, a 7 bottom dump type driver, like Mr. Koski was -- I mean, that's, 8 basically, what he did most of the time -- then you keep that 9 truck under those trailers.</p> <p>10 But if you get somebody that maybe has more transport 11 experience or -- you know, then they might be assigned to it less, 12 because they are doing other things, as -- yes.</p> <p>13 Q Are Trailer 6773, 6774 and 6775 always connected?</p> <p>14 A Not always.</p> <p>15 Q When are they not connected?</p> <p>16 A Well, they wouldn't be connected if you are working on 17 them. And it is possible that we would unhook the back two 18 trailers and run the front trailer by itself.</p> <p>19 Q Would you ever run the -- just the back two trailers?</p> <p>20 A No, not possible, not practically possible, no.</p> <p>21 Q Okay. I'm going to go back to Exhibit 2.</p> <p>22 MR. BROWN: I'm sorry, Counsel, did you say Exhibit 2?</p> <p>23 MS. SHREVE: Yes.</p> <p>24 BY MS. SHREVE:</p> <p>25 Q Would Trailer 6773, 6774 or 6775 run with a truck other</p>
<p style="text-align: right;">Page 71</p> <p>1 pulls trailers other than 6773, 6774 and 6775?</p> <p>2 A Over the course of a year, say, or you are talking about 3 during a certain time frame, like, of the accident, or are you 4 talking about in general, like, overall?</p> <p>5 Q So we'll go per month.</p> <p>6 So in a month, is it typical for Truck 5694 to run with 7 or to pull 6773, 6774 and 6775?</p> <p>8 A In the summertime, during the busy season, it's typical 9 for it to be hooked to that primarily. And other times of the 10 year, it could be hooked to an end dump, a flatbed. It could do 11 all sorts of different things.</p> <p>12 And even during the summer, summertime, it can be 13 unhooked, hooked to an end dump.</p> <p>14 This is normal course of business for us, trucks 15 switching trailers.</p> <p>16 But that truck is specifically, I would say, assigned to 17 those trailers. That's what it would primarily pull, yes, that -- 18 probably 60 percent of the time.</p> <p>19 Q So since -- strike that.</p> <p>20 Between the July 2013 incident and the July 2014 21 incident, how many -- approximately what percentage, if you want 22 to do percentage, percentage a month would Truck 5694 be 23 disconnected from Trailers 6773, 6774 and 6775?</p> <p>24 A I would say we disconnect it 40 percent of the time.</p> <p>25 Q And then the same would go for the July 7th, 2014,</p>	<p style="text-align: right;">Page 73</p> <p>1 than 6 -- 5694?</p> <p>2 A Yes.</p> <p>3 Q If -- strike that.</p> <p>4 Okay. We'll go to Exhibit 2, MDB 483.</p> <p>5 Yeah, you can pull that off.</p> <p>6 Would this be a time that all three trailers, 6773, 6774 7 and 6775, were not run together?</p> <p>8 Or, can you read the truck number and then the trailer 9 numbers for -- on this daily driver sheet.</p> <p>10 A This is Daniel Koski's log sheet for July 16, 2013. And 11 he has written down Truck 5691 and Trailer 6774 and Trailer 6775.</p> <p>12 But I would have no idea why that would be.</p> <p>13 If in -- well, no, I do not have any idea why that would 14 be. I've never seen this since I've been to work there.</p> <p>15 Q So it's not typical to run 6774 and 6775 without 6773?</p> <p>16 A Correct, and also not behind a transfer truck. But I 17 guess you could do it.</p> <p>18 I don't know if he was actually operating that day. I'm 19 not sure what he did. I can't really read this. There's a bill 20 of lading, the shipping document for that day. So I'm not sure 21 what happened.</p> <p>22 Q Okay.</p> <p>23 A But it is technically possible to run it behind.</p> <p>24 Technically possible, it's not practical.</p> <p>25 Q Okay. From July 2013 to the subject incident on</p>

<p style="text-align: right;">Page 74</p> <p>1 July 7th, 2014 -- again, you can give me percentages --</p> <p>2 approximately how many times a month are Trailers 6773, 6774 and</p> <p>3 6775 disconnected, or were they disconnected?</p> <p>4 A From 5694 or any --</p> <p>5 Q From each other.</p> <p>6 A Oh, two percent possibly.</p> <p>7 Q So not very often?</p> <p>8 A No. Very rare.</p> <p>9 Q How about from the subject incident of July 7th, 2014,</p> <p>10 until the present, how often has Trailer 6773, 6774 and 6775 been</p> <p>11 disconnected?</p> <p>12 A Probably the same, five percent.</p> <p>13 I mean, I could be wrong. There are times when we run</p> <p>14 the front trailer by itself, and in 2014, we might have ran it</p> <p>15 five percent of the time.</p> <p>16 Q Okay.</p> <p>17 A But it's not a common configuration.</p> <p>18 Q If you perform maintenance on any of those trailers, do</p> <p>19 you disconnect them?</p> <p>20 A No, not generally, not normal maintenance, not</p> <p>21 preventative maintenance.</p> <p>22 The only time we unhook them, if we want to put it in</p> <p>23 the shop and close the doors, because it won't fit in the shop</p> <p>24 without disconnecting it.</p> <p>25 Q So with the maintenance records, if there was</p>	<p style="text-align: right;">Page 76</p> <p>1 valve that was on the Truck --</p> <p>2 MR. BROWN: Objection, asked and answered.</p> <p>3 BY MS. SHREVE:</p> <p>4 Q -- 6775?</p> <p>5 A No, we did not. Didn't think there was a need to,</p> <p>6 especially considering the brand-new trailers were coming with the</p> <p>7 same valve. So they are still shipping the same valves on the</p> <p>8 same trailers, so I would imagine that's still the standard</p> <p>9 de facto valve.</p> <p>10 Q I'm going to go back to Exhibit Number 9. So it's the</p> <p>11 work orders on Equipment 6777.</p> <p>12 A Okay. Thank you.</p> <p>13 Q Earlier, you testified that you were aware of a</p> <p>14 different Versa valve model that Versa used. I believe you said</p> <p>15 in April 2014, you were aware of a different Versa valve.</p> <p>16 A That was the first time I seen one installed on a bottom</p> <p>17 dump trailer, yes, something different.</p> <p>18 Q So if you look at MDMAINT 000321.</p> <p>19 A Okay.</p> <p>20 Q And this is dated December 1st, 2014. And this</p> <p>21 indicates that the -- you replaced the Versa valve, correct?</p> <p>22 A Correct.</p> <p>23 Q Did you -- did MDL ever contact Versa to inquire about</p> <p>24 the difference in the Versa valve model that you were aware of and</p> <p>25 the one that was purchased to replace this Versa valve?</p>
<p style="text-align: right;">Page 75</p> <p>1 maintenance done on any of these trailers and it indicates it was</p> <p>2 done in the shop, then the trailer would have been -- the trailers</p> <p>3 would have been disconnected?</p> <p>4 A Depends on what time of the year it is. In the</p> <p>5 summertime, you just pull it in the shop, work on it, pull it out.</p> <p>6 Wintertime, snowing outside, they probably disconnect,</p> <p>7 more than -- if you have more than a little bit of work to do on</p> <p>8 the trailer, they disconnect it, bring it in the shop and close</p> <p>9 the doors.</p> <p>10 Q Is there any way to determine whether or not the trailer</p> <p>11 was disconnected when the maintenance was performed?</p> <p>12 A No.</p> <p>13 Q Okay.</p> <p>14 MS. WOELFEEL: Take a break? It's 12:02.</p> <p>15 MS. SHREVE: We'll go off the record.</p> <p>16 (A recess was taken.)</p> <p>17 MS. SHREVE: Can we go back on the record.</p> <p>18 BY MS. SHREVE:</p> <p>19 Q Mr. Palmer, you understand you are still under oath</p> <p>20 today, correct?</p> <p>21 A Yes.</p> <p>22 Q So in regards to the July 2013 incident that occurred --</p> <p>23 A Uh-huh.</p> <p>24 Q -- did anyone from MDL consult Versa or reach out to</p> <p>25 Versa to ask what Versa valve they should purchase to replace the</p>	<p style="text-align: right;">Page 77</p> <p>1 A Do you mean in regards to before purchasing this valve</p> <p>2 to replace the valve on this trailer?</p> <p>3 Q Yes, to replace.</p> <p>4 A No, because the valve -- we had already installed a</p> <p>5 lockout device on the valve, our own version of a lockout device.</p> <p>6 So there's no reason to purchase a valve that was</p> <p>7 different. We already had the lockout device in place at this</p> <p>8 particular instance. This was after we put the lockout devices on</p> <p>9 there.</p> <p>10 Q And so then that's the reason why you chose that valve</p> <p>11 as well to purchase to replace the Versa valve that was already on</p> <p>12 that trailer?</p> <p>13 A Is that why, because we already had a lockout device in</p> <p>14 place?</p> <p>15 Q Yes. Was that your -- strike that. Let me rephrase.</p> <p>16 Why did you decide to purchase the same Versa valve to</p> <p>17 replace the one on Equipment Number 6777 on -- for this</p> <p>18 December 1st, 2014, replacement?</p> <p>19 A Because that's the valve -- I think I stated before that</p> <p>20 that's the valve that people stock, so that's the standard valve</p> <p>21 that people use.</p> <p>22 And we had already installed a lockout device for that</p> <p>23 style of valve, so we just went back to that valve.</p> <p>24 Q Okay. Thank you.</p> <p>25 Earlier, you testified that there are times that you</p>

<p style="text-align: right;">Page 78</p> <p>1 have disconnected Trailer 6773, 6774 and 6775 from each other</p> <p>2 after the July 14th -- or, July 7th, 2014, incident; is that</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q And when you reconnect those trailers, do you do any</p> <p>6 testing on the Versa valves to make sure that they open or close?</p> <p>7 A We would perform the same routine as we would for a</p> <p>8 pre-trip inspection. So you would hook it up, make sure</p> <p>9 everything is properly connected, all the lights work, the</p> <p>10 trailers build air.</p> <p>11 And you -- I think I said before, it's up to the driver</p> <p>12 to decide whether he wants to test the functionality with the</p> <p>13 switches in the cab.</p> <p>14 But I, myself, I just make sure the gates open manually</p> <p>15 and there's air pressure to the gates and make sure they're</p> <p>16 closed. And that's how you test it.</p> <p>17 Q Then you would test on the trailer after it has been</p> <p>18 connected?</p> <p>19 A Yes. You don't want to put it back on the road if it's</p> <p>20 not going to work.</p> <p>21 Q Does MDB have any written policies regarding the</p> <p>22 operation of the trucks?</p> <p>23 MR. BROWN: I'll object, vague as to "operation."</p> <p>24 Go ahead.</p> <p>25 THE WITNESS: Does MDB -- yeah, MDB specific?</p>	<p style="text-align: right;">Page 80</p> <p>1 Q When do you believe the policy or a handbook of some</p> <p>2 sort that -- regarding the operation of the trucks came about from</p> <p>3 MDB?</p> <p>4 A I became aware of a policy and procedures manual that</p> <p>5 was implemented in 2016. I don't know that -- I can't tell you</p> <p>6 specifically if it tells you -- how much detail it goes into the</p> <p>7 actual operation of the truck, how to operate the switches or that</p> <p>8 kind of stuff.</p> <p>9 I know it specifically tells you to -- that the trailers</p> <p>10 are equipped with lockout devices, and they must be -- trailers</p> <p>11 are -- the Versa valves are -- have a lockout device and they must</p> <p>12 be attached at all times.</p> <p>13 Q Okay. And then I was going to ask for trailers, but you</p> <p>14 kind of touched on the trailers as well.</p> <p>15 A Right.</p> <p>16 Q So would the trailers be the same as the truck? Would</p> <p>17 it be one policy and procedure?</p> <p>18 A Yes, just one, yes.</p> <p>19 Q If there wasn't any sort of policy and procedure</p> <p>20 regarding operation of the truck, how would an employee know how</p> <p>21 to operate a truck? And I'm just talking specifically the truck.</p> <p>22 A Are you talking about operating the truck in the</p> <p>23 capacity of dumping the trailers, or are you talking about just</p> <p>24 generally operating a truck?</p> <p>25 Q Generally operating a truck in 2013, July of 2013.</p>
<p style="text-align: right;">Page 79</p> <p>1 BY MS. SHREVE:</p> <p>2 Q Yes. Does MDB have any policy and procedures on how to</p> <p>3 work a truck, like, drive it, the switches, all of that?</p> <p>4 MR. BROWN: I'm going to object, vague, overbroad.</p> <p>5 Do you understand the question?</p> <p>6 THE WITNESS: I do.</p> <p>7 I was able to find a policy and procedures manual. Did</p> <p>8 you get a copy of that, or no? I don't know if I --</p> <p>9 MS. SHREVE: I did not.</p> <p>10 THE WITNESS: Did I --</p> <p>11 MR. BROWN: It wasn't one of the ones that Thierry gave</p> <p>12 you or that I gave you?</p> <p>13 MS. SHREVE: Huh-uh. This is --</p> <p>14 THE WITNESS: But that's what we use currently. We</p> <p>15 just -- you are talking about during this particular time or now?</p> <p>16 BY MS. SHREVE:</p> <p>17 Q I'm talking about at that particular time.</p> <p>18 A I do not believe so, no.</p> <p>19 MR. BROWN: I'm going to just say, can we say 2013,</p> <p>20 2014. There's, I think, three different times.</p> <p>21 BY MS. SHREVE:</p> <p>22 Q July 2014.</p> <p>23 A I do not believe so, no.</p> <p>24 Q How about July 2013?</p> <p>25 A No, I do not believe so.</p>	<p style="text-align: right;">Page 81</p> <p>1 A Well, all of our drivers are properly licensed with</p> <p>2 CDLs, and they are certified. I mean, they have CDLs and they</p> <p>3 have to have proper endorsements to drive doubles, triples.</p> <p>4 And we don't hire drivers that don't have experience.</p> <p>5 So they have to provide you with at least a couple years, three</p> <p>6 years of experience doing what we do.</p> <p>7 Q Okay.</p> <p>8 A And then you do a -- you know, you do go on a road trip</p> <p>9 with them, make sure that they know how to operate the vehicle</p> <p>10 properly.</p> <p>11 Q Okay. How does MDB explain to its employees how to</p> <p>12 operate the belly dump of the trailers?</p> <p>13 MR. BROWN: I'm going to object again. Overbroad.</p> <p>14 BY MS. SHREVE:</p> <p>15 Q How do you operate the belly dump of the trailer?</p> <p>16 A Depends on what kind of job you are on.</p> <p>17 If you are on a job that requires dumping with the</p> <p>18 switches, then you would just pull on to the job. When the dump</p> <p>19 man tells you where to dump, you lift up the cover and dump the</p> <p>20 switch.</p> <p>21 How do we actually tell the driver that? He's trained</p> <p>22 on that verbally. And most all the drivers have years of</p> <p>23 experience doing this.</p> <p>24 Q So if you act -- if you are going to activate the belly</p> <p>25 dump with a switch, you just lift up the switch?</p>

<p style="text-align: right;">Page 82</p> <p>1 A You lift up the safety cover. The switch is underneath 2 it. The cover is to keep you from accidentally activating it by 3 bumping it. And then you push up on the switch. 4 It's like you are turning on a light, headlights, or 5 whatever. And that activates the solenoid on the valve, and it 6 operates the gates. 7 Q Now -- if you were going to do it manually, how do you 8 activate it manually? 9 A You just -- which is what we do most of the time. You 10 stop the truck where you are going to dump, get out, and just move 11 the lever by hand. 12 There is an accumulator valve on the valve that you push 13 in initially to keep the hand valve, the operating valve from 14 springing back so you can control the gates to keep them in a 15 semiopen position, because we dump in -- we call it a grizzly, 16 which is like a hopper, so we can't dump it too fast. 17 We have to open the gates up, crack them open, like, 18 maybe a foot or two and control that by hand. It's easier to 19 control it after you push the accumulator in to release the 20 trapped air pressure in the valve. 21 Q Okay. Then if you are going to close the valve, how do 22 you close it? 23 A Just pull the handle closed. 24 Q Okay. 25 A It closes the gates. And you visually check to make</p>	<p style="text-align: right;">Page 84</p> <p>1 plates and the proper fenders. So when you go to the pit, the 2 loader puts the material in the hopper, doesn't load the rest -- 3 you know, he doesn't spill it over the ends. 4 Q Was there a policy and procedure in place in July 2014 5 regarding making sure that the cargo in the belly dump trailers is 6 secure? 7 A Is what? 8 Q Was there a policy and procedure in place in July 2014 9 to make sure that the cargo is secure? 10 MR. BROWN: Object, foundation. 11 THE WITNESS: Not a written policy, I don't think. It 12 was all verbal training. 13 BY MS. SHREVE: 14 Q And so what would be the verbal training that MDB would 15 provide? 16 A Well, if the loader operator -- are you talking about 17 keeping the load from blowing out, or are you talking about 18 keeping the load from spilling out? I'm not sure I completely 19 understand. Just secure in general? 20 Q Yeah, secure in general, make sure the load does not 21 come out of the trailer, whether it comes out from the top, 22 bottom, side. 23 A Well, it's pretty easy. It's not rocket science. 24 I mean, you go out to the pit. The loader puts the 25 material into the hopper. For some reason, some gets spilled out,</p>
<p style="text-align: right;">Page 83</p> <p>1 sure the gate is closed. And you can hear them closed. It's 2 not -- they are right there, two feet away. 3 Q Do you have to wait any certain amount of time after you 4 close it to reopen it again? 5 A The only time -- you only have to wait -- are you 6 talking about hand? 7 Q Yes. 8 A You only have to wait -- you are only limited by your 9 air supply. 10 So if you open the gates and close them in enough time, 11 it's going to lower your air pressure and you have to wait for the 12 air pressure to build back up. But other than that, you can open 13 them up right away. 14 Q How do you know if the air pressure is built back up? 15 A The gates won't open, or you can also look at the 16 gauges. All our trailers have gauges. You can see right there if 17 it doesn't have enough air pressure. 18 Q Does MDB have any policy and procedure regarding 19 securing the cargo it carries in their belly dump? 20 A We do now. This particular point, that I know of. 21 Q In July 2013. 22 A Not that I know of. I don't know if there was one, a 23 written one in effect. 24 But it's common knowledge. Everybody knows how to make 25 sure -- you know, all of our trailers are equipped with shed</p>	<p style="text-align: right;">Page 85</p> <p>1 then you would -- after you get off the scale, you get out and you 2 brush it off. 3 I can't remember the last time that happened, not in 4 this area. 5 Q Is there anything, as a driver, that the driver does to 6 make sure the material inside the trailer is secure when driving, 7 not just at the loading? 8 A Not while driving, no. Nothing -- there's nothing 9 special he has to do. Stays in the trailer. He's going down the 10 road. 11 After you leave -- after you leave the scale, if you are 12 hauling sand, you got to go under the water rack and water your 13 load down to make sure it doesn't blow. 14 I mean, I'm not sure if that's what you are looking for. 15 Q Does MDB require their drivers to inspect their load 16 after they have picked it up to make sure the contents inside the 17 trailer is secure from -- 18 A Yes. 19 Q -- coming out of top, bottom, sides? 20 A Yes. Yes. It's the driver's responsibility. 21 Q And what does MDB require their drivers to do in this 22 inspection after the contents in the trailer has been loaded, to 23 make sure that nothing comes out from the top, bottom or sides of 24 the trailer? 25 A Then MDB requires their drivers to make sure their gates</p>

<p style="text-align: right;">Page 86</p> <p>1 are closed, which that's pretty standard in order to get loaded. 2 They are not going to load the trailer if the gates are open. 3 They can't. 4 And if you are looking to make sure that there's not any 5 rock spilled over the ends of the side boards, I guess, like I 6 say, that doesn't -- it hardly ever happen. 7 And as far as coming to town, we've just got to make 8 sure you water your load down if it's sand, something that blows. 9 And they all do that. 10 Q Does MDB require its drivers to check the pressure 11 gauges on the valve, the Versa valve? 12 A Yes. 13 Q And how often do they require that to be checked? 14 A Well, they check it every time they dump, that you can, 15 yeah. 16 Q Do they check it after the trailer is loaded with 17 whatever contents they are picking up? 18 A No. 19 Q Have you ever been told not to inspect a load that 20 you've just -- 21 A No. 22 Q Are you aware of any -- is MDB aware of any government 23 policies regarding securing your load? 24 A I just know that it's the company or the driver's 25 responsibility to make sure you secure your load.</p>	<p style="text-align: right;">Page 88</p> <p>1 gate chains. 2 Q Gate chains. I just want to make sure we're speaking of 3 the same thing, so I'll call them gate chains. 4 A Sure. That's fine. 5 Q Does MDB have any policy regarding the gate chains, of 6 when to use them? 7 A No. 8 The purpose of the chains -- the trailers that we have, 9 the chains are -- the purpose of the chains are to limit the size 10 of the windrow. They are not designed to keep the gates from 11 coming open. 12 Q Were these gate chains on Trailer 6775 on the day of the 13 subject incident? 14 A Yes. 15 Q Were these gate chains on Trailer 6778 on the day of the 16 subject incident? 17 A Yes. 18 Q Can putting the gate chains -- I'm trying to think of 19 how to word this correctly. Strike that. 20 Does placing the gate chains on the belly dump prevent 21 the belly dump -- can it prevent the belly dump from opening, if 22 it is -- if it is manually activated? 23 A Okay. The chains are always attached to the trailer, 24 and all you have to do is shorten the links of it. 25 And if you shorten it up as short as you can get it,</p>
<p style="text-align: right;">Page 87</p> <p>1 Q How does MDB ensure that its employees follow the 2 procedure of making sure their load is secure after they have -- 3 the trailer has been loaded? 4 A How do we ensure that? 5 Q Yes. 6 A I don't -- 7 Q Does MDB do anything to ensure that their drivers secure 8 their load after contents have been poured into the trailer? 9 MR. BROWN: Objection, foundation. 10 THE WITNESS: Well, short of following the drivers 11 around to ensure, there's not much you can do, other than if they 12 don't secure it, you can fire them or write it up. 13 Like I say, that stuff doesn't happen. Everybody 14 polices everybody out there. So our driver -- you know, all of 15 our drivers are looking out for everybody else, even other 16 companies. 17 BY MS. SHREVE: 18 Q Are there chains on trailers that can be used to secure 19 the belly dump so it doesn't open or so that it opens a certain 20 width versus fully open? 21 A Yes. 22 Q What do you refer -- what would you call those chains? 23 I don't know the proper terminology of it, so that's why I'm 24 trying to -- 25 A I'm not sure what you call them. I just call them the</p>	<p style="text-align: right;">Page 89</p> <p>1 it's still not going to keep it from completely -- it's not 2 completely going to prevent it from opening. 3 It's going to narrow it down how much it can open, maybe 4 only a few inches, but they are not designed as a lockout device. 5 They are designed to -- as a way to limit the size of the windrow 6 when you are doing road construction. 7 Q Are you aware of -- is MDB aware of any government 8 regulations requiring the chains to be shortened to help secure 9 their load? 10 A No. 11 Q Has MDB ever suggested to any of their drivers to 12 shorten the chains to help prevent the inadvertent opening of the 13 belly dump? 14 MR. BROWN: Objection, foundation. 15 THE WITNESS: I haven't, and I don't think anybody has. 16 Like I say, I don't think it would do any good, but maybe. I 17 don't know. 18 BY MS. SHREVE: 19 Q Have you ever had -- have you ever seen a belly dump 20 trailer have the chains shortened while driving their truck? 21 A That's kind of a broad question, because, you know, I've 22 hauled wet concrete in bottom dump trailers and you have to put 23 chains and binders on there to keep the gates from opening. But 24 that's specific to that particular haul. 25 As far as what we do, no, I've never seen anybody -- I</p>

