

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 6 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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9 VERSA PRODUCTS COMPANY, INC.

10 DISTRICT COURT

11 WASHOE COUNTY, NEVADA

12 JAMES BIBLE,

13 Plaintiff,

14 vs.

15 MDB TRUCKING, LLC, a Nevada Limited
Liability Company; RMC LAMAR
16 HOLDINGS, INC., a Colorado
Corporation; VERSA PRODUCTS
17 COMPANY, INC. a New Jersey
Corporation; DANIEL ANTHONY KOSKI;
18 ABC CORPORATIONS I-X; BLACK AND
WHITE COMPANIES; XYZ
19 PARTNERSHIPS; and DOES I-X,
inclusive,

20 Defendants.

21 VERSA PRODUCTS COMPANY, INC.,

22 Cross-Claimant,

23 vs.

24 MDB TRUCKING, LLC; DANIEL
25 ANTHONY KOSKI; and DOES I-X,
inclusive,

26 Cross-Defendants.
27
28

Case No. CV16-01914
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

1 MDB TRUCKING, LLC,
2 Third-Party Plaintiff,
3 vs.
4 THE MODERN GROUP GP-SUB, INC., a
5 Texas corporation and general
6 partnership; DRAGON ESP, LTD. A Texas
7 limited partnership; and DOES 1-10 and
8 BLACK AND WHITE COMPANIES, 1-10,
9 Third-Party Defendants.

8 MDB TRUCKING, LLC, a Nevada limited
9 liability company,
10 Cross-Claimant,
11 vs.
12 RMC LAMAR HOLDINGS, INC., a
13 Colorado corporation; VERSA
14 PRODUCTS, INC. a New Jersey
15 corporation and DOES 1-10 and BLACK
16 AND WHITE COMPANIES, 1-10,
17 Cross-Defendants.

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

19 COMES NOW, Defendant/Cross-Claimant/Cross-Defendant VERSA PRODUCTS
20 COMPANY, INC., by and through its attorneys of record, Josh Cole Aicklen, Esq., David
21 B. Avakian, Esq. and Paige S. Shreve, Esq., of the law firm LEWIS BRISBOIS
22 BISGAARD & SMITH, LLP, and hereby request an Order dismissing Defendant/Cross-
23 Claimant/Cross-Defendant MDB TRUCKING, LLC's Cross-Claims against it, or in the
24 alternative issuing an adverse jury instruction.

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

4 DATED this 15th day of May, 2017

5 Respectfully submitted,

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8
9 By /s/ David B. Avakian

10 JOSH COLE AICKLEN
11 Nevada Bar No. 007254
12 DAVID B. AVAKIAN
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20 PRODUCTS COMPANY, INC.
21
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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-
4 DEFENDANT MDB TRUCKING, LLC's CROSS-CLAIM PURSANT TO NRCP 35; OR IN
5 THE ALTERNATIVE, FOR AN ADVERSE JURY INSTRUCTION

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

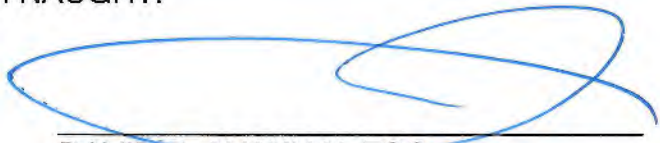
7 DAVID B. AVAKIAN, ESQ., being first duly sworn, deposes and states as follows:

- 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 CV16-01914.
- 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.

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

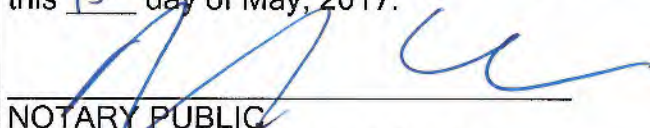
3 11. Attached hereto as Exhibit 8 is a true and correct copy of the Deposition
4 Transcript of Patrick Bigby.

5 FURTHER AFFIANT SAYETH NAUGHT.

6
7 

8 DAVID B. AVAKIAN, ESQ.

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

11 
12 NOTARY PUBLIC
13 In and for said County and State



14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 I. **INTRODUCTION**

16 Defendant/Cross-Claimant, MDB TRUCKING, LLC ("hereinafter referred to as
17 "MDB"), has brought Cross-Claims¹ against VERSA PRODUCTS COMPANY, INC.
18 (hereinafter referred to as "VERSA"), in which it asserts a contribution claim against
19 VERSA for a personal injury claims brought by Plaintiffs, Ernest Fitzsimmons and Carol
20 Fitzsimmons ("Fitzsimmons"); Angela Wilt ("Wilt"); Rosa, Benjamin, Cassandra and
21 Natalie Robles ("Robles"); Sonya Corthell ("Corthell"); Beverly, Patrick and Ryan

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
26 only. VERSA is named as a direct defendant in all nine cases, except for Remmerde. VERSA is only a
27 Third-Party Plaintiff/Defendant in that case.

28 In all nine of the above-mentioned lawsuits, MDB filed cross-claims/third-party Complaints against
VERSA for equitable indemnity and contribution. VERSA filed a Motion to Dismiss MDB's Indemnity claim
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 Crossland ("Crossland"); Olivia and Naykyla John ("John"); Kandise Baird ("Kins"); James
2 Bible ("Bible"); and Geneva Remmerde ("Remmerde") (collectively referred to as
3 "Plaintiffs"). See, MDB's Cross-Claim against VERSA, a true and correct copy attached
4 hereto as Exhibit 1. Plaintiffs were driving westbound on IR80 when a semi-trailer driven
5 by Daniel Koski and owned by Cross-Claimant MDB spilled gravel on the freeway,
6 causing multiple automobile accidents and the injuries alleged by the Plaintiffs. MDB's
7 contribution claim is based on its allegation that the inadvertent gravel dump was due to
8 an alleged "defect" with the VERSA valve on the subject trailer.

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

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

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

28

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

5 **II. FACTUAL BACKGROUND**

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

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

13 MR. PALMER: No. That remained in service until such time
14 litigation started.

15 Q. And on that same trailer, the same Versa valve, did MDB in
16 their investigation right after the subject incident -- again, pre-
17 litigation, right after -- did MDB discover any design defect with
18 the Versa valve?

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

21 Q. Okay.

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

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

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

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

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

 Q. And what was this work order for?

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

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

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

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

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

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?

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

1 that gets unplugged and plugged all the time, and we replace them as soon
2 as -- any issues whatsoever, we replace them.

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

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

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

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

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

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

16 MR. PALMER: 12/2/15?

17 Q. Uh-huh.

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

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

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

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

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

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

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

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

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

9
10 **REQUEST FOR ADMISSION NO. 13:**

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

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

14 Admitted.

15 **REQUEST FOR ADMISSION NO. 14:**

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

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

19 Admitted.

20 **REQUEST FOR ADMISSION NO. 15:**

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

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

24 Admitted.

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

26 **REQUEST FOR ADMISSION NO. 24:**

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

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RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Admitted.

Id. at P. 6:8-12

REQUEST FOR ADMISSION NO. 26:

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

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

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

Id. at P. 6:18-23.

III. LEGAL ARGUMENT

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

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

Here, as the Court is aware, the instant case does not involve a negligible fender bender. Contrarily, this case involves a serious twenty car accident, resulting from when one of MDB's trucks released a truckload of material onto a busy interstate highway. With so many parties involved and due to the gravity of the event, *it is clear that MDB was on notice that there was potential litigation on the horizon* where liability would be an issue. MDB was well-aware that both police and EMT's were on scene and numerous people were transported to local hospitals with serious injuries. Moreover, as MDB's truck,

1 trailers and the subject VERSA valve are the centerpiece of the resulting litigation, MDB
2 knew, or should have reasonably known, that the truck, trailers and valve were relevant to
3 the instant litigation. Thus, because MDB was on notice that the truck and trailers were
4 relevant to potential litigation, MDB had a pre-litigation duty to preserve the evidentiary
5 value contained within the truck, trailers and valve by removing such evidence from
6 service and continued use.

7 Moreover, as MDB's cross-claim against VERSA asserts that the subject valve
8 caused or contributed to the accident because it allegedly operated inadvertently, MDB
9 *was on notice and knew*, or should have reasonably known, *that any parts*, mechanical,
10 electrical, or otherwise, that are *related to the valve's operation*, (in any capacity), *are*
11 *relevant to the instant litigation*. Thus, because MDB was on notice that all parts related to
12 the subject valve were relevant to potential litigation, MDB had a pre and post litigation
13 duty to preserve the evidentiary value contained within such evidence by retaining the
14 evidence instead of conveniently discarding, and ultimately destroying, such critical
15 evidence.

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

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

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

27 Nevada allows for the dismissal of a case based upon an offending party's abuse
28 of discovery. GNLV Corp. v. Serv. Control Corp., 111 Nev. 866, 870, 900 P.2d 323, 325

1 (1995). Indeed, the Nevada Rules of Civil Procedure permit the Court to strike out
2 pleadings or dismiss an action entirely for discovery abuses. See NRCP 37(b)(2)(C).
3 Additionally, a district court has the inherent equitable power to dismiss actions as a
4 sanction for abusive litigation practices. Parkinson v. Bernstein, Nos. 59947, 61089, 2014
5 Nev. Unpub. LEXIS 2176, at *1 (Dec. 22, 2014).

6 Dismissal is a proper sanction where a plaintiff possesses the evidence at issue
7 but disposes of it before filing a complaint. CSA Serv. Ctr., LLC v. Air Design Sys., LLC,
8 No. 57674, 2013 Nev. Unpub. LEXIS 686, at *8 (May 31, 2013). Dismissal of a party's
9 complaint as a sanction does not need to be "preceded by other less severe sanctions."
10 CSA Serv. Ctr., LLC v. Air Design Sys., LLC, No. 57674, 2013 Nev. Unpub. LEXIS 686, at
11 *7 (May 31, 2013). A court's authority to impose sanctions "is rooted in a court's
12 fundamental interest in protecting its own integrity and that of the judicial process."
13 Halverson v. Hardcastle, 123 Nev. 245, 261 n.26, 163 P.3d 428, 440 (2007) (quoting
14 Cummings v. Wayne County, 210 Mich. App. 249, 533 N.W.2d 13, 14 (Mich. Ct. App.
15 1995).

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

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

25 To muddy the waters even more, MDB not only continued to operate the subject
26 truck, trailer, and valve at issue in this case, but MBD, *while on notice* to preserve
27 relevant evidence, *removed* and *threw away* the electrical components that control the
28

1 subject valve. See, Exhibit 3 at P. 169:16-22; Exhibit 6 at P. 4:13-22. Mr. Palmer testified
2 to the same:

3 Q. Okay. Did you save the plugs that you changed after the July 2014
4 event until the time that the forensic inspection, electrical inspection
5 had occurred?

6 MR. PALMER: No.

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

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

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

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

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

19 While dismissal need not be preceded by other less severe sanctions, it should be
20 imposed only after thoughtful consideration of all the factors involved in a particular case.

21 See, Young v. Johnny Ribeiro Bldg., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). The
22 factors a Court may properly consider include, but are not limited to:

- 23 1) the degree of willfulness of the offending party;
- 24 2) the extent to which the non-offending party would be prejudiced by a lesser
25 sanction;
- 26 3) the severity of the sanction of dismissal relative to the severity of the
27 discovery abuse;
- 28 4) whether any evidence has been irreparably lost;
- 5) the feasibility and fairness of alternative, less severe sanctions, such as an
order deeming facts relating to improperly withheld or destroyed evidence to
be admitted by the offending party;

- 1 6) the policy favoring adjudication on the merits;
2 7) Whether sanctions unfairly operate to penalize a party for the misconduct of
3 his or her attorney; and
4 8) the need to deter both the parties and future litigants from similar abuses.

5 Id.

6 a. MDB Willfully Destroyed Evidence Pertinent to VERSA's Liability
7 Defense

8 The first factor of the Young analysis specifically addresses the degree of
9 willfulness of the offending party. Young, 106 Nev. at 93. The Nevada Supreme Court
10 found conduct willful when the violating party fails to disclose evidence in way that
11 demonstrates "active concealment" or appears to be "intentional or at least highly
12 reckless." N. Am. Props. v. McCarran Int'l Airport, No. 61997, 2016 Nev. Unpub. LEXIS
13 487, at *9 (Feb. 19, 2016)

14 Here, after being on notice to preserve all relevant evidence, MDB: 1)
15 compromised the evidence's integrity by continuing to operate the subject truck, trailers,
16 and subject valve for two years; and 2) actively destroyed evidence by removing and
17 trashing components involved with how the subject valve activates. See, Exhibit 3 at P.
18 169:16-22; Exhibit 4 at P. 84:19-24; Exhibit 6 at P. 4:13-22. MDB should have removed
19 the subject truck, trailers and valve from service immediately after the accidents to
20 preserve their condition as they existed at the time of the accident. However, MDB
21 continued to habitually use such evidence in its business operations, thus corrupting the
22 integrity of the evidence. Id. Consequently, MDB's tainting of the evidence created a
23 highly prejudicial situation for VERSA because MDB essentially destroyed the very
24 evidence VERSA requires to defend it's case.

25 Moreover, knowing that MDB's main theory of liability against VERSA was that the
26 subject valve was somehow "energized," MDB removed and spoliated electrical parts that
27 activated the subject value. See, Exhibit 5. Put simply, *MDB discarded the electrical
28 component parts that are used in activating the subject valve.* Such conduct appears
intentional or, at the very least, highly reckless considering the magnitude of the instant

1 case and the competing theories of liability. Moreover, such conduct appears intentional
2 or highly reckless when viewed in the proper context that such evidence supports
3 VERSA's defense that it's valve functioned properly. Accordingly, applying Young and N.
4 AM. Props, because MBD's intentional or reckless conduct rises to a level of willfulness,
5 MBD's destruction of evidence and it's failure to preserve the integrity of evidence weighs
6 in favor of this Court striking MDB's cross-claim against VERSA.

7 **b. A Lesser Sanction Would Adversely Harm Versa Because it Would**
8 **Needlessly Increase Litigation Costs and Severely Prejudice**
 VERSA's Liability Defense

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

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

23 **c. Dismissal of MDB's Cross-Claim Balances the Harm of MDB's**
24 **Destruction of Evidence Necessary for VERSA to Assert a Proper**
 Defense

25 The third factor of the Young analysis addresses the severity of the sanction of
26 dismissal relative to the severity of the discovery abuse. See, Young, 106 Nev. at 93.
27 Courts have held that severe sanctions are warranted when the aggravating party
28

1 *violates both the letter and spirit* of the discovery rules. See, N. Am. Props, 2016 Nev.
2 Unpub. LEXIS 487 at *10.