<p style="text-align: right;">Page 90</p> <p>1 don't see a reason for doing it. If you think there's a way for 2 the gates to come open, that's not the way to stop it.</p> <p>3 Q What would be the way to stop it?</p> <p>4 A If you are concerned with the gates opening up by the 5 valve, then we put a lockout device on the valve.</p> <p>6 Q So would shortening the chains on the belly dump be 7 another way to ensure that the full -- the belly dump doesn't open 8 completely?</p> <p>9 A Oh, yes. That's what they are designed for, yes.</p> <p>10 Q Are you able to still drive the truck with the chains 11 shortened?</p> <p>12 A Yes.</p> <p>13 Q Are you aware -- or, is MDB aware of any regulations 14 requiring a pin, a lockout pin on a Versa valve?</p> <p>15 A No, not in Nevada. I mean, there might be some state 16 regulations, but none that I know of.</p> <p>17 Q Let's go to -- you briefly touched upon this. Does MDB 18 require its drivers to have certain certifications or special 19 license in order to drive their trucks?</p> <p>20 A Yes. They have to have a commercial driver's license, 21 Class A, doubles, triples endorsements. And along with that, 22 other qualifications that go along with that are medical card, 23 clean driving record, whatnot.</p> <p>24 Q How about for employees that perform maintenance on the 25 trucks and trailers?</p>	<p style="text-align: right;">Page 92</p> <p>1 Q If you flip to MDB 008.</p> <p>2 A Okay.</p> <p>3 Q What do all of these inspection data numbers, state 4 plates -- what are all of these?</p> <p>5 A These are inspections of vehicles for whatever, for -- 6 performed by law enforcement, it looks like.</p> <p>7 Q And do you get copies of these inspections?</p> <p>8 A Oh, yes, I do. Yes.</p> <p>9 Q And do you have copies of these inspections?</p> <p>10 A At this particular point in time?</p> <p>11 Q Yes. Does MDB.</p> <p>12 A Probably. They are also available online, are they not?</p> <p>13 I don't --</p> <p>14 Q No.</p> <p>15 A Oh.</p> <p>16 Q I would request that you search for these, and if you 17 have them, please provide them to your attorney.</p> <p>18 MR. BROWN: The ones that match up with these, on this 19 document?</p> <p>20 MS. SHREVE: Well, we had requested everything through 21 the present from -- I believe it was June 30th through the 22 present. And --</p> <p>23 MR. BROWN: What did you call these?</p> <p>24 MS. SHREVE: The SMS system.</p> <p>25 And this document -- I was told this was everything</p>
<p style="text-align: right;">Page 91</p> <p>1 A Is there any certification that's required?</p> <p>2 Q Yes.</p> <p>3 A It's not an employment requirement. It's not a 4 requirement of employment. You have to have experience and 5 knowledge in this area, and you also have -- but if they do 6 actually perform annual inspections, they have to be certified.</p> <p>7 Q But for regular routine maintenance and repairs, there's 8 no -- MDB doesn't require any specific certifications or license?</p> <p>9 A No.</p> <p>10 MS. SHREVE: Okay. I'm going to go to the next exhibit, 11 which is 15.</p> <p>12 (Exhibit 15 marked for identification.)</p> <p>13 BY MS. SHREVE:</p> <p>14 Q So this is MDB 007 through MDB 10. Have you seen this 15 before?</p> <p>16 A Have I seen this specific document before?</p> <p>17 Q Yes.</p> <p>18 A I don't think -- I'm not sure.</p> <p>19 Q Are you familiar with what this document is?</p> <p>20 A Yes.</p> <p>21 Q And what is this?</p> <p>22 A It's part of the SMS, Safety Measurement System, part of 23 Federal Highway, FMCSA.</p> <p>24 Q And do you keep records of these documents?</p> <p>25 A I suppose, on occasion, I do.</p>	<p style="text-align: right;">Page 93</p> <p>1 through the present, but this document, obviously, is 2 April 2014 -- or April 4th. You understand.</p> <p>3 So I would just request that. And we don't have actual 4 copies of the inspection report at all. It was just this.</p> <p>5 MR. BROWN: We'll see what we can find.</p> <p>6 MS. SHREVE: Perfect. Thank you.</p> <p>7 THE WITNESS: I don't think I ever was asked for those.</p> <p>8 BY MS. SHREVE:</p> <p>9 Q If you can just look to see and provide to your 10 attorney, I would appreciate that.</p> <p>11 So let's go down to -- it looks like on 7/7/2014 --</p> <p>12 A Okay.</p> <p>13 Q That's the day of the specific incident.</p> <p>14 It looks like there was an inspection done on the 15 subject truck; is that correct?</p> <p>16 MR. BROWN: It's on the next page.</p> <p>17 THE WITNESS: Oh, you are on Number 9? I'm sorry.</p> <p>18 MS. SHREVE: No, on Number 8.</p> <p>19 MS. WOELFEL: It's five lines down. If you look at the 20 inspection date, start at the top and go five.</p> <p>21 THE WITNESS: I see the 7/7, yes. What's it 22 specifically that you are asking for?</p> <p>23 BY MS. SHREVE:</p> <p>24 Q Is that -- for the subject truck and trailer on the day 25 of the incident, the subject incident?</p>

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1 A Are we talking about the driver that's --

2 Q The gravel truck on July 7th, 2014.

3 A 2014?

4 Q Yes.

5 A I'm assuming it is. I mean, I don't have a license

6 plate number to match up with the 5694, but I'm assuming it is.

7 I'm not denying it. I certainly wouldn't say it's not.

8 Q I would -- in your responses to requests for

9 interrogatories, it was indicated that 502618 is the license plate

10 for the truck. I'll represent that to you.

11 A Sure.

12 Q So what exactly -- what, I guess, violations were given

13 to the truck on the day of the subject incident? It looks like it

14 reads above, if I am correct.

15 A I'm having a hard time reading this as far as which way

16 it goes.

17 Q Okay. And then I guess the best might be to wait until

18 we get the actual inspection reports to be able to go into detail

19 about it.

20 MR. BROWN: I guess so, because I'm unaware of what

21 these descriptions are for.

22 BY MS. SHREVE:

23 Q So if we --

24 A Yeah, because page 2 of 4 is missing, correct?

25 MS. SHREVE: Well, we would request page 2 as well. So

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1 we will request that and revisit that to go -- to see what

2 occurred on that day.

3 BY MS. SHREVE:

4 Q Okay. We're going to get away from this document and

5 just request that you look for those documents.

6 A Okay.

7 MS. WOELFEL: And I'll just -- if you are able to look

8 for those before we resume tomorrow -- because I think we're going

9 to have you back tomorrow -- that would be great, if possible,

10 Brian, because we might need to ask Mr. Koski questions about that

11 document as well.

12 MR. BROWN: We'll try.

13 MS. SHREVE: I was going to say, if not, we would like

14 to reserve the right to bring him back to ask about that.

15 BY MS. SHREVE:

16 Q Where do you -- are there more than one location to pick

17 up a load, that MDB picks up loads from?

18 A Yes.

19 Q How many different locations are there?

20 A Are you talking about in Nevada? California?

21 Q For -- does MDB, the Nevada location, pick up loads in

22 other states other than Nevada?

23 A Yes. I mean, there are 25 different locations we would

24 pick up from. 90 percent of our business probably comes out of

25 just a few locations.

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1 Q Okay. Where was the load that was picked up on the day

2 of the July 7th, 2014, incident?

3 A It was picked up at Paiute Quarry, Paiute -- it's Cemex

4 Paiute aggregate quarry in Wadsworth, Nevada.

5 Q Is it "Cemex"?

6 A "Cemex," yeah, C-e-m-e-x.

7 Q So if I just call it "Cemex," would you understand we're

8 talking about that specific location?

9 A No.

10 Q How would you like me to phrase it?

11 A Paiute.

12 Q "Paiute"?

13 A Yes. That's what we call it.

14 Q Is there a policy, when picking up a load at Paiute,

15 regarding whether the driver gets out of the truck or stays in the

16 truck to manually access the lever, the switch?

17 A No, that's nothing to do with the loading site. Paiute

18 is where we load the load. So he would not have anything to do

19 with operating the valve at the time of loading.

20 Q So can you take me through the process of loading the

21 truck at Paiute.

22 So you would drive, obviously, there, and you pull in.

23 A For the most part, what happens is, when the truck

24 initially goes to the pit, you have to go to the scales and tare

25 in, get your light weight.

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1 It's not something that's required every day, but if you

2 are going there for the first time, you get your light weight.

3 And then they find out how much your legal with weight

4 is and they put that in the computer.

5 And then subsequently, you go out into the pit, and you

6 tell them what you are picking up, rock or sand. And he tells you

7 where they are loading -- what part of the pit they are loading

8 from, and then you get loaded.

9 You tell him. He knows how much you can haul, because

10 everybody hauls similar amounts.

11 So if you are loading sand, they might put two buckets

12 on the front, two buckets in the middle trailer, and one bucket in

13 the back trailer.

14 Then he follows you up to the scales and tops you off at

15 the scales while he's watching the scale to make sure you are not

16 overweight.

17 And if, for some reasons, he messes up and gets you

18 overweight, they make you go trim your load. They can't -- their

19 system won't allow them to print an overweight ticket.

20 Q How do you know what the legal weight is for your truck

21 and trailer?

22 A We measure it and use a formula provided to us by NDOT,

23 Nevada Department of Transportation.

24 Q And do you know what the legal weight is for Equipment

25 Number 5964 with Trailers --

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1 A Yeah, 5694, 6773, 6774. It would be 129,000 pounds,
2 gross weight.

3 Q Does each trailer have a specific load weight?

4 A A limit? Yes.

5 Q And how do you know what that limit is?

6 A By how many axles it is. You have to go by the same
7 formula, how many axles do you have versus your bridge, meaning
8 your distance in axle spacings.

9 Q And what is the load limit for 6773?

10 A You are talking about net weight, or are you talking
11 about gross weight?

12 The truck -- I would say it's legal at about
13 75,500 pounds, the truck and the trailer with its load on.

14 Q What about Trailer 6774?

15 A It's legal to 40,000 pounds as a trailer by itself.

16 Q And what about 6775?

17 A Same thing.

18 Q 40,000?

19 A Yes.

20 Q Does that include -- I'm sorry, just to clarify -- the
21 weight of the trailer itself?

22 A Yes, that's the gross weight. That's the maximum gross
23 weight allowed.

24 Q Do you know how much Trailer 6775 weighs?

25 A I would be guessing, somewhere around 9,500 pounds.

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1 Q Does MDB weigh its trailer?

2 A No.

3 Q How does the loader know how much to put in each trailer
4 if there's three trailers?

5 A Because he does this all day long, so he's familiar with
6 it.

7 If he went out there with a set of trailers that he
8 never saw before and he told them I'm legal at 129,000, he would
9 say, well, we'll start off with -- you are loading rock, two and a
10 half in the front and two in one and see how -- until he figures
11 how much to put in you.

12 Q So does he weigh the trailers individually?

13 A No, not the loader operator.

14 But when you come across the scale, when you first come
15 on, you have your semi, you've got your tractor. And your first
16 semi trailer come on the scale first, you can see how much you
17 weigh.

18 And in reality, there's no way for the next two trailers
19 to weigh what they are legally capable of hauling because you
20 would be overweight.

21 So each trailer by itself has more carrying capacity as
22 an individual trailer. But when you put them all together, your
23 length and your bridge loss lower the overall gross weight of the
24 vehicle.

25 You can't -- in other words, you can't haul 40-, 40- and

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1 80-. You would be overweight.

2 Q Would it be possible if your -- would there be any way
3 of knowing that the second trailer -- do you measure your second
4 and third trailer together, then -- wait, strike that.

5 How do you measure the second and third trailer? You
6 said the truck and first trailer are measured together, correct?

7 A Yes. As you drive along the scale, you can look at the
8 scale. It has got a digital readout. You can see what you weigh.

9 So if it's 75,000, then you know your next two trailers
10 can't possibly be 80,000. You would be 150-some thousand pounds.

11 So in order to be 129-, they are way underweight. They
12 probably only have 30- and 30- in them.

13 And if you are trying to say -- you are trying to get
14 at can one trailer be way overloaded and the other trailer be,
15 say, empty, I don't think the material could physically -- you
16 could fit that much material physically in one trailer to overload
17 it that much.

18 These are small, small trailers.

19 Q Yeah, that was my question.

20 A Yeah.

21 Q You can overload them.

22 A You can overload them, but not -- not to the point of
23 40,000 pounds.

24 Q So are there no records kept as to the weight per
25 individual trailer of what it's hauling?

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1 A No.

2 Q Is a driver required to check in with MDB at any time
3 throughout the day?

4 A Only if he needs something or he has a problem.

5 Q Is a driver required to contact MDB when they pick up a
6 load?

7 A No.

8 Q How about when they drop off a load?

9 A No.

10 Q I'm going to go back to Exhibit Number 2.

11 A Is that from yesterday?

12 Q Yes.

13 Are these the driver's daily logs provided to MDB every
14 day a driver drives?

15 A Yes. They turn them in every day.

16 Q I was looking through the driver's logs that were
17 produced, and I did not see any driver's log from the day of the
18 2000 -- July 2013 incident.

19 I know -- we're not sure on the date. I think based on
20 the interrogatory responses, I'll represent to you that MDB said
21 in one area, it was July 5th, and another one, July -- I believe
22 it was 30th.

23 A The day of the first incident?

24 Q Yes, the July 2013 incident.

25 A Okay.

<p style="text-align: right;">Page 102</p> <p>1 Q And there also seems to be a lot missing here and there.</p> <p>2 Do you know if you provided all the driver's logs that MDB has, to</p> <p>3 your attorney?</p> <p>4 A So are these all of the logs that we produced, or these</p> <p>5 are just a sampling of the logs that we produced?</p> <p>6 Q I have the rest of them right here. I want through all</p> <p>7 of them, and these are the ones that I pulled out that were around</p> <p>8 either right before or right after the time of the incident --</p> <p>9 A Okay.</p> <p>10 Q -- for '13 and '14. I can give you all of them to look</p> <p>11 at if you would like to review them.</p> <p>12 A Oh, no, I just -- because there is a lot missing here.</p> <p>13 So that's why I'm wondering if these are just the ones you have</p> <p>14 questions on.</p> <p>15 Q Yes, these are just a sample of them that I took out</p> <p>16 that were around the subject incident. I have the rest of them</p> <p>17 that was produced here.</p> <p>18 A I thought -- didn't we look at these yesterday, though,</p> <p>19 the ones from that day?</p> <p>20 MR. BROWN: I thought so.</p> <p>21 BY MS. SHREVE:</p> <p>22 Q We looked at them from 2014. I'm talking about the 2013</p> <p>23 incident.</p> <p>24 A Oh, okay.</p> <p>25 Q And there was nothing after -- the 2014 incident is the</p>	<p style="text-align: right;">Page 104</p> <p>1 correct?</p> <p>2 A Yes.</p> <p>3 Q When was Mr. Koski hired?</p> <p>4 A I would have to go look. I would have to look that up.</p> <p>5 2013, I believe. 2012? I don't know. I don't have it right off</p> <p>6 the top of my head.</p> <p>7 Q Do you know who hired him?</p> <p>8 A Yes, Tracy Shane.</p> <p>9 Q And what qualifications did Mr. Koski have before he was</p> <p>10 hired by MDB?</p> <p>11 A He worked for numerous trucking companies as a CDL</p> <p>12 driver, hauling aggregate and dump trucks, similar to what we do.</p> <p>13 He had a CDL, medical card, proper endorsements.</p> <p>14 Q Okay. I'm sorry, I wasn't having this as an exhibit,</p> <p>15 but I'm just going to pull it out to help refresh your memory in</p> <p>16 regards to Mr. Koski's employment.</p> <p>17 A I'm guessing it was 2012.</p> <p>18 MS. SHREVE: Hold on one second.</p> <p>19 I don't have copies of this, but we can get copies made?</p> <p>20 This will be Exhibit 16, and it is the employment file of</p> <p>21 Mr. Koski that was produced by MDB. It's MDB 683 through 691.</p> <p>22 MS. WOELFEL: Do you want me to make quick copies right</p> <p>23 now?</p> <p>24 MR. BROWN: Yes.</p> <p>25 MS. SHREVE: We can go off the record for a second.</p>
<p style="text-align: right;">Page 103</p> <p>1 last one that was produced. There's nothing past 2014 that was</p> <p>2 produced.</p> <p>3 A I believe that's all that was requested, or at least of</p> <p>4 me. Do you want --</p> <p>5 MR. BROWN: We'll find them. If they didn't get</p> <p>6 produced, we'll get them.</p> <p>7 THE WITNESS: You wanted all of them through a certain</p> <p>8 time?</p> <p>9 MS. SHREVE: Yes. Yeah, through the present. That was</p> <p>10 the request. Well, yes.</p> <p>11 MR. BROWN: I don't have their request in front of me,</p> <p>12 but we'll find it.</p> <p>13 MS. SHREVE: We'll talk about that.</p> <p>14 THE WITNESS: Are you talking about for the specific</p> <p>15 trucks or the driver?</p> <p>16 MS. SHREVE: It was for the trucks and the trailer, not</p> <p>17 driver specific, but it was the trucks and trailer.</p> <p>18 THE WITNESS: Okay.</p> <p>19 MS. WOELFEL: Paige, is it okay if we take a five-minute</p> <p>20 break right now?</p> <p>21 MS. SHREVE: Sure. We can go off the record.</p> <p>22 (A recess was taken.)</p> <p>23 MS. SHREVE: We can go back on the record.</p> <p>24 BY MS. SHREVE:</p> <p>25 Q Mr. Palmer, you understand you are still under oath,</p>	<p style="text-align: right;">Page 105</p> <p>1 Sorry about that.</p> <p>2 (A recess was taken.)</p> <p>3 (Exhibit 16 marked for identification.)</p> <p>4 MS. SHREVE: We're going to go back on the record.</p> <p>5 BY MS SHREVE:</p> <p>6 Q So off the record, I handed you a document that was</p> <p>7 produced as Mr. Koski's employment file. We have marked this as</p> <p>8 Exhibit 16.</p> <p>9 Does this reflect your recollection of when Mr. Koski</p> <p>10 was hired?</p> <p>11 A Yes and no. I'm somewhat confused by the dates on here</p> <p>12 that I'm reading, if I'm not -- if I'm reading them correctly.</p> <p>13 Q Okay. What --</p> <p>14 A Date of application, I'm reading that as August 8th,</p> <p>15 2010. Is that what everybody looks like they see?</p> <p>16 Q That is what I see, yes.</p> <p>17 A But then you go down to the bottom here, he's got an</p> <p>18 accident on 5/13, 2011. So I know that can't be true.</p> <p>19 And then you go to the next page or the third page, and</p> <p>20 it says he worked for a couple of companies up until 2012.</p> <p>21 So I'm assuming that this is 6/8/2012 when he filled out</p> <p>22 the application.</p> <p>23 Q I will help you. How about, go to MDB 689.</p> <p>24 A Yes, I saw that. I-9 form --</p> <p>25 Q So this may --</p>

<p style="text-align: right;">Page 106</p> <p>1 A -- was also signed also on 6/8/2012. So provided that</p> <p>2 the I-9 form was filled out properly at the time that he was</p> <p>3 hired, that was his hire date.</p> <p>4 Q And who does it say is the representative from MDB?</p> <p>5 A Tracy Shane.</p> <p>6 Q And what's the date there?</p> <p>7 A 6/8/2012.</p> <p>8 Q So safe to say that, likely, he was hired on June 8th,</p> <p>9 2012?</p> <p>10 A Yes.</p> <p>11 Q When Mr. Koski was hired, what training did he undergo?</p> <p>12 A He would have went underwent the normal training</p> <p>13 procedures that we train our drivers on, on how we expect them to</p> <p>14 operate in accordance with our values, as far as you are expected</p> <p>15 to do proper pre-trip inspections, you are expected to obey the</p> <p>16 traffic laws.</p> <p>17 You are trained on where you are going to -- you know,</p> <p>18 how to haul the material that we haul, how to fill out the</p> <p>19 paperwork, how to dump the material what -- at the place. And</p> <p>20 this is all done hands-on.</p> <p>21 Q Okay. And how long does this training -- how long would</p> <p>22 this training have lasted?</p> <p>23 A It usually lasts one to two days, full days.</p> <p>24 Q Did he -- was he provided any other training other than</p> <p>25 from MDB, like any outside company?</p>	<p style="text-align: right;">Page 108</p> <p>1 A First time I met him, he was driving for Rainbow Rock.</p> <p>2 And we had a yard right next to Rainbow Rock, so he used to cut</p> <p>3 through our yard every day. So I've known him since at least</p> <p>4 1994.</p> <p>5 Q So you've known him in the truck driving capacity, I</p> <p>6 guess?</p> <p>7 A Absolutely.</p> <p>8 So everybody -- the word of mouth is he's a good driver.</p> <p>9 Everybody knows he is a good driver, that kind of thing. That's</p> <p>10 how -- that's how you know a driver.</p> <p>11 Q Okay.</p> <p>12 A By his reputation.</p> <p>13 And you also work with him. You are out there driving</p> <p>14 with him on days.</p> <p>15 Q Okay. After Mr. Koski was employed through when --</p> <p>16 actually, strike that.</p> <p>17 Is Mr. Koski still employed by MDB?</p> <p>18 A No.</p> <p>19 Q How long ago did he stop working for MDB?</p> <p>20 A I believe he stopped working for us sometime around</p> <p>21 January, February of 2015.</p> <p>22 Q Okay. And why does -- how come he no longer works for</p> <p>23 MDB?</p> <p>24 A From my understanding, he had some sort of a mini stroke</p> <p>25 and that -- he was off work for a while.</p>
<p style="text-align: right;">Page 107</p> <p>1 A Not after he was hired by us, no. Well -- no.</p> <p>2 Q Did Mr. Koski receive any company policies or handbooks</p> <p>3 when he was hired?</p> <p>4 A I'm not sure if he received the Federal Motor Carrier</p> <p>5 green book, they call it. I'm not sure if he received that.</p> <p>6 There's no record in his file that says he received it.</p> <p>7 Q Okay.</p> <p>8 A So I'm not sure.</p> <p>9 When you say "other training," I mean, he went to MSHA</p> <p>10 training. I mean, that's really nothing to do with driving a</p> <p>11 truck, but --</p> <p>12 Q What training was that?</p> <p>13 A MSHA, Mine Safety Health Administration training. He</p> <p>14 did three days of training with that so he could get on to mine</p> <p>15 sites, but that's really nothing to do with driving a truck.</p> <p>16 Q Okay. Any other training, whether it was related to</p> <p>17 driving the truck or not?</p> <p>18 A No.</p> <p>19 This is an individual that's known to us, known to</p> <p>20 Tracy Shane. I've known him for 25 years. Everybody knows he has</p> <p>21 driven trucks his whole life. So he's got experience. You put</p> <p>22 him in the truck, you can see that he can do the job.</p> <p>23 Q You said you've known Mr. Koski for over 25 years?</p> <p>24 A I have, yes.</p> <p>25 Q And how have you -- how did you first meet Mr. Koski?</p>	<p style="text-align: right;">Page 109</p> <p>1 He actually came in from the job and said he felt dizzy</p> <p>2 and left, and they took him to the hospital. He ended up having</p> <p>3 sort of a mini stroke, and he hasn't been the same since. So he</p> <p>4 decided to retire.</p> <p>5 Q And do you recall when that was?</p> <p>6 A That would have been around January, February of 2015,</p> <p>7 to the best of my recollection.</p> <p>8 Q So Mr. Koski retired from MDB; is that correct?</p> <p>9 A Yes.</p> <p>10 Q So from the time he started until when he retired in,</p> <p>11 roughly, January or February 2015, was Mr. Koski ever provided any</p> <p>12 additional company policies or handbooks or training manuals?</p> <p>13 A Not from my knowledge. I mean, not that I can say for</p> <p>14 sure, I should say. He may have, but I don't -- I can't prove</p> <p>15 that he was.</p> <p>16 Q How did MDB decide to assign Truck --</p> <p>17 A 5694.</p> <p>18 Q -- to Mr. Koski?</p> <p>19 A That was just the truck that probably would have been</p> <p>20 available at the time. We may have just recently purchased it,</p> <p>21 and he -- he was next in line to get that truck and that -- he</p> <p>22 started driving that truck and he liked it, so you just keep him</p> <p>23 in there.</p> <p>24 Q Did Mr. Koski drive any other trucks?</p> <p>25 A Oh, yes.</p>

<p style="text-align: right;">Page 110</p> <p>1 Q What other trucks did he drive?</p> <p>2 A I'm sure he would have driven just about every one of</p> <p>3 our trucks at one time or another.</p> <p>4 Q So was Truck 6590 --</p> <p>5 A 5694.</p> <p>6 Q -- 5694 specifically assigned to Mr. Koski, or could</p> <p>7 other drivers drive it?</p> <p>8 A It was assigned to him, yes, but that doesn't mean</p> <p>9 somebody else couldn't drive it. I drove it quite a bit.</p> <p>10 Q And when did you drive it?</p> <p>11 A I drove it -- I have driven it off and on since I've</p> <p>12 been there, you know. But there have been times when I would</p> <p>13 drive it for maybe a month while he was driving another truck.</p> <p>14 Q And would you drive it with Trailers 6773, 6774 and</p> <p>15 6775?</p> <p>16 A Most of the time if I was, in fact, hauling aggregate</p> <p>17 and bottom dumps, but not necessarily.</p> <p>18 Q Other than yourself and Mr. Koski, did anybody else</p> <p>19 drive Truck 5694?</p> <p>20 A Yes.</p> <p>21 Q Who else drove, between July 2013 and the present?</p> <p>22 A Oh, gosh. It's probably been ten different drivers or</p> <p>23 more drive it.</p> <p>24 Q From July 2013 to the present, has any other driver</p> <p>25 pulled Trailer 6773, 6774 and 6775 other than Mr. Koski?</p>	<p style="text-align: right;">Page 112</p> <p>1 A Immediately after it happened?</p> <p>2 Q After you spoke with Mr. Koski and he told you that the</p> <p>3 truck dumped on the road.</p> <p>4 A Well, we did. That's when we replaced the Versa valve</p> <p>5 on the back trailer and did all of the wiring -- did a few wiring</p> <p>6 changes in the truck. But, yes, we did do that inspection and did</p> <p>7 some revamping of things.</p> <p>8 Q Was Mr. Koski disciplined for his -- for his actions on</p> <p>9 the day of the subject incident of July 7th, 2014?</p> <p>10 A No.</p> <p>11 Q Did you speak with Mr. Koski on the day of the subject</p> <p>12 incident? Did someone from MDB speak with him?</p> <p>13 A Yes.</p> <p>14 Q Did someone from MDB inspect the truck on the day of</p> <p>15 this incident?</p> <p>16 MR. BROWN: Objection, asked and answered.</p> <p>17 THE WITNESS: I don't believe we actually inspected the</p> <p>18 truck. That was the day we put the lockout devices on it. And</p> <p>19 they haven't had a problem since, so yeah.</p> <p>20 BY MS. SHREVE:</p> <p>21 Q Did the subject truck and trailer -- you just indicated</p> <p>22 that you put the lockout device on the day that it occurred.</p> <p>23 So did the truck -- was the truck and trailer -- truck</p> <p>24 and trailers in service the following day, since it had the</p> <p>25 lockout device on it?</p>
<p style="text-align: right;">Page 111</p> <p>1 A Yes.</p> <p>2 Q How many different drivers?</p> <p>3 A Oh, probably half a dozen.</p> <p>4 Q Was Mr. Koski subject to any discipline in regards to</p> <p>5 the July 2013 incident?</p> <p>6 A No, he was not. He didn't do anything wrong as far</p> <p>7 as -- no.</p> <p>8 Q Did MDB do any investigation in regards to Mr. Koski's</p> <p>9 actions on that day?</p> <p>10 MR. BROWN: Objection, asked and answered.</p> <p>11 THE WITNESS: We spoke with him, and we were sure that</p> <p>12 he wasn't the cause of the accident, or the cause of the spill of</p> <p>13 the rock. I shouldn't say the accident; the incident.</p> <p>14 BY MS. SHREVE:</p> <p>15 Q And what did he say in regards to the July 2013 incident</p> <p>16 when you spoke with him?</p> <p>17 A That he was just driving down the road and the gates</p> <p>18 opened.</p> <p>19 Q Did MDB do any inspection in the truck after the</p> <p>20 July 2013 incident?</p> <p>21 MR. BROWN: Objection, asked and answered.</p> <p>22 THE WITNESS: Are you talking about, did we inspect the</p> <p>23 truck after it happened?</p> <p>24 BY MS. SHREVE:</p> <p>25 Q Yes.</p>	<p style="text-align: right;">Page 113</p> <p>1 A I believe so, yes. I think it was critical that we had</p> <p>2 them back in service the next day.</p> <p>3 Q I'm going into some of your knowledge about the sand</p> <p>4 truck, which was the truck you were driving on the day of the</p> <p>5 subject incident.</p> <p>6 A Okay.</p> <p>7 Q So can you just explain to me the process of your day on</p> <p>8 that day, July 7th, 2014, like from when you got to work.</p> <p>9 MR. BROWN: I'm just going to object. He has already</p> <p>10 answered this about what time he got there.</p> <p>11 But you can tell her again.</p> <p>12 THE WITNESS: If I remember correctly, the truck and the</p> <p>13 trailers were already hooked together the night before.</p> <p>14 So I came to work at 4:45 a.m., proceeded to do my</p> <p>15 pre-trip inspection on the truck and the trailers, make sure</p> <p>16 everything is working, and left the yard at 5 o'clock and headed</p> <p>17 to the Paiute pit.</p> <p>18 If I remember right, my load time that day was 5:31.</p> <p>19 And the reason it's 5:31 is specifically to show the two trucks</p> <p>20 loading at 5:30, which order for them to load up.</p> <p>21 If you just put both of them at 5:30, then nobody knows</p> <p>22 which -- who to load in front of. So I'm 5:31, that means you</p> <p>23 load behind the guy at 5:30. That's all that means.</p> <p>24 BY MS. SHREVE:</p> <p>25 Q Okay. And what load did you pick up that day?</p>

<p style="text-align: right;">Page 114</p> <p>1 A I believe I went to Paiute quarry, picked up 2 three-quarter concrete rock and took it to Cemex Concrete, the 3 Cemex Concrete batch plant in Reno. 4 Q And if you want to look at Exhibit Number 2, it's 5 MDB 679 and MDB 681. It appears to be your driver's timesheet and 6 bill of lading. 7 A What numbers, 479? 8 Q 679. 9 A Oh. Okay. It's in Exhibit 2. Yeah, it's in that one. 10 Oh, these are all 400 numbers. 11 MR. BROWN: I was telling him. He'll eventually get 12 there. 13 BY MS. SHREVE: 14 Q I think it might be the last one in that exhibit or 15 close to it. 16 A Oh, here we go. 17 MR. BROWN: Yeah, go back a little. Keep going that 18 way. They are before those. 19 THE WITNESS: Okay. 20 BY MS. SHREVE: 21 Q So 679 and 681 appear to be your sand truck, the sand 22 truck you were driving. 23 A Yes. 24 Q I think this will help you in referencing. 25 A Okay.</p>	<p style="text-align: right;">Page 116</p> <p>1 sign the ticket, grab my copy of it and leave. 2 Q Okay. Before your truck was loaded at 5:28, does the 3 loader check your belly dump to ensure that it is closed? 4 A No. He probably would see it if it was open in the 5 daytime, but in the dark, he wouldn't notice it -- probably would 6 not notice it. 7 But if it was open, it would just dump on the ground, 8 and within a few minutes, you would be getting yelled at on the 9 CB. 10 Q Does he check the pressure gauge on the Versa valve? 11 A No. 12 Q After your truck is loaded, do you inspect -- do you 13 inspect your trailers to see if the belly gates are closed? 14 A Yeah, I do a visual as I'm walking to the scale house. 15 It would be pretty obvious. You could see if the gates are open 16 as you are walking by the trailers. Yeah. 17 Q So on the first load that you had, you did a visual 18 inspection of -- 19 A Yes. 20 Q -- of it. Okay. 21 Did you -- during your first load, did you visually look 22 at the pressure gauges on the first -- 23 A No. 24 It really doesn't take a whole lot of pressure to keep 25 the gates closed once they are loaded. And for some reason, if</p>
<p style="text-align: right;">Page 115</p> <p>1 Q So you arrived to pick up your load. 2 A I arrived at 5:28 a.m. 3 Q Okay. And what did you pick up that day? 4 A My first load, I picked up concrete rock. So I arrived 5 at the pit at 5:28 a.m. and left the scales with my weight slip at 6 5:51 a.m. 7 Q Okay. And how does the individual loading your truck go 8 about -- how did he load your trailer that day? 9 A Okay. Seeing how I already have a tare weight and they 10 only require you to get a new tare weight not that often, maybe 11 every couple of months, I just come in the pit, go around the back 12 of the scales where the rock is located. 13 And when it's my turn to load, I pull up. And he knows 14 to put two and a half buckets in the front trailer. I pull up, 15 puts a bucket and a half or something like that in the second 16 trailer, pull up and puts, like, one bucket in the back trailer. 17 Now, depending on if there's another rock truck behind 18 me and whether he'll follow me up to the pit -- up to the scale 19 and top me off, or he'll load the next truck and top us both off 20 at the same time. 21 Probably what happened is, I was the only truck there. 22 So he brings up another half a bucket. I pull on to the scale, he 23 watches the scale, and as soon it gets to 129,000 pounds, he 24 stops. 25 She prints the ticket in the scale house. I go in and</p>	<p style="text-align: right;">Page 117</p> <p>1 you don't have any air pressure, you are going to know it right 2 away. It's going to open up on you as soon as he puts the first 3 load bucket on. 4 So in all my years, I've never seen a truck leave the 5 scales with the gates open. By that time, somebody has already 6 alerted them, hey, what are you doing, your gates were open when 7 you were loading. 8 So, no, I do not visually check the air pressure on 9 every load. 10 Q So then after you were loaded -- and you departed, it 11 looks like, at 5:51, correct? 12 A Yes. 13 Q Where did you go when you departed? 14 A I went to the Cemex Concrete batch plant located in 15 Reno. I arrived there at 6:27 a.m. 16 Q And when you arrived, what did you do? 17 A When you arrive at the plant -- this particular plant, 18 you go around the plant counterclockwise. So you head up the ramp 19 on -- I guess that would be the north side of the plant. 20 You honk your air horn twice to let them know that you 21 are there so he can turn the belt on. 22 So when you pull around the back of the plant and you 23 position your first trailer over the grizzly, the belts are 24 already on, and you can get out and dump the rock and have it 25 start going up -- up the belt, because by the time you get to the</p>

<p style="text-align: right;">Page 118</p> <p>1 second and third trailer, if the belts aren't on, your last 2 trailer won't fit.</p> <p>3 Q So when you arrived, did you -- I'm talking specifically 4 your -- the first time at 6:27 a.m., did you unload the belly dump 5 of the first trailer?</p> <p>6 A Uh-huh.</p> <p>7 Q And how did you unload that?</p> <p>8 A The way I do it is, I pull on to the grizzly so that the 9 gates are straddling the grizzly. This is where a driver can 10 actually use his switch to open the gates.</p> <p>11 But you can't open the gates wide open and have the 12 whole load go in there. It makes a mess. You can open it and 13 close it, but I don't see anybody doing it.</p> <p>14 I physically get out of the truck and walk back there 15 and use the hand valve to dump the trailer by hand.</p> <p>16 Q Okay.</p> <p>17 A And also, that gives -- then especially when it's dark 18 in the morning, then you know for sure you are over the center of 19 the grizzly. You only have a few inches front or back to be 20 centered on the grizzly.</p> <p>21 If you are too far forward or back, you spill the 22 material off where the grizzly isn't. And the loader has to come 23 over there and push it into the grizzly.</p> <p>24 So I visually check to make sure I'm in the correct 25 place and so open the gates by hand about halfway, and you just</p>	<p style="text-align: right;">Page 120</p> <p>1 pressure.</p> <p>2 Q So on the first load, you ended up opening it fully, 3 closing it, opening it again, is that correct, to shake out the 4 rest? Is that how I understood it?</p> <p>5 A No. You open up halfway, let the rock come out until 6 the majority of it comes out. Then you open up all the way, then 7 you just barely start to close it, and open it, just a couple of 8 inches.</p> <p>9 If you close it all the way, then open it all the way 10 back up again, now you would be out of air, not that it would hurt 11 anything, but that's -- at that point.</p> <p>12 Q And then did you close that before you pulled up to 13 unload your second?</p> <p>14 A Oh, yeah.</p> <p>15 Q And did you do the same thing with your -- the second 16 trailer as you did with the first?</p> <p>17 A Exactly the same thing.</p> <p>18 Q And did you do the exact same thing for the third 19 trailer?</p> <p>20 A Yes.</p> <p>21 Q So now that you've unloaded your truck, what did you do 22 next?</p> <p>23 A Left the plant, went back to Paiute and got another 24 load.</p> <p>25 Q When you arrived at Paiute, did you check to see if</p>
<p style="text-align: right;">Page 119</p> <p>1 kind of let the rock flow in there.</p> <p>2 Q Uh-huh. So you -- just clarifying, you open the lever 3 so that the belly gate only opens halfway; is that correct?</p> <p>4 A Yes. You start cracking it open. The gate starts 5 slowly opening. When it gets about halfway, you pull the Versa 6 valve back into the neutral position so the gates stay in the 7 same -- they don't start to close or open, they stay right there, 8 right where you set them.</p> <p>9 Q Okay. So when you are dumping your first load, did 10 you -- you didn't -- just trying to clarify.</p> <p>11 The belly dump wasn't completely open as far as it could 12 go; is that correct?</p> <p>13 A Not when you first start opening it, no.</p> <p>14 Q When -- do you ever open it fully?</p> <p>15 A Oh, yes. As soon as it -- as soon as you see the 16 majority of the rock came out, then you open it all the way so 17 that the gates are all completely open.</p> <p>18 And then you can pull the Versa valve back closed 19 momentarily, push it back open momentarily. And that kind of 20 shakes the gates and makes sure there are no rocks. If there is 21 any rock left over in there, they will come out. Then you close 22 all the gate all the way.</p> <p>23 And as you are doing this, you are watching the air 24 pressure gauge. For me, you are curious, make sure you've got 25 enough air pressure, but generally, there's plenty of air</p>	<p style="text-align: right;">Page 121</p> <p>1 your -- if the gates were open?</p> <p>2 A No.</p> <p>3 Q Did you check the pressure gauges?</p> <p>4 A No.</p> <p>5 Q Did the person loading the truck, to your knowledge, 6 check?</p> <p>7 A No.</p> <p>8 Q Okay. So you arrived, you said -- so it looked like 9 7:05, correct?</p> <p>10 A Yes.</p> <p>11 Q So tell me what happened once you arrived.</p> <p>12 A Okay. On the -- somewhere along the line between -- I 13 can't remember if it was on my dispatch or somebody told me after 14 I hauled my first load, but somebody switched me to sand, which is 15 very common.</p> <p>16 You switch to sand, rock, sand, rock, depending on what 17 bin is getting full or what they need.</p> <p>18 So I get back, and I announced on the radio, 5693 back, 19 back in the pit, getting sand this time, to make sure they update 20 their computer, so that when you leave the pit, your weight slip 21 says sand on it, not rock, because then that messes up their 22 inventory.</p> <p>23 So then you go to a different portion of the pit, which 24 is where they load the sand. And he loads the sand. And you do 25 the same way you did the rock. Slightly different configuration</p>

<p style="text-align: right;">Page 122</p> <p>1 on how many buckets he puts in because of the weight of the sand, 2 but the same scenario.</p> <p>3 Q Okay. And then after your sand was all loaded, did you 4 check to see if your gates were closed?</p> <p>5 A No.</p> <p>6 Q Did you check the pressure?</p> <p>7 A No.</p> <p>8 It's an assumption that they are closed. I mean, if 9 they weren't closed, you would be stuck in the pit. So, I mean -- 10 yeah.</p> <p>11 Q And then, so after you were loaded, what -- what 12 happened next?</p> <p>13 A After I went across the scale, got my weight slip, went 14 and headed into town, did the exact same thing as the first load 15 went there.</p> <p>16 The only thing different is, when you get there with 17 sand, you don't honk your horn so they can turn the belt on, 18 because the grizzly, you dump in -- you pull up, straddle the 19 grizzly, you get out, you turn the belt on yourself.</p> <p>20 Q Okay. And with this load, did you manually use -- did 21 you use the manual lever to open the belly dump?</p> <p>22 A Yes.</p> <p>23 Q Did you do that for all three trailers?</p> <p>24 A Yes.</p> <p>25 Q And did you open it in the same manner as you did with</p>	<p style="text-align: right;">Page 124</p> <p>1 A Well, I would have had to stop before I got to the pit 2 to do all of this because you are not allowed, your truck, in the 3 pit. So in order to do the inspection, you have to stop somewhere 4 outside the property to do this.</p> <p>5 Q So did you stop -- prior to picking up the 8:31 load, 6 did you stop somewhere to do the inspection on it?</p> <p>7 A No.</p> <p>8 Q Did you stop any time between your first concrete load 9 at 5:28 and your second or your third sand pickup at 8:31 to 10 inspect your truck --</p> <p>11 A No.</p> <p>12 Q -- and trailers?</p> <p>13 A No.</p> <p>14 Q So your truck was loaded with the sand. After your sand 15 was in the truck -- in the trailers, did you do any inspection on 16 the trailers, after it was loaded?</p> <p>17 A Just the visual inspection. As you are walking to the 18 scale house, you are always -- visual it -- I am, as a driver, 19 always visually inspecting what you have, make sure you don't have 20 a flat tire. You look at the tires.</p> <p>21 You are sitting on the scale and you've got a big pile 22 of sand underneath your trailer, it would be pretty obvious.</p> <p>23 Q So you say you do your visual inspection. Do you have a 24 routine visual inspection that you do?</p> <p>25 A I mean -- me, personally?</p>
<p style="text-align: right;">Page 123</p> <p>1 the first load?</p> <p>2 A Yes.</p> <p>3 Q Did you ensure that all trailers were closed prior to 4 leaving?</p> <p>5 A Yes.</p> <p>6 Q Did you check the pressure on all three trailers?</p> <p>7 A Yeah. I mean, when you are -- the valve -- the air 8 pressure gauge is within a few inches of the valve, so you are 9 looking at it as you are closing it. It's pretty hard not to.</p> <p>10 Q Okay. And so after you were unloaded, what did you do 11 next?</p> <p>12 A This is on the second load?</p> <p>13 Q Yeah, the second.</p> <p>14 A I went back to Palute, got another load of sand, the 15 same as I always do -- or, I mean, the same as the first two 16 loads, went, repeated the same procedure to go back, get another 17 load of sand.</p> <p>18 Q All right. And when you arrived to get this load, did 19 you check the belly dumps to see if they were closed?</p> <p>20 A No.</p> <p>21 Q Did you check the pressure gauge?</p> <p>22 A No.</p> <p>23 Q Did you check the connections between the trailers?</p> <p>24 A No.</p> <p>25 Q Did you do any inspection of your truck or trailers?</p>	<p style="text-align: right;">Page 125</p> <p>1 Q Yes.</p> <p>2 A Yeah, I'm always looking at my equipment as I'm walking 3 by it.</p> <p>4 Q Do you have kind of a mental checklist of --</p> <p>5 A Yes. Uh-huh, yeah.</p> <p>6 Q And what does your mental checklist include of your 7 visual inspection?</p> <p>8 A Well, when you are loading out at the pit, you can see 9 what the loader operator is doing. You can tell if he's not 10 putting the material in there correctly.</p> <p>11 So, for some reason, you see him doing something weird 12 back there, like, it's a different loader operator, maybe you get 13 out, walk by there and do a more thorough check.</p> <p>14 But for the most part, you are just looking to make sure 15 everything looks right.</p> <p>16 It's like looking at your gauges in your truck. You get 17 used to what everything is supposed to look like, and if something 18 is out of place, then it catches your eye.</p> <p>19 Q So you did your visual inspection after you had your 20 load when you were walking?</p> <p>21 A Uh-huh.</p> <p>22 Q And then -- and you didn't notice anything in your 23 visual inspection?</p> <p>24 A No.</p> <p>25 Q And then what occurred?</p>

<p style="text-align: right;">Page 126</p> <p>1 A I left the pit and headed to Reno to dump at the same 2 Cemex Concrete plant.</p> <p>3 Q Okay. And did anything occur on your drive to the 4 plant?</p> <p>5 A When I got to town, I received a phone call from 6 somebody that says, "Hey, did you lose a load of sand?" 7 And I said, "I don't think so." 8 At that particular point, I was able to move the 9 steering wheel slightly to the right and back to the left, and I 10 could see the back trailer. 11 I could see the back gate was wide open on the back 12 trailer. And I said, "Oh, crap, I guess I did," at which time, I 13 reached over -- first of all, I looked over to see if my switch 14 was on, which it wouldn't. It wouldn't possibly be on, but that's 15 the first thing I checked. 16 And then I lifted up the cover for the rear trailer, 17 turned the switch on and back off again, and that closed the 18 gates. 19 Q Okay. So you first looked over in the -- 20 A Visually inspected the switches to make sure the covers 21 were down. 22 Q And were the covers down? 23 A Yes. 24 Q Okay. And then I'm going to actually back up a second. 25 Where were you when you got notified of this?</p>	<p style="text-align: right;">Page 128</p> <p>1 do?</p> <p>2 A Just dumped my load like normal and then headed to the 3 yard, because at that particular point, I think I heard already 4 about Dan Koski's incident. 5 Q And when you got to the third trailer, did you open the 6 third trailer? 7 A No. I mean, it was empty. 8 Q And how did you know it was empty? 9 A Well, when you are going down the road and the gates are 10 wide open, there's no chance of there even being so much as a 11 pebble in there now, after it has been bouncing down the highway 12 for 20 miles. 13 I mean, there's just no chance. It's open all the way. 14 Q So you didn't check? 15 A Oh, no. 16 Q Did you look at the lever of the Versa valve on the 17 third trailer? 18 A Yeah. 19 Q What was the position of the lever? 20 A At this point, it was closed. 21 Q So it was down? 22 A Out. 23 Q Or -- 24 A It's hard to say. Out. 25 Q Let's see if we can -- we'll go to Exhibit 3, which is a</p>
<p style="text-align: right;">Page 127</p> <p>1 A I was at Vista Boulevard heading into town. I'm not 2 sure what exit that is. 21?</p> <p>3 Q Do you know approximately how long it had been since you 4 had left?</p> <p>5 A Twenty minutes. 6 Q So it would be fair to say around 9 o'clock is when you 7 were notified? 8 A Yes. 9 Q And do you recall where you pulled over? 10 A I didn't pull over. 11 Q Oh, I'm sorry. I thought you said you pulled over. So 12 you were inspecting when you were driving? 13 A Well, if you are going down the road and you look in 14 your mirror, you cannot see the gates. 15 But if you turn your wheel just slightly to the right 16 and back to the left, the back trailer will move over like this, 17 move over six inches and back six inches. And when it moves back, 18 you can see the gate and you can see it's open. 19 Q Okay. 20 A And that's when I reached over, opened it, turn the 21 switched on, turned it off. And that energizes the solenoid and 22 closes it, even though who knows why it was open. 23 At that point, there was no reason for me to pull over. 24 I just went to the plant. 25 Q Okay. And when you arrived at the plant, what did you</p>	<p style="text-align: right;">Page 129</p> <p>1 picture of the Versa valve, just visually, to make sure we have 2 the same understanding. 3 So MDB 004. Okay. 4 A As you can see in this picture, the Versa valve, the 5 handle points down. If you push the valve in towards the center 6 of the trailer, it opens the trailer, and then if you pull it all 7 the way out towards you, it closes the trailer. 8 Q So what was the position of the lever? 9 A It was in the "out" position after I got to the plant. 10 Q Did you touch the lever at all -- 11 A I don't -- 12 Q -- to see if you could -- if there was any resistance in 13 pushing it in? 14 A I think I did. 15 Q Okay. And what did you find? 16 A I think there was resistance in it, meaning the 17 accumulator did have air in it. 18 Q Did you look at the air pressure gauge? 19 A I believe so. 20 Q And what did the air pressure gauge indicate? 21 A I'm sure it had better than a hundred pounds of air. 22 Q So then after -- strike that. 23 After you left the drop-off location, what did you do 24 next? 25 A Went to the yard, our yard, MDB's yard.</p>

<p style="text-align: right;">Page 130</p> <p>1 Q And what occurred at the yard?</p> <p>2 A Well, after doing a cursory inspection at plant, seeing</p> <p>3 if there's nothing obviously wrong with the valve, with the</p> <p>4 plumbing or the wiring, nothing -- there's nothing that was</p> <p>5 broken, going to the yard, looking at it there, there's no obvious</p> <p>6 thing that -- once again, there's nothing obvious that pointed to</p> <p>7 why this thing opened, I decided to put the truck out of service</p> <p>8 and to fabricate the lockout devices.</p> <p>9 Q Did you tell anyone about what occurred with your truck</p> <p>10 and trailer?</p> <p>11 A No. Everybody already knew it.</p> <p>12 You are talking about did I tell my supervisor at the</p> <p>13 time?</p> <p>14 Q Yes.</p> <p>15 A Yeah, he already knew it. Yes, I talked to him about</p> <p>16 it.</p> <p>17 Q How did he already know?</p> <p>18 A Because everybody -- news travels fast. I'm sure</p> <p>19 everybody in Northern Nevada knew somebody lost a load, as soon</p> <p>20 as -- you know.</p> <p>21 Q So there's a lot of gossip going around?</p> <p>22 A Yes.</p> <p>23 Q And at that time, had you heard about Daniel Koski's</p> <p>24 load?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 132</p> <p>1 problems. So it could have been, I don't know, the driver.</p> <p>2 Tracy Shane might have said -- I don't know.</p> <p>3 Q Did anyone implement that?</p> <p>4 A I don't know. I never did. As a driver, I never did</p> <p>5 it.</p> <p>6 Q Okay. Would shortening the gate chain help ensure that</p> <p>7 the belly gate dump wouldn't fully open?</p> <p>8 A Oh, yes.</p> <p>9 Q So that would be a way to help secure your load from</p> <p>10 unloading, I guess, fully?</p> <p>11 A I suppose it could. I mean, it could help, yes.</p> <p>12 MS. SHREVE: Can we take a short break so I can just do</p> <p>13 a quick review over my notes to make sure that I don't have</p> <p>14 anything else.</p> <p>15 MS. WOELFEL: Sure.</p> <p>16 MS. SHREVE: We're going to go off the record.</p> <p>17 (A recess was taken.)</p> <p>18 MS. SHREVE: So we'll go back on the record.</p> <p>19 BY MS. SHREVE:</p> <p>20 Q Mr. Palmer, you understand you are still under oath,</p> <p>21 correct?</p> <p>22 A Yes.</p> <p>23 MS. SHREVE: So next, I'm going to hand to you, which is</p> <p>24 Exhibit 17. This was brought to us today by your counsel.</p> <p>25 (Exhibit 17 marked for identification.)</p>
<p style="text-align: right;">Page 131</p> <p>1 Q And did you speak with anyone regarding your load and</p> <p>2 his load both occurring that day?</p> <p>3 A Well, my immediate contact was Pat Bigby. And I just</p> <p>4 said, you know, I'm putting these trailers out of service, I'm</p> <p>5 going to fabricate these, and that's what I'm going to do, because</p> <p>6 it's just -- we had already been through this the year before. We</p> <p>7 couldn't find anything wrong. We still can't explain why it</p> <p>8 happened.</p> <p>9 So we just decided to go the -- this route, where his --</p> <p>10 make it so the handle cannot move.</p> <p>11 Q At any point, did you guys -- or, did anyone from MDB</p> <p>12 suggest maybe shortening of the gate chains just as a safety</p> <p>13 precaution to ensure that it wouldn't -- the belly gates would not</p> <p>14 fully open?</p> <p>15 A After this issue or before this issue?</p> <p>16 Q Any time -- I guess any time after January -- or, sorry,</p> <p>17 July 2013.</p> <p>18 A Maybe somebody suggested it. I'm not sure. I wouldn't</p> <p>19 have suggested it, because, like I say, it's not a positive</p> <p>20 lockout device.</p> <p>21 Some of the Ranco trailers have a way to do that, but</p> <p>22 our back two trailers don't have a way of doing that.</p> <p>23 Q Do you have an idea of who may have suggested shortening</p> <p>24 the gate?</p> <p>25 A Oh, everybody has got their ideas about how to solve</p>	<p style="text-align: right;">Page 133</p> <p>1 BY MS. SHREVE:</p> <p>2 Q Yesterday and possibly today as well, you testified that</p> <p>3 the -- that your drivers provide vehicle inspection reports when</p> <p>4 they do their inspection. Is that correct?</p> <p>5 A At the time of this happening, our drivers --</p> <p>6 MS. SHREVE: Can you repeat my question to him. Sorry.</p> <p>7 (The question was read by the reporter.)</p> <p>8 THE WITNESS: That was correct up until the point that</p> <p>9 they changed the law.</p> <p>10 BY MS SHREVE:</p> <p>11 Q Okay. What is the -- what law was changed?</p> <p>12 A The requirement to fill out the DVIRs is now only</p> <p>13 required to fill it out if there's a defect noted.</p> <p>14 Q Okay. And when was that change?</p> <p>15 A I don't know, approximately a year and a half ago.</p> <p>16 Q And what was required prior to the law change?</p> <p>17 A You had to fill out a DVIR every day regardless of if</p> <p>18 there is a defect or not.</p> <p>19 Q So approximately a year and a half ago, that was changed</p> <p>20 to only if the driver noted some sort of defect, correct?</p> <p>21 A Correct.</p> <p>22 Q Okay. And so what you brought to us today is what a</p> <p>23 Driver Vehicle Inspection Report is for MDB that would be filled</p> <p>24 out?</p> <p>25 A Correct, even though, if you look at that, it says</p>

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1 "Morrison Trucking" at the top. I don't know if you noticed that.