3 Here, the instant discovery violations are a text book example of conduct that
4 violates both the letter and spirit of discovery: *MDB threw away key evidence that VERSA*
5 *needs to prove it's case.* See, Exhibit 3 at P. 169:16-22. Such conduct has a nullifying
6 effect on VERSA's ability to defend itself in this matter. Essentially, MDB's destruction of
7 evidence functions indirectly as an informal dismissal of VERSA's defenses. Accordingly,
8 applying Young and N. Am. Props., because MDB's actions have a similar effect as a
9 dispositive Motion, dismissal of MDB's cross-claim is proportionate to MDB's discovery
10 abuses and, therefore, this factor weighs in favor of the Court striking MDB's cross-claim.

12 d. Unquestionably, MBD Irreparably Destroyed Highly Relevant
13 Evidence

14 The fourth factor of the Young analysis addresses whether any evidence has been
15 irreparably lost. Young, 106 Nev. at 93. Although evidence may not be irreparably lost,
16 the Court may hold this factor against the aggravating party if the abusive conduct greatly
17 undermines the utility of the subject evidence by robbing the aggrieved party of the
18 opportunity to carefully review and consider the evidence before trial. See, N. Am. Props.
19 2016 Nev. Unpub. LEXIS 487 at *11.

20 Here, this is an open and closed case - *MDB irreparably lost evidence.* See,
21 Exhibit 3 at P. 169:16-22. MDB threw away the electrical components that relate to the
22 core issue of why the subject valve activated. *Id.* Additionally, through the continued
23 used of the truck, trailers, and subject valve after the accident, MDB forever destroyed
24 VERSA's ability to investigate the condition of such evidence as it existed at the time of
25 the accidents. See, Exhibit 4 at P. 84:19-24; Exhibit 6 at P. 4:8-22. Accordingly, applying
26 Young and N. Am. Props., because MDB irreparably spoliated evidence, which unduly
27

1 prejudice VERSA, this factor strongly weighs in favor of the Court striking MDB's cross-
2 claim.

3 e. An Alternative Sanction Would Not Be Fair to VERSA Since MDB's
4 Destruction of Evidence Has a Nullifying Effect on VERSA's
5 Defenses

6 The fifth factor of the Young analysis addresses the feasibility and fairness of
7 alternative, less severe sanctions, such as an order deeming facts relating to improperly
8 withheld or destroyed evidence to be admitted by the offending party. Young, 106 Nev. at
9 93. The purpose of alternative sanctions is to restore the prejudiced party to the same
10 position it would have been absent the discovery violation. See, Turner v. Hudson Transit
11 Lines, 142 F.R.D. 68, 74 (S.D.N.Y. 1991).

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

23 f. Public Policy Favors Dismissing this Meritless Claim

24 The sixth factor of the Young analysis addresses the public policy favoring
25 adjudication on the merits. Young, 106 Nev. at 93. Although courts favor adjudicating
26 cases on their merits, gross discovery abuses will qualify as circumstances when case-
27 ending sanctions, or sanctions that effectively act as case-ending sanctions, are
28 appropriate. See, Foster v. Dingwall, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010) (not

1 hearing the case on its merits appropriate when relevant evidence been irreparably lost
2 due to the willful actions).

3 Here, under normal circumstances, policy favors that a Court adjudicate a
4 traditional case on its merits. However, the instant case is distinguishable from a
5 traditional case for two reasons. First, MDB's expert has readily admitted that the subject
6 valve has no design or manufacturing defects. See, Exhibit 2 at P. 97:16-25;98:1-17;
7 Exhibit 5; Exhibit 7 at P. 84:25;85:1-12; Exhibit 8 at P.118:6-19. Second, *MDB destroyed*
8 *key defense evidence*, which constituted a gross discovery abuse and created an unjust
9 chilling effect on VERSA's liability defenses. See, Exhibit 3 at P. 169:16-22; Exhibit 6 at
10 P. 4:8-22; P. 6:8-23. Accordingly, applying Young and Foster, because MDB's cross-
11 claim is meritless and MDB irreparably destroyed key defense evidence, this factor
12 strongly weighs in favor of the Court striking MDB's cross-claim.

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

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

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

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

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

1 Here, MDB's conduct has undermined the Nevada's Rules of Civil Procedure and
2 the very spirit of discovery. This case stems from an accident *involving multiple vehicles*
3 *and serious injuries*. If ever there was a time to preserve evidence, this is the case.
4 However, MDB saw it fit to destroy critical defense evidence while on actual notice (i.e.
5 after the first Complaint was filed) that such evidence was relevant to the subject
6 litigation. See, Exhibit 3 at P. 169:16-22; Exhibit 6 at P. 4:8-22; P. 6:8-23. Allowing for
7 anything less than dismissal of MDB's cross-claim would establish an improper precedent
8 and could lead to a slippery slope of allowable discovery abuses. Accordingly, applying
9 Young and GNLV Corp., because the Court needs to deter similar future conduct
10 analogous to MDB's instant conduct, this factor strongly weighs in favor of the Court
11 striking MDB's cross-claim.

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

14 When evidence is willfully suppressed, NRS 47.250(3) creates a rebuttable
15 presumption that *the evidence would be adverse if produced*. Bass-Davis v. Davis, 122
16 Nev. 442, 448, 134 P.3d 103, 106 (2006). A rebuttable presumption is a rule of law by
17 which the finding of a basic fact gives rise to a presumed fact's existence, unless the
18 presumption is rebutted. Van Wart v. Cook, 557 P.2d 1161, 1163 (Okla. Civ. App. 1976).
19 However, the party seeking the presumption's benefit has the burden of demonstrating
20 that the evidence was destroyed with intent to harm. Bass-Davis v. Davis, 122 Nev. 442,
21 448, 134 P.3d 103, 107 (2006).

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

27 Here, as addressed in the Young analysis, MDB willfully destroyed crucial
28 evidence that is pertinent to VERSA's liability defenses. See, Exhibit 3 at P. 169:16-22;

1 Exhibit 6 at P. 4:8-22; P. 6:8-23. With MDB's continual use of the subject truck, trailers,
2 and valve after the subject accident, MDB corrupted the integrity and value of such
3 evidence. Such continued use after being on notice to preserve evidence demonstrates
4 MDB's intent to harm the integrity of the evidence and harm VERSA's defense of the
5 case. Additionally, MDB's cognizant destruction of the key electrical components, that
6 cause the valve to activate, demonstrate by a preponderance of the evidence that MDB
7 intended to harm VERSA by destroying the evidence that supports VERSA's liability
8 defenses. Id. MBD may try to hide behind a procedural argument that it threw away the
9 critical evidence as part of its business operations; however, such an argument would
10 constitute a red hearing because MDB should not have even operated the subject truck,
11 trailers and valve to artificially create a situation that called for replacement and repair of
12 such components. Id. Accordingly, applying Bass-Davis, because MDB intentionally
13 suppressed and destroyed crucial evidence, this Court should advise the jury that such
14 evidence would be adverse against MDB if MDB had properly produced such evidence.

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

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

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

9 **IV. CONCLUSION**

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

13 **AFFIRMATION**

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

16 DATED this 15th day of May, 2017

17 Respectfully submitted,

18 LEWIS BRISBOIS BISGAARD & SMITH LLP

19
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DEPUTY

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COURT CLERK
DEPUTY

6 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CHURCHILL

8 JAMES BIBLE,
9 Plaintiff,

10 vs.

11 MDB TRUCKING, LLC; a Nevada Limited
12 Liability Company; RMS [sic] LAMAR
13 HOLDINGS, INC.; a Colorado Corporation;
14 VERSA PRODUCTS COMPANY, INC.; a
15 New Jersey Corporation; DANIEL
16 ANTHONY KOSKI, et. al.,

17 Defendants.

18 MDB TRUCKING, LLC, a Nevada limited
19 liability company,

20 Cross-Claimant,

21 vs.

22 RMC LAMAR HOLDINGS, INC., a
23 Colorado corporation; VERSA PRODUCTS
24 INC., a New Jersey Corporation; and DOES
25 1-10, and BLACK AND WHITE
26 COMPANIES 1-10,

27 Cross-Defendants.

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

CV16 01914
DI

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

///

THORNDAL ARMSTRONG
DELK BALKENBUSH
& EISINGER
6391 S. McCarran, Suite B
Reno, Nevada 89509
(775) 786-2482

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 1-
6 10 are sued herein under fictitious names and capacities of said Defendants are not known by
7 Cross-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 Complaint was filed on July 7, 2016 in the Tenth Judicial District Court, Case
18 No. 16-10DC-0824, Department I in which the Plaintiff James Bible prayed for damages against
19 Defendant MDB Trucking, LLC alleging negligence with regard to an accident which occurred
20 on July 7, 2014 where a Ranco trailer owned by MDB Trucking, LLC spilled a load of gravel
21 causing an accident and injury which are claims presented by Plaintiffs.

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

26 7. Cross-Defendant RMC Lamar Holdings, Inc. manufactured the subject Ranco
27 trailer in 2002 under the vehicle brand Ranco with vehicle identification number
28 1R9BP45082L008431 Idaho Plate #TE3528.

1 8. Cross-Claimant MDB Trucking, LLC was the last purchaser and end user of the
2 subject Ranco trailer in 2012.

3 9. On or about 2002, the Ranco trailer that left Cross-Defendant's control as
4 designed, assembled and manufactured by the Cross-Defendant was unreasonably dangerous and
5 defective in one or more of the following respects:

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

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

12 c. That Versa Valve manufactured an alternate safer design available in 2002
13 including a manual lock system which was available to Ranco.

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

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

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

22 11. That to the extent Plaintiff was injured as a proximate result of the unreasonably
23 dangerous conditions and defects at the time of manufacturing or negligent design, such is a direct
24 and proximate result of the negligence of the Cross-Defendants; and, any negligence that exists as
25 alleged by Plaintiff is expressly denied. Cross-Defendants were actively negligent and Cross-
26 Claimant was passively negligent but also an innocent defendant with no culpable fault at all.

27 THORNDAL ARMSTRONG
DELK BALKENBUSH
& EISINGER
6500 S. McCarran, Suite B
Reno, Nevada 89509
(775) 786-2882

27 ///

28 ///

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

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

6 14. That Cross-Claimant has been required to expend costs and attorneys' fees in
7 defending the negligence claims in the Complaint on file herein and for prosecuting the instant
8 Cross-Complaint.

9 **FIRST CLAIM FOR RELIEF**

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

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

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

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

18 **SECOND CLAIM FOR RELIEF**

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

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

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

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

27 **THORNDAL ARMSTRONG**
DELK BALKENBUSH
& EISINGER
6390 S. McCarran, Suite B
Reno, Nevada 89509
(775) 796-2882

28 ///

///

1 THIRD CLAIM FOR RELIEF

2 (Implied Indemnification as to VERSA)

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

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

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

10 FOURTH CLAIM FOR RELIEF

11 (Contribution as to VERSA)

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

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

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

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

- 20 1. For implied indemnification with respect to all negligence claims brought against
- 21 Cross-Claimant in this matter;
- 22 2. For contribution with respect to all negligence claims brought against Cross-
- 23 Claimant in this matter;
- 24 3. For attorneys' fees and costs expended in this matter; and

25 ///

26 ///

27 ///

28 ///

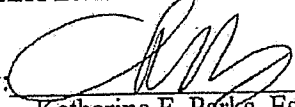
THORNDAL ARMSTRONG
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4. For such other and further relief as this Court deems just and proper in the premises.

DATED this 2th day of August, 2016.

THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

By: 

Katherine F. 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/Cross-Claimant
MDB TRUCKING, LLC

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

1 CERTIFICATE OF SERVICE

2 Pursuant to NRC 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 hand delivery

10 electronic means (fax, electronic mail, etc.)

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

12
13 James F. Sloan, Esq.
14 977 West Williams Avenue
15 Fallon, Nevada 89506
Attorneys for Plaintiff

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

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

24 DATED this 15 day of August, 2016.

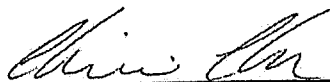
25
26 
27 An employee of Thorndal Armstrong
28 Delk Balkenbush & Eisinger

EXHIBIT 2

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

3 -000-

4 ERNEST BRUCE FITZSIMMONS and
5 CAROL FITZSIMMONS, Husband
6 and Wife,

6 Plaintiff,

Case No. CV15-02349

7 vs.

Dept. No. 10

8 MDB TRUCKING, LLC; RMC LAMAR
9 HOLDINGS, INC.; VERSA PRODUCTS
10 COMPANY, INC.; DANIEL ANTHONY
11 KOSKI; ABC Corporations I-X,
12 Black and White Companies,
13 and DOES I-XX, inclusive,

14
15 Defendants.