2 Q I did. I was going there next to ask, why do your
3 vehicle inspection reports say "Morrison Trucking"?

4 A Apparently, Tracy Shane wanted to use these inspection
5 reports that somebody gave him. And drivers were crossing out
6 "Morrison Trucking" and writing "MDB Trucking" on there instead.
7 But, apparently, whoever filled these out did not do that.

8 Q Okay. So have you always had the Morrison Trucking --

9 A Oh, we had them for a while. Now, we don't. Now, we
10 have ones that say "MDB Trucking."

11 Q Okay.

12 A If you know Tracy Shane, he don't like to throw anything
13 out.

14 Q He likes to recycle.

15 Is MDB at all related to Morrison Trucking?

16 A No.

17 Q And so everything on this vehicle inspection report, is
18 this everything that is done daily that's inspected?

19 A Are you talking about the check boxes?

20 Q Yes, all the boxes. Is that everything listed that is
21 to be inspected every day?

22 A That is a guideline that, my guess, J.J. Keller puts on
23 there for you to go by. But there are other things that we check
24 that aren't on here, and things that are on here that we don't
25 check because they don't apply to our vehicle.

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1 Q What are things that are not on here that you would
2 check?

3 A Oh, you check your gates to make sure that they are
4 properly closed. You check to make sure your safety pins are
5 inserted on your hitches, on your transfer trucks. You're making
6 sure your valves are open to your back trailers, on your multiple
7 sets of trailers.

8 And there's also -- you are looking for all kinds of
9 things.

10 Basically, what the drivers are following are the
11 guidelines put forth by the commercial driver's license pre-trip
12 inspection, and this just helps them remember some of that stuff
13 as they are doing it.

14 Q And would this be the same inspection that's conducted
15 at the end of the day as well for the driver?

16 A Yes. So it's the same inspection done in the morning,
17 pre-trip and post-trip, almost identical. And this is turned in
18 at the end of the day.

19 And your driver can fill it out any time during the day
20 or at the end of the day. It doesn't have to be filled out in the
21 morning. It has to be completed and turned in at the end of the
22 day as part of his post-trip inspection.

23 As you can see on this first one, on August 19th, 2015,
24 the driver didn't even sign it. I'm not sure which driver it was
25 that day, but he filled it out at 3:00 p.m., which, I imagine, is

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1 at the end of the day.

2 Q Okay. So one of these, if I'm correct, then, in
3 understanding, it's not filled out in the morning, just in the
4 afternoon; is that correct?

5 A Correct. You are required to do the inspection in the
6 morning, but you don't actually fill out -- it's not required to
7 fill out the inspection report until the end of the day.

8 You can -- you fill that out in the morning if you want.
9 But if something else breaks during the day, you can add it to it
10 and then turn it in.

11 Q So if you had discovered something in your initial
12 inspection, would you note it on here and just wait until your
13 final inspection at the end of the day?

14 A Yes. I would note it on here.

15 Q You would add?

16 A Yeah.

17 Q Was that a "yes"? Sorry.

18 A Yes, sorry.

19 Q Is that typical for most of MDB's drivers, to note
20 something on their inspection vehicle report in the morning if
21 they noticed it?

22 A Uh-huh, yes, it would be.

23 MS. SHREVE: Go to the next exhibit, which would be
24 Exhibit 18.

25 (Exhibit 18 marked for identification.)

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1 BY MS. SHREVE:

2 Q These were provided to me this morning from your
3 counsel, I guess you pulled for me last night.

4 Can you explain to me what these are.

5 A The first one I'm looking at is the brake inspector
6 qualifications, certification.

7 It's set forth by the USDOT rules, Federal Motor Carrier
8 Safety Administration, that in order to work on the brake system
9 of a vehicle, you have to be certified, qualified by your
10 employer.

11 So this would be my employer, MDB Trucking, certifying
12 me, based on my 30 years experience, to do brake.

13 Q Okay.

14 A Required brake maintenance and repair.

15 Q Okay. And then what about the second page?

16 A The second one is similar. It's just this one is an
17 inspector qualification certification, which is required for me to
18 perform annual inspections under the Code of Federal Regulations,
19 that I'm qualified.

20 It just certifies that I'm qualified, and they checked
21 that.

22 I think this is in response to something you asked
23 yesterday, if I had any certifications to do this, yes.

24 Q Yes. I appreciate it.

25 Are there any other certifications that you have other

<p style="text-align: right;">Page 138</p> <p>1 than these two that you have provided today?</p> <p>2 A I mean, I have other -- not provided by my employer, I</p> <p>3 do not think so. I have air-conditioning certifications to be</p> <p>4 able to perform air-conditioning work on a commercial vehicle.</p> <p>5 Q Any other certifications in regards to performing any</p> <p>6 repair work or maintenance on these vehicles?</p> <p>7 A I don't think so.</p> <p>8 MS. SHREVE: I think that's all the questions I have</p> <p>9 right now. I reserve the right to ask some more after other</p> <p>10 counsel continues.</p> <p>11 So at this moment, I would pass the witness.</p> <p>12 MS. WOELFEL: Great. Thank you.</p> <p>13 MS. SHREVE: Do you want to take a break and switch?</p> <p>14 MS. WOELFEL: No, we can get started. I'll just try to</p> <p>15 speak up.</p> <p>16 If you can't hear me, let me know.</p> <p>17 THE WITNESS: Okay.</p> <p>18</p> <p>19 EXAMINATION</p> <p>20 BY MS. WOELFEL:</p> <p>21 Q My name is Jessica Woelfel. I represent RMC Lamar.</p> <p>22 I'll get through as much as I can today, then we'll pick</p> <p>23 back up tomorrow morning, just depending where we are.</p> <p>24 So I want to go back to, just really quickly, Exhibit 17</p> <p>25 that you were just looking at, the Driver Vehicle Inspection</p>	<p style="text-align: right;">Page 140</p> <p>1 Q So there was a wiring issue that was preventing the</p> <p>2 switch from operating the gate?</p> <p>3 A Correct.</p> <p>4 Q How did you correct that problem?</p> <p>5 A I believe I unplugged the four-way from the front of the</p> <p>6 front trailer, cleaned it, put it back in and it worked.</p> <p>7 Q And you used the same four-way?</p> <p>8 A Yes.</p> <p>9 Q And cleaning that four-way fixed the problem?</p> <p>10 A Yes, because when you clean it, you are also -- if it</p> <p>11 gets any kind of corrosion on it whatsoever, the switch -- it's</p> <p>12 not really corrosion, it just -- basically, you are just cleaning</p> <p>13 it with a wire brush and spreading the prongs out slightly and</p> <p>14 plugging it back in and it worked.</p> <p>15 Q Is that a pretty typical issue where you would have some</p> <p>16 sort of corrosion or debris in one of these plugs that would</p> <p>17 prevent or that would cause some sort of a malfunction in the</p> <p>18 wiring?</p> <p>19 A It's possible. When I say "corrosion," that's probably</p> <p>20 a bad choice.</p> <p>21 It's more of oxidation of the brass. It doesn't make</p> <p>22 good contact. So you have to get in there and clean it with a</p> <p>23 wire brush.</p> <p>24 Q Do you do any type of regular inspections of the wiring</p> <p>25 to check for those types of issues, or do you just wait until a</p>
<p style="text-align: right;">Page 139</p> <p>1 Report.</p> <p>2 A Can you explain something for a second.</p> <p>3 Q Sure.</p> <p>4 A RMC Lamar, is that the parent company to Ranco, or is</p> <p>5 that the company who purchased Ranco? I'm not sure who --</p> <p>6 Q That's the company that sold to Dragon. So that's --</p> <p>7 A Okay. Just in relation to Ranco trailers?</p> <p>8 Q Yes, manufacturer of the trailer, original manufacturer.</p> <p>9 Okay. With respect to this trailer -- this is Trailer</p> <p>10 Number 6775 on the first page -- the remarks here -- well, first</p> <p>11 of all, can you tell me who the mechanic's signature is on this</p> <p>12 document, first page of Exhibit 17?</p> <p>13 A Are you talking about the --</p> <p>14 Q First page of the Driver's Vehicle Inspection Report.</p> <p>15 A Oh, that would be my signature, that the defects were</p> <p>16 corrected.</p> <p>17 Q Okay. And the remarks were that the cab switch is not</p> <p>18 opening the gate. What does that mean?</p> <p>19 A That means that the switch inside the cab, that has the</p> <p>20 cover on that you open to activate the trailer to dump it with the</p> <p>21 electric solenoid, was not operating, something that -- the</p> <p>22 trailer was not being -- you cannot operate from the truck cab.</p> <p>23 It doesn't necessarily mean it was the switch, it</p> <p>24 just -- it could be the wiring between the switch and the valve.</p> <p>25 Somewhere along the lines, it wasn't working, wasn't operating.</p>	<p style="text-align: right;">Page 141</p> <p>1 driver brings it to your attention that a cab switch isn't</p> <p>2 working?</p> <p>3 A When they come in for the routine inspections, we check</p> <p>4 to make sure that the wire is in place and the wire is not --</p> <p>5 everything looks mechanically correct, in other words, it's not</p> <p>6 broken, the wire is not broken, the four-way plug is not</p> <p>7 physically broken.</p> <p>8 But we do not unplug and clean it every time we check it</p> <p>9 off, no.</p> <p>10 Q Do you ever, in the annual inspection, unplug and clean</p> <p>11 and check the wires at that point?</p> <p>12 A On the annual inspection? I would -- I don't think so,</p> <p>13 no.</p> <p>14 It -- you have to understand the nature of these plugs,</p> <p>15 and you change them all the time anyway because of damage. And</p> <p>16 so --</p> <p>17 Q Okay. So going all the way back --</p> <p>18 A Okay.</p> <p>19 Q -- to the very beginning, I want to go to when MDB first</p> <p>20 leased the Trailer 6775 from Western Nevada Transport.</p> <p>21 A Okay.</p> <p>22 Q Do you know what year MDB first leased Trailer 6775?</p> <p>23 A I believe it was 2012.</p> <p>24 Q Can you tell me how MDB came to work with Western Nevada</p> <p>25 Transport to lease trailers and vehicles?</p>

<p style="text-align: right;">Page 142</p> <p>1 A I believe that -- well, being in the industry for so 2 long, myself and Tracy Shane know the owners of Western Nevada 3 Transport, or have known them for probably 35 years. 4 So everybody knows everybody. And he probably called 5 Tracy, says hey, I've got these trailers I want to get rid of, 6 yeah. 7 Q Do you know when that relationship began between MDB and 8 Western Nevada, what year that they first started working 9 together? 10 A Officially? 11 Q Officially. 12 A Probably when they leased the trailers. 13 Q For the first time, was that in 2012? 14 A Probably. 15 I mean, we probably had a working relationship before 16 that where we would haul for them and they would haul for us. But 17 as far as leasing trailers, I think that was the first time that 18 any of that happened, yes. 19 Q 2012 was the first time? 20 A I'm pretty sure, yes. 21 Q Okay. How old was Trailer 6775 at the time of the 22 initial lease? 23 A I would have to look and see what the year of the 24 trailer is. I'm pretty sure it's a 2002 or something like that. 25 So it would have been ten years old, I believe.</p>	<p style="text-align: right;">Page 144</p> <p>1 it was or was not original? 2 A No. 3 Q And I don't remember if you answered this question or 4 not, but does MDB have any of the maintenance documents from 5 Western Nevada Transport in relationship to Trailer 6775? 6 A No, we do not. 7 Q Does SKS have any of those documents? 8 A No. 9 Q Now, when Trailer 6775 was first leased, can you tell me 10 what efforts MDB made to evaluate the condition of the electrical 11 connections on the trailer? 12 A At the beginning, I wasn't there at the time, but the 13 routine would have been the same as what it was after I became 14 employed there. 15 We completely go through them, check all of the wiring, 16 probably replaced all the plugs that even remotely look like they 17 were old. 18 Q Okay. When you say "check all of the wiring," what do 19 you mean by that? Describe in detail for me what your process -- 20 what your standard process would be. 21 I understand that you weren't there in 2012. 22 A Well, you do a visual check on the wire, the ones -- the 23 wiring that you can see. There's a lot of wire on a Ranco trailer 24 that's hidden. You cannot see it. 25 So without pulling it completely out of the trailer,</p>
<p style="text-align: right;">Page 143</p> <p>1 Q Okay. 2 A To the best of my knowledge. 3 Q Do you know what the condition of the trailer was at the 4 time MDB initially leased 6775? 5 A I think it was in good condition. 6 Q Okay. Do you know if the wiring was original? 7 A I believe the wiring was original. 8 Q Okay. Why do you believe that? 9 A Because the wiring was original when we first started 10 working on them. 11 Q Did you -- or, do you know if MDB made any inquiries as 12 to any changes or modifications that were made to 6775 by 13 Western Nevada in the ten years before MDB leased? 14 A I do not believe we did. I think we just did our own 15 inspection on the trailer to make sure everything was mechanically 16 correct before we put them in service. 17 Q So you don't know for sure if the wiring was original or 18 not? 19 A No, I can't say that for sure, no. 20 Q Same thing with respect to the valves, the Versa valve 21 that was on 6775. 22 Do you have any confirmation at all that that was an 23 original valve that was placed on 6775 when it was manufactured? 24 A No, I can't say for certain. 25 Q Have you seen any documents whatsoever indicating that</p>	<p style="text-align: right;">Page 145</p> <p>1 it's hard -- it would be hard to inspect every aspect of the 2 wiring. 3 Q So I'm just going to stop you there. 4 Do you know if you pulled the wiring out to inspect it 5 when you first received Trailer 6775? 6 A No, we did not. 7 Q Have you, since having -- leasing the trailer in 2012, 8 pulled the wiring out of those hidden locations to inspect the 9 wiring? 10 A We pulled it out and replaced it. 11 Q In 2013? 12 A I believe so. 13 Q Outside of that time in 2013, do you ever conduct 14 inspections during your annual inspection where you do a visual 15 inspection of the hidden wiring? 16 A No. 17 Q So I had interrupted you. You were describing the 18 process of checking the wiring, and you said that you conduct a 19 visual inspection at first. 20 And so can you go on to explain the rest of the process. 21 A Well, the process would be that you look at the trailer. 22 And, like I said, there's very little wire that's actually 23 exposed. 24 So -- but you would look to see that there's any damage 25 to any of that wire where it goes into the side of the trailer,</p>

<p style="text-align: right;">Page 146</p> <p>1 which would be a rub point. You check that.</p> <p>2 You check seven-way and the four-way connection in the</p> <p>3 front of the trailer, make sure that the plug looks good, check it</p> <p>4 in the back of the trailer.</p> <p>5 Now, you do have cords that go between the trailers.</p> <p>6 Those, you check. You pull out the seven-ways and the four-ways,</p> <p>7 make sure that they are all -- they all look good. You put it all</p> <p>8 back together.</p> <p>9 But the main thing you are looking for when you are</p> <p>10 testing the lights is the lights work and you don't have a ground</p> <p>11 issue. Then, generally, you don't have -- generally, you don't</p> <p>12 have to look any farther.</p> <p>13 Q Okay. All right. And then with respect to regular</p> <p>14 maintenance on the electrical system, we kind of touched on that,</p> <p>15 but you said that you would do a visual inspection when the</p> <p>16 trailer came in on your regular kind of multi-week inspections.</p> <p>17 A Uh-huh.</p> <p>18 Q Is that a "yes"?</p> <p>19 A Yes. I'm sorry. Yes.</p> <p>20 Q And then you would -- when somebody would bring it to</p> <p>21 your attention that there was a problem with a connection, you</p> <p>22 might pull a plug, replace a plug or check for debris or</p> <p>23 corrosion, correct?</p> <p>24 A Yes.</p> <p>25 Q And then during your annual inspections, what would you</p>	<p style="text-align: right;">Page 148</p> <p>1 A Absolutely -- no, they have not. There's no evidence --</p> <p>2 they have not been repainted.</p> <p>3 Q Okay. Now, SKS is owned by the same owners of MDB; is</p> <p>4 that correct?</p> <p>5 A That's correct.</p> <p>6 Q Is there any difference in ownership?</p> <p>7 A It's a different structure. One is a limited liability</p> <p>8 company and -- each of them being a member.</p> <p>9 Q Correct.</p> <p>10 A And the other one is -- SKS is a corporation where</p> <p>11 Travis Bonanno was the president and Kari Bonanno, I think, is the</p> <p>12 secretary-treasurer.</p> <p>13 Q So it's Travis Bonanno and Kari Bonanno, correct?</p> <p>14 A Yes.</p> <p>15 Q And they are -- are they the sole members of</p> <p>16 MDB Trucking?</p> <p>17 A Yes.</p> <p>18 Q Are they the sole shareholders of SKS?</p> <p>19 A Yes. As far as I know, the last time I looked.</p> <p>20 Q Now, you mentioned yesterday that you report to a person</p> <p>21 named Terry Davis?</p> <p>22 A Yes.</p> <p>23 Q What company does he work for?</p> <p>24 A He's officially employed by Bonanno Concrete, but I</p> <p>25 think he works for both Bonanno Concrete and MDB Trucking.</p>
<p style="text-align: right;">Page 147</p> <p>1 do with respect to the electrical system on the trailer?</p> <p>2 A We would go through the same process. We don't</p> <p>3 actually -- I mean, it's not like we pull all the wiring out. I</p> <p>4 mean, we're talking a major project. We are talking a two-day</p> <p>5 project to pull all the wiring out.</p> <p>6 We wouldn't do that in every trailer if it didn't show</p> <p>7 any signs of malfunctioning.</p> <p>8 Q Okay. When MDB first leased Trailer 6775 in 2012, do</p> <p>9 you know if they had it repainted?</p> <p>10 A No, we did not. To my knowledge, I do not believe we</p> <p>11 had it painted.</p> <p>12 Q Have you repainted any of your trailers since 2012?</p> <p>13 A No.</p> <p>14 Any of our trailers?</p> <p>15 Q Yes.</p> <p>16 A Oh, boy, I think we have. Not any of these trailers.</p> <p>17 Q Tell me, when you do repaint a trailer, do you remove</p> <p>18 any components from the trailer before you do a repaint?</p> <p>19 A If we were to repaint a trailer, we would remove a lot</p> <p>20 of components, lights, fenders, tires, wheels, that sort of</p> <p>21 things.</p> <p>22 Q And none of the trailers at issue that we've been</p> <p>23 discussing, 6773, 6774, 6775, none of those have been repainted --</p> <p>24 A No.</p> <p>25 Q -- since MDB has leased those trailers?</p>	<p style="text-align: right;">Page 149</p> <p>1 Q Do you know what his job title is?</p> <p>2 A Now, on his email, it says "safety coordinator."</p> <p>3 Q How long has he worked with Bonanno Concrete and/or MDB?</p> <p>4 Can you tell me approximately when he started working with MDB?</p> <p>5 A Approximately a year ago.</p> <p>6 Q So can you narrow that down a little bit more? Are we</p> <p>7 talking about approximately March of 2016, or -- is that your best</p> <p>8 recollection of when Terry Davis started working with MDB,</p> <p>9 approximately March 2016?</p> <p>10 A Yeah, that sounds about right, yes.</p> <p>11 Q Now, you said he was working with Bonanno Concrete</p> <p>12 approximately two years ago; is that correct?</p> <p>13 A Yes.</p> <p>14 Q Okay. How long have you had to report to Terry Davis?</p> <p>15 MR. BROWN: Object to foundation.</p> <p>16 Go ahead.</p> <p>17 THE WITNESS: I'm sorry.</p> <p>18 BY MS. WOELFEL:</p> <p>19 Q Do you report to Terry Davis?</p> <p>20 A I communicate to him.</p> <p>21 Q How often do you communicate with him?</p> <p>22 A A couple times a week, two or three times a week,</p> <p>23 sometimes three or four times a day, depends on what we're doing.</p> <p>24 Q And what types of issues do you communicate with</p> <p>25 Terry Davis about?</p>

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1 A He takes care of some of the safety things at
 2 MDB Trucking and safety policies. If I have questions about
 3 workers' comp or drug testing, supervisory training, that sort of
 4 thing, he gets involved in.
 5 Q What type of safety policies is Terry Davis involved in
 6 with respect to MDB?
 7 A I'm not sure.
 8 Q You mentioned you talk to him about safety policies and
 9 whenever he's involved in safety policies and that his role is
 10 safety coordinator.
 11 Can you describe more fully what his role entails for
 12 MDB as a, I guess, quote, unquote, "safety coordinator"?
 13 A I believe on his title, it's safety coordinator of
 14 Bonanno Concrete. I'm not sure what his title is at MDB Trucking.
 15 But because he's a safety coordinator at Bonanno Concrete, he does
 16 help me with safety issues at MDB Trucking.
 17 Q What type of safety issues does he --
 18 A Our weekly safety meetings, that sort of stuff, OSHA
 19 training, MSHA training.
 20 Q What kind of weekly safety meetings do you have?
 21 A We just have weekly, like, tailgate topics, I guess you
 22 could call that.
 23 Q Does that involve sort of gathering up all your drivers?
 24 A Sometimes, yeah.
 25 Q Well, describe for me a typical weekly safety meeting.