16 _____/

17 AND RELATED THIRD-PARTY COMPLAINT,
18 RELATED CROSS-COMPLAINT AND
19 CONSOLIDATED CASE.

20 _____/

21 Pages 1 to 104, inclusive.

22

23 V O L U M E I I I

24 D E P O S I T I O N O F S C O T T A L E N P A L M E R

25

26 _____
27 Wednesday, March 8, 2017
28 Reno, Nevada

29 J O B N O . : 3 7 8 3 3 4 A

30 REPORTED BY: CHRISTINA AMUNDSON
31 CCR #641 (Nevada)
32 CSR #11883 (California)

<p>1 A P P E A R A N C E S Page 2</p> <p>2</p> <p>3 FOR PLAINTIFFS: (Via telephone)</p> <p>4 BRADLEY DRENDEL & JEANNEY</p> <p>5 BY: SARAH M. QUIGLEY, ATTORNEY AT LAW</p> <p>6 6900 South McCarran Boulevard, Suite 2000</p> <p>7 Reno, NV 89509</p> <p>8 775.775.525.9164</p> <p>9</p> <p>10 FOR MDB TRUCKING AND KOSKI:</p> <p>11 THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER</p> <p>12 BY: BRIAN M. BROWN, ATTORNEY AT LAW</p> <p>13 THIERRY BARKLEY, ATTORNEY AT LAW</p> <p>14 6590 South McCarran Boulevard, Suite B</p> <p>15 Reno, NV 89509</p> <p>16 775.786.2882</p> <p>17</p> <p>18 FOR DRAGON AND MODERN GROUP: (Via telephone)</p> <p>19 GREENBERG TRAUERIG, LLP</p> <p>20 BY: JACOB D. BUNDICK, ATTORNEY AT LAW</p> <p>21 3773 Howard Hughes Parkway, Suite 400 N</p> <p>22 Las Vegas, NV 89169</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 I N D E X Page 4</p> <p>2 Volume III, Deposition of SCOT ALLEN PALMER</p> <p>3</p> <table border="0"> <tr> <td>EXAMINATION BY</td> <td>PAGE</td> </tr> <tr> <td>4 Ms. Woelfel</td> <td>4</td> </tr> <tr> <td>5 Mr. Bundick</td> <td>54,99</td> </tr> <tr> <td>6 Ms. Shreve</td> <td>59</td> </tr> </table> <p>7 E X H I B I T S</p> <table border="0"> <tr> <td>8 EXH.</td> <td></td> <td></td> </tr> <tr> <td>NO.</td> <td>DESCRIPTION</td> <td>PAGE</td> </tr> <tr> <td>9</td> <td></td> <td></td> </tr> <tr> <td>10 Exhibit 21</td> <td>Work Orders, MDB 196</td> <td>11</td> </tr> <tr> <td>11 Exhibit 22</td> <td>Work Order, MDB 356</td> <td>20</td> </tr> <tr> <td>12 Exhibit 23</td> <td>Work Orders, MDB 161</td> <td>23</td> </tr> <tr> <td>13 Exhibit 24</td> <td>Work Orders, MDB 031</td> <td>28</td> </tr> <tr> <td>14 Exhibit 25</td> <td>ENGS Invoice</td> <td>43</td> </tr> <tr> <td>15 Exhibit 26</td> <td>MDB Dropped Load of Sand</td> <td>46</td> </tr> <tr> <td>16</td> <td>7/7/14</td> <td></td> </tr> <tr> <td>17 Exhibit 27</td> <td>Record of Annual Inspection</td> <td>48</td> </tr> <tr> <td>18 Exhibit 28</td> <td>Driver/Vehicle Examination</td> <td>50</td> </tr> <tr> <td>19</td> <td>Report</td> <td></td> </tr> <tr> <td>20 Exhibit 29</td> <td>Driver/Vehicle Examination</td> <td>50</td> </tr> <tr> <td>21</td> <td>Report</td> <td></td> </tr> <tr> <td>22</td> <td>-o0o-</td> <td></td> </tr> <tr> <td>23</td> <td></td> <td></td> </tr> <tr> <td>24</td> <td></td> <td></td> </tr> <tr> <td>25</td> <td></td> <td></td> </tr> </table>	EXAMINATION BY	PAGE	4 Ms. Woelfel	4	5 Mr. Bundick	54,99	6 Ms. Shreve	59	8 EXH.			NO.	DESCRIPTION	PAGE	9			10 Exhibit 21	Work Orders, MDB 196	11	11 Exhibit 22	Work Order, MDB 356	20	12 Exhibit 23	Work Orders, MDB 161	23	13 Exhibit 24	Work Orders, MDB 031	28	14 Exhibit 25	ENGS Invoice	43	15 Exhibit 26	MDB Dropped Load of Sand	46	16	7/7/14		17 Exhibit 27	Record of Annual Inspection	48	18 Exhibit 28	Driver/Vehicle Examination	50	19	Report		20 Exhibit 29	Driver/Vehicle Examination	50	21	Report		22	-o0o-		23			24			25		
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<p>1 // Page 3</p> <p>2 A P P E A R A N C E S (Continued)</p> <p>3</p> <p>4 FOR RMC LAMAR HOLDINGS, INC:</p> <p>5 McDONALD CARANO WILSON LLP</p> <p>6 BY: JESSICA L. WOELFEL, ATTORNEY AT LAW</p> <p>7 100 West Liberty Street, Tenth Floor</p> <p>8 Reno, NV 89501</p> <p>9 775.788.2000</p> <p>10</p> <p>11 FOR VERSA PRODUCTS:</p> <p>12 LEWIS BRISBOIS BISGAARD & SMITH LLP</p> <p>13 BY: PAIGE S. SHREVE, ATTORNEY AT LAW</p> <p>14 6385 South Rainbow Boulevard, Suite 600</p> <p>15 Las Vegas, NV 89118</p> <p>16 702.693.4317</p> <p>17</p> <p>18 ALSO PRESENT: Daniel Koski, Bill Carder</p> <p>19 -o0o-</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 BE IT REMEMBERED that on Wednesday, March 8,</p> <p>2 2017, commencing at 9:30 a.m. of said day, at</p> <p>3 McDonald Carano Wilson LLP, 100 West Liberty Street,</p> <p>4 Tenth Floor, Reno, Nevada, before me, CHRISTINA M.</p> <p>5 AMUNDSON, a Certified Shorthand Reporter, personally</p> <p>6 appeared SCOT ALLEN PALMER.</p> <p>7 -----</p> <p>8 SCOT ALLEN PALMER,</p> <p>9 called as a witness in the matter herein,</p> <p>10 who, having been previously duly sworn, was examined</p> <p>11 and testified as follows:</p> <p>12 E X A M I N A T I O N</p> <p>13 BY MS. WOELFEL:</p> <p>14 Q Good morning, Scott.</p> <p>15 A Good morning.</p> <p>16 Q All right. My name is Jessica Woelfel and</p> <p>17 we'll continue on from yesterday.</p> <p>18 A Okay.</p> <p>19 Q And you understand that you are still under</p> <p>20 oath?</p> <p>21 A Yes.</p> <p>22 Q And that the same admonitions apply that</p> <p>23 have applied over the course of the last two days?</p> <p>24 A Yes.</p> <p>25 Q Okay. And if you need a break at any time,</p>																																																																	

Page 6

1 just let me know, okay?

2 A Okay.

3 Q Okay. After we finished yesterday, did you

4 go and search for any other documents at MDB?

5 A No, I did not. I didn't have a chance. By

6 the time I got my work done yesterday, it was pretty

7 late.

8 Q Okay. Did you have an opportunity to speak

9 with anybody other than your attorneys about the

10 deposition yesterday?

11 A No.

12 Q Or this morning?

13 A No.

14 Q Okay. So yesterday we were talking about

15 gate chains underneath belly dumpers.

16 Do you recall that conversation?

17 A Yes.

18 Q Okay. I want to ask you about a similar

19 device. Are you aware of a pinning system that can

20 be on belly dumpers or other types of dump trucks?

21 A Yes.

22 Q Do the lead trailers that MDB uses utilize

23 a pinning system?

24 A Yes, they do.

25 Q Okay. And so was Trailer No. 6773

Page 7

1 utilizing a pinning system?

2 A Yes, it does. Yes.

3 Q Did it have one in July of 2013?

4 A Yes.

5 Q And did it have one in July of 2014?

6 A Yes.

7 Q And is it MDB's policy that the pinning

8 system is activated on the -- I guess the smallest

9 pin lock when MDB drivers are pulling that trailer?

10 A No.

11 Q When you drive a truck and pull a trailer

12 that has a pinning system, do you have the pinning

13 system locked in to prevent opening while you are

14 pulling a trailer?

15 A No.

16 Q Why not?

17 A I don't think that's what it was designed

18 for.

19 Q Would you agree that if you were to drive

20 with a pinning system that it would prevent an

21 inadvertent opening of a belly dumper?

22 A Am I aware of that --

23 Q Would you agree that --

24 A Oh, yes, I would.

25 MR. BROWN: I'm going to make a late

Page 8

1 objection as to vague and foundation.

2 BY MS. WOELFEL:

3 Q Is the pinning device utilized in the same

4 manner as the gate chains where it can control the

5 size of the opening on a belly dumper?

6 A Yes.

7 Q I'm gonna go back to Exhibit 20.

8 Do you have the original exhibits in front

9 of you, by chance? So if you go to Exhibit 20 at

10 the second page, which is Bates-labeled MDB 240 --

11 A Okay.

12 Q We talked about this document a little bit

13 yesterday. I just wanted to get a little more

14 detail from you. Under the "Work done" portion it

15 says -- just to lay foundation, this is dated

16 August 2nd, 2013, for Trailer No. 6775.

17 Is that correct?

18 A Yes.

19 Q Okay. And this was the investigation of

20 the unintentional gate opening that occurred in July

21 of 2013. Is that correct?

22 A Yes.

23 Q Okay. And the work that you did is listed

24 under -- or that someone at MDB did is listed under

25 the work done. And one of the items listed says

Page 9

1 "Isolating dump coil circuit, removed coil hose."

2 You know what, why don't you just read that for me

3 because I'm having trouble reading the second

4 sentence under "Work done."

5 A It appears that it reads as "Isolating dump

6 coil circuit, removed coil case ground from

7 circuit."

8 Q Can you tell me what that means? Can you

9 describe for me the work that was done to isolate

10 the dump coil circuit and then what specifically was

11 done to remove the coil case?

12 A Coil case ground.

13 Q Ground. Yes. Thank you.

14 A I cannot say for certain what he did.

15 Q Do you know why this particular work was

16 done?

17 A Well, it was done in conjunction with

18 preventing it from -- the gate from opening

19 unintentionally.

20 I believe Mr. Bigby removed the wire that

21 goes directly from the case ground to the trailer --

22 or I think he isolated it from the trailer and wired

23 it directly to -- actually, I'm not sure what he

24 did.

25 Q Okay.

Page 10

1 A I can't really say for sure.
 2 Q You didn't participate in these repairs.
 3 A No. I wasn't -- I actually didn't start
 4 work for them until about a week later.
 5 Q Okay, fair enough. You can put that
 6 exhibit away. If you could grab Exhibit No. 5.
 7 A Okay.
 8 Q Exhibit 5 is a document -- I'm looking at
 9 the first page Bates-labeled MDB maintenance 000144
 10 and the equipment number listed is 6773 and the date
 11 completed is August 11th, 2013. Do you see that?
 12 A Yes.
 13 Q And this would be the lead trailer that Mr.
 14 Koski was pulling in July of 2013. Is that correct?
 15 A Yes.
 16 Q Okay. And this is work that was performed
 17 by you. Is that correct?
 18 A That is correct.
 19 Q Okay. Under the notes it says "Pulled out
 20 unused wire from" -- what's that word?
 21 A "Loom."
 22 Q -- "from loom and dissected."
 23 Is that right?
 24 A Yes.
 25 Q So it says "Pulled out unused wire from

Page 11

1 loom and disconnected."
 2 Can you describe for me which wire you were
 3 pulling out that was unused and from where?
 4 A Oh, I can't explain where the wire went.
 5 All I know is when I pulled the 7-way receptacle out
 6 of the front of the trailer there was an unused wire
 7 in the loom that didn't go anywhere. It didn't go
 8 to the solenoid, it didn't go anywhere on the
 9 trailer, so I just pulled it out and got rid of it.
 10 Q Do you know what that unused wire was in
 11 there for?
 12 A No idea.
 13 Q Why did you pull it out?
 14 A Well, there's no reason to have it in there
 15 if it's not connected to anything.
 16 Q Was it causing any issue with the trailer?
 17 A No.
 18 Q I'm going to hand you a document I'll mark
 19 as Exhibit 21.
 20 (Deposition Exhibit 21 marked for
 21 identification.)
 22 BY MS. WOELFEL:
 23 Q These are work orders that are
 24 Bates-labeled MDB 196197, 204, 205, and 206, and
 25 they are each for Equipment No. 6774.

Page 12

1 Do you see that?
 2 A Yes.
 3 Q Okay. And 6774 is the second trailer in
 4 the series of three trailers that we've been
 5 discussing. Is that correct?
 6 A Yes, that's correct.
 7 Q So the first work order at the bottom says
 8 "Performed by Pat." And the date of this work order
 9 looks to be July 21st, 2013, with a date completed
 10 of August 2nd, 2013. Do you see that?
 11 A Yes.
 12 Q Do you know if this work order was put
 13 together after the July 2013 dump incident or
 14 before?
 15 A It would appear that it was done after.
 16 Q So would that suggest to you that the
 17 July 2013 inadvertent dump occurred before
 18 July 21st 2013?
 19 A No. I think it's July 31st.
 20 Q Oh, you think that says "July 31st"?
 21 A I would think so.
 22 Q That would make some sense.
 23 A Yes.
 24 Q Thank you for clarifying that. I'm having
 25 trouble reading some of this writing.

Page 13

1 A I am too but I don't think -- I think it
 2 happened July 31st is the date. Yeah.
 3 Q Okay. So your reading on this work order
 4 is the date of the work order which was prepared by
 5 Pat is July 31st, 2013.
 6 A Yes.
 7 Q Okay, thank you. Can you tell me what this
 8 work order is for?
 9 A Okay. He rewired the dump valve circuit
 10 and this sort of is similar to what he did on the
 11 prior work order for 6775, about removing the coil
 12 case ground, and this kind of jars my memory of what
 13 he did.
 14 What he did was removed the ground wire
 15 from the coil that grounds to the trailer, so that
 16 the wires going to the trailer from the truck go
 17 directly from the truck straight to the valve
 18 without having any connection to the trailer --
 19 Q Okay.
 20 A -- because --
 21 Q Go ahead. Why did he do that?
 22 A He did it to prevent back-feeding through
 23 the ground. And on a Ranco trailer -- these
 24 particular Ranco trailers, they are not grounded
 25 through the trailer. There is no ground.

Page 14

1 Q Okay.

2 A There is no ground from the truck directly
3 to the trailer. They're all grounded through the
4 wiring system.

5 Q Okay. So this indicates a complete -- or
6 this describes the complete rewiring job that was
7 done on 6774 after -- or is this a portion of that?

8 A Just a portion of that. Basically he just
9 made sure that the wires, the 4-way wire, which is
10 the wire that comes from the truck to the trailer,
11 went directly to the Versa valve and didn't travel
12 through the grounding, you know, the trailer body
13 itself.

14 Q Okay. Was there any indication that there
15 had been some error or defect with the wiring that
16 had occurred that suggested that Pat should remove
17 and replace this wiring?

18 A No. I think he did this at the same time
19 he did 6774 and 6775 as a result of the inadvertent
20 dumping to make sure that both trailers were wired
21 correctly --

22 Q Okay.

23 A -- that --

24 Q Go ahead. I apologize for interrupting
25 you.

Page 15

1 A There was no reason to have the coil ground
2 to the trailer considering that the trailer did not
3 get a ground from the truck so, therefore, it's sort
4 of not being used as a ground so he removed it, the
5 circuit.

6 Q Okay. Did MDB maintain any of the wires or
7 coil case grounds that they removed from this
8 trailer?

9 A No.

10 Q Did they throw them away?

11 A Yes.

12 Q Did you do any testing on them at all after
13 they were removed?

14 A No. Basically he didn't really remove --
15 actually physically remove anything from the Versa
16 valve. He actually just took the wire that was
17 coming from the coil that went to the trailer and
18 disconnected -- there's two wires, one that goes
19 directly and he just wired them together into the
20 grounding system of the truck.

21 Q Okay. I understand.

22 A He didn't actually remove part of the
23 valve.

24 Q Just rewired?

25 A Yes.

Page 16

1 Q Okay. Next page, MDB 197, this is for
2 Equipment No. 6775, 6774 -- actually, why don't you
3 tell me what equipment numbers this is for.

4 A Okay. This is a work order completed on
5 September 15th, 2013, and it's for the set of
6 trailers, 6773, 6774, 6775.

7 Q Okay. Can you describe for me what this
8 work order is for?

9 A Yes. I dropped a set of trailers in and I
10 did a normal inspect and lube of all three trailers.
11 So I inspected the trailers, lubed it, and at the
12 same time I noticed that there were some lights that
13 were possibly unplugged or -- the plugs weren't
14 making good contact so I repaired those.

15 There was ABS brake wire that was -- looked
16 like the wire tie broke on it so I tied that up.
17 And then also I replaced some zerk fittings on the
18 back axle of 6775, three zerk fittings.

19 Q Okay. If we can go to the next page, MDB
20 204, can you tell me what dates this work was
21 performed and on what piece of equipment?

22 A This was performed February 13th, 2014,
23 on Trailer 6774 and Pat worked on it. It says,
24 "Troubleshoot in-op lights on trailer." So the
25 driver said there was lights that were -- one

Page 17

1 particular light wasn't working so he found -- Pat
2 found the male plug at the hitch broken, replaced
3 the plug and tested. So on the rear of 6774 he put
4 in a 7-way plug. Actually, it's kinda hard -- I
5 think he actually did it on the front of 6774.

6 Q Okay.

7 A I'm sorry. The front, a 7-way plug on the
8 front. I think he's talking about the hitch on the
9 back of 6773.

10 Q Okay. Go to the next page. MDB 205, and
11 can you tell me the date of this work order, the
12 equipment number, and what was occurring.

13 A This is February 15th, 2014, Trailer 6774,
14 and he replaced the rear 4-way socket and plug.

15 Q Why?

16 A It probably wasn't making good contact so
17 there was not -- it wasn't -- we were not able to
18 dump 6775 with the switch from inside the cab, so he
19 replaced the 4-way socket and plug.

20 Q Okay.

21 A So its 4-way socket is on the rear of 6775,
22 I believe. He doesn't make a note of where the plug
23 is.

24 Q But you would need that in order to --

25 A Yeah. The plug is probably on the front of

Page 18

1 6775. he doesn't designate which.
 2 **Q Okay. And there's no name on the bottom of**
 3 **this sheet indicating who performed the work but**
 4 **you're presuming that it was Pat?**
 5 A Oh, yeah, it was Pat. Yes.
 6 **Q Okay. Go to MDB 206, the next page. This**
 7 **looks like it's a work order dated March 1, 2014.**
 8 **Is that right?**
 9 A Yes.
 10 **Q For 6774.**
 11 A Yes.
 12 **Q And the work order is by you and it looks**
 13 **like the work is performed by you. Is that correct?**
 14 A Yes.
 15 **Q And here can you tell me what is indicated**
 16 **on this work order?**
 17 A The left rear subframe over the rear axle
 18 on the left side was cracked from damage caused by a
 19 broken spring.
 20 **Q Okay. So the frame of the trailer was**
 21 **cracked?**
 22 A The subframe.
 23 **Q Okay. And it looks like you cut out the**
 24 **damaged area of the frame.**
 25 A Yes. Had a new piece fabricated and welded

Page 19

1 it back into place. So the spring -- we had a
 2 spring break, the trailer would now fall down on the
 3 top of the spring, so the U-bolt caused a dent into
 4 the bottom of the frame, which cracked it, so we cut
 5 it out and replaced it.
 6 **Q How large of an area did you cut out? How**
 7 **large of an area was damaged?**
 8 A The actual damage area was only a few
 9 inches, a couple inches wide. But the piece I
 10 fabricated and put in there was probably 6 or
 11 8 inches wide by 6 or 8 inches high.
 12 **Q Okay. Did you pull the main wiring harness**
 13 **on this trailer prior to repairing?**
 14 A No. There's no wires in that location.
 15 **Q Okay. Can you tell me exactly where the**
 16 **location is? I'm not sure if I have a photo. I'm**
 17 **trying to get a sense of where precisely the**
 18 **location of this work was on this trailer of.**
 19 A Okay. It's on the rear of the trailer on
 20 the left side about a foot in from the side, so it's
 21 actually the subframe. It's not the actual frame of
 22 the trailer. It's the subframe that the axle and
 23 the springs bolt to.
 24 **Q Okay.**
 25 A So the wiring is actually in the frame of

Page 20

1 the trailer. It's not in the subframe underneath
 2 the trailer. So we would have -- I would have taken
 3 precautions to pull all the hoses out for the brakes
 4 and get them out of the way so that welding wouldn't
 5 cause damage to those, but there's no actual trailer
 6 wiring in that location.
 7 **Q How far away is the trailer wiring from the**
 8 **location you were working on?**
 9 A Oh, probably a foot away, and it's enclosed
 10 in the side frame rail of the trailer.
 11 **Q Okay.**
 12 A In fact, I think it actually is on the
 13 opposite side of the trailer in that particular
 14 instance.
 15 **Q All right. I'm going to mark this next.**
 16 (Deposition Exhibit 22 marked for
 17 identification.)
 18 BY MS. WOELFEL:
 19 **Q This is a document Bates-labeled MDB 356**
 20 **and this is -- can you tell me the date of this?**
 21 A August 5th, 2014.
 22 **Q Can you tell me the piece of equipment that**
 23 **was being worked on?**
 24 A It looks like truck 5693.
 25 **Q Is that the truck that you drove?**

Page 21

1 A Yes.
 2 **Q Okay. And this is a work order that you**
 3 **filled out?**
 4 A No. This is a work order that Pat filled
 5 out. It was just -- when it says "By Scott" at the
 6 top, that means I am the one that brought it to his
 7 attention about the repairs.
 8 **Q Okay. And why did the truck need to be**
 9 **repaired here?**
 10 A He says that he troubleshooted intermittent
 11 first trailer gate function.
 12 **Q What does that mean? Does that mean that**
 13 **the gate is not opening or closing properly?**
 14 A I would -- before I read what he actually
 15 did to fix it, I would assume that that means that
 16 the driver's unable to operate the gate with the
 17 switch from inside the truck intermittently, so
 18 sometimes he could flip the switch and it would open
 19 and sometimes it wouldn't open.
 20 **Q Do you have a recollection of the truck**
 21 **that you were driving having a switch problem in or**
 22 **around August of 2014? This is shortly after -- a**
 23 **month after your inadvertent dump of the sand truck.**
 24 A I don't specifically remember this but it's
 25 not -- it's not uncommon.

Page 22

1 Q How often did you activate the dumping
2 mechanism from inside the truck?

3 A How often did I?

4 Q Yes. Because my recollection of your
5 testimony is that you would typically operate the
6 Versa valve manually.

7 A Correct.

8 Q So were there some instances where you
9 would operate it from inside the truck?

10 A Yes, but not really in conjunction with
11 dumping it at the plant.

12 Q What would it be in conjunction with?

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.

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.

25 And I also make sure my equipment's

Page 23

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.

5 Q Okay. And this trailer had the manual
6 lockout that you had designed as of August 5th,
7 2014.

8 A Yeah. Yes, it did.

9 Q Okay.

10 (Deposition Exhibit 23 marked for
11 identification.)

12 BY MS. WOELFEL:

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.

17 Is that correct?

18 A That's correct.

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.

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.

25 Q Is it unusual that Tracy would fill out a

Page 24

1 work order?

2 A Not necessarily.

3 Q Okay.

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.

8 Q So this work order is indicative of one of
9 your routine maintenance checks on the trailers?

10 A Yes, uh-huh.

11 Q And would you and Pat typically do those
12 routine maintenance checks together?

13 A Not always, not necessarily. Usually one
14 of us would be doing something else but sometimes we
15 would do it together.

16 Q Next page, 170, can you tell me the date on
17 this work order and what it is for.

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.

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?

24 A I actually believe that we do the -- well,
25 I don't believe it. We actually do do this as a

Page 25

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.

4 Q When you say "we all go out and do it as a
5 team," who is on the team?

6 A Myself and Pat.

7 Q So you, Pat, and Tracy?

8 A Sure, yeah.

9 Q Do you do the annual inspections -- the
10 federal annual inspections for all of the trailers
11 on the same day?

12 A No.

13 Q Okay.

14 A We do one -- annually whenever their
15 particular time comes up.

16 Q Okay. And when that trailer's particular
17 time comes up, the three of you conduct that
18 inspection together.

19 A Yes.

20 Q Okay. So describe for me what you do in a
21 federal annual inspection.

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

Page 26

1 checking lights, brakes, cracks in the trailer,
 2 springs --
 3 Q Okay.
 4 A -- any safety issues that are related to
 5 the trailer.
 6 Q Okay. And I see that this work order has a
 7 total time on the bottom. It says a half.
 8 Does that indicate that the federal annual
 9 inspection took approximately half an hour?
 10 A I would say -- I would assume so for one
 11 trailer, yes.
 12 Q Do you check the wiring in your federal
 13 annual inspection?
 14 A We check the function of the wiring system.
 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?
 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.
 22 Q Do you look at any of the hidden wiring?
 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.

Page 27

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.
 4 A Yes. This is August 5th, 2014, Trailer
 5 6773. The trailer was inspected and lubed and
 6 replaced the 4-way socket.
 7 Q Why did you need to replace the 4-way
 8 socket?
 9 A They probably found that it was -- the pins
 10 possibly were oxidized. I mean, I'm speculating.
 11 Q But that would be a typical reason why you
 12 would replace a 4-way socket?
 13 A Yeah, or it could be loose. The pins could
 14 be wore slightly.
 15 Q Okay. Next page, MDB 186. Same thing. If
 16 you could tell me the date and what was occurring
 17 here.
 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."
 21 Q And that would be probably the same reason
 22 as you explained --
 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

Page 28

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.
 5 Q And each of those 4-way sockets that you
 6 replaced you would have thrown away the old ones.
 7 A Yes.
 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.
 12 (Deposition Exhibit 24 marked for
 13 identification.)
 14 BY MS. WOELFEL:
 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?
 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.
 24 Q Okay. And the first page, MDB 031, can you
 25 tell me the date of this work order and what was

Page 29

1 occurring here?
 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."
 7 Q What gate dump 4-way plug is this referring
 8 to?
 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.
 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.
 18 Q Okay.
 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.
 25 Q Okay. So when he activated the switches

Page 30

1 from inside the cab, there was no power getting to
 2 that first trailer.
 3 A Exactly.
 4 Q Okay. And what was the cause of the lack
 5 of power?
 6 A Okay. He says he "found the switches wired
 7 to light circuit."
 8 Q What's that mean?
 9 A I'm not sure.
 10 Q Okay. What's the next line say?
 11 A "Rewired switches to accessory." I can't
 12 read that. "Wired ground to cab ground." Okay. I
 13 understand that.
 14 Q What's that mean?
 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.
 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.
 25 Q What does that mean?

Page 31

1 A So, apparently, at the time -- this might
 2 have been prior to us operating that truck with the
 3 set of triples --
 4 Q Okay.
 5 A -- so it's possible that --
 6 Q He was modifying it to work with a set of
 7 triple trailers?
 8 A Instead of just a set of double trailers.
 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?
 12 A Right. That was after he repaired the wire
 13 -- repaired the power issue.
 14 Q Okay. Do you know who drove Truck No. 5694
 15 regularly before Mr. Koski was hired?
 16 A No.
 17 Q And the date of this work order is pretty
 18 shortly after Mr. Koski was hired. Is that correct?
 19 A Yeah. Within 6 months.
 20 Q Okay.
 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

Page 32

1 a different manner so it worked.
 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.
 5 A The date of the work order is July 26th,
 6 2013, and it's for Equipment No. 5694.
 7 Q Okay.
 8 A And --
 9 Q What does that work order indicate was
 10 occurring?
 11 A "Rewired gate switches," meaning the
 12 switches that operate the bottom inside the cab of
 13 the truck.
 14 Q And that would be the same wires that are
 15 referenced on the April 13th work order?
 16 A Yes, uh-huh.
 17 Q That's a "yes"?
 18 A Yes.
 19 Q Thank you. Why did the gate switches need
 20 to be rewired on this date?
 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?

Page 33

1 Q So when we were looking at some work orders
 2 earlier you had indicated that you thought --
 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.
 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?
 12 A Yes, might have been the same day.
 13 Q Are you certain that this rewiring work was
 14 performed after the dump or could it have been
 15 performed before?
 16 A I'm -- I'm certain that it happened
 17 afterwards and that was the reason that they did
 18 this.
 19 Q Were you working at MDB on July 26th, 2013?
 20 A No.
 21 Q Can you describe for me what work was
 22 performed here?
 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

Page 34

1 bottom dump trailers.

2 So, now, the source of the power, the

3 ground and the positive, have to go through the

4 master switch so the master switch has to be on in

5 order to provide power now to the three subsequent

6 dump switches.

7 **Q Okay.**

8 A And I believe -- and I do know for sure

9 that's why they did that, because that's one of the

10 first things they said that they did.

11 **Q Was install a master switch?**

12 A Yeah. I don't think -- yeah. Yes. That

13 is what they did, yes.

14 **Q Okay. And there was also the red covers**

15 **over the toggle switches that were installed as**

16 **well. Is that correct?**

17 A Yeah. Over the three dump switches that

18 originally had the covers, and then the master

19 switch also has a cover so now there's four switches

20 with covers.

21 **Q Okay. So the covers were there in July of**

22 **2013.**

23 A For the three switches.

24 **Q Okay, thank you. Next page. This is MDB**

25 **078. Can you tell me the date of this work order**

Page 35

1 **and what this was for?**

2 A This is on August 19th, 2013, for Truck No.

3 5694.

4 **Q That's the date of completion of the work**

5 **order, correct?**

6 A Yes.

7 **Q And the work order is dated August 17th,**

8 **2013.**

9 A I'm not sure. It could be August 19th.

10 **Q It's hard to tell.**

11 A I can't imagine that he would take two days

12 to get around to working on it.

13 **Q Okay.**

14 A Usually worked on it right away.

15 **Q Okay. And go ahead and describe for me**

16 **what was going on here.**

17 A Unfortunately, it doesn't tell me which

18 trailers he was pulling that day but I'm assuming

19 that we can make the assumption that he was pulling

20 the triples. It really doesn't matter which

21 trailers he was pulling.

22 But he's troubleshooting the "trailer

23 lights flashing, poor ground," which means that if

24 you turn your clearance lights, taillights on and

25 then turn your 4-way flashers and you have a poor

Page 36

1 ground from the truck or through the trailers, it

2 makes the taillights and the marker lights flash

3 with the flashers. They sorta dim at the same time

4 that the turn signals flash and that indicates a

5 poor ground.

6 So he found there was a poor ground at the

7 pogo stick at the 7-way plug and he replaced the

8 7-way socket and the plug.

9 **Q Okay. Next page, MDB 081, can you tell me**

10 **the date this work was completed and what was going**

11 **on in this work order.**

12 A Okay. This is September -- it looks like

13 September 15th, 2013, for Truck 5694, and this was

14 performed by myself. And at this time it looks like

15 the truck came in for normal inspection and during

16 that time I found a few things wrong with the truck.

17 So this time we replaced the -- I replaced

18 the 7-way plug on the end of the cord going to the

19 trailer, so that's actually on the other end of the

20 cord that Pat Bigby would have just replaced a month

21 before. It's on the other end of the cord.

22 So I put a new 7-way on, replaced the

23 pigtail on the left backup light on the back of the

24 trailer -- back of the truck/tractor. Sorry.

25 Adjusted the air suspension to proper height.

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1 Placed the pigtail on the right backup light and

2 both stop turn tail lamps. Replace the license

3 plate light.