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1 A Sometimes it's hard to get all of our drivers together
 2 at the same time because they all start at different times. And
 3 so there's a tailgate meeting type topic that we discuss, and I
 4 discuss it with them as I see them, or in groups of -- smaller
 5 groups of people.
 6 Q Do you have a written agenda for these weekly meetings?
 7 A I'm not sure.
 8 Q You don't know if you have a written agenda or not for
 9 these safety -- weekly safety meetings?
 10 A I'm not sure what you mean by "written agenda."
 11 Q Do you write down what you are going to discuss at these
 12 weekly tailgate safety meetings?
 13 A Yeah. Yes.
 14 Q And what do you do with the documents where you write
 15 down the topics for discussion at your weekly safety meetings? Do
 16 you save those?
 17 A Yes.
 18 Q Do you have a file that includes all of those?
 19 A Yes.
 20 Q Okay. How long have these weekly safety meetings been
 21 taking place?
 22 A A couple of months on this particular one. We used to
 23 do a different type of weekly safety meetings when Tracy was
 24 there.
 25 Q What type of safety meetings, if any, were in place in

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1 July of 2013?
 2 A Would have been the same weekly safety meetings, but the
 3 topics would have come from a different agency, I suppose you
 4 could call it.
 5 Q Okay. At the weekly safety meetings, would you discuss
 6 any safety issues that have been noted by your drivers that might
 7 impact other drivers and things of that nature?
 8 A I think those are mostly covered one on one with
 9 drivers.
 10 Q So, for example, when there was the dump of Mr. Koski's
 11 truck in July of 2013, would that topic have been discussed at one
 12 of these weekly safety meetings and, you know, discussion of
 13 safety measures? Would you have had that conversation in one of
 14 these weekly safety meetings?
 15 A No.
 16 MR. BROWN: Objection, foundation.
 17 Go ahead.
 18 THE WITNESS: I'm sorry.
 19 BY MS. WOELFEL:
 20 Q No, you would not have?
 21 A That wouldn't have been part of the topic of the weekly
 22 safety meetings. That would have been in addition to that.
 23 Q Okay. And can you tell me if there was a conversation
 24 had with drivers or staff kind of to pull everybody together to
 25 talk about this incident and how to move forward from the incident

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1 in July of 2013?
 2 A Everybody -- at that point, everybody knows what's going
 3 on. Everybody knows his trailer opened.
 4 Everybody knows that the other trailers were opening up
 5 on the highway at the same time, Lakeside, Capurro. There's a lot
 6 of people have trailers opening up. Everybody in town knows about
 7 it, and this is a problem. This is an industry problem that we're
 8 having.
 9 Q Okay. So in July --
 10 A So we don't believe it's a safety issue specific to one
 11 of our drivers, it's an industrywide problem. So everybody is
 12 aware of this, and everybody has taken as much precaution as they
 13 can to keep this from happening.
 14 Q Okay. And so in July of 2013, this was a problem in the
 15 industry that MDB was aware of and discussing?
 16 MR. BROWN: Objection, foundation.
 17 Go ahead.
 18 BY MS. WOELFEL:
 19 Q Is that what you are testifying to?
 20 A Yes, specific -- yes, specific to certain manufacturers
 21 of valves on certain manufacturers of trailers, yes.
 22 Q And you are saying specific as to certain manufacturers
 23 of valves and certain manufacturers of trailers. Who are you
 24 referring to there?
 25 A I'm speaking of Ranco and Versa Valve.

<p style="text-align: right;">Page 154</p> <p>1 Of course, that's not entirely fair to say that only 2 Ranco trailers would open up, because 98 percent of the trailers 3 in this town are Ranco trailers. 4 So, of course, if you are going to have a problem, it's 5 going to be a Ranco trailer. So I can't really say -- I'm not 6 just pointing my fingers at Ranco trailer, but -- 7 Q Okay. And so you've testified that this is sort of a 8 general thing that MDB was aware of in or around July of 2013, 9 that there had been some dumps that had occurred. 10 What, if any, safety measures did MDB implement to 11 address those issues in July of 2013 to prevent future dumps, July 12 or August of 2013? 13 A In July, after that happened to us in July of 2013, the 14 measures we took were to rewire the trailers, put the new Versa 15 valve on, rewire the truck. And we had no issues whatsoever for a 16 year. 17 And the truck that I drove never -- or that -- the 18 trailer that I had behind my truck on the same day never had an 19 issue, ever. Why have an issue at the same time on the same date 20 at a similar location on that day? We don't know. 21 So we did everything that we could possibly do to 22 inspect these, mechanically and electrically, to see if there's 23 any problem that could possibly cause this to happen. 24 We -- nobody really can explain to -- explain why this 25 was going on.</p>	<p style="text-align: right;">Page 156</p> <p>1 in order to install an entirely new switch into the truck? Do 2 they have to do rewiring in the vehicle to make that work? 3 A On this particular truck, I -- as with most trucks, even 4 if they come from the factory, get their power source off of one 5 of the hot wires under the dash that would be hot, unswitched. In 6 other words, it's hot all the time, even if the key is off. 7 There are numerous wires that you can find in the 8 factory wiring loom that's hot. And that would go to the supply 9 of the first switch, which would then be jumpered to the supply of 10 the second switch, which would be jumpered to the supply of the 11 third switch. 12 And then each of the delivery terminals of those 13 switches, we wired to the respective gate valve on Trailers 1, 2 14 and 3. 15 Q Okay. 16 A And what Pat Bigby did, which I'm not sure if he 17 installed the master switch, but the master switch was put in. 18 And the wire, the hot -- the positive wire is run straight from 19 the switch to the battery, fused. 20 And so therefore, if there's any sort of feedback that 21 you are getting in the factory loom is now eliminated. None of 22 this actually changed anything, but they were just doing it for 23 peace of mind. 24 Q When you replaced the wiring in Trailer 6775, did you 25 test the wiring in 6773 and 6774 at the same time?</p>
<p style="text-align: right;">Page 155</p> <p>1 Q Okay. Did you inspect every other MDB truck in July and 2 August of 2013 to see if any of those trucks had any issues with 3 the wiring or the valves? 4 A We inspected every trailer that had a valve and every 5 truck that would have pulled those trailers, yes. 6 Q In 2013? 7 A Yes, and found no problems. 8 Q And found no problems. 9 Did you get from Mr. Koski, after the July 2013 10 incident -- did you have him write a written report of what 11 occurred with respect to that incident? 12 A I do not think so. 13 Q When you -- when MDB did change the wires after the July 14 of 2013 incident, did it pull the entire wiring system? 15 A Yes. 16 Q 100 percent of the wires in 6775? 17 A Yes, we did. 18 Q None of the previous wires were left or spliced or 19 connected, it was an entirely new wiring system? 20 A Correct. 21 Q And my understanding from your testimony is that there 22 was also a new master switch installed in the truck after the 23 July 2013 incident. Is that correct? 24 A Yes, that is correct. 25 Q What types of wiring changes -- or, what has to be done</p>	<p style="text-align: right;">Page 157</p> <p>1 A I think we replaced the wiring in all three trailers at 2 the same time. 3 Q Okay. So the wiring was completely replaced in 6773, 4 6774 and 6775? 5 A I believe so, at least the back two trailers for sure. 6 I believe all three trailers were done. I worked on them for 7 probably three days, you know. It's quite the job. 8 Q Okay. And what did you do with the wire that you pulled 9 from 6773, 6774 and 6775? Did you test or keep or just throw 10 away? What did you do with those wires? 11 A We either scrapped it or threw it away. Did we test it? 12 No. Did we visually inspect it? Yes. 13 Q Did you see anything in your visual inspection of the 14 wiring? 15 A Did I see anything abnormal? 16 Q Anything abnormal. 17 A I wouldn't say there was anything abnormal on the actual 18 wire. 19 With the way it was wired, the way the routing of the 20 wiring and how -- some of the -- was kind of hokey, the way they 21 would run the dump switch wire back into the seven-way junction 22 box and use that -- a fuse that's -- on the front of the seven-way 23 receptacle, there are fuses. 24 And apparently, Ranco likes to take -- disable one of 25 those fuses and use it as a fuse for the dump.</p>

<p style="text-align: right;">Page 158</p> <p>1 So the wire -- which is, actually, you know, to us, is</p> <p>2 unacceptable to run the wire for the dump wire through the</p> <p>3 seven-way and use that as -- so we thought that was very unusual,</p> <p>4 so we eliminated that completely.</p> <p>5 So the four-way wires simply go straight to the Versa</p> <p>6 valve. They don't go in through the seven-way at all.</p> <p>7 Q Did you think there was anything with respect to the way</p> <p>8 that the wiring was routed that led to the inadvertent dump on</p> <p>9 July 7th, or whatever it was, July 2013?</p> <p>10 A I wouldn't say there was, like, a smoking gun there,</p> <p>11 like, there was something obvious that would have caused it, no.</p> <p>12 Q And you did not maintain that wiring at all?</p> <p>13 A No. We would have thrown it away.</p> <p>14 Q Okay. And then you modified the way that the wiring was</p> <p>15 run when you rewired it; is that correct?</p> <p>16 A Correct.</p> <p>17 Q Did you modify the way that the wiring had previously</p> <p>18 run in any other manner, other than what you just described to me?</p> <p>19 A No. We just kept the seven-way and the four-way wires</p> <p>20 separated from each other.</p> <p>21 Q Okay. In July 2013, was SKS the owner of the trailer or</p> <p>22 was Western, do you recall?</p> <p>23 A I believe Western Nevada Transport was still the</p> <p>24 owner --</p> <p>25 Q In July 2013?</p>	<p style="text-align: right;">Page 160</p> <p>1 it -- I mean, it didn't malfunction mechanically.</p> <p>2 Q Did you know where the Versa valve -- the old Versa</p> <p>3 valve that was removed was kept or stored?</p> <p>4 A It would have been kept in our parts room, but I don't</p> <p>5 think I could identify it, if we have more than one there.</p> <p>6 Q Does MDB still have that Versa valve?</p> <p>7 A I don't know.</p> <p>8 I know we have a couple of Versa valves laying around</p> <p>9 there in different states of repair, you know.</p> <p>10 But we share the shop with WNT, and they have Versa</p> <p>11 valves. So, you know, we share parts or whatever as far as if</p> <p>12 somebody needs a used part.</p> <p>13 So there's no way I could identify which valve it was.</p> <p>14 Q So you share a workshop with Western Nevada Transport?</p> <p>15 A We do now, yes.</p> <p>16 Q When did you start sharing that shop with them?</p> <p>17 A 2014.</p> <p>18 Q What month?</p> <p>19 A January.</p> <p>20 Q Do you label the parts that belong to you versus the</p> <p>21 parts that belong to WNT?</p> <p>22 A No. They have their side of the shop with their parts</p> <p>23 room, we have our side of the shop with our parts room. So it's</p> <p>24 pretty easy to figure out whose is what.</p> <p>25 Q Okay. Did you alert the ownership about the July 2013</p>
<p style="text-align: right;">Page 159</p> <p>1 A -- and we were leasing them directly from them.</p> <p>2 Q Did you notify Western of the inadvertent dump in July</p> <p>3 of 2013?</p> <p>4 A Once again, I didn't have to notify them. Everybody</p> <p>5 knows. They knew, yes. I didn't notify them, but they already</p> <p>6 knew. Everybody knows this already.</p> <p>7 Q Is there any documentation relating to notification of</p> <p>8 Western of the 2013 dump?</p> <p>9 A No.</p> <p>10 Q Do you know who notified Western of the dump in 2013?</p> <p>11 A No.</p> <p>12 Q And you testified that the Versa valve, at the end of --</p> <p>13 after the dump in 2013 was also replaced.</p> <p>14 And I believe you said that MDB kept the old Versa valve</p> <p>15 that it removed; is that correct?</p> <p>16 A I'm assuming that we kept it, because we don't throw</p> <p>17 that kind of stuff out. Plus, we would keep it for spare parts or</p> <p>18 whatever, even though we generally never reuse them.</p> <p>19 But we don't like to throw that kind of stuff out.</p> <p>20 Q Did you run any tests on the Versa valve that was</p> <p>21 removed?</p> <p>22 A No.</p> <p>23 Q Or did MDB run any tests?</p> <p>24 A No. There's really no reason to test any of the stuff,</p> <p>25 because we know why -- I mean, we know it opened electrically, so</p>	<p style="text-align: right;">Page 161</p> <p>1 release?</p> <p>2 A Are you talking about ownership of --</p> <p>3 Q Of MDB.</p> <p>4 A Oh, yes.</p> <p>5 Q Do you know what their response was or their direction</p> <p>6 was in response to finding out that there had been a release in</p> <p>7 July of 2013?</p> <p>8 A Yeah, make sure it doesn't -- I mean, figure out what's</p> <p>9 going on.</p> <p>10 Q And did they instruct you to investigate the problem and</p> <p>11 try to figure out the cause of the incident?</p> <p>12 A Yes.</p> <p>13 Q And you said that you were confident -- or, I believe</p> <p>14 you said you were confident that it was a Versa valve failure that</p> <p>15 led to this; is that correct?</p> <p>16 A No, I don't think that's the correct -- I don't think</p> <p>17 that's what I said.</p> <p>18 I think I said that -- I believe that what caused this</p> <p>19 is the Versa valve inadvertently becoming energized by a manner</p> <p>20 other than by our truck, but it was definitely energized</p> <p>21 electrically.</p> <p>22 Q And how could it have become inadvertently electrolyzed</p> <p>23 by a manner that's not through your truck?</p> <p>24 And we are talking about July of 2013 right now.</p> <p>25 A Okay. We can talk about that day or any of the days.</p>

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1 That's the \$64,000 question.
 2 That's what everybody is trying to figure out, is after
 3 the 2014 incident, when we put the lockout devices on, other
 4 companies followed suit, put the same lockout devices on all their
 5 trailers because they were afraid of it happening again.

6 But there are still trucks -- a lot of trucks running
 7 around with out lockout devices on there. So for them, I guess,
 8 it could just be a matter of time before it happens to them. I'm
 9 not sure. It's just --

10 Q So what I think I hear you saying is that it's your
 11 belief that in July of 2013, there was some other electrical
 12 reason why the Versa valve was charged, other than the truck, but
 13 your investigation could not identify what that was?

14 A Yes.

15 Q Now, you started in August of 2013 with MDB; is that
 16 correct?

17 A Yes.

18 Q Was -- and you participated in the rewiring project at
 19 this time, correct?

20 A Shortly thereafter.

21 Q Had the rewiring project already been underway when you
 22 first started?

23 A The wiring of the tractor, the switches in the truck had
 24 been done.

25 Q So the master switch project had already been worked on

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1 and completed when you started?

2 A Yes.

3 Q And then you participated in rewiring the three
 4 trailers?

5 A Yes. Yes.

6 We were trying to be as proactive as we could. When I
 7 came to work there, I got right up to speed on what was going on.

8 They told me what -- the steps they took. I talked to
 9 them about what I thought. And we proceeded from there to try to
 10 do whatever we could do to keep this -- to see if we could find
 11 what the problem is.

12 Q And prevent it from occurring again?

13 A And we thought we did do that, yes, because it was a
 14 year before it happened again.

15 Q Did you suggest your pinning system in August of 2013
 16 when you were assisting in the rewiring and investigation?

17 A No.

18 Q Why not?

19 A I don't even think it was an idea of mine yet.

20 Q Okay.

21 A For the most part, our operation, which allows our
 22 drivers to dump in a grizzly where you have to get out every time
 23 and you can get out manually to do it, it's not a nuisance to pull
 24 the pin.

25 But if you are doing highway construction and you are

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1 dumping shoulder material or base rock on the highway, you are
 2 going from the pit to the job and you've got to dump, you don't --
 3 they don't want you out of the truck, taking your pins out, out
 4 there on the highway, every load.

5 So for the most part, it's having the gate manually --
 6 having a manual lockout on the gate is somewhat of an
 7 inconvenience that -- at the time, I didn't think it was -- it
 8 just didn't seem like that was a workable solution, to try to come
 9 up with a lockout device at that time.

10 Q Is that the same thing with respect to the gate chain
 11 along the bottom, that would be -- would create a nuisance or more
 12 work for the driver to put that on and take that off?

13 A "A nuisance" is probably a poor choice of words.

14 If you look at these trailers, they are short trailers.

15 They only have about a foot between the tires and the gates. So
 16 to crawl over there and chain these gates is a real chore. And
 17 it's actually a safety issue to try to get in there and chain
 18 these gates.

19 So to crawl under there and do this every load would
 20 be -- I don't think that would be a workable solution.

21 Q Why would it be a safety issue?

22 A Because you can barely fit under the gates back there.
 23 You have to crawl under the truck.

24 So unless you pull over to the side of the road and
 25 chock your truck and -- I mean, it's hard to get under there. So

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1 you would have to do it every load, yeah.

2 Sooner or later, you are going to get somebody hurt,
 3 stuck under there, whatever. There are things you can hit your
 4 head on.

5 Q So it sounds like using those at any time would create a
 6 safety issue.

7 Can you describe for me -- I mean, do you not have your
 8 employees use those chains at all?

9 A I've never used them at MDB Trucking, and I don't think
 10 anybody else has either.

11 But the deal is with that, if you -- if you are going to
 12 use them the way they are designed to be used, you would get to a
 13 job site that's dumping base rock, and the dump guy would tell
 14 you, you know -- he would give you a visualization of the way he
 15 wants the chains set up.

16 And you go out there and you set them once in the
 17 morning, you are done. Every load you come back, they are set
 18 already. You don't have to get out every time, chain and unchain
 19 them, chain and unchain them.

20 You just do it one time in the morning, and you are
 21 done. And if you are going back to the same job, you leave them
 22 the same way for the next day.

23 Q Have you ever used the chains as part of a -- driving
 24 the truck and doing a load?

25 A At MDB Trucking?

<p style="text-align: right;">Page 166</p> <p>1 Q At any time in your 35-year career, have you utilized</p> <p>2 that chain system?</p> <p>3 A Oh, yes, extensively, but not to keep the gates from</p> <p>4 opening, to keep the gates -- to restrict the opening of the</p> <p>5 gates, yes --</p> <p>6 Q Okay. So you have used them --</p> <p>7 A -- for the size of windrow they want on a job site, yes.</p> <p>8 Q Have you ever been injured in putting the chains on or</p> <p>9 off?</p> <p>10 A All the trailers that I have ever chained are semi</p> <p>11 trailers that have ten feet between the axles and the gates. So</p> <p>12 you walk under the trailer and you chain them.</p> <p>13 These are short trailers. They have -- it's only,</p> <p>14 like -- you can barely get your head in there to chain them.</p> <p>15 Q So my question is, have you ever been injured setting up</p> <p>16 the chaining device --</p> <p>17 A No.</p> <p>18 Q -- under a truck?</p> <p>19 A No.</p> <p>20 Q Are you aware of any other employee that you've worked</p> <p>21 with being injured setting up a chain device underneath a belly</p> <p>22 dumper?</p> <p>23 MR. BROWN: Objection, foundation.</p> <p>24 THE WITNESS: I don't know of any.</p> <p>25 ///</p>	<p style="text-align: right;">Page 168</p> <p>1 Q At the scene of the accident.</p> <p>2 A Well, the truck was not at the scene of the accident.</p> <p>3 Q Well, the truck pulled over to the side of the road.</p> <p>4 A No, he was not asked to do that.</p> <p>5 Q Okay. Thank you.</p> <p>6 Did you test the electrical system of any of the three</p> <p>7 trailers that were involved in this incident upon its return to</p> <p>8 the yard?</p> <p>9 A No.</p> <p>10 Q Why not?</p> <p>11 A There was no need to.</p> <p>12 Q Why was there no need to?</p> <p>13 A Because we put lockout devices on there, which prevents</p> <p>14 the gates from opening.</p> <p>15 We had already rewired the trailers completely. We had</p> <p>16 already checked the trailers out extensively.</p> <p>17 At this point, we felt that putting a lockout device was</p> <p>18 the best way to prevent this from happening again. And so far, it</p> <p>19 has been two and a half years and we haven't had a problem.</p> <p>20 Q So when you were -- when the truck came back to the</p> <p>21 yard -- and you said you had already rewired the trailer</p> <p>22 completely, you are talking about the rewire that took place one</p> <p>23 year ago?</p> <p>24 A Yes.</p> <p>25 Q And there was no inspection of the electrical system</p>
<p style="text-align: right;">Page 167</p> <p>1 BY MS. WOELFEL:</p> <p>2 Q Okay. So going to the July 2014 release, my</p> <p>3 understanding is that Mr. Koski contacted MDB while he was at the</p> <p>4 site of the dump and he had pulled over; is that correct? He had</p> <p>5 contacted them to advise them that this incident in July of 2014</p> <p>6 had occurred?</p> <p>7 A Yes.</p> <p>8 Q And do you know who he spoke to?</p> <p>9 A Tracy Shane.</p> <p>10 Q Okay. And do you know if anybody requested that</p> <p>11 Mr. Koski take any photos or do any documentation of the truck or</p> <p>12 the site of the event?</p> <p>13 MR. BROWN: Objection, foundation.</p> <p>14 THE WITNESS: Okay. The site of the event was a mile</p> <p>15 back down the road. So it would be pretty hard for him to walk</p> <p>16 down the freeway a mile to take pictures, especially while they</p> <p>17 are waiting for fire and rescue to arrive.</p> <p>18 He's on the side of the road, talking to a</p> <p>19 Highway Patrol officer at the time. I don't think that would be</p> <p>20 the time for Mr. Koski to be to do an independent investigation of</p> <p>21 what happened.</p> <p>22 BY MS. WOELFEL:</p> <p>23 Q So my question is, did anybody from MDB ask him to take</p> <p>24 any photos or document the truck?</p> <p>25 A At the scene of the accident?</p>	<p style="text-align: right;">Page 169</p> <p>1 after July of 2014?</p> <p>2 A No, not -- not in direct relation to that incident, no.</p> <p>3 Well, I shouldn't say that. We didn't do that</p> <p>4 inspection. The forensic -- the people -- the scientists and</p> <p>5 forensic people came out and did a complete inspection, all -- a</p> <p>6 year later, or whatever it was, a year and a half later.</p> <p>7 Q After the lawsuit had been filed?</p> <p>8 A Yeah.</p> <p>9 Q And the wiring system in the trailers, the subject</p> <p>10 trailers, is it your statement that the wiring system was exactly</p> <p>11 the same as the wiring system that was installed in July of 2013?</p> <p>12 A To the best of my knowledge, yes, it was. I don't</p> <p>13 think -- we never -- we didn't make any modifications to it, no.</p> <p>14 Q No modifications to it outside of changing plugs?</p> <p>15 A Maybe -- exactly, something like that, yes.</p> <p>16 Q Okay. Did you save the plugs that you changed after the</p> <p>17 July 2014 event until the time that the forensic inspection,</p> <p>18 electrical inspection had occurred?</p> <p>19 A No.</p> <p>20 Q What did you do with the plugs or any plugs that you</p> <p>21 changed on the subject trailers?</p> <p>22 A We throw them in the garbage after that, yeah.</p> <p>23 Q Did you do any testing -- outside of creating this pin</p> <p>24 system, did you do any testing to the Versa valve to see if it was</p> <p>25 malfunctioning in any way?</p>