4 And then the air conditioning was not

5 blowing properly so I pulled out the H -- the heater

6 and air conditioning filter, blew it out, put it

7 back in and then made a note that we actually needed

8 to do a complete disassembly and clean -- and the

9 evaporator and the heater core needs to be cleaned.

10 Also removed the outside temperature gauge and took

11 that in for warranty.

12 **Q Was this truck out of service for a while**

13 **after this particular work order or did it go right**

14 **back into service?**

15 A It went back into work. Everything was

16 fixed properly.

17 **Q It seems like there was a lot of work on**

18 **this truck on this day.**

19 A Well, it seems like it's a lot of work but

20 it's only an hour or two worth of work. It's a

21 bunch of miscellaneous housekeeping-type work.

22 **Q Okay. Next work order is MDB 095. Want to**

23 **tell me the date completed and describe what was**

24 **occurring here.**

25 A This is on October 20th, 2013, Truck 5694.

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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.

6 Q On the bottom notes it says "Replacing
 7 master switch with DPST switch." What is that?

8 A Double-pull single-throw.

9 Q And "to isolate" -- what's that word?

10 A "Isolate ground from 4-way wire."

11 Q Why don't you read me the entire sentence
 12 under "Notes."

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."

17 Q Is that -- why would you do that?

18 A Why would I rewire it?

19 Q Yeah.

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.

23 Q Okay. And was this an MDB standard? Did
 24 you do this type of rewiring on all of the trucks?

25 A No. The only reason I did that is because

Page 39

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.

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.

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.

16 A November 12th, 2013, Truck 5694. Pat did
 17 a PM 1.

18 Q What is that?

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.

24 Q And how often are PM 1s performed?

25 A At that particular time we were -- they

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1 were performed every 10,000 miles.

2 Q It's probably practically every other day
 3 with the way you guys drive.

4 A Yeah, right.

5 Q And it looks like you also replaced a 4-way
 6 socket.

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.
 11 I know some companies that try to run them forever
 12 but just -- we replace them.

13 Q All right. Tell me about MDB 109.

14 A I believe the date on this is 3/21/2014.

15 Q It looks like that could be a "3" to me as
 16 well, so we'll go with it.

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.

22 Q That red part that covers the toggle
 23 switch?

24 A Yes.

25 Q Okay.

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1 A And resecured deck plate. The deck plate
 2 was loose on the tractor.

3 Q Go to the next page, 119. Describe this
 4 work order for me.

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.

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.

18 Q All right. Next page, MDB 155, can you
 19 tell me the date of this work order and what this
 20 involves.

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.

24 This was done by at the time our mechanic's
 25 helper, Brandon Jones, and he would have brought the

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1 trailers around to the shop and went and greased and
 2 inspected them.

3 **Q So Brandon Jones was the mechanic's helper**
 4 **at this time?**

5 A Yes.

6 **Q Is he still the mechanic's helper?**

7 A No.

8 **Q Do you know when Brandon Jones left MDB?**

9 A No. He wasn't there very long. He was
 10 just basically helping out.

11 **Q Okay. And what did Brandon's inspection**
 12 **involve?**

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.

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.

24 **Q Okay. You're checking the wiring?**

25 A No. I mean, you're checking the

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1 functionality of the lights.

2 **Q Okay.**

3 A You're not actually checking the wiring.

4 **Q And are you checking the valves during an**
 5 **inspection like this, Versa valves?**

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.

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.

13 **Q Okay. Go ahead and set this exhibit aside.**

14 MS. WOELFEL: Why don't we take a
 15 five-minute break.

16 (Recess taken.)

17 MS. WOELFEL: I'm going to mark this next
 18 in order.

19 (Deposition Exhibit 25 marked for
 20 identification.)

21 BY MS. WOELFEL:

22 **Q Scott, I've handed you a document MDB 27**
 23 **and 28. Can you tell me what this document is?**

24 A This is an invoice from ENGS Motor Truck
 25 Company specifically for a repair order, and it's

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1 for repair work done on our Truck 5694. It looks
 2 like the work was performed April 4th, 2013.

3 **Q Okay. So you had sent the truck out to**
 4 **ENGS to be worked on?**

5 A Yes.

6 **Q Okay. So this was not work that was**
 7 **performed in-house?**

8 A That's correct.

9 **Q And can you tell me why this truck was sent**
 10 **out for repair?**

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?

14 **Q Why would you send it out versus doing it**
 15 **in-house.**

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.

22 **Q And when you came onboard, did you have**
 23 **your own tools that you brought with you?**

24 A Yes. I have a laptop that has software
 25 that requires you hook up to Cummins or Caterpillar

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1 engines and do diagnostics.

2 **Q Okay. So tell me what work this work order**
 3 **reflects.**

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.

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."

16 **Q What is "ECM"?**

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.

20 **Q Okay. And does it look like the ECM was**
 21 **changed?**

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

Page 46

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?

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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.

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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.

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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 inadvertent
 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

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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

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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

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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.

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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

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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?

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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

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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.

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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 --

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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

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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.

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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.

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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

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1 fairly easily.

2 Q So specifically Trailer No. 6775, if it

3 does not -- if I recall what you said, if it doesn't

4 have the air pressure, then it can go to neutral.

5 Is that correct?

6 MR. BROWN: Objection, foundation.

7 THE WITNESS: Well, it takes air pressure

8 to close the gates and to open the gates. So if you

9 took the Versa valve out of the system, there would

10 be no air pressure any longer so the gates would be

11 basically -- there would be no pressure holding it

12 closed or open. It would basically stay where it

13 was.

14 BY MS. SHREVE:

15 Q So if the Versa valve lost pressure then,

16 would the belly gates go to neutral?

17 MR. BROWN: I'll object, lack of

18 foundation, incomplete hypothetical. Probably

19 beyond the scope of the notice. Answer if you can.

20 THE WITNESS: That was probably a poor

21 choice of words as far as "neutral." When I say

22 "neutral," I don't mean the position of the actual

23 gates themselves. I'm saying neutral as far as

24 there's no pressure holding it one way or the other.

25 There's nothing pushing the gates open or closed, so

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1 generally the gates would stay in a position they

2 were.

3 BY MS. SHREVE:

4 Q Okay.

5 A More likely if it's loaded than empty.

6 Q Does MDB have to connect the Versa valve --

7 so we'll talk specifically the 6775 trailer -- did

8 MDB have to connect the Versa valve to anything in

9 order for it to be used on the trailer?

10 MR. BROWN: Object, foundation, vague as to

11 time.

12 BY MS. SHREVE:

13 Q After the July 2013 incident when MDB

14 installed the new Versa valve onto the Trailer 6775,

15 did MDB have to connect the Versa valve to anything

16 in order for it to be used in the trailer?

17 A Yes. The Versa valve would have to be

18 attached to the trailer, bolted to the trailer. And

19 then the air supply line that comes out of the tank

20 and goes to the filter and the oiler then goes to

21 the input of the Versa valve.

22 Then the hoses going to the open and closed

23 positions on each cylinder come out of the Versa

24 solve, so the hoses would have to be attached to the

25 Versa valve in order for it to work.

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1 Q So how many hoses are attached to the Versa

2 valve -- or in Trailer 6775 when it's installed how

3 many hoses are connected to the Versa valve?

4 A I believe there's five hoses.

5 Q Other than the five hoses, when installing

6 the Versa valve on Trailer 6775 in 2013 did anything

7 else have to be connected to the Versa valve?

8 A Yes. The solenoid that activates the Versa

9 valve to the open position via electricity has to be

10 wired into the 4-way system of the -- the 4-way

11 wiring system of the trailer.

12 Q And is the solenoid that you just spoke

13 about, is that a Versa product?

14 A Yes.

15 Q Okay. Does that solenoid come with the

16 valve that was purchased August 1st, 2013?

17 A Yes.

18 Q All right. So you can correct me if I'm

19 wrong. If I understand it correctly, you connect

20 the 4-way plug to the solenoid -- is that

21 correct? -- when you installed it in July 2013?

22 A No. The 4-way wire comes from the tractor

23 and it goes through all the trailers. And so by the

24 time it gets to the last trailer, you still have the

25 4-way wire running through the system, but there's

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1 only one wire hot in the ground wire in that

2 particular 4-way in the back trailer. So there's

3 two wires that could connect to the solenoid --

4 Q Okay.

5 A -- the hot wire and the ground wire.

6 Q So when installing the Versa valve on

7 Trailer 6775 in 2013, in order to install it to the

8 trailer, it was bolted down and then five hoses and

9 two wires were connected to the Versa product.

10 A That's correct.

11 Q Okay. Now, you said that there's two wires

12 connected to the last trailer. And it made it seem

13 like -- are there more wires that are connected to

14 the first two trailers, the solenoid in the first

15 two trailers?

16 A No. To clarify that, the 4-way wire has

17 three hot wires -- or hot wires when activated by

18 the dump switches in the tractor and one ground

19 wire.

20 So one of those three hot wires goes to

21 each trailer, so as it goes down the trailer -- and

22 the front trailer would be, say, the green wire and

23 the 4-way system would go to that solenoid. The

24 next one would be the yellow wire and the next one

25 would be the red wire, whatever wiring color

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1 designation that we use.

2 Q Okay. So I'm just trying to make sure I

3 understand this correctly from how you're explaining

4 it. So there's a 4-way wire that comes from the

5 truck. Is that correct?

6 A Correct.

7 Q And it has three hot, one for each, and one

8 of them is for each trailer, correct?

9 A Correct.

10 Q Do all of those wires travel through each

11 trailer?

12 A Yes. They would have to to get from --

13 yes. Yes.

14 Q Okay. So when you detach a trailer, what

15 happens to that wire if you -- let me rephrase that.

16 When you detach Trailer 6775 from 6774,

17 what happens with the wire that is going to the

18 Versa valve on 6775?

19 A It stays with 6775. It's hardwired from

20 the trailer. The 4-way wire in that trailer into

21 the solenoid where it goes out through the front of

22 the trailer, down the draw bar, there's a plug on

23 the end of that that gets unplugged from the back of

24 6774 and that stays with the trailer. That all

25 stays with 6775.

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1 Q Okay. Are the five hoses that are

2 connected to the Versa valve, are they Versa valve's

3 products?

4 A I highly doubt it.

5 Q Did those five hoses come with the purchase

6 of the Versa valve on August 1st, 2013?

7 A No.

8 Q The two wires that are attached to the

9 Versa valve, are those Versa product? Are they

10 owned by -- do you know if they manufactured those

11 wires?

12 A I don't know if they manufacture them but

13 they came with the valve, yes.

14 Q Okay. So the two wires that connect --

15 that go through the truck --

16 A Oh, no. I'm sorry.

17 Q Okay.

18 A There's two -- there's a pigtail of two

19 wires coming off the solenoid when you buy it.

20 Q Okay.

21 A And when you splice that into our wiring,

22 that's where it becomes our wiring at that point.

23 Q Okay. So there's two wires on the Versa

24 valve that are attached to the wires that are on the

25 truck or in the truck.

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1 A Correct.

2 Q Okay. And those wires that are in the -- I

3 don't know if it's in or on, which one it should be

4 -- but in or on the truck, are those Versa Valves'

5 products?

6 A No.

7 Q Earlier you testified that there was a

8 rewiring of Truck 5694 after the July 2013 incident.

9 Before MDB rewires the truck and trailers,

10 is that wiring what is on truck and Trailer 5693 in

11 July 2014? Do you need me to re-word it? That was

12 terrible.

13 A I think I know what you're saying. Are you

14 saying is the wiring configuration of 5693 the same

15 or similar to 5694's wiring prior to the 2013

16 incident?

17 Q Yes. How the wiring was before MDB rewired

18 it in 2013 --

19 A Yes.

20 Q -- is that wiring the wiring that is

21 consistent with Truck 5693 or is it the post-wiring

22 -- the rewiring MDB did that's on Truck 5693?

23 MR. BROWN: I'm going to object. Vague.

24 It may only be vague to me, but I'm lost.

25 THE WITNESS: I think I know what you're

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1 getting at. Truck 5694, I don't believe, was ever

2 -- I mean, sorry. Truck 5693, I don't believe, was

3 ever rewired. So the wiring on Truck 5694 prior to

4 the rewiring after the first incident in July of

5 2013 would have been similar to the current wiring

6 on Truck 5693.

7 But, you know, no truck is gonna be

8 identical the way they're wired but there is no

9 master switch in 5693 so it would be similar to

10 that, yes.

11 BY MS. SHREVE:

12 Q You said no wiring would be identical.

13 Why is that?

14 A Well, you used to be able to order trucks

15 from the factory with dump switches, and I don't

16 know that you can anymore -- no, I think you can.

17 You can still get them from the factory with dump

18 switches.

19 So some trucks come from the factory with

20 dump switches already installed as an option and

21 some trucks -- well, other trucks that weren't

22 necessarily intended to haul bottom dumps and

23 somebody would retrofit them with switches for

24 bottom dumps. And so depending on where you

25 acquired the truck from and if you got it new or

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1 used and who originally did the wiring, it could be
 2 slightly different.
 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.
 9 BY MS. SHREVE:
 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?
 14 A Yes, that is correct.
 15 Q Okay. And where does that electricity come
 16 from in activating it if you are activating it
 17 electrically?
 18 MR. BROWN: I'll object, foundation.
 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.
 24 BY MS. SHREVE:
 25 Q So for Trailer 6775 the only way for

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1 electricity to get to the Versa valve is from
 2 activating the switch?
 3 MR. BROWN: I'm gonna object, lack of
 4 foundation, beyond the scope. You're asking for an
 5 expert opinion.
 6 THE WITNESS: I can actually answer that
 7 question.
 8 BY MS. SHREVE:
 9 Q I'm going to reask it. When MDB was
 10 installing -- strike that. I'll let you answer my
 11 previous question.
 12 A The answer to that question is no, not
 13 necessarily. That's the \$64,000 question.
 14 Q Okay. How else can electricity activate
 15 the Versa valve that you're aware of?
 16 MR. BROWN: Objection, foundation, calls
 17 for expert opinion.
 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.
 25

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1 BY MS. SHREVE:
 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?
 6 MR. BROWN: I'm going to -- go ahead.
 7 THE WITNESS: Can you please clarify when
 8 you say "attached to the trailer"? You're talking
 9 attached to the trailer wiring?
 10 BY MR. SHREVE:
 11 Q The trailer wiring, yes.
 12 A That would be correct, yes. It could not,
 13 not from the tractor, no.
 14 Q You said "not from the tractor."
 15 Yesterday you testified that MDB shares a
 16 shop with Western Nevada Transport since July 2014.
 17 Is that correct?
 18 A I believe I said --
 19 Q I'm sorry. January 2014.
 20 A Yes, that is correct.
 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?
 25 A That would have been prior to this.