<p style="text-align: right;">Page 170</p> <p>1 A No, other than visual inspection of making sure it was</p> <p>2 mechanically sound, which means that it's still in place, the</p> <p>3 handle is still in place, there's no damage to it, it's still</p> <p>4 operating correctly, it's just got a pin in there now.</p> <p>5 Q Okay. Did you take a written statement from Mr. Koski</p> <p>6 after the July of 2013 release?</p> <p>7 A I don't believe so.</p> <p>8 MS. SHREVE: Take a rest room break?</p> <p>9 MS. WOELFEL: Sure. Take a five-minute rest room break.</p> <p>10 That's fine.</p> <p>11 MS. SHREVE: We can go off the record.</p> <p>12 (A recess was taken.)</p> <p>13 MS. WOELFEL: Okay. We can go back on the record.</p> <p>14 BY MS. WOELFEL:</p> <p>15 Q Can you tell me if anybody was injured in relationship</p> <p>16 to the July 2013 dump incident?</p> <p>17 A To my knowledge, nobody was injured.</p> <p>18 Q And, obviously, there were some injuries with respect to</p> <p>19 July of 2014, or alleged injuries, which is why this lawsuit has</p> <p>20 occurred.</p> <p>21 A Yes. Yes.</p> <p>22 Q Was MDB aware of those injuries on -- or the alleged</p> <p>23 injuries, on the day that the incident occurred?</p> <p>24 A Oh, yes, definitely.</p> <p>25 Q Was MDB concerned that they might get sued on the date</p>	<p style="text-align: right;">Page 172</p> <p>1 MR. BROWN: Just kidding.</p> <p>2 THE WITNESS: I don't think Terry -- I wasn't talking to</p> <p>3 Terry Davis at that -- I don't even think he was working there at</p> <p>4 that particular time. I'm not sure.</p> <p>5 BY MS. WOELFEL:</p> <p>6 Q Was there a go-between between you and ownership before</p> <p>7 Terry Davis arrived?</p> <p>8 A Okay. At 2014, Tracy Shane was the manager.</p> <p>9 Q Okay. And would Tracy talk directly with the two</p> <p>10 owners?</p> <p>11 A With the owner, with Travis Bonanno. Kari wasn't that</p> <p>12 involved with the business. It would be Travis Bonanno. And he</p> <p>13 would talk with him directly, yes.</p> <p>14 Q And once Travis left, is that when Terry Davis came</p> <p>15 onboard?</p> <p>16 A Travis? No, Travis is still around, he's just kind of</p> <p>17 too busy with the concrete stuff. So I think Terry helps him out</p> <p>18 as sort of his right-hand man type of thing, I think his position</p> <p>19 is sort of, yeah.</p> <p>20 Q Are you aware of any conversations amongst the ownership</p> <p>21 and/or management related to the possibly of litigation involving</p> <p>22 this accident after July 2014?</p> <p>23 MR. BROWN: Objection, vague as to time.</p> <p>24 Go ahead.</p> <p>25 THE WITNESS: No, there was no talk about that. Nobody</p>
<p style="text-align: right;">Page 171</p> <p>1 of the incident?</p> <p>2 MR. BROWN: Objection to the extent it calls for</p> <p>3 speculation.</p> <p>4 You can answer.</p> <p>5 THE WITNESS: The sentiment in the company was everybody</p> <p>6 was concerned for the people that got hurt, and everybody really</p> <p>7 actually felt bad because we thought we tried everything to keep</p> <p>8 this from happening.</p> <p>9 And, yeah, I don't think anybody talked about getting a</p> <p>10 lawsuit. I don't think that was ever even a topic.</p> <p>11 BY MS. WOELFEL:</p> <p>12 Q Was -- did you think that it was a possibility that MDB</p> <p>13 might be involved in litigation as a result of the incident?</p> <p>14 MR. BROWN: Objection to the extent it calls for</p> <p>15 speculation, asked and answered.</p> <p>16 THE WITNESS: No, I didn't think anything about that,</p> <p>17 no. I mean --</p> <p>18 BY MS. WOELFEL:</p> <p>19 Q Did you -- I'm sorry, you can go ahead and finish.</p> <p>20 Did you have any discussions with ownership or --</p> <p>21 A Terry Davis?</p> <p>22 Q Yes, thank you.</p> <p>23 -- or Terry Davis?</p> <p>24 MR. BROWN: Don't.</p> <p>25 THE WITNESS: Oh, sorry.</p>	<p style="text-align: right;">Page 173</p> <p>1 was talking about that.</p> <p>2 BY MS. WOELFEL:</p> <p>3 Q Was there any instruction or discussion regarding</p> <p>4 preserving the evidence after this incident occurred on July 7th</p> <p>5 of 2014?</p> <p>6 A No. Once again, we didn't think it -- we did not think</p> <p>7 it was an issue.</p> <p>8 I think the Highway Patrol came out and did an</p> <p>9 inspection as well after this happened.</p> <p>10 Q When did the Highway Patrol do their inspection?</p> <p>11 A I might be misspeaking here, but I believe they did --</p> <p>12 came out the following day, did a cursory inspection. I'm not --</p> <p>13 follow-up to their --</p> <p>14 Q And did they come to the yard to do that inspection?</p> <p>15 A I think so, yes.</p> <p>16 Q Were you there when this inspection occurred?</p> <p>17 A Possibly not. I might have been out driving that day.</p> <p>18 Q Do you know who was there when this inspection occurred?</p> <p>19 A If it did, in fact, occur, which I'm not sure -- like I</p> <p>20 said, I believe it did -- Tracy Shane would have been there, and</p> <p>21 Pat Bigby would have been there.</p> <p>22 Whether they participated in it or they just let the</p> <p>23 Highway Patrol do their job, I'm not sure.</p> <p>24 Q Do you have any documents in MDB's possession related to</p> <p>25 this inspection by the Highway Patrol?</p>

<p style="text-align: right;">Page 174</p> <p>1 A I would have to look and see if there is.</p> <p>2 Q And I would ask that you take a look, and if you do have</p> <p>3 anything --</p> <p>4 A Yes.</p> <p>5 Q -- to turn it over to your attorney.</p> <p>6 Are you aware of any findings by the Highway Patrol in</p> <p>7 regards to this inspection?</p> <p>8 A No.</p> <p>9 Q When -- after July 7th of 2014, when did you finish</p> <p>10 making your pinning system?</p> <p>11 A I finished in the same day.</p> <p>12 Q And -- that was fast.</p> <p>13 A On -- on the subject trailer.</p> <p>14 Q On the subject three trailers.</p> <p>15 A Actually, I'm not sure. I did one whole set the first</p> <p>16 day. And I don't remember if it was my set or his set.</p> <p>17 Q And a set is a set of three?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 A So after that incident happened, no bottom dumps left</p> <p>21 the yard to haul material without the lockout device in place.</p> <p>22 But they were all done within a day or two of this incident.</p> <p>23 Q And you manufactured that lockout system?</p> <p>24 A I did the majority of them, yes. I think Pat Bigby made</p> <p>25 one for a trailer that -- yes, I think he made one.</p>	<p style="text-align: right;">Page 176</p> <p>1 I knew of a different valve that had the lockout</p> <p>2 capabilities. But at that particular point, I can make the</p> <p>3 bracket and get the trailer back on the road right now, versus</p> <p>4 buying it, \$700 valve, and replacing all the valves. And it would</p> <p>5 do the same thing. So, no.</p> <p>6 If, in fact, the Versa valve had failed -- in hindsight,</p> <p>7 if I would have known about this, '13, we would have done it then</p> <p>8 probably. I don't know.</p> <p>9 Q Are you aware of a dump involving Capurro Trucking</p> <p>10 sometime in 2012 or 2014?</p> <p>11 A Uh-huh.</p> <p>12 Q Is that a "yes"?</p> <p>13 A Quite a few of them, yes. It was actually maybe even</p> <p>14 before that time, 2010, '11, '12. Seems to me I remember quite a</p> <p>15 few.</p> <p>16 Q Are you aware of any litigation against</p> <p>17 Capurro Trucking?</p> <p>18 A Huh-uh, no. I think there might have been, but it's</p> <p>19 just rumor. It would be a rumor if I said something.</p> <p>20 Q When had you heard that rumor?</p> <p>21 A Oh, I don't know. I don't know that anybody was</p> <p>22 injured. I just know there were some cars that got damage to</p> <p>23 them.</p> <p>24 Q Had you heard about that incident shortly after it</p> <p>25 occurred?</p>
<p style="text-align: right;">Page 175</p> <p>1 Q And you designed the lockout system?</p> <p>2 A Yes.</p> <p>3 Q Did you have to drill or do anything to the Versa valve</p> <p>4 to make that pinning system work?</p> <p>5 A No, no modifications at all to the Versa valve. You</p> <p>6 don't even have to -- you don't even have to remove the Versa</p> <p>7 valve to put it in place. You do nothing to the Versa valve</p> <p>8 whatsoever.</p> <p>9 You just slide the bracket around the handle, mark where</p> <p>10 the hole is going to be drilled for the safety pin, take it back</p> <p>11 off, drill the pin, put it back -- drill the hole for the pin, put</p> <p>12 it back, bolt it on, and you are done.</p> <p>13 Q So you remove the Versa valve --</p> <p>14 A No, did not remove the Versa valve.</p> <p>15 Q You did not remove the Versa valve at all?</p> <p>16 A No. You fabricate the bracket, you install it -- you</p> <p>17 drill holes on the trailer where -- below the Versa valve, mount</p> <p>18 it, figure out where the hole is going to go for the -- behind the</p> <p>19 handle, mark it, take that bracket back off, drill the hole, put</p> <p>20 it back on, then you are done.</p> <p>21 Q Was there discussion on whether to purchase a different</p> <p>22 Versa valve for the subject trailer, 6775, after the July 7th,</p> <p>23 2014, dump?</p> <p>24 A No, because -- I don't know if I should elaborate on</p> <p>25 this.</p>	<p style="text-align: right;">Page 177</p> <p>1 MR. BROWN: Objection, foundation.</p> <p>2 THE WITNESS: Well, like I say, news travels fast.</p> <p>3 Everybody knows it immediately. Everybody starts calling people</p> <p>4 and say, hey, did you hear so-and-so lost a load on the highway.</p> <p>5 Everybody knows it right away because it's really</p> <p>6 something that actually concerns everybody.</p> <p>7 BY MS. WOELFEL:</p> <p>8 Q How long -- you said you've been in the trucking</p> <p>9 industry for approximately 35 years; is that correct?</p> <p>10 A Well, since 19-- late '70s, yes.</p> <p>11 Q How -- when did you start working with belly dump</p> <p>12 trailers?</p> <p>13 A First time I ever used a belly dump trailer was probably</p> <p>14 1980.</p> <p>15 Q And have you used them consistently throughout your</p> <p>16 career since then?</p> <p>17 A Yeah, off and on, between driving and management</p> <p>18 positions and mechanical positions, yes.</p> <p>19 Q And have the belly dump trailers that you've worked with</p> <p>20 always been Ranco trailers?</p> <p>21 A No.</p> <p>22 Q What other types of belly dump trailers have you worked</p> <p>23 with?</p> <p>24 A Fruehauf, Cook, Utility, Beall, I'm sure -- Midland. I</p> <p>25 mean, I'm sure I'm missing some. Trail King, Load King.</p>

<p style="text-align: right;">Page 178</p> <p>1 Q Okay. I'm going to show you some documents.</p> <p>2 A Okay.</p> <p>3 MS. WOELFEL: Jump into some documents.</p> <p>4 And I apologize to the folks on the phone because I</p> <p>5 don't have -- I didn't circulate these earlier.</p> <p>6 (Exhibit 19 marked for identification.)</p> <p>7 BY MS. WOELFEL:</p> <p>8 Q So Exhibit 19 is a document that's Bates-labeled MDB 388</p> <p>9 on page 1, 394 on page 2, and 400 on page 3. If you look at the</p> <p>10 top, they all relate to Equipment Number 6777.</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And can you tell me which piece of Equipment 6777 was or</p> <p>14 is.</p> <p>15 A I believe 677 -- well, I don't believe it. 677 is the</p> <p>16 front -- is the middle trailer of the set that I was pulling on</p> <p>17 subject day, July 7th, 2014.</p> <p>18 Q Okay. And if we look at the first page of the page that</p> <p>19 is Bates-labeled MDB 388, on the work order, it is by you?</p> <p>20 A Uh-huh.</p> <p>21 Q Scott, that's you, correct?</p> <p>22 A Yes.</p> <p>23 Q Is there any other person named Scott that works for</p> <p>24 MDB?</p> <p>25 A No. The work order is made up by me, but the work was</p>	<p style="text-align: right;">Page 180</p> <p>1 Q When did you make this change to your timecards such</p> <p>2 that I would be able to allocate your time working on maintenance</p> <p>3 issues?</p> <p>4 A I think -- I believe it was January of 2015 that we</p> <p>5 changed timecard formats.</p> <p>6 Q Why did you change your timecard formats in</p> <p>7 January 2015?</p> <p>8 A Because somebody in the office wanted to start figuring</p> <p>9 out how much it was costing to work maintenancewise on each piece</p> <p>10 of equipment, but it never really came about.</p> <p>11 But that's where -- how it started.</p> <p>12 Q Okay. All right. So looking at the first page of this</p> <p>13 work order -- and can you read the first -- or read what is listed</p> <p>14 or written in under where it says "Additional."</p> <p>15 I don't see anything checked on the top. It says</p> <p>16 "Additional," and then you have something written. Can you read</p> <p>17 that for me.</p> <p>18 A Yes. It says rewire trailer to meet MDB standards.</p> <p>19 Replace lights with LEDs.</p> <p>20 Q Okay. What are MDB standards? What does that mean,</p> <p>21 that you are rewiring this trailer to meet MDB standards?</p> <p>22 A Our standards is to wire the trailer in conjunction with</p> <p>23 FMCSA rules and proper techniques, I would suppose.</p> <p>24 Q Okay. You said in conjunction with something,</p> <p>25 something, something rules --</p>
<p style="text-align: right;">Page 179</p> <p>1 performed by myself and Pat.</p> <p>2 Q Okay. And there's a section on each of these work</p> <p>3 orders for total time, and I've noticed that most of them are</p> <p>4 blank.</p> <p>5 Is that to indicate the time it took to perform the work</p> <p>6 order or the maintenance that needs to be performed?</p> <p>7 A That's what -- that's what that's for, yes, but we don't</p> <p>8 generally use that.</p> <p>9 Q Why not?</p> <p>10 A Because we don't allocate time to a particular piece of</p> <p>11 equipment.</p> <p>12 And the way we do it, we do it with a separate timesheet</p> <p>13 that has got all the trailer numbers and the time it took the --</p> <p>14 the mechanic worked on each trailer.</p> <p>15 Q So I just want to make sure I understand what you are</p> <p>16 saying.</p> <p>17 Are you saying that on your timesheet -- for example, if</p> <p>18 I wanted to know how long it took you to perform the work that is</p> <p>19 indicated on the December 1, 2013, work order, I could figure that</p> <p>20 out by looking at your timesheets; is that correct?</p> <p>21 A You could. Presently, you could. When this -- November</p> <p>22 of 2013, you would not be able to, no.</p> <p>23 Q Why not?</p> <p>24 A Because that wasn't -- that's not the way we filled our</p> <p>25 timecards out then.</p>	<p style="text-align: right;">Page 181</p> <p>1 A Federal Motor Carrier Safety Administration rules.</p> <p>2 Q Okay.</p> <p>3 A That would -- that would apply probably to -- more to</p> <p>4 ABS system than anything else where they require certain type --</p> <p>5 gauge of wire for ABS brakes, that sort of thing.</p> <p>6 Q So can you describe for me what you did here to rewire</p> <p>7 this trailer to meet MDB standards.</p> <p>8 A We installed junction boxes at the front of the trailer</p> <p>9 to eliminate the seven-way and the four-way plugs at the front of</p> <p>10 trailer, so they could be hard wired in.</p> <p>11 I don't -- we installed all new four-way and seven-way</p> <p>12 cable on the draw bar and plugs on the draw bar, installed new</p> <p>13 three-way wire from front to rear.</p> <p>14 Installed junction box at rear of trailer to isolate</p> <p>15 wires to dump valves. Replaced all lights with LEDs.</p> <p>16 Q So what you just described, that would be considered MDB</p> <p>17 standards with respect to the wiring of the trailer?</p> <p>18 A Yes, to -- yes, the type of wiring we did, you know, and</p> <p>19 the techniques that we used to do it.</p> <p>20 Q Would you do this to every trailer so that you ensured</p> <p>21 that it met MDB standards?</p> <p>22 A Not if it already met MDB standards. If it already met</p> <p>23 our standards to begin with, then we wouldn't rewire the trailer,</p> <p>24 no.</p> <p>25 Q Does any part of this work that you described involve</p>

<p style="text-align: right;">Page 182</p> <p>1 pulling the wire, the hidden wiring?</p> <p>2 A Yes.</p> <p>3 Q Okay. So does this mean that -- so how do you know if a</p> <p>4 new trailer that you've leased meets MDB standards, unless you</p> <p>5 pull the wiring and inspect how it's been wired in the first</p> <p>6 place?</p> <p>7 A Well, we wouldn't know that.</p> <p>8 Q So do you rewire every new trailer that you lease?</p> <p>9 A No. That's usually for used trailers.</p> <p>10 New to us?</p> <p>11 Q New to you.</p> <p>12 A Yes. No, but when you look at the wires that are -- if</p> <p>13 you are looking at the wiring that you can see and it doesn't meet</p> <p>14 our standards, then now is the time to start looking, digging</p> <p>15 deeper and start pulling all the wiring out and putting it in</p> <p>16 correctly.</p> <p>17 Q Okay. So if you see exposed wiring that doesn't meet</p> <p>18 MDB standards --</p> <p>19 A Yes.</p> <p>20 Q -- then your standard procedure -- MDB standard</p> <p>21 procedure is to pull all of the wiring in the trailer and rewire</p> <p>22 it; is that correct?</p> <p>23 A Or we would bring it up to our standards.</p> <p>24 It wouldn't necessarily mean we had to pull an all the</p> <p>25 wiring out, but generally -- it might entail that.</p>	<p style="text-align: right;">Page 184</p> <p>1 misspeaking, but I do believe you can go down and buy a brand-new</p> <p>2 Ranco trailer that still doesn't meet our standards, but so be it.</p> <p>3 BY MS. WOELFEL:</p> <p>4 Q And this is your personal standards?</p> <p>5 A Yeah. So it doesn't necessarily mean --</p> <p>6 Q That there's a defect in the product?</p> <p>7 A Exactly.</p> <p>8 Q Okay. What gauge of wire do you use when you are</p> <p>9 rewiring?</p> <p>10 MR. BROWN: Objection, foundation.</p> <p>11 BY MS. WOELFEL:</p> <p>12 Q Let's talk about 6777.</p> <p>13 MR. BROWN: Same objection.</p> <p>14 THE WITNESS: What gauge of wire do we use?</p> <p>15 BY MS. WOELFEL:</p> <p>16 Q Yes.</p> <p>17 A That's kind of a broad question. There are multiple</p> <p>18 gauges in the trailer.</p> <p>19 Q Okay. What types of gauges are in the trailer, and a</p> <p>20 trailer like 6777?</p> <p>21 A For instance, the four-way wire is four wires in a</p> <p>22 casing, and they are all 14-gauge.</p> <p>23 Q Okay. What other types of wire?</p> <p>24 A The seven-way cable, that is your main -- that's your</p> <p>25 main lights, turn signals, brake lights, ABS, ground, we use only</p>
<p style="text-align: right;">Page 183</p> <p>1 But I do remember this specific trailer where the</p> <p>2 seven-way cable going from the seven-way at the front of the</p> <p>3 trailer to the back was spliced.</p> <p>4 Somebody had spliced it from ABS to non-ABS seven-way</p> <p>5 cord, which does not meet law, the federal law guidelines, or our</p> <p>6 standards.</p> <p>7 Q Okay.</p> <p>8 A So that is what brought us to the conclusion to rewire</p> <p>9 the trailer.</p> <p>10 Q And can you tell me when MDB first leased Trailer 6777.</p> <p>11 A I believe it was December or late October maybe of 2012,</p> <p>12 I believe.</p> <p>13 Q Okay. And so was this trailer in operation for almost a</p> <p>14 year before it was rewired to meet MDB standards?</p> <p>15 A Yeah. Well, it wasn't -- yeah, until we determined that</p> <p>16 it didn't meet MDB standards.</p> <p>17 Q Okay.</p> <p>18 A That's sort of a generic term that I use when I wrote</p> <p>19 the work order up. It doesn't necessarily mean we have a specific</p> <p>20 standard that we go by.</p> <p>21 Q Are these standards written out?</p> <p>22 A No. They are just in my -- Pat and I's head. We know</p> <p>23 how we do things.</p> <p>24 MS. SHREVE: The next two are also in Exhibit 9.</p> <p>25 THE WITNESS: And I do believe -- I don't want to be</p>	<p style="text-align: right;">Page 185</p> <p>1 ABS cable.</p> <p>2 When I say it meets ABS standards, it means it's got an</p> <p>3 8-gauge ground, 10-gauge stop light, and the rest are 12-gauge.</p> <p>4 Q Okay. And that would be -- the type of wiring in, you</p> <p>5 just said Equipment Number 6777, would that be the same --</p> <p>6 A Yes.</p> <p>7 Q -- in 6775?</p> <p>8 A Yes. Yes.</p> <p>9 MS. WOELFEL: I'm sorry, my exhibits are in a little bit</p> <p>10 of a mess here. I'm looking for a specific one.</p> <p>11 Let's go ahead and mark in next in line.</p> <p>12 I'll apologize in advance if there are any duplicates.</p> <p>13 I tried to prevent that from occurring, but it's certainly a</p> <p>14 possibility.</p> <p>15 (Exhibit 20 marked for identification.)</p> <p>16 BY MS. WOELFEL:</p> <p>17 Q Exhibit 20 is a series of documents that all relate to</p> <p>18 Equipment Number 6775. And these are Bates-labeled MDB 239, 240,</p> <p>19 246, 253, 256, 258, 262 and 15.</p> <p>20 And I just want to walk through these -- each of these</p> <p>21 quickly.</p> <p>22 And Equipment Number 6775 is the subject trailer that</p> <p>23 Mr. Koski was driving that inadvertently opened; is that correct?</p> <p>24 A That is correct.</p> <p>25 Q And on July 18th, 2013, can you -- looks like this is a</p>

<p style="text-align: right;">Page 186</p> <p>1 work order prepared by Pat; is that correct?</p> <p>2 A Pardon?</p> <p>3 Q This is a work order that was prepared by Pat, is that</p> <p>4 correct, so far as you can tell?</p> <p>5 A You know, actually, it was prepared by his wife.</p> <p>6 Q I was going to say it's really nice handwriting.</p> <p>7 A He must have had a bunch of them to do and took them</p> <p>8 home and dictated them, I guess. But it is Pat's work order, yes.</p> <p>9 Q And the work was performed by Pat?</p> <p>10 A Yes.</p> <p>11 Q And can you describe for me the work that was performed</p> <p>12 here.</p> <p>13 A Troubleshoot air leak at the gate control valve.</p> <p>14 Q Do you know if this work order was before or after the</p> <p>15 July '13 dump incident, because there's some confusion as to the</p> <p>16 date. So I'm wondering if you know whether this work order is</p> <p>17 from before that incident or after that incident.</p> <p>18 A Well, it's kind of a loaded question.</p> <p>19 MR. BROWN: Well, ask -- listen to what she said, do you</p> <p>20 know. And all you can say is yes or no, whether you know or not.</p> <p>21 THE WITNESS: Well, if you are saying is it after the</p> <p>22 July 13th incident, then, yeah, for sure, it's after the July 13th</p> <p>23 incident.</p> <p>24 BY MS. WOELFEL:</p> <p>25 Q No. Well, I'm not -- the July 2013 incident. So let me</p>	<p style="text-align: right;">Page 188</p> <p>1 for leaks, okay.</p> <p>2 Q Now, this handwriting, we established, is not Pat's.</p> <p>3 His wife is writing this, it looks like.</p> <p>4 A I think so, yes.</p> <p>5 Q Where is his wife getting information? Is Pat making</p> <p>6 notes? Is he just telling her what he did? Do you have any idea</p> <p>7 where she's getting the information that's included on this</p> <p>8 document?</p> <p>9 A She is probably getting it from his notes. This is</p> <p>10 exactly -- this looks exactly like what Pat would have written if</p> <p>11 he wrote it.</p> <p>12 It doesn't look -- I mean, it doesn't look -- I</p> <p>13 understand what he did, what he was -- so whether she wrote it or</p> <p>14 he wrote it, I think it's the same -- same thing, yes.</p> <p>15 Q Do you usually keep handwritten notes on something other</p> <p>16 than a work order when you are performing work on one of the MDB</p> <p>17 trucks or trailers?</p> <p>18 A I don't know if he does. I think he does. I do, just</p> <p>19 so you don't forget to write the mileage down or the part number</p> <p>20 or something like that, and then when you go to do your work --</p> <p>21 sit down to do your work order, you have it in front of you, fill</p> <p>22 out your work order, throw the paper away, you don't need it now.</p> <p>23 Q So you throw away your handwritten notes once you fill</p> <p>24 out the work order. Is that your testimony?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 187</p> <p>1 clarify.</p> <p>2 THE WITNESS: Oh, oh, I see. Okay.</p> <p>3 MR. BROWN: There you go. We don't know when it is.</p> <p>4 BY MS. WOELFEL:</p> <p>5 Q I'm not trying to trick you.</p> <p>6 A Oh, no, no, I know that.</p> <p>7 Q So my question is, we know that a dump occurred sometime</p> <p>8 in July of the year 2013 involving Equipment 6775, correct?</p> <p>9 A Yes.</p> <p>10 Q Okay. We don't know the exact date that that occurred,</p> <p>11 but we have a work order in front of us, MDB 239, that's dated</p> <p>12 July 18 that discusses an air leak at a gate control valve.</p> <p>13 A Uh-huh, yes.</p> <p>14 Q My question for you is, did this occur -- or is this</p> <p>15 work order from before that incident or after that incident, if</p> <p>16 you know?</p> <p>17 A I don't know for sure, but I believe it was done before</p> <p>18 the incident. I believe that the incident -- the first incident</p> <p>19 with the bottom opening inadvertently was the end of the month in</p> <p>20 July, so I believe this was done before.</p> <p>21 Q Okay. Can you tell me what was done to fix this</p> <p>22 problem.</p> <p>23 A Pat found the O-rings on the oiler and water separator</p> <p>24 leaking. Tried to repair with O-rings, removed units, bypassed</p> <p>25 air lines, plumbed solid with pipe fittings, reinstalled, tested</p>	<p style="text-align: right;">Page 189</p> <p>1 Q Go down to the next page --</p> <p>2 A Can I make a clarification? This actually wasn't the</p> <p>3 gate control valve that we were working on. You guys do know</p> <p>4 that, right?</p> <p>5 Q Sure, you can make that clarification.</p> <p>6 A Yeah, we weren't actually working on the gate control</p> <p>7 valve, which would be the Versa valve. We were actually working</p> <p>8 on the oiling system that's the head of it, yeah.</p> <p>9 Q Thank you for that clarification.</p> <p>10 Okay. So on to the next page, which would be MDB 240,</p> <p>11 and this work order is dated 8/1/2013. And it says date</p> <p>12 completed, 8/2/2013, for Equipment 6777.</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Is this Pat's handwriting?</p> <p>16 A Yes, it is.</p> <p>17 Q And this says investigate unintentional gate opening.</p> <p>18 So this is the work order to deal with the unintentional gate</p> <p>19 opening that occurred at the end of July 2013; is that correct?</p> <p>20 A That is correct.</p> <p>21 Q And the total time is not filled out. And was it your</p> <p>22 testimony that there's no way to figure out how much time it took</p> <p>23 to fix this problem?</p> <p>24 A I could only guess.</p> <p>25 Q Now, this is the work order for rewiring the trailers,</p>

<p style="text-align: right;">Page 190</p> <p>1 is that correct, to rewire?</p> <p>2 A This, no. I think it's to rewire the truck. He might</p> <p>3 have actually done something to the trailer. I'm not sure.</p> <p>4 Q Can you actually take a look and tell me what this work</p> <p>5 order is for.</p> <p>6 A Okay. This was -- his notes was investigation --</p> <p>7 investigating unintentional gate opening. So he replaced the</p> <p>8 Versa valve and rewired dump valve circuit from valve to truck.</p> <p>9 Q What does that mean -- stop you there -- "rewired dump</p> <p>10 valve circuit from valve to truck"? Can you describe where those</p> <p>11 components are.</p> <p>12 A So what he did was, he made sure that the wiring from</p> <p>13 the batteries of the truck went to the switches, and from the</p> <p>14 switches in the four-way through -- directly to each Versa valve</p> <p>15 on each trailer without going through any other wiring, any --</p> <p>16 it's not -- inclusive in any other wire. It's separate from all</p> <p>17 other -- all other portions of the trailer.</p> <p>18 Q Okay. So what you are saying is, the wire from the</p> <p>19 truck, he switched the wiring so that it went straight from the</p> <p>20 truck -- the battery directly to the Versa valve?</p> <p>21 A No, from the battery directly to the switches in the</p> <p>22 truck, and from there, directly to each Versa valve, instead of</p> <p>23 going through the seven-ways.</p> <p>24 Q So before we were speaking, we talked about how you</p> <p>25 completely rewired the three trailers --</p>	<p style="text-align: right;">Page 192</p> <p>1 A Yes.</p> <p>2 Q And what did you do with -- or, what do you typically do</p> <p>3 with the four-way socket and plug that you remove?</p> <p>4 A Throw them away.</p> <p>5 Q Do you know why you had to remove or replace the</p> <p>6 four-way socket and plug here?</p> <p>7 A Now, once again, if there's any issues with wiring,</p> <p>8 something not making contact, we replace -- these are pretty</p> <p>9 high-maintenance items. We replace them, rather than try to clean</p> <p>10 them or whatever. We just replace them.</p> <p>11 Q Next one is June 4th, 2014. Again, no name on the</p> <p>12 bottom. But does that look like Pat's handwriting to you, or is</p> <p>13 that your handwriting?</p> <p>14 A It's got a little of both. It looks like it's got</p> <p>15 Tracy's handwriting, my handwriting and Pat's -- or, no, Tracy's</p> <p>16 handwriting and Pat's handwriting -- and my handwriting, yes.</p> <p>17 Q And the work order, it says by -- I think that says</p> <p>18 Scott?</p> <p>19 A Yes, by Scott, but Pat wrote "by Scott," meaning I'm the</p> <p>20 one that brought it to his attention and told him, hey, we need to</p> <p>21 fix this.</p> <p>22 Q Describe to me what this work order entails.</p> <p>23 A The trailer came in to the yard. Driver would have</p> <p>24 noticed -- let us know by filling out a DVIR, which we may or may</p> <p>25 not have at this particular time, that the ABS light was on,</p>
<p style="text-align: right;">Page 191</p> <p>1 A Yes.</p> <p>2 Q -- in response to this incident, correct?</p> <p>3 A I believe so.</p> <p>4 Q Is this the work order for the rewiring?</p> <p>5 A No, not for the complete trailer.</p> <p>6 Q Okay. That would be a different work order?</p> <p>7 A Yes. If -- yeah, it would be.</p> <p>8 Q Okay. And what's reflected on this work order does</p> <p>9 not -- does not discuss or identify the work that you did in</p> <p>10 rewiring the three trailers, 6773, 6774 --</p> <p>11 A No.</p> <p>12 Q -- and 6775?</p> <p>13 A No.</p> <p>14 Q On to the next document, and that's a work order dated</p> <p>15 February 15th, 2014, for Equipment Number 6775.</p> <p>16 And can you tell me what this -- first of all, you can't</p> <p>17 identify who performed this work because there's no name; is that</p> <p>18 correct?</p> <p>19 A That is correct. When -- I can identify it by his</p> <p>20 handwriting.</p> <p>21 Q That looks like Pat's handwriting, too?</p> <p>22 A It is Pat's handwriting. And, apparently, he didn't</p> <p>23 even put the date on, because that's my handwriting for the date.</p> <p>24 Q And it says "replace four-way socket and plug"; is that</p> <p>25 correct?</p>	<p style="text-align: right;">Page 193</p> <p>1 indicating a malfunction in the ABS system on the trailer.</p> <p>2 Q And so what did you do to repair that?</p> <p>3 A Pat would have hooked up our computer to it, figured out</p> <p>4 what was wrong with it, diagnosed it, found that the YE-1 wire was</p> <p>5 broken, which is one of the wires going from the modulator to one</p> <p>6 of the four wheels, wheel ends.</p> <p>7 And he temporarily repaired the broken wire, spliced it,</p> <p>8 which you are really not supposed to do, but it does work. And</p> <p>9 then he replaced it on -- two days later when the new one came in.</p> <p>10 Q Next page is 6775 on 6/30, 2014, and I believe we</p> <p>11 touched upon this one earlier in your testimony.</p> <p>12 A Yes.</p> <p>13 Q Since the last time -- I think you touched upon it</p> <p>14 yesterday -- do you have any idea what this work order is about?</p> <p>15 A No. In fact, this morning, I pulled this work order out</p> <p>16 before coming here and went over it with Pat Bigby.</p> <p>17 Q Okay. Tell me what you guys discussed.</p> <p>18 A And he says the only thing he can think of is the bolts</p> <p>19 were loose and he tightened up the bolts.</p> <p>20 Q On the Versa valve?</p> <p>21 A Yes. That's the only thing he could think of.</p> <p>22 Q Did he have any personal recollection of it, or was he</p> <p>23 just kind of speculating as to what it could possibly --</p> <p>24 A I think he was speculating, yes.</p> <p>25 Q What else did you chat with Pat about this morning</p>

<p style="text-align: right;">Page 194</p> <p>1 before your deposition? Did you talk about anything else with</p> <p>2 respect to your testimony the day before?</p> <p>3 A Oh, no. No.</p> <p>4 Q Did you get any more clarification or talk through any</p> <p>5 other issues?</p> <p>6 A Huh-uh.</p> <p>7 MR. BROWN: Is that a "no"?</p> <p>8 THE WITNESS: Huh?</p> <p>9 MR. BROWN: Is that a "no"?</p> <p>10 THE WITNESS: Oh, yeah, no, we did not. We had other --</p> <p>11 other projects we were trying to figure out before I had to take</p> <p>12 off to go to deposition. So, no.</p> <p>13 BY MS. WOELFEL:</p> <p>14 Q So the only item that you discussed with Pat related to</p> <p>15 your testimony or sought clarification from him this morning was</p> <p>16 on the document that's Bates-labeled MDB 256; is that correct?</p> <p>17 A Yes, that's correct.</p> <p>18 Q Did you talk to any person other than Pat this morning,</p> <p>19 you know, about seeking clarification or checking on the stuff</p> <p>20 that you had testified about?</p> <p>21 A No, I did not talk to anybody.</p> <p>22 Q All right. Next page, MDB 258, date on there is</p> <p>23 July 2nd, 2014. What's going on with this work order?</p> <p>24 A Same trailer again, came in with ABS light on again. He</p> <p>25 would have done -- gone through his typical diagnostics test,</p>	<p style="text-align: right;">Page 196</p> <p>1 Q You don't keep those?</p> <p>2 A No.</p> <p>3 Q For any purpose.</p> <p>4 Okay. And then the next page -- it's actually out of</p> <p>5 chron order here and we have discussed it. It's a repeat. Ignore</p> <p>6 that one.</p> <p>7 A Okay.</p> <p>8 MS. WOELFEL: It's 5 o'clock right now. Why don't we</p> <p>9 break and pick it up in the morning.</p> <p>10 THE WITNESS: Okay.</p> <p>11 MS. WOELFEL: And we'll shoot to have you done by</p> <p>12 noontime. We'll do our best to make it happen. Okay?</p> <p>13 THE WITNESS: Okay.</p> <p>14 MS. WOELFEL: Thank you very much.</p> <p>15 THE WITNESS: Yes. Thank you.</p> <p>16 MS. SHREVE: Bye, everyone on the phone.</p> <p>17 (The proceedings concluded at 4:59 p.m.)</p> <p>18 -o0o-</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 195</p> <p>1 hooking the computer to it, found both sensors wires to the front</p> <p>2 sensors damaged, replaced both wires.</p> <p>3 Q And with respect to the wires that he removed, he would</p> <p>4 have thrown those away, correct?</p> <p>5 A Yes.</p> <p>6 Q Next page, MDB 262, that is the work order that was</p> <p>7 completed on July 8th, 2014. Can you tell me what's going on with</p> <p>8 this one.</p> <p>9 A Okay. Apparently, six days later, came back with the</p> <p>10 ABS light on again, did the same troubleshooting and found BU-1</p> <p>11 circuit fault. Traced circuit to the extension cable, replaced</p> <p>12 cable and cleaned or cleared codes.</p> <p>13 Q Okay.</p> <p>14 A This time, he found the problem with the extension</p> <p>15 cable.</p> <p>16 Q So the first fix on July 2nd didn't repair the problem.</p> <p>17 It looks like the repair that Pat did six days later found the</p> <p>18 source of that issue?</p> <p>19 A I would say that he replaced the sensors, and the sensor</p> <p>20 wires go to an extension that goes the rest of the way. So</p> <p>21 apparently -- replacing both sensor wires didn't fix it or just a</p> <p>22 coincidence that the extension cable was also broken. But, yeah.</p> <p>23 Q And with respect to the items he replaced, he would</p> <p>24 throw the ones he removed away; is that correct?</p> <p>25 A Yeah. No, we do not have those.</p>	<p style="text-align: right;">Page 197</p> <p>1 REPORTER'S CERTIFICATION</p> <p>2</p> <p>3 I, CONSTANCE S. EISENBERG, a Certified Court Reporter in</p> <p>4 and for the State of Nevada, do hereby certify;</p> <p>5 That on Tuesday, March 7, 2017, at the hour of 9:45 a.m.</p> <p>6 of said day, at 100 W. Liberty St., 10th Floor, Reno, Nevada,</p> <p>7 personally appeared SCOTT ALLEN PALMER, who was duly sworn by me to</p> <p>8 testify in the within-entitled proceedings;</p> <p>9 That said deposition was taken in verbatim stenotype</p> <p>10 notes by me and thereafter transcribed into typewriting as herein</p> <p>11 appears;</p> <p>12 That I am not a relative nor an employee of any of the</p> <p>13 parties, nor am I financially or otherwise interested in this</p> <p>14 action;</p> <p>15 That the foregoing transcript, consisting of pages one</p> <p>16 through 197, is a full, true and correct transcription of my</p> <p>17 stenotype notes of said deposition.</p> <p>18 DATED: At Reno, Nevada, this 16th day of March, 2017.</p> <p>19</p> <p>20</p> <p>21 <i>Constance S. Eisenberg</i></p> <p>22 CONSTANCE S. EISENBERG, CCR #142, RMR, CRR</p> <p>23</p> <p>24</p> <p>25</p>

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2	ERRATA SHEET
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5	I declare under penalty of perjury that I have read the
6	foregoing _____ pages of my testimony, taken
7	on _____ (date) at
8	_____ (city), _____ (state),
9	
10	and that the same is a true record of the testimony given
11	by me at the time and place herein
12	above set forth, with the following exceptions:
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EXHIBIT 4

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

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ERNEST BRUCE FITZSIMMONS and Case No. CV15-02349
CAROL FITZSIMMONS, husband and Department No. 10
wife, Plaintiffs,

vs.

MDB TRUCKING, LLC; et al.,
Defendants.

_____/

AND RELATED THIRD-PARTY MATTERS
AND CONSOLIDATED CASE.
_____/

DEPOSITION OF PMK OF MDB TRUCKING

SCOTT ALEN PALMER

March 6, 2017

Reno, Nevada

Volume I

REPORTED BY: CONSTANCE S. EISENBERG, CCR #142, RMR, CRR
Job No. 378331

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EXAMINATION

SCOTT ALLEN PALMER

EXAMINATION BY MS. SHREVE

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EXHIBIT 7

Work orders, Equipment No. 6775

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Note: Original Exhibits retained in binder at Sunshine Litigation Services.

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For THE MODERN GROUP AND DRAGON ESP, LTD.:
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BILL CARTER

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BE IT REMEMBERED that on Monday, March 6, 2017, at the
hour of 1:39 p.m. of said day, at the offices of McDonald Carano
Wilson, 100 W. Liberty St., 10th Floor, Reno, Nevada, before me,
CONSTANCE S. EISENBERG, a Nevada Certified Court Reporter,
personally appeared SCOTT ALLEN PALMER, who was by me first duly
sworn, and was examined as a witness in said cause.

-o0o-

SCOTT ALLEN PALMER

called as a witness, having been duly sworn,
testified as follows:

EXAMINATION

BY MS. SHREVE:

Q Good afternoon. My name is Paige Shreve, and I
represent defendant Versa Product Company in this suit.

Would you please say your name and spell it for the
record.

A Scott Palmer, S-c-o-t-t, P-a-l-m-e-r.

Q Okay. Mr. Palmer, you understand the oath that you just
took is the same oath that you would take in a court of law and
you are subject to the same penalty of perjury?

A Yes.

Q Okay. Have you ever been deposed before?

A I don't think so.

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BE IT REMEMBERED that on Monday, March 6, 2017, at the
hour of 1:39 p.m. of said day, at the offices of McDonald Carano
Wilson, 100 W. Liberty St., 10th Floor, Reno, Nevada, before me,
CONSTANCE S. EISENBERG, a Nevada Certified Court Reporter,
personally appeared SCOTT ALLEN PALMER, who was by me first duly
sworn, and was examined as a witness in said cause.

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SCOTT ALLEN PALMER

called as a witness, having been duly sworn,
testified as follows:

EXAMINATION

BY MS. SHREVE:

Q Good afternoon. My name is Paige Shreve, and I
represent defendant Versa Product Company in this suit.

Would you please say your name and spell it for the
record.

A Scott Palmer, S-c-o-t-t, P-a-l-m-e-r.

Q Okay. Mr. Palmer, you understand the oath that you just
took is the same oath that you would take in a court of law and
you are subject to the same penalty of perjury?

A Yes.

Q Okay. Have you ever been deposed before?

A I don't think so.

<p style="text-align: right;">Page 6</p> <p>1 Q So we're going to go over a couple of ground rules for 2 the deposition just so you understand how this goes. You might 3 have already spoke to your counsel about it, but I'm just going to 4 reiterate. 5 First of all, to my right is a court reporter. She is 6 taking down everything that we say. So if you could please make 7 sure your responses are all verbal responses, she doesn't -- she 8 can't take down "uh-huh" or "yeah," just like "yes," "no." 9 Just make sure they are verbal, please. Or, shaking 10 your head, she can't type that down. 11 Another thing is, it's really hard for the court 12 reporter to get down what we're saying if we talk over each other. 13 So I would request that you let me finish my question, and I will 14 give you the same courtesy and let you finish your answer. 15 I know, sometimes, you can anticipate what the question 16 is going to be and so you start to answer. So if you could just 17 wait until the question is complete before you answer, I would 18 appreciate that. 19 Also, at any time, your attorney or another attorney in 20 the room may make an objection. That's okay. You can let them 21 make an objection, and then you can go ahead and answer the 22 question, unless your attorney instructs you otherwise. 23 I'll be asking you questions. And if, for some reason, 24 you do not understand any question I ask, please let me know. 25 If you answer the question, I'm going to assume that you</p>	<p style="text-align: right;">Page 8</p> <p>1 of your name may be incorrect. 2 However, significant changes, which would be something 3 like, you know, there was a red light and you then later say no, 4 the light was green, not red, that's a substantial change. And 5 then you would be subject at trial for me to comment on your 6 change. 7 Additionally, if you need any breaks at all during the 8 deposition, just let me know and we can take a break at any time. 9 I just request that you answer the question that I had 10 asked before we do take the break. 11 A Okay. 12 Q Now, is there any reason why you are unable to give your 13 best testimony today? 14 A No. 15 Q Have you taken any medication in the last 24 hours? 16 A No. 17 Q Do you understand that you are being deposed today as 18 the person most knowledgeable for MDB Trucking? 19 A Yes. 20 Q I know earlier, you testified that you don't recall ever 21 being deposed before, so I'm guessing this answer is going to be 22 no. But have you ever been a deponent and been the person most 23 knowledgeable for something before? 24 A Yes. 25 Q You have?</p>
<p style="text-align: right;">Page 7</p> <p>1 understood the question. 2 Sometimes I can ask bad questions. So just say, "Hey, 3 can you please rephrase that," or, "I don't understand." That's 4 okay to let me know, and I'll gladly rephrase the question. 5 A Okay. 6 Q Another thing is, sometimes, you might be unsure of 7 something and I may ask for you to give your best estimate. 8 Do you understand the difference between an estimate and 9 a guess? 10 A Yes. 11 Q Okay. So I'll give you an example. 12 I can ask you to estimate, you know, the length of this 13 table. You, obviously, can see the table and can estimate it. 14 But if I ask you to estimate the table in my house, that would be 15 a guess because you've never seen it before. 16 A Yes. 17 Q So I may ask you to give your best estimate. If you 18 don't know, it's okay to not know, just let me know, you know, you 19 don't know and you are unable to. 20 Additionally, a transcript will be prepared at the end 21 of this deposition. You will have a chance to look over it and 22 make any changes you want. 23 There are two type of changes. There's grammatical 24 changes, small changes, and then there's substantive changes. 25 It's okay to make grammatical changes or something. The spelling</p>	<p style="text-align: right;">Page 9</p> <p>1 A Yes. I'm not sure -- yeah, I'm not sure I understand 2 the question. 3 Q Have you ever been asked to be the person most 4 knowledgeable and been subject to a deposition, like you are here 5 today, before? 6 A Oh. No. 7 Q Do you understand what is meant by "the person most 8 knowledgeable"? 9 A Yes. 10 Q I'm going to just reiterate to make sure we have the 11 same understanding. 12 Basically, it means you are here to testify on behalf of 13 the company. So you are not here to testify in your own personal 14 capacity, it's for the company. 15 I will ask you a couple of questions in the beginning to 16 get some just background about yourself before I go into questions 17 about the company. Okay? 18 A Okay. 19 MR. BROWN: Can I just say one thing? 20 As you are aware, Mr. Palmer was also the driver of the 21 sand truck. 22 MS. SHREVE: Yes. 23 MR. BROWN: So to the extent that you want to ask him 24 questions about that as the driver of the sand truck, I would 25 appreciate it if you do it sometime over the next few days so he</p>

<p style="text-align: right;">Page 10</p> <p>1 doesn't have to come back as a fact witness. I know he wasn't 2 noticed for that.</p> <p>3 MS. SHREVE: Yeah.</p> <p>4 MR. BROWN: But I think it would be economically 5 feasible for everybody.</p> <p>6 MS. SHREVE: We were going to ask you that as well.</p> <p>7 MR. BROWN: So I don't have an objection to that, if you 8 want to ask him factual questions as to his knowledge of that from 9 a factual standpoint.</p> <p>10 MS. SHREVE: Perfect. Thank you.</p> <p>11 MS. WOELFEL: I would just comment, I think that that 12 makes a lot of economical sense, as long as we don't get an 13 objection saying, you know, we have seven hours with him or we're 14 running out of time with him.</p> <p>15 MR. BROWN: Sorry, I'm eating candy.</p> <p>16 As long as we finish and everybody is moving along 17 reasonably, I'm not going to throw a fit about the times in any 18 regard.</p> <p>19 MS. WOELFEL: Okay.</p> <p>20 MR. BROWN: But, you know, I don't anticipate everybody 21 asking the same questions over and over again, so as long as 22 that's not the case.</p> <p>23 MS. SHREVE: All right. Okay. So we will begin.</p> <p>24 BY MS. SHREVE:</p> <p>25 Q Can you give me your full name, please. I know earlier,</p>	<p style="text-align: right;">Page 12</p> <p>1 Q Okay. And where did you go to high school?</p> <p>2 A I went to North Branford High School in North Branford, 3 Connecticut. And Reno High School is where I graduated, in Reno, 4 Nevada.</p> <p>5 Q And after graduation from high school, did you attend 6 any other secondary school?</p> <p>7 A No.</p> <p>8 Q What's your current occupation?</p> <p>9 A Manager.</p> <p>10 Q Manager for where?</p> <p>11 A MDB Trucking, LLC.</p> <p>12 Q How long have you been in that position as the manager 13 of MDB?</p> <p>14 A About 14 months.</p> <p>15 Q And what was your title before then?</p> <p>16 A Maintenance manager.</p> <p>17 Q How long have you been with MDB Trucking?</p> <p>18 A Since August of 2014.</p> <p>19 Q So would you briefly take me through the job duties that 20 you perform on a daily basis as the manager of MDB.</p> <p>21 A I do paperwork in the morning, the prior day's 22 paperwork. I dispatch trucks. I oversee the maintenance of the 23 vehicles. I actually perform some of the maintenance on the 24 vehicles on occasion.</p> <p>25 On a rare occasion, I drive.</p>
<p style="text-align: right;">Page 11</p> <p>1 you said Scott Palmer, but first, middle and last name.</p> <p>2 A Scott Allen Palmer.</p> <p>3 Q What's your date of birth?</p> <p>4 A 11/2/1960.</p> <p>5 Q Where were you born?</p> <p>6 A California.</p> <p>7 Q What city?</p> <p>8 A Vallejo.</p> <p>9 Q How long did you live there?</p> <p>10 A Three years, four years.</p> <p>11 Q Where did you go after that?</p> <p>12 A Napa.</p> <p>13 Q How long were you in Napa?</p> <p>14 A Until 1971.</p> <p>15 Q Where did you go after Napa?</p> <p>16 A Northford, Connecticut.</p> <p>17 Q How long were you in Northward, Connecticut, for?</p> <p>18 A Northford, Connecticut, until 1975.</p> <p>19 Q Where did you go after that?</p> <p>20 A Reno.</p> <p>21 Q So have you been in Reno, Nevada, ever since?</p> <p>22 A Reno, Sparks, state of Nevada, since 1975, yes.</p> <p>23 Q What's your current address?</p> <p>24 A 6717 Rolling Meadows Drive, Apartment 721, Sparks, 25 Nevada 89436.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q Okay. And you said paperwork. What kind of paperwork?</p> <p>2 A The drivers' daily paperwork, invoicing, truck reports, 3 you have IFTA reports, that kind of stuff, mileage.</p> <p>4 Q What sort of maintenance do you perform?</p> <p>5 A Personally?</p> <p>6 Q Yes.</p> <p>7 A I go out and work on electrical problems, ABS problems, 8 stuff that takes a little bit more of a technical background.</p> <p>9 Q Okay. And do you have any certifications for performing 10 any maintenance work?</p> <p>11 A I've got -- yes, I have a few certifications.</p> <p>12 Q Okay. And what are those certifications?</p> <p>13 A Air-conditioning, tire and brake repair. I'm certified 14 to do annual inspections of vehicles.</p> <p>15 Q Where did you receive these certifications from?</p> <p>16 A Different places I worked, employers, previous employers 17 and current employers, and also from taking classes.</p> <p>18 Q Did you receive any of these certifications from your 19 time employed at MDB?</p> <p>20 A Yeah. Yes.</p> <p>21 Q And which certification was that?</p> <p>22 A In order to do annual inspections or brake specs at a 23 company, you have to be certified by their management.</p> <p>24 Q And what did that entail for you to get your 25 certification from the management?</p>