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1 Q So no?
 2 A Pardon?
 3 Q So is that a "no"?
 4 A We didn't share the shop with them at that
 5 particular time, so no.
 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.
 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?
 13 A Yes.
 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?
 17 MR. BROWN: Calls for speculation,
 18 foundation.
 19 BY MS. SHREVE:
 20 Q That you're aware of, that you have
 21 knowledge of.
 22 A So the question is, Can it be activated
 23 electrically if they're not hooked to the trailer?
 24 Q No. The question is if the two wires on
 25 the MDB valve are not connected to the two wires in

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1 the truck, what are the ways the valve can be
2 activated?
3 MR. BROWN: Object, asked and answered.
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.
9 BY MS. SHREVE:
10 Q Okay. Now I'm going to Exhibit 17. This
11 is the Driver/Vehicle Inspection Report.
12 Based on this inspection report, would
13 there be a work order for this?
14 A Are you talking about any --
15 Q Sorry. The first page in the Exhibit 17
16 dated 8/19/2015. This is for Tractor 5694 and
17 Trailer 6775.
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.
22 Q No. Go ahead.
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

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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.
5 Q But this specific one, is this a minor
6 instance that a work order would not be done on?
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.
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.
18 Is that correct?
19 A It's possible, yeah.
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?
24 A No.
25 Q The reason I ask that is what has been

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1 produced there was not a work order for this event
2 or this day --
3 A Okay.
4 Q -- so I'm just trying to make sure that we
5 have all the work orders --
6 A Correct.
7 Q -- since it's my understanding you don't
8 keep all of these Driver/Vehicle Inspection Reports.
9 A Not past a certain time.
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.
13 Did I understand that correctly?
14 A Yes, I believe so. I might not have been
15 there that day and ...
16 Q And what makes you believe that you think
17 this occurred?
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.
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

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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.
4 Q So you said you saw highway patrol come and
5 do an investigation in the yard following the 2013
6 incident.
7 A That is correct.
8 Q Did this occur on the day of the 2013
9 incident?
10 A I believe it was the next day.
11 Q Okay. So were you employed with MDB at
12 that time?
13 A No. But I was around.
14 Q Okay. And why were you around?
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.
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.

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1 Q Okay. And do you know if the highway
 2 patrol following their investigation provided MDB
 3 with any paperwork?
 4 A I would imagine they would have.
 5 Q Okay. And what would MDB have done with
 6 that paperwork?
 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.
 10 Q Okay, thank you. Yesterday you testified
 11 that you keep handwritten notes -- correct? --
 12 maintenance notes. Sorry.
 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.
 19 Q And does Pat do the same thing as you?
 20 A Oh, yeah.
 21 Q Do you know if Pat keeps his handwritten, I
 22 guess --
 23 A I know that he does not.
 24 Q Okay. Are the work orders filled out after
 25 the work is complete?

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1 A Yes.
 2 Q Okay.
 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 --
 9 Q Okay.
 10 A -- but most of the time it's filled out
 11 after the fact.
 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?
 17 A Which one?
 18 Q Oh, I'm sorry. MDB 000240. Sorry.
 19 A Yes, I did.
 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?
 24 A I think what he told me was that it must
 25 have been something to that effect, that he must

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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.
 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?
 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.
 13 Q Okay. Can we go to Exhibit 21, please.
 14 A Okay.
 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.
 18 A Are we talking about Exhibit MDB 196?
 19 Q Oh, strike that. Go to MDB 205. I believe
 20 that's where it was spoken about. Sorry about that.
 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?

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1 A I would imagine that's the original
 2 symptom, yes.
 3 Q Okay. And if that was the symptom, can
 4 Trailer 6775 still be activated by --
 5 A Yeah.
 6 Q -- its own switch?
 7 A Yes, it could be. Not necessarily but it
 8 could be, yes.
 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.
 12 A Absolutely, yes.
 13 Q Is the wiring different for a truck that
 14 pulls two trailers versus a truck that pulls three
 15 trailers?
 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.
 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?
 25 A No. No. This is the work order that there

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1 comes off the batteries, which goes, I think -- I
 2 believe it goes to a circuit breaker on the frame
 3 rail.
 4 Q Okay.
 5 A That's all factory wiring, yeah.
 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?
 9 MR. BROWN: Objection, vague.
 10 BY MS. SHREVE:
 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.
 16 A Is that the one that's July 26th in that
 17 exhibit?
 18 Q So this would be Exhibit 15. It's the
 19 safety measurement system.
 20 A Oh, yes. And what date is there on that?
 21 MR. BROWN: Here (indicating).
 22 BY MS. SHREVE:
 23 Q So in this report it lists dates of
 24 violations for the truck.
 25 A Okay.

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1 MR. BROWN: Can you say what page you're
 2 looking at for the record.
 3 MS. SHREVE: Sorry. MDB 008.
 4 THE WITNESS: Okay.
 5 BY MS. SHREVE:
 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.
 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.
 13 A Yes. They're inspection report numbers.
 14 They're not necessarily violations.
 15 Q Right. Sorry.
 16 A But --
 17 Q Would they have an inspection report done
 18 on that July 2013 incident?
 19 A Yes. Any time the highway patrol stops
 20 you, they give you one of those sheets.
 21 Q Okay.
 22 A I shouldn't say "every time," but I would
 23 imagine they do --
 24 Q Okay.
 25 A -- most times.

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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?
 7 MR. BROWN: Objection, foundation,
 8 speculation.
 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.
 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.
 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.
 22 BY MS. SHREVE:
 23 Q Okay. Would you agree that same truck had
 24 a report done on July 30th, 2013, and July 31st,
 25 2013?

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1 A Yes, it would have had one done. Yes.
 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?
 5 A July 25th, 2013.
 6 Q This is one of the dates listed on the
 7 report that we just spoke about, correct?
 8 A Yes.
 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?
 12 A Can somebody refresh my memory about
 13 something? I don't know if anybody knows this
 14 answer.
 15 Q Sure.
 16 A On the July 2013 incident was rock dumped
 17 that day or sand? Does anybody -- I don't know if--
 18 MR. BROWN: I don't think anyone at this
 19 table can help.
 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.
 24 BY MS. SHREVE:
 25 Q Now, if you turn that page to MDB 475, does

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1 this -- it looks like it was for 7/25/2013 for the
 2 subject truck and trailer.
 3 Does this indicate whether or not this was
 4 the day that the trailer had a dump?
 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.
 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?
 14 A You're referring to the scale ticket being
 15 changed or whatnot?
 16 Q Yes.
 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.
 23 Q Okay. If you go back to Exhibit 24 and go
 24 to MDB 073 --
 25 A Yes.

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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?
 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?
 12 A I'm not -- are you saying that I thought
 13 this work order originally was from before?
 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.
 18 A Yes.
 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.
 23 So what would be the reasoning this would
 24 have been done?
 25 A To my knowledge -- okay. I know for

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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.
 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.
 8 Q That was going to be my next question, is
 9 it possible that the date --
 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.
 13 Q Okay. Now, you're saying it's possible
 14 that the date could be incorrect.
 15 Could the miles be incorrect as well, then?
 16 A No.
 17 Q Okay. So if you go to Exhibit 2 --
 18 A So you're putting your detective skills to
 19 work here on the mileage, I'm assuming.
 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.
 24 A Right, that's good.
 25 Q Okay. So if you go to MDB 471, what's the

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1 date on this daily driver sheet?
 2 A Oh, the date on this is July 29th, 2013.
 3 Q Okay. And what is the starting odometer on
 4 this log sheet?
 5 A 396,989 miles.
 6 Q Now, is that the same mileage that is
 7 listed on Exhibit 24, MDB 073?
 8 A Yes, it is.
 9 Q Okay. I'll represent to you there is
 10 not -- a driver's daily sheet for July 26th was not
 11 produced.
 12 Now, would that be because the truck was in
 13 service that day, if that date of July 26th, 2013,
 14 is correct?
 15 A The truck was not in service?
 16 Q Correct.
 17 A That is correct.
 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?
 22 A I'm sorry. I was thinking.
 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

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1 starting odometer in Exhibit 2, MDB 471, for
 2 July 29th, 2013?
 3 A That would be the assumption I would make,
 4 yes.
 5 Q Okay.
 6 A And as far as a July 26th truck report --
 7 or daily driver sheet missing?
 8 Q And would that be because it was actually
 9 getting maintenance performed on it that day?
 10 A Well, no. I would say there's one missing
 11 because there's a gap in the mileage.
 12 Q Okay.
 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?
 16 Q It was for the truck and the trailer.
 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.
 21 Q Okay. Would you drive the truck on the day
 22 it is getting serviced?
 23 A Oh, yes, definitely.
 24 Q Okay. But it is possible that that date of
 25 July 26th is correct, then?

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1 A Yes.
 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?
 7 A No. I don't know why they wouldn't have.
 8 Now --
 9 Q Do you know why there would have been a
 10 rewiring of the gate switch that day?
 11 A I'm sorry. Rewiring the switch on
 12 July 26th?
 13 Q Yes. If it occurred before the July 2013
 14 incident.
 15 A No. There would be no reason for it.
 16 Q You're not aware of any reason?
 17 A No.
 18 Q Okay. After the July 2013 incident, did
 19 MDB in their investigation into it find any defect
 20 with the Versa valve?
 21 MR. BROWN: Can you read the question back?
 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?"
 25 MR. BROWN: I'm going to object to the

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1 extent that it would call for any type of
 2 attorney-client privilege that's occurred since the
 3 commencement of the litigation.
 4 You understand that?
 5 THE WITNESS: Not exactly, but --
 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.
 10 THE WITNESS: Okay.
 11 BY MS. SHREVE:
 12 Q So in July 2013, right after the incident
 13 and your investigation into it --
 14 A Yes.
 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?
 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 ...
 25 Q Okay.

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1 A Yeah.
 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?
 8 MR. BROWN: Objection, foundation,
 9 speculation.
 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.
 15 BY MS. SHREVE:
 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?
 21 A No. That remained in service until such
 22 time litigation started.
 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

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1 after -- did MDB discover any design defect with the
 2 Versa valve?
 3 MR. BROWN: Objection, foundation.
 4 THE WITNESS: No. But, once again, we
 5 weren't looking for any sort of design defects or
 6 functionality defects. It worked.
 7 BY MS. SHREVE:
 8 Q Okay.
 9 A To the best of our knowledge it still
 10 worked.
 11 Q So it worked as you expected it to work,
 12 then?
 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.
 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.
 22 Did MDB in their investigation find any
 23 defect with the Versa valve?
 24 A No.
 25 Q Okay. And the same goes for the Trailer

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1 6778. After the July 2014 incident did MDB find any
 2 defect in the design of the Versa valve after their
 3 investigation?
 4 MR. BROWN: Objection, foundation.
 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.
 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.
 12 MS. WOELFEL: No, I have no other followup.
 13 I'm good.
 14 MS. SHREVE: Does anyone on the phone have
 15 any followup questions?
 16 MS. QUIGLEY: No.
 17 MR. BUNDICK: Yeah, I have one.
 18 FURTHER EXAMINATION
 19 BY MS. BUNDICK:
 20 Q Mr. Palmer, this is Jacob Bundick and I
 21 represent Modern Group and Dragon Ltd.
 22 In your opinion how is Modern responsible
 23 for the --
 24 MS. WOELFEL: The chiropractor couldn't
 25 hear you. Would you be able to talk slower and talk

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1 up a little bit, please.
 2 MR. BUNDICK: Sure. Let me take you off
 3 speaker phone.
 4 Hello?
 5 MS. WOELFEL: Go ahead.
 6 BY MR. BUNDICK:
 7 Q Mr. Palmer, in your opinion how is my
 8 client Modern Group responsible for the accident
 9 that occurred in July 2013?
 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.
 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.
 18 THE WITNESS: If you're asking for my
 19 opinion, I don't really --
 20 BY MR. BUNDICK:
 21 Q Do you have knowledge outside of what you
 22 discussed with your attorney?
 23 A Pardon?
 24 MR. BROWN: We can't hear you.
 25 MS. SHREVE: If you could talk slower.

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1 BY MR. BUNDICK:
 2 Q Mr. Palmer, can you answer the question
 3 without divulging attorney-client privilege
 4 information?
 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.
 8 Q You do not have an opinion. Thank you.
 9 MR. BUNDICK: I have no further questions.
 10 MR. BROWN: I have no questions.
 11 MS. WOELFEL: We've completed this witness'
 12 deposition. Thank you for your time.
 13 THE WITNESS: Thank you.
 14 MR. BROWN: I know you don't send
 15 originals, but I'll take the copy for signature.
 16 MS. WOELFEL: We've all ordered copies of
 17 the transcript.
 18 THE REPORTER: Counsel on the phone, are
 19 you ordering copies of the transcript, or no?
 20 MS. QUIGLEY: Yes, I'll take an E-tran.
 21 MR. BUNDICK: Yes, for E-Transcript.
 22 (Whereupon, deposition was concluded at
 23 12:19 p.m.)
 24 -o0o-
 25

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1 STATE OF NEVADA)
) ss.
 2 COUNTY OF WASHOE)
 3
 4 I, CHRISTINA AMUNDSON, a duly commissioned and
 5 licensed court reporter, Washoe County, State of
 6 Nevada, do hereby certify:
 7 That I reported the taking of the deposition of
 8 SCOT ALLEN PALMER, commencing on Wednesday, March 8,
 9 2017, at 9:30 a.m.
 10 That prior to being examined, the witness was
 11 duly sworn to testify to the truth. That I
 12 thereafter transcribed my said shorthand notes into
 13 typewriting and that the typewritten transcript of
 14 said deposition is a complete, true, and accurate
 15 transcription of said shorthand notes.
 16 I further certify that I am not a relative or
 17 employee of an attorney or counsel of any of the
 18 parties, nor a relative or employee of an attorney
 19 or counsel involved in said action, nor a person
 20 financially interested in the action.
 21
 22 DATED: At Reno, Nevada, this 14th day of March
 23 2017. Christina Amundson
 24 CHRISTINA AMUNDSON CCR #641
 25

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ERRATA SHEET

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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 3

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

-o0o-

ERNEST BRUCE FITZSIMMONS and
CAROL FITZSIMMONS, husband and
wife,
Plaintiffs,

Case No. CV15-02349
Department No. 10

vs.

MDB TRUCKING, LLC; et al.,
Defendants.

_____ /

AND RELATED THIRD-PARTY MATTERS
AND CONSOLIDATED CASE.