<p style="text-align: right;">Page 14</p> <p>1 A You have to fill out a form provided by the Federal 2 Motor Carrier Safety Administration that proves you have the 3 knowledge and the experience to do it, and then it's signed off by 4 the current manager. 5 Q Is there a certain amount of hours in maintenance that 6 you are required to do in order to receive these certifications? 7 A I'm not sure. I don't know the answer to that. I don't 8 think so. 9 Q Prior to starting at MDB in August 2014, what was 10 your -- where did you work? 11 A K & B Transportation. 12 Q And what -- how long were you there? 13 A One year. 14 Q And what did you do there? 15 A I drove a truck and worked in a shop, as a mechanic. 16 Q Okay. And then prior to working at K & B, where were 17 you? 18 A At Northern Nevada Excavating. 19 Q And how long were you there? 20 A Five years. 21 Q And what did you do there? 22 A I was truck driver, oversaw the shop. And towards the 23 end, I was actually the administrator. 24 Q And then prior to that, did you have any other 25 experience in driving trucks or shop maintenance?</p>	<p style="text-align: right;">Page 16</p> <p>1 A Truck driver and mechanic. 2 Q Okay. And then when did you become an owner? 3 A 19- -- probably, I would say five years after I started 4 there, I was a partner, and then I bought my partner out. 5 Q So the last 15 years, roughly -- 6 A Yes. 7 Q -- you were an owner? 8 And were you the sole owner of the company? 9 A At the end, I was, yes. 10 Q Are you aware that your testimony today is about the 11 lawsuit brought by Fitzsimmons, MDB, and other defendants in 12 similarly related cases? 13 A Yes. 14 Q Did you do anything to prepare for your deposition 15 today? 16 A I met with my attorneys, Brian and Thierry, Saturday to 17 go over what the procedures were going to be of the deposition and 18 how -- 19 MR. BROWN: You don't need to tell her what we did or 20 talked about, just that you met with us. 21 THE WITNESS: Yes. 22 BY MS. SHREVE: 23 Q Did you look over any documents to prepare for your 24 deposition today? 25 Again, I don't want to know any conversation you had</p>
<p style="text-align: right;">Page 15</p> <p>1 A Yes. 2 Q Okay. Can you tell me what those were and your time at 3 those jobs. 4 A Prior to that, I was at Harco company for 20 years 5 and -- 6 Q Was that -- 7 A Pardon? 8 Q Was there anything else prior to that with doing any 9 truck driving and maintenance? 10 A Yes. Before that, I was with a company called 11 Silver Bears, Incorporated, for five years. And I did maintenance 12 and truck driving at that place, too. 13 Q And then prior to that? 14 A That was it. 15 Q That was it. Okay. 16 A Well, pretty much, that was it. 17 Q Okay. 18 A So at Harco Company, I was actually the owner at the end 19 of the 20 years. I sold it. 20 Q So you started off doing -- what did you start off doing 21 at Harco? 22 A "Harco," H-a-r-c-o. 23 Q At Harco. 24 A Harco Company, yes. 25 Q So what did you start off doing there?</p>	<p style="text-align: right;">Page 17</p> <p>1 with your counsel. 2 A Yes, just the questions that are posed in a deposition. 3 I'm not sure what you call that. 4 Q In the notice of deposition? 5 A In the notice, yes. 6 Q So you only looked at the notice of deposition? 7 A Yes. 8 Q You didn't look at any other documents? 9 A I don't think so. 10 Q Okay. Did you speak with anyone other than your 11 attorneys in preparation for the deposition today? 12 A No. 13 Q What is the legal name of MDB Trucking? 14 A MDB Trucking, LLC. 15 Q And where was it incorporated? 16 A Reno. I believe it was Reno. To the best of my 17 knowledge, I think it -- I'm fairly sure it was Reno. 18 Q And do you know when it was incorporated? 19 A Between -- it's actually not a corporation, it's a 20 limited liability corporation, but I look at it slightly 21 differently. 22 Q Yes. I appreciate that. 23 Do you have the -- or, do you know the business address 24 of MDB? 25 A The mailing address is P.O. Box 61806, Reno, Nevada</p>

<p style="text-align: right;">Page 18</p> <p>1 89506.</p> <p>2 Q What about the physical address?</p> <p>3 A The physical address of the yard I manage is 905 East</p> <p>4 Mustang Road.</p> <p>5 Q Are there more than one locations of MDB?</p> <p>6 A Yes.</p> <p>7 Q How many locations are there?</p> <p>8 A We have two yards, two operations, one in Dixon,</p> <p>9 California, and one in Sparks, Nevada; Reno, Nevada.</p> <p>10 Q And what's the address for the one in California?</p> <p>11 A 7059 Tremont Road, Dixon, California.</p> <p>12 Q And do you have any interaction with the yard in</p> <p>13 California?</p> <p>14 A Not over the last six months. They pretty much run on</p> <p>15 their own. But before that, I have knowledge of it, yes.</p> <p>16 Q Who owns MDB?</p> <p>17 A The partners are -- or the members -- I'm not sure how</p> <p>18 you would say that -- are Travis Bonanno and Kari Bonanno.</p> <p>19 Q And they both -- they own both locations in Nevada and</p> <p>20 California?</p> <p>21 A Yes.</p> <p>22 Q How many employees does MDB have?</p> <p>23 MR. BROWN: Are you talking total or just in --</p> <p>24 MS. SHREVE: We'll do in Nevada and then we'll do in</p> <p>25 California.</p>	<p style="text-align: right;">Page 20</p> <p>1 A I don't report directly to the owner very much right</p> <p>2 now. I report to a gentleman named Terry Davis, who works for the</p> <p>3 owner.</p> <p>4 Q And what is Terry Davis' job title?</p> <p>5 A I'm not sure.</p> <p>6 Q Is he an employee of the company?</p> <p>7 A I'm not sure.</p> <p>8 Q How often do you speak with Terry Davis?</p> <p>9 A Probably daily, at least a couple -- a few times a week.</p> <p>10 Q What are the things that you discuss with him?</p> <p>11 A Mostly, just general administrative issues, maybe, that</p> <p>12 the office might have, or whether or not we might be purchasing</p> <p>13 something that's going to cost a significant amount of money.</p> <p>14 Like, I'll run that by him and he can run that by the owner.</p> <p>15 Q Do the drivers and maintenance employees report to you?</p> <p>16 A Yes, the ones in Reno, yes.</p> <p>17 Q Right. Exactly.</p> <p>18 How many -- let me -- strike that.</p> <p>19 Do you make the decisions to purchase or lease any truck</p> <p>20 or trailer in Nevada?</p> <p>21 A Yes.</p> <p>22 Q Do you have to ask anyone above you to purchase or lease</p> <p>23 a truck or trailer --</p> <p>24 A Yes.</p> <p>25 Q -- in Nevada?</p>
<p style="text-align: right;">Page 19</p> <p>1 THE WITNESS: Twenty-two.</p> <p>2 BY MS. SHREVE:</p> <p>3 Q In Nevada?</p> <p>4 A No, total. I'm sorry. I missed --</p> <p>5 Q No.</p> <p>6 A I'm sorry.</p> <p>7 Q So how many would you say are in Nevada?</p> <p>8 A Twelve.</p> <p>9 Q So, roughly, ten in California --</p> <p>10 A Yes.</p> <p>11 Q -- if my math is correct?</p> <p>12 A Yes.</p> <p>13 Q And what are the different jobs entailed of the</p> <p>14 employees? We'll start with Nevada. Like, are they drivers,</p> <p>15 maintenance? What are the positions that you have in Nevada?</p> <p>16 A Okay. Myself as the manager, then we have one mechanic,</p> <p>17 one mechanic's helper, and the rest are truck drivers.</p> <p>18 Q And what about in California?</p> <p>19 A We have a manager that works down there that is also a</p> <p>20 driver. And then we have one mechanic and eight drivers, eight</p> <p>21 additional drivers.</p> <p>22 Q And I know you've briefly talked about it, but can you</p> <p>23 explain the managerial structure? So in regards to -- is there</p> <p>24 the owner, and then does the owner go to the manager, which would</p> <p>25 be you? Do you report to the owner? How does that work?</p>	<p style="text-align: right;">Page 21</p> <p>1 Is that person Terry Davis?</p> <p>2 A Yes, currently, yes.</p> <p>3 Q Currently.</p> <p>4 How many trucks does MDB own and/or lease in Nevada?</p> <p>5 A Eleven -- twelve.</p> <p>6 MR. BROWN: Are you specifically talking about trucks</p> <p>7 that will tow trailers?</p> <p>8 THE WITNESS: I was just going to --</p> <p>9 BY MS. SHREVE:</p> <p>10 Q I'm going to go into what those trucks entail, so --</p> <p>11 but, yes.</p> <p>12 A Yeah, if you are speaking of pickups, I mean, I guess</p> <p>13 you could make it 13, but 13 total vehicles.</p> <p>14 Q So for the different trucks, how many does MDB actually</p> <p>15 own?</p> <p>16 A To my knowledge, none.</p> <p>17 Q Okay. So of the 12 trucks or possibly 13 trucks, what</p> <p>18 are the different trucks? Are they all the same, or are they</p> <p>19 different?</p> <p>20 A Are you talking about make or model or type of vehicle?</p> <p>21 Q The type of vehicle, whether it tows, dump trucks, or a</p> <p>22 pickup truck.</p> <p>23 A Oh, we have -- well, we would have one pickup truck, one</p> <p>24 mechanic service truck, and the rest are heavy-duty tractor</p> <p>25 trailers or truck trailers.</p>

<p style="text-align: right;">Page 22</p> <p>1 I can go into more detail on that, whether they are a</p> <p>2 tractor that pulls bottom dumps or a truck that has the transfers</p> <p>3 behind it, but I'm not sure if that's what you are looking for.</p> <p>4 Q Yes. So how many pull belly dumps?</p> <p>5 A We have four. We have six power units that can pull</p> <p>6 bottom dumps.</p> <p>7 Q Are all six in service daily?</p> <p>8 A No.</p> <p>9 Well, yes, they could be, yes, not pulling bottom dumps,</p> <p>10 though, if that's what you meant.</p> <p>11 Q What would they pull if they are not pulling the bottom</p> <p>12 dumps?</p> <p>13 A They would pull pneumatic trailers that haul cement.</p> <p>14 They could be hauling a transport trailer. They could be hauling</p> <p>15 equipment.</p> <p>16 Q And then how many trailers does MDB own or lease in</p> <p>17 Nevada?</p> <p>18 A I'm completely guessing on this because it's not</p> <p>19 something I keep count of. It's probably close to 40.</p> <p>20 Q And are the, roughly, 40 trailers -- are any of them</p> <p>21 owned by MDB?</p> <p>22 A I do not think so.</p> <p>23 Q And of the approximately 40 trailers, how many are used</p> <p>24 daily?</p> <p>25 A I would say 70 percent of them would be used daily in</p>	<p style="text-align: right;">Page 24</p> <p>1 transmission or rebuild a transmission, so we sent it to somebody</p> <p>2 that could have the time to do it.</p> <p>3 MS. SHREVE: All right. So I'm going to hand out the</p> <p>4 first exhibit. So I would like to mark this as Exhibit 1. This</p> <p>5 is going to be the amended notice of the deposition for today.</p> <p>6 (Exhibit 1 marked for identification.)</p> <p>7 BY MS. SHREVE:</p> <p>8 Q I'll give you a second to look over this document.</p> <p>9 Have you seen this document before?</p> <p>10 A I think so, yes.</p> <p>11 Q What is your understanding of what this document is?</p> <p>12 A What you are going to be asking me today, what I'm going</p> <p>13 to be responsible for answering.</p> <p>14 Q And, again, you understand that this requires MDB to</p> <p>15 produce the person that is most knowledgeable on all the topics</p> <p>16 that are listed in this notice?</p> <p>17 MR. BROWN: Objection. He can give his notice of -- his</p> <p>18 understanding of what he'll testify, not legal implications.</p> <p>19 You can answer, if you can.</p> <p>20 THE WITNESS: Do I need to answer? I'm sorry.</p> <p>21 BY MS. SHREVE:</p> <p>22 Q Yes. Do you need me to --</p> <p>23 A Yes, please, repeat the question.</p> <p>24 Q I'll try and repeat it.</p> <p>25 Do you understand that this notice of deposition</p>
<p style="text-align: right;">Page 23</p> <p>1 possible different combinations.</p> <p>2 Q And of those trailers, how many are the belly dump</p> <p>3 trailers?</p> <p>4 A Nine.</p> <p>5 Q What other -- what services does MDB provide for its</p> <p>6 trucks or trailers?</p> <p>7 A Services?</p> <p>8 Q Yes. Do you do all of your repairs in-house?</p> <p>9 A Yes.</p> <p>10 Q And what sort of repairs do you do to the trucks or</p> <p>11 trailers?</p> <p>12 A We do every bit of maintenance, preventive maintenance,</p> <p>13 routine maintenance and general repairs.</p> <p>14 Q Do you ever have to send a truck or trailer to another</p> <p>15 company for any repairs or maintenance?</p> <p>16 A Very seldom. That would only be in case of, like,</p> <p>17 alignment. Mostly, we do everything in-house.</p> <p>18 Q So is alignment the only thing you would send a truck or</p> <p>19 trailer to a company to for maintenance or repair?</p> <p>20 A I mean, it's not the only thing that we've ever sent it</p> <p>21 out for, but that's generally -- yes, other than tires. We have a</p> <p>22 tire service that comes and does our tire work for us.</p> <p>23 Q What are other things that you've had to send out the</p> <p>24 truck or trailer for?</p> <p>25 A Maybe we didn't have enough time to replace a</p>	<p style="text-align: right;">Page 25</p> <p>1 requires MDB to designate a person to testify on its behalf in the</p> <p>2 case?</p> <p>3 A Yes, I do.</p> <p>4 Q Do you understand that MDB is required to prepare that</p> <p>5 person to provide all information known or reasonably available to</p> <p>6 them based on all 47 topics listed?</p> <p>7 MR. BROWN: Same objection.</p> <p>8 Go ahead.</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MS. SHREVE:</p> <p>11 Q You are testifying on behalf of MDB as their person most</p> <p>12 knowledgeable, correct?</p> <p>13 A Yes.</p> <p>14 Q When did you become aware that you would be the person</p> <p>15 most knowledgeable for MDB in this deposition?</p> <p>16 A When I received the notice of the deposition.</p> <p>17 Q Do you recall when that was?</p> <p>18 A I think it was maybe a month ago, a few weeks ago. I</p> <p>19 don't exactly remember.</p> <p>20 MR. BROWN: The day after it was sent?</p> <p>21 MR. BARKLEY: I don't think you are testifying, Counsel.</p> <p>22 BY MS. SHREVE:</p> <p>23 Q And besides looking at this notice of deposition, as you</p> <p>24 said earlier, is there anything else that you did or discussed</p> <p>25 with anyone to ensure that you were prepared as the person most</p>

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

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IN AND FOR THE COUNTY OF WASHOE

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ERNEST BRUCE FITZSIMMONS and
CAROL FITZSIMMONS, husband and
wife,

Case No. CV15-02349

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Department No. 10

Plaintiffs,

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vs.

12

MDB TRUCKING, LLC; et al.,

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Defendants.

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_____/

15

AND RELATED THIRD-PARTY MATTERS
AND CONSOLIDATED CASE.

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_____/

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DEPOSITION OF PMK OF MDB TRUCKING

19

SCOTT ALLEN PALMER

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March 6, 2017

21

Reno, Nevada

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Volume I

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REPORTED BY: CONSTANCE S. EISENBERG, CCR #142, RMR, CRR

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Job No. 378331

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A P P E A R A N C E S

For the Plaintiff:
(Appearing Telephonically)

BRADLEY, DRENDEL & JEANNEY
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BILL CARTER

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EXAMINATION

SCOTT ALLEN PALMER

EXAMINATION BY MS. SHREVE

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Note: Original Exhibits retained in binder at Sunshine Litigation Services.

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BE IT REMEMBERED that on Monday, March 6, 2017, at the

hour of 1:39 p.m. of said day, at the offices of McDonald Carano

Wilson, 100 W. Liberty St., 10th Floor, Reno, Nevada, before me,

CONSTANCE S. EISENBERG, a Nevada Certified Court Reporter,

personally appeared SCOTT ALLEN PALMER, who was by me first duly

sworn, and was examined as a witness in said cause.

-o0o-

SCOTT ALLEN PALMER

called as a witness, having been duly sworn,

testified as follows:

EXAMINATION

BY MS. SHREVE:

Q Good afternoon. My name is Paige Shreve, and I

represent defendant Versa Product Company in this suit.

Would you please say your name and spell it for the

record.

A Scott Palmer, S-c-o-t-t, P-a-l-m-e-r.

Q Okay. Mr. Palmer, you understand the oath that you just

took is the same oath that you would take in a court of law and

you are subject to the same penalty of perjury?

A Yes.

Q Okay. Have you ever been deposed before?

A I don't think so.

<p style="text-align: right;">Page 6</p> <p>1 Q So we're going to go over a couple of ground rules for 2 the deposition just so you understand how this goes. You might 3 have already spoke to your counsel about it, but I'm just going to 4 reiterate. 5 First of all, to my right is a court reporter. She is 6 taking down everything that we say. So if you could please make 7 sure your responses are all verbal responses, she doesn't -- she 8 can't take down "uh-huh" or "yeah," just like "yes," "no." 9 Just make sure they are verbal, please. Or, shaking 10 your head, she can't type that down. 11 Another thing is, it's really hard for the court 12 reporter to get down what we're saying if we talk over each other. 13 So I would request that you let me finish my question, and I will 14 give you the same courtesy and let you finish your answer. 15 I know, sometimes, you can anticipate what the question 16 is going to be and so you start to answer. So if you could just 17 wait until the question is complete before you answer, I would 18 appreciate that. 19 Also, at any time, your attorney or another attorney in 20 the room may make an objection. That's okay. You can let them 21 make an objection, and then you can go ahead and answer the 22 question, unless your attorney instructs you otherwise. 23 I'll be asking you questions. And if, for some reason, 24 you do not understand any question I ask, please let me know. 25 If you answer the question, I'm going to assume that you</p>	<p style="text-align: right;">Page 8</p> <p>1 of your name may be incorrect. 2 However, significant changes, which would be something 3 like, you know, there was a red light and you then later say no, 4 the light was green, not red, that's a substantial change. And 5 then you would be subject at trial for me to comment on your 6 change. 7 Additionally, if you need any breaks at all during the 8 deposition, just let me know and we can take a break at any time. 9 I just request that you answer the question that I had 10 asked before we do take the break. 11 A Okay. 12 Q Now, is there any reason why you are unable to give your 13 best testimony today? 14 A No. 15 Q Have you taken any medication in the last 24 hours? 16 A No. 17 Q Do you understand that you are being deposed today as 18 the person most knowledgeable for MDB Trucking? 19 A Yes. 20 Q I know earlier, you testified that you don't recall ever 21 being deposed before, so I'm guessing this answer is going to be 22 no. But have you ever been a deponent and been the person most 23 knowledgeable for something before? 24 A Yes. 25 Q You have?</p>
<p style="text-align: right;">Page 7</p> <p>1 understood the question. 2 Sometimes I can ask bad questions. So just say, "Hey, 3 can you please rephrase that," or, "I don't understand." That's 4 okay to let me know, and I'll gladly rephrase the question. 5 A Okay. 6 Q Another thing is, sometimes, you might be unsure of 7 something and I may ask for you to give your best estimate. 8 Do you understand the difference between an estimate and 9 a guess? 10 A Yes. 11 Q Okay. So I'll give you an example. 12 I can ask you to estimate, you know, the length of this 13 table. You, obviously, can see the table and can estimate it. 14 But if I ask you to estimate the table in my house, that would be 15 a guess because you've never seen it before. 16 A Yes. 17 Q So I may ask you to give your best estimate. If you 18 don't know, it's okay to not know, just let me know, you know, you 19 don't know and you are unable to. 20 Additionally, a transcript will be prepared at the end 21 of this deposition. You will have a chance to look over it and 22 make any changes you want. 23 There are two type of changes. There's grammatical 24 changes, small changes, and then there's substantive changes. 25 It's okay to make grammatical changes or something. The spelling</p>	<p style="text-align: right;">Page 9</p> <p>1 A Yes. I'm not sure -- yeah, I'm not sure I understand 2 the question. 3 Q Have you ever been asked to be the person most 4 knowledgeable and been subject to a deposition, like you are here 5 today, before? 6 A Oh. No. 7 Q Do you understand what is meant by "the person most 8 knowledgeable"? 9 A Yes. 10 Q I'm going to just reiterate to make sure we have the 11 same understanding. 12 Basically, it means you are here to testify on behalf of 13 the company. So you are not here to testify in your own personal 14 capacity, it's for the company. 15 I will ask you a couple of questions in the beginning to 16 get some just background about yourself before I go into questions 17 about the company. Okay? 18 A Okay. 19 MR. BROWN: Can I just say one thing? 20 As you are aware, Mr. Palmer was also the driver of the 21 sand truck. 22 MS. SHREVE: Yes. 23 MR. BROWN: So to the extent that you want to ask him 24 questions about that as the driver of the sand truck, I would 25 appreciate it if you do it sometime over the next few days so he</p>

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1 doesn't have to come back as a fact witness. I know he wasn't
 2 noticed for that.
 3 MS. SHREVE: Yeah.
 4 MR. BROWN: But I think it would be economically
 5 feasible for everybody.
 6 MS. SHREVE: We were going to ask you that as well.
 7 MR. BROWN: So I don't have an objection to that, if you
 8 want to ask him factual questions as to his knowledge of that from
 9 a factual standpoint.
 10 MS. SHREVE: Perfect. Thank you.
 11 MS. WOELFEL: I would just comment, I think that that
 12 makes a lot of economical sense, as long as we don't get an
 13 objection saying, you know, we have seven hours with him or we're
 14 running out of time with him.
 15 MR. BROWN: Sorry, I'm eating candy.
 16 As long as we finish and everybody is moving along
 17 reasonably, I'm not going to throw a fit about the times in any
 18 regard.
 19 MS. WOELFEL: Okay.
 20 MR. BROWN: But, you know, I don't anticipate everybody
 21 asking the same questions over and over again, so as long as
 22 that's not the case.
 23 MS. SHREVE: All right. Okay. So we will begin.
 24 BY MS. SHREVE:
 25 Q Can you give me your full name, please. I know earlier,

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1 you said Scott Palmer, but first, middle and last name.
 2 A Scott Allen Palmer.
 3 Q What's your date of birth?
 4 A 11/2/1960.
 5 Q Where were you born?
 6 A California.
 7 Q What city?
 8 A Vallejo.
 9 Q How long did you live there?
 10 A Three years, four years.
 11 Q Where did you go after that?
 12 A Napa.
 13 Q How long were you in Napa?
 14 A Until 1971.
 15 Q Where did you go after Napa?
 16 A Northford, Connecticut.
 17 Q How long were you in Northward, Connecticut, for?
 18 A Northford, Connecticut, until 1975.
 19 Q Where did you go after that?
 20 A Reno.
 21 Q So have you been in Reno, Nevada, ever since?
 22 A Reno, Sparks, state of Nevada, since 1975, yes.
 23 Q What's your current address?
 24 A 6717 Rolling Meadows Drive, Apartment 721, Sparks,
 25 Nevada 89436.

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1 Q Okay. And where did you go to high school?
 2 A I went to North Branford High School in North Branford,
 3 Connecticut. And Reno High School is where I graduated, in Reno,
 4 Nevada.
 5 Q And after graduation from high school, did you attend
 6 any other secondary school?
 7 A No.
 8 Q What's your current occupation?
 9 A Manager.
 10 Q Manager for where?
 11 A MDB Trucking, LLC.
 12 Q How long have you been in that position as the manager
 13 of MDB?
 14 A About 14 months.
 15 Q And what was your title before then?
 16 A Maintenance manager.
 17 Q How long have you been with MDB Trucking?
 18 A Since August of 2014.
 19 Q So would you briefly take me through the job duties that
 20 you perform on a daily basis as the manager of MDB.
 21 A I do paperwork in the morning, the prior day's
 22 paperwork. I dispatch trucks. I oversee the maintenance of the
 23 vehicles. I actually perform some of the maintenance on the
 24 vehicles on occasion.
 25 On a rare occasion, I drive.

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1 Q Okay. And you said paperwork. What kind of paperwork?
 2 A The drivers' daily paperwork, invoicing, truck reports,
 3 you have IFTA reports, that kind of stuff, mileage.
 4 Q What sort of maintenance do you perform?
 5 A Personally?
 6 Q Yes.
 7 A I go out and work on electrical problems, ABS problems,
 8 stuff that takes a little bit more of a technical background.
 9 Q Okay. And do you have any certifications for performing
 10 any maintenance work?
 11 A I've got -- yes, I have a few certifications.
 12 Q Okay. And what are those certifications?
 13 A Air-conditioning, tire and brake repair. I'm certified
 14 to do annual inspections of vehicles.
 15 Q Where did you receive these certifications from?
 16 A Different places I worked, employers, previous employers
 17 and current employers, and also from taking classes.
 18 Q Did you receive any of these certifications from your
 19 time employed at MDB?
 20 A Yeah. Yes.
 21 Q And which certification was that?
 22 A In order to do annual inspections or brake specs at a
 23 company, you have to be certified by their management.
 24 Q And what did that entail for you to get your
 25 certification from the management?