_____ /

CONTINUED DEPOSITION OF PMK OF MDB TRUCKING

SCOTT ALEN PALMER

March 7, 2017

Reno, Nevada

Volume II

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

<p>1 2 For the Plaintiff: (Appearing telephonically) 3 4 BRADLEY, DRENDEL & JEANNEY BY: SARAH MARIE QUIGLEY, ESQ. 6900 S. McCarran Blvd, Ste. 2000 5 Reno, Nevada 89509 775-335-9999 6 Fax 775-335-9993 Sarahquigley@bdjlaw.com 7 8 For MDB TRUCKING, LLC, & DANIEL KOSKI: 9 THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER BY: BRIAN M. BROWN, ESQ. 10 AND THIERRY BARKLEY, ESQ. (a.m. session) 6590 S. McCarran Blvd., Suite B 11 Reno, Nevada 89509-6112 775-786-2882 12 Fax 775-786-8004 Emb@thorndal.com 13 14 For RMC LAMAR HOLDINGS, INC.: 15 MCDONALD CARANO WILSON LLP BY: JESSICA L. WOELFEL, ESQ. 16 100 W. Liberty Street, Tenth Floor Reno, Nevada 89501 17 775-788-2000 Fax 77-788-2020 Jwoelfel@mcwlaw.com 18 19 For VERSA PRODUCTS COMPANY, INC.: 20 LEWIS, BRISBOIS, BISGAARD & SMITH, LLP BY: PAIGE S. SHREVE, ESQ. 21 6385 South Rainbow Blvd., Suite 600 Las Vegas, Nevada 89118 22 702-898-3383 Fax 702-893-3789 Paige.Shreve@lewisbrisbois.com 23 24 25</p>	<p>Page 2</p>	<p>1 2 EXAMINATION 3 4 SCOTT ALLEN PALMER 5 6 EXAMINATION BY MS. SHREVE 7 8 EXAMINATION BY MS. WOELFEL 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 4</p> <p>INDEX</p> <p>PAGE</p> <p>5</p> <p>5</p> <p>138</p> <p>EXHIBITS</p> <p>DESCRIPTION</p> <p>PAGE</p> <p>6</p> <p>9</p> <p>14</p> <p>53</p> <p>62</p> <p>67</p> <p>68</p> <p>91</p> <p>105</p> <p>132</p> <p>136</p> <p>178</p> <p>185</p> <p>Note: Original Exhibits retained in binder at Sunshine Litigation Services.</p>
<p>1 For THE MODERN GROUP AND DRAGON ESP, LTD.: (Appearing telephonically) 2 3 GREENBERG TRAUERIG, LLP BY: JACOB D. BUNDICK, ESQ. 3373 Howard Hughes Parkway, Ste. 400 N 4 Las Vegas, Nevada 89169 702-792-9002 5 Bundickj@gtlaw.com 6 7 Also present: 8 DANIEL KOSKI (a.m. session) 9 10 BILL CARTER 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 3</p>	<p>1 BE IT REMEMBERED that on Tuesday, March 7, 2017, at the hour 2 of 9:45 a.m. of said day, at the offices of McDonald Carano 3 Wilson, 100 W. Liberty St., 10th Floor, Reno, Nevada, before me, 4 CONSTANCE S. EISENBERG, a Nevada Certified Court Reporter, 5 personally appeared SCOTT ALLEN PALMER, who was by me previously 6 duly sworn, and was examined as a witness in said cause. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>Page 5</p> <p>-o0o-</p> <p>SCOTT ALLEN PALMER</p> <p>called as a witness, having been previously duly sworn, testified as follows:</p> <p>MS. SHREVE: We can go on the record. Good morning, Mr. Palmer. THE WITNESS: Good morning. MS. SHREVE: Do you understand you are still under oath today? THE WITNESS: Yes.</p> <p>EXAMINATION</p> <p>BY MS. SHREVE:</p> <p>Q Yesterday, I gave you some general rules of a deposition. Do you remember those rules? A Yes. Q Do you need me to repeat those rules or go over them</p>

Page 6

1 again?

2 A No.

3 MS. SHREVE: Okay. Perfect.

4 So we will begin with the next exhibit, which is

5 Exhibit 8. And this will be the work orders for Equipment Number

6 5693, which will be the -- I guess we're labeling it the sand

7 truck, so which would be your truck that you drove that day.

8 THE WITNESS: Okay.

9 (Exhibit 8 marked for identification.)

10 BY MS. SHREVE:

11 Q So we'll do the same thing, kind of what we did

12 yesterday with these work orders. Please just state the date of

13 the work order and what was done with this work order.

14 A Okay. The date is August 5th, 2014. The work order is

15 for Truck 5693.

16 And it's troubleshoot intermittent first trailer gate

17 function, found wire not secured, replaced plug with -- oh,

18 Phillips plug.

19 So the mechanic, Pat, put a new four-way plug on the end

20 of the cord on the tractor.

21 Q Similar to the four-way plugs that we discussed

22 yesterday?

23 A Uh-huh, exactly the same.

24 Q So then we'll go to the next one, which is MDEMSUP 62.

25 Can you please tell me the date and what this work order is for.

Page 7

1 A The date is March 23rd, 2015, for Truck 5693 again.

2 Troubleshoot, gate not working with switch and also adjust clutch.

3 Gates were working when checked out. Four-way plug from

4 tractor to trailer ground had some corrosion. Replace four-way

5 plug.

6 Also noticed feedback at plug, traced to light wiring in

7 dash. Unplugged jumpers, recommend rewiring switches. He put a

8 new four-way plug and also adjusted the clutch.

9 Q What is meant by noticed feedback at plug, traced to

10 light wiring at dash?

11 A I believe on that particular truck -- actually, I'm not

12 sure.

13 I think that particular truck had lights in the dash

14 that told you whether the switch is on or off, and it might have

15 been some sort of a feedback between the light and the plug.

16 Q And when you say "the switch is on or off," what switch

17 are you specifically talking about?

18 A Okay. One of the dump switches for one of the trailers,

19 whether it be the first, the second or the third trailer.

20 Q Okay. And does this indicate whether -- it says

21 recommended rewiring switches. Does it indicate whether there was

22 a rewiring of switches?

23 A It does not indicate that on this particular work order.

24 Q When you recommend rewiring switches, does it usually

25 happen after or -- no, I guess.

Page 8

1 A It would -- it should, yes. Did it happen? I'm not

2 sure.

3 Q Okay. We'll go to the next work order, which is

4 MDEMSUP 68. Can you please tell me the date on this work order

5 and what occurred.

6 A The date of the work order is May 18th, 2015, for

7 Truck 5693. It says replace VVA sensor connector and add coolant.

8 Q And what is the VVA sensor connector?

9 A I actually remember this particular event because I'm

10 the one that wrote it up.

11 It would have been -- the truck would have come with a

12 "check engine" light on. We would have hooked the computer to it.

13 It would have gave us a code, I think it's 95, which indicates the

14 variable valve actuator sensor has a high or low voltage.

15 And Pat determined that it was the connector at the end

16 of the wire going into the sensor.

17 This is on the engine.

18 Q Okay.

19 A This is on the valve train internal to the engine under

20 the valve cover.

21 Q Okay. Perfect. Let's go to the next order, which is

22 MDEMSUP 83. Can you please tell me the date completed on this

23 work order and what occurred.

24 A This is on November 29th, 2015; Truck 5693. And I did

25 this work order. And I replaced the seven-way plug at the trailer

Page 9

1 end of the seven-way cord.

2 Q Okay. Again, this is --

3 A Just another seven-way.

4 Q -- the seven-way plug that we've seen in previously in

5 other work orders?

6 A Yes.

7 MS. SHREVE: All right. We will go on to the next

8 exhibit, which will be Exhibit 9.

9 (Exhibit 9 marked for identification.)

10 BY MS SHREVE:

11 Q And this is in regard to Equipment 6777, which would be

12 the second trailer on the sand truck that we're calling it --

13 A That is correct.

14 Q -- that you were driving that day.

15 A That is correct.

16 Okay. This is February 20th, 2014; Trailer 6777.

17 Troubleshoot air loss.

18 They found the rear gate cylinder on this trailer -- the

19 gate -- meaning the cylinder that opens up the gates -- leaking,

20 bypassing air at the QR valve.

21 He disassembled the cylinder, put a packing kit in it,

22 reinstalled the cylinder and tested it, and it cured the air leak.

23 Q Okay. We will go on to the next one, if you can tell me

24 the date completed on this one and what occurred, please.

25 A This is on April 16th, 2014; Trailer 6777. Versa valve

Page 10

1 handle loose, and air spring action on lever not working
 2 correctly.
 3 Remove Versa valve, dissemble, found accumulator rubber
 4 bad. Swapped accumulator with one from another valve. Clean the
 5 inside of valve and accumulator, oil with air tool and reassemble.
 6 Also adjust handle not to tighten. Test. All okay.
 7 Q Okay. On this one, it says that you removed and
 8 disassembled the Versa valve, correct?
 9 A Correct.
 10 Q And it says you swapped the accumulator with another
 11 valve?
 12 A The rubber inside the accumulator.
 13 Q Okay. And do you know which valve you switched it out
 14 with?
 15 A No.
 16 Q Do you keep records of which one you would have switched
 17 it out with?
 18 A No. It would have been a valve that would have been
 19 removed. It's probably a used valve that had been sitting around
 20 in the shop, might not have even been our valve.
 21 Q Would it have been a Versa valve?
 22 A Oh, absolutely, yeah.
 23 Q When you take valves, Versa valves, out of your -- out
 24 of a trailer, what do you do with them? Do you keep them, or do
 25 you throw them away?

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1 A Well, we haven't had too many that we've taken off. In
 2 fact, this is actually contrary to what I said yesterday where we
 3 don't repair them. Apparently, I forgot about this.
 4 This is actually -- this accumulator valve is actually
 5 attached to the side of the Versa valve. So I guess I didn't
 6 think about it as being actually taking a Versa valve apart.
 7 But I guess it would be considered a part of the Versa
 8 valve. It's not part of the main spool of the Versa valve, in
 9 other words.
 10 Q How many Versa valves -- you just testified that you
 11 haven't taken many off. How many would you say you've taken off
 12 of trailers at MDB?
 13 A Other than the two that we took off for --
 14 Q Yes, other than the two that you took off -- that the
 15 experts took off for testing of the valve.
 16 A Yes, other than those, I don't think we took off more
 17 than one or two.
 18 Q Would you know which trailer you would have taken those
 19 valves off of?
 20 A I would say the only one that I know for sure of, since
 21 my time there, was the one taken off of 6775 and replaced with a
 22 new valve in October -- October -- I think it was August of 2013,
 23 that first incident.
 24 In fact, that might be the valve that I took the
 25 accumulator rubber out of, because we saved that valve.

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1 Q Do you recall seeing any other Versa valve around other
 2 than the one that was taken off of 6775 from the -- around
 3 August 2013?
 4 A Do I remember seeing any other valves around in our
 5 shop?
 6 Q Yes, that could have possibly been one that you would
 7 have used.
 8 A I don't recall. I don't think so.
 9 Q Okay. All right. I'm going to go to the next one. I'm
 10 going to come back later and ask some more on that one, but I'll
 11 move to the next work order, which is MEMAINT 000321.
 12 Can you tell me the date completed on this one and what
 13 occurred.
 14 A December 1st, 2014; Equipment Number 6777 again.
 15 Troubleshoot gates not closing with switch. Found accumulator
 16 Versa valve not functioning. Replaced Versa valve.
 17 Okay. There's another one I must not have remembered.
 18 Q So would this be the same Versa valve that was in the
 19 previous work order we just spoke about, the MEMAINT 315?
 20 A No, this would be the new Versa valve.
 21 Q So was the Versa valve, then, replaced -- because --
 22 sorry to go back -- strike that.
 23 To go back to the previous one, MEMAINT 315, it does
 24 not appear that you actually replaced the Versa valve. It
 25 appears, from my understanding, that you did some maintenance on

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1 it; is that correct?
 2 A That is correct, changed the rubber in the accumulator
 3 portion of the valve.
 4 Q So then on the MEMAINT 321, before you replaced the
 5 Versa valve -- is that the same Versa valve --
 6 A Oh, yes, this -- I'm sorry. Yes. I would imagine that
 7 it probably still had a problem with it not -- not sealing
 8 correctly. So we just put a new Versa valve on it at that time.
 9 Q And it looks like this order was -- I know it says it
 10 was performed by Pat, but it was, I guess, maybe requested by you;
 11 is that correct?
 12 A Yes.
 13 Q Do you recall how you became aware of this issue?
 14 A I would have become aware of it from the driver or I
 15 might have been the driver. I would have to go back and look at
 16 the records to see who was driving the truck right before this
 17 date.
 18 That, either way, whether it was myself or another
 19 driver, a driver would have said the gates are opening with the
 20 switch, but they are not closing with the switch, which,
 21 generally, means the accumulator is not holding air.
 22 So seeing as how we already tried to fix it once, we
 23 just -- I told Pat just replace it, put a new valve on it.
 24 MS. SHREVE: Okay. All right. And I'm probably going
 25 to come back to these when I have additional questions, but for

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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 MDEMSOP 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, MDEMSOP 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 --

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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 MDEMSOP 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?

Page 16

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

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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

Page 18

1 truck that you were driving on the day of the subject incident,
 2 did anyone from MDE, 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 MDE
 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 hold 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 MDE?
 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

Page 19

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.

Page 20

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?

Page 21

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

Page 22

1 conversation.

2 Q So Pat Bigby is one of the people --

3 A Uh-huh.

4 Q -- that said that to you?

5 MR. BROWN: Say "yes" or "no," please.

6 BY MS. SHREVE:

7 Q Yeah, can you --

8 A Oh.

9 MR. BROWN: Say "yes" or "no."

10 THE WITNESS: Oh. Yes.

11 BY MS. SHREVE:

12 Q And do you know anybody -- can you recall any other

13 names?

14 A No.

15 Q So Pat Bigby is the only one you recall saying that?

16 A Yes, that I recall.

17 Q Do you know if Pat Bigby called Versa?

18 A No, I don't believe so.

19 Q Did he give you any explanation as to why he believed

20 that, I guess, Versa wouldn't give you any information?

21 A I believe the point he was trying to get across is they

22 are not going to admit to anything.

23 Q Did he indicate why he felt that way?

24 A No.

25 Common sense, I would imagine.

Page 23

1 Q But to your knowledge, he didn't call Versa himself?

2 A I don't think he did, no.

3 Q Are you aware of anybody that did call Versa besides

4 yourself?

5 A I'm speculating, maybe Lakeside or Capurro called them.

6 I'm not sure.

7 I have no idea if they did.

8 Q So no one specifically told you that they reached out to

9 Versa about --

10 A That's correct.

11 Q Did you send Versa Valve a letter or any other

12 communication other than that one phone call?

13 A No.

14 Q Okay. And you don't recall the day, correct, that you

15 called Versa?

16 A No.

17 Q And you don't recall who you spoke with from Versa?

18 A No.

19 Q I'm sorry, what exactly -- what specifically do you

20 remember that Versa said to you when you called them?

21 A I don't remember exactly. All I know is, it was

22 somewhat of an informal call. I thought I would give it a shot,

23 call and see if I could talk to somebody, if anybody knows

24 anything about this.

25 And I -- I pretty much got the impression that they --

Page 24

1 they just as soon don't want to say anything. I mean, I don't

2 think they were hiding anything, but they just --

3 Q What gave you the impression that they -- or actually,

4 strike that.

5 What do you mean by they didn't want to say anything?

6 A I just got the impression after talking to them -- I

7 mean, I didn't push it that hard. I just tried to talk to

8 somebody about seeing if I could get some information from

9 somebody about if they have anybody looking into this or if they

10 had any problems in the country where they can give me some

11 insight on what to do.

12 And they pretty much didn't offer up any help. They

13 didn't seem that they were -- maybe the guy I talked to just

14 didn't really know that they were having problems or if there was

15 a problem.

16 But I left it at that. I didn't really push it that

17 hard, because at that particular time, I still don't -- we still

18 didn't know what was causing this.

19 Q Do you know what phone number you called from Versa?

20 A Oh, I do not remember. I probably looked it up on

21 Google.

22 Q Do you know which department you would have called?

23 A No.

24 Q Did you specifically tell them about any of the

25 incidents that you -- that MOB had experienced?

Page 25

1 A No.

2 Q Did you ask them in regards to what type of valve should

3 be used on a trailer?

4 A No. This was a couple of years ago, so I'm having a

5 hard time exactly recalling.

6 But I do know I was going through a process of trying to

7 investigate this, and I do remember calling them. That's all --

8 basically, that's all I remember. And I remember the phone call

9 that just really didn't get me any information.

10 Q Okay. And you said you went through a process of

11 investigating this. What was the process you went through?

12 A Oh, I did some Internet searches to see if I could find

13 any other instances around the country of gates opening, and I

14 didn't really -- I didn't really find anything.

15 That didn't really lead to any -- any -- any insight

16 into what was going on.

17 Q Okay. Other than Internet searches, what else did you

18 do to investigate?

19 A I talked to some of the other people.

20 Q And do you recall --

21 A That was probably later in 2015 that I did that.

22 Q That you did the investigating into it?

23 A Yes.

24 Q Okay.

25 A I don't remember what day -- what time it was, actually.

Page 26

1 Q Okay. And when you said you called people, do you
 2 remember who you called?
 3 A No.
 4 Q Would they have been other trucking companies?
 5 A Yes, competitors.
 6 Q So other than the Internet searching and making phone
 7 calls to the competitors, did you do anything else in
 8 investigating?
 9 A No, I do not believe so.
 10 Pretty much after the 2014 incident, we pretty much gave
 11 up on figuring out why it opened. We put the gate locks in, and
 12 at that point, it becomes not an issue on why they opened, because
 13 they can't open now.
 14 So that would -- you know, so everything I did would
 15 have been prior to that, which would have been almost three years
 16 ago.
 17 So a lot of it is informal. Just when you talk to
 18 somebody, you know, initially, you say, hey, what are you guys
 19 doing, do you have any problems, you know. It's just informal.
 20 So I don't remember exactly what I would have talked
 21 about it to them about.
 22 Q Okay. So are you saying this investigation would have
 23 occurred before the 2014 incident. Is that what you were saying
 24 there?
 25 A No, it would have been after.

Page 27

1 Q Okay.
 2 A I don't know. I don't know exactly, you know, the
 3 timeline. It would have been before or after. It could have been
 4 either one. I just know it's been something that I've always been
 5 curious about.
 6 Q Okay. Did you do any investigation after the 2013
 7 incident?
 8 A Yes.
 9 Q Okay. What did you do after the 2013 incident?
 10 A Just talked to some of the people in the industry. I
 11 think that's probably when I called Versa.
 12 I don't know. I don't think anybody called Ranco. I
 13 don't really remember too much about it because I never really
 14 received any valuable information from anything I investigated.
 15 Q So you said you did not call Ranco. Is that --
 16 A I don't believe I did, no.
 17 Q Do you know if anybody else did?
 18 A I don't think so.
 19 Q Do you know for a fact that the unintentional openings
 20 on other trucks or other trailers occurred with a Versa valve?
 21 A Yes.
 22 Q And how do you know that?
 23 A Just common knowledge I suppose. All the trailers that
 24 are in this town, almost -- I would say 98 percent of them have
 25 Versa valves on them.

Page 28

1 Q So no one specifically told you with certainty that that
 2 trailer had -- that the trailers had Versa valves on them, the
 3 ones that had --
 4 A I don't recall that, but I knew they were all Ranco
 5 trailers and I'm pretty sure all Ranco trailers have Versa valves.
 6 Q How do you know they were Ranco trailers?
 7 A Just because that's the type of trailers that these
 8 companies operate.
 9 Q Is Ranco the only type of trailer that --
 10 A Manufacture --
 11 Q -- that has the belly dump?
 12 A No.
 13 Q What are the other manufacturers, other than Ranco?
 14 A I'm sorry?
 15 Q Other than Ranco, what are the other manufacturers that
 16 the trailers could have been?
 17 A I can't even think of any other ones that these other
 18 competitors operate. Pretty much everybody runs Ranco in this
 19 area.
 20 Q And what are other valves other than Versa valves that
 21 could have been on --
 22 A I know Wabco makes a valve, but I haven't seen any of
 23 those in use since -- for 20 years, too much, you know. Many
 24 newer trailers don't usually come with those. And it is possible,
 25 but not likely.

Page 29

1 Q Do you know what models of the Versa valves were on all
 2 of the trailers that did unintentional dumping?
 3 A I can't say for certain, but I would be almost sure they
 4 are the exact valve that we have on our trailers.
 5 Q And why would you be almost sure about that?
 6 A Because that's what all the trailers in this area come
 7 with.
 8 I've been doing this for 30 years, and pretty much
 9 everybody runs the same valve.
 10 There's only two different configurations I've seen in
 11 this area for Versa, and they are both identical. One just
 12 happens to be a -- mounts on a manifold, and one is a direct
 13 mount.
 14 But they are the same -- same design valve. Just the
 15 way they mount, it's only two different.
 16 Q So in your 30 years, have you seen any other valve on a
 17 trailer than -- other than the Versa valve?
 18 A Yes.
 19 Q Do you see a lot of them, a lot of -- in your past 30
 20 years of experience, seen a lot of other valves, other than Versa
 21 valves on trailers?
 22 A Not a lot in percentage to the Versa valves, no, not in
 23 the last, say, 15 years.
 24 Q So what would be your estimate of the percentage that
 25 have Versa valves?

Page 30

1 A Currently in operation?

2 Q That you've seen in your 30 years that operate it.

3 A Oh, maybe -- how many percentage -- what's the

4 percentage of Versa valves or the other valves?

5 Q The Versa valves.

6 A I would say in all the years I've been doing this,

7 probably 90 percent.

8 Q And you said in about 30 years you've been doing this,

9 or 20? Sorry.

10 A I've been doing this since '80 -- 1980 probably. So

11 that would be what, 35 years.

12 Q So in your 35 years, you've seen approximately

13 90 percent of the trailers have Versa valves on them?

14 A Yes.

15 Q And in your 35 years, you are aware, based on your

16 testimony yesterday, of, roughly, a dozen unintentional openings

17 that have occurred?

18 A That's at least.

19 Q Is that number more?

20 A It could be. I mean, we're talking about ones that I've

21 had firsthand knowledge of.

22 Q Yeah.

23 A Ones I've seen. And there are also ones that you know

24 that happened. You've seen evidence. You know that they

25 happened.

Page 31

1 So we're talking about a different -- ones I've

2 personally actually seen happen, just a few of them, but ones that

3 I've -- I have firsthand knowledge of, there's probably at least a

4 dozen.

5 Q When you say "a few," how many do you consider to be a

6 few, because I know some people --

7 A Three or four.

8 Q Okay. And you said you have firsthand knowledge from --

9 about a dozen; is that correct?

10 A Uh-huh.

11 Q In your 35 years?

12 A Yes.

13 Q Okay. And how did you get that firsthand knowledge of

14 those dozen?

15 A I've seen -- driven by where they have dumped the loads

16 on the highway. I've been following trucks that dump loads in

17 front of me on the highway.

18 I've been associated with three of them that -- with our

19 company. I've seen evidence of, you know, other companies that

20 have actually -- I mean, you could still go out on the highways

21 and see where the asphalt is still in the middle of the highway

22 five years later.

23 You can still see evidence of where it was dumped. And

24 you hear about it right away.

25 Q Okay. You said you've seen trailers dump on the highway

Page 32

1 before?

2 A Yes.

3 Q Okay. And on the ones you've seen, how did you know

4 those were Versa valves on the trailer? Did you see the Versa

5 valve?

6 A Actually, yes.

7 Q And you also said there's times you see evidence of a

8 dumping.

9 A Yes.

10 Q What type of evidence do you see?

11 A When you drive out the highway and you see big rocks on

12 the side of the road that you know somebody was hauling in to

13 Nevada Cement, for instance, that don't belong on the side of the

14 highways, because the accident -- it was accidentally dumped on

15 the side of the road and NDOT came along and pushed it off.

16 And there's still evidence of it sitting there. The

17 rock is still sitting there on the side of the road ten years

18 later, because they don't remove it, they just push it off the

19 side of the road into the borrow pit.

20 Q Is there any way that rock could come on the side of the

21 road other than an unintentional dumping?

22 A Not that particular rock.

23 Q Why is that?

24 A It's clinkers from the cement plant, coming from a

25 specific location. I mean, somebody would have had to dump it

Page 33

1 there. I can't imagine somebody intentionally dumping it there.

2 Q But that's possible?

3 A Very, very unlikely.

4 Q But possible?

5 A Yes.

6 And the cars that drove over the top of it and wiped out

7 their oil pans probably wouldn't be too happy that the guy did it

8 on purpose.

9 Q I would hope he wouldn't, but it's -- anything is

10 possible.

11 A Yeah.

12 Q And so, say, the dozen in your 35 years that you are

13 aware of, do you know who manufactured those trailers?

14 A I've seen Fruehauf trailers that have dumped. I've seen

15 Beall trailers that have dumped. I've seen Ace -- I believe

16 Ace -- maybe not Ace.

17 Q And in all of these that you have firsthand knowledge

18 of, do you know the manufacturer of the truck that was pulling the

19 trailer?

20 A The majority of them would have been Peterbilts.

21 Q And of these dozen in your 35 years, are you aware of

22 how many trailers were being pulled by the truck?

23 A I knew that one for sure was one trailer, a semi

24 trailer. And all the rest of them were at least two trailers.

25 Q Do you know approximately how many were two versus

Page 34

1 three?

2 A The only one I have firsthand knowledge of that are

3 three trailers are the ones that we dumped. Not that many people

4 run three trailers.

5 Q Do you ever run more than three trailers?

6 A No.

7 Q Okay. On the ones that had two trailers, do you know of

8 whether it was the first or second trailer that was -- caused the

9 dump?

10 A No, I don't recall that, other than the one that I know

11 that dumped in front of me on the highway was the rear trailer.

12 Q Okay. So that's the only one that you actually saw that

13 there was a Versa valve on?

14 A Yes.

15 Q Do you recall who manufactured that truck?

16 A Peterbilt.

17 Q Do you recall who manufactured that trailer?

18 A Ranco, Ranch Manufacturing. I'm not sure. They changed

19 names a few times, but Ranco trailer is what it is, yes.

20 Q Do you recall when that was?

21 A No, I do not.

22 Q Do you recall if it was before 2013?

23 A Yes, it was.

24 I believe it was.

25 Q So was it before you were employed with MDB?

Page 35

1 A I think it was, yes.

2 MS. SHREVE: Do you mind if we take a break for a second

3 and go off the record.

4 (A discussion was held off the record.)

5 MS. SHREVE: Let's go back on the record again.

6 BY MS SHREVE:

7 Q Mr. Palmer, you understand you are still under oath

8 after this break, correct?

9 A Yes.

10 Q I'm just going to do a couple more questions in regards

11 to the dumps that you have seen or are aware of.

12 Now, in your 35 -- roughly, 35 years of experience, how

13 many trucks would have been driving, that you would have seen --

14 like how many trucks a day drive in Nevada, carrying trailers

15 of -- belly dump trailers?

16 A On an average day?

17 Q Yes.

18 A Are you saying, like, in this area, how many a day?

19 Hundreds of them.

20 Q Hundreds of them?

21 A Yes.

22 Q And then are hundreds of them driven every day, or is it

23 five days a week, like Monday through Friday, or is it seven days

24 a week?

25 MR. BROWN: I'm going to just object as to foundation.

Page 36

1 I understand you are just trying to get a feel.

2 But you can answer if you can. So go ahead.

3 THE WITNESS: Are you specifically talking about trucks

4 configured with bottom dumps?

5 BY MS. SHREVE:

6 Q Yes.

7 A Yes, I would say there are hundreds of trucks in the

8 Western Nevada, Northern Nevada area that travel hauling materials

9 daily, five, six days a week.

10 Q Okay. So in your past 35 years, there's been -- trucks

11 are driving, approximately 100 a day, six days a week, for the

12 past 35 years then, roughly?

13 A That's a good -- yes.

14 Q So I can't do math that quick, but it's a lot of trucks?

15 A Yes.

16 Q And with all of those belly dump trucks, you are only

17 aware of 12 times that this occurred?

18 A I wouldn't necessarily say that. You mean my personal

19 knowledge of it?

20 Q Yes, that you are aware of an unintentional belly dump

21 opening.

22 A Personally, yes, I only know of 10, 15, 20, something

23 like that. But that's not -- yeah, that's all I personally would

24 know about.

25 Q Right. So your personal knowledge of the three that

Page 37

1 occurred at MDB, correct?

2 A Uh-huh.

3 MR. BROWN: Asked and answered.

4 BY MS. SHREVE:

5 Q The one that you actually observed have a belly dump on

6 the highway, correct? You observed one belly dump on the highway;

7 is that correct?

8 A I've seen, actually, two. I've seen one in California

9 dump as well. Maybe I'm getting off track here.

10 Q I'm just going over the ones that you say you have

11 knowledge -- you testified that you had knowledge of unintentional

12 belly dumps occurring, correct?

13 A Yes.

14 Q I'm trying to understand your knowledge of the belly

15 dumps that occurred.

16 A Yes.

17 Q Okay. You had said there was three that you are aware

18 of from MDB. And earlier, you testified you actually observed one

19 occur. Is it more than one that you actually observed?

20 A Yes.

21 Q Okay. How many have you actually observed in your 35

22 years?

23 A Are we talking about actually occurred while it's

24 happening?

25 Q Yes, that you actually observed the belly dump opening

Page 38

1 and the items in the truck come out.
 2 A Two.
 3 Q Where did these two incidents occur that you just spoke
 4 about that you actually observed the belly dump opening and the
 5 items that were in the trailer come out of the trailer?
 6 A One of them occurred on Interstate 80 going eastbound at
 7 the top of Patrick Hill, so just about a quarter of a mile west of
 8 the Patrick exit, Interstate 80.
 9 Q Do you recall approximately what year that happened?
 10 A No, I do not.
 11 Q Was it before 2013?
 12 A It would be a guess, but I would say more than likely.
 13 Q Were you working at MDB at the time of that?
 14 A I do not think so.
 15 Q And what was the make of this truck that was pulling the
 16 trailers?
 17 A Peterbilt.
 18 Q How many trailers was it pulling?
 19 A Two.
 20 Q What -- do you know the makes of the trailers?
 21 A Yes.
 22 Q How do you know the make of the trailers?
 23 A I could see them.
 24 Q What were the make of the trailers?
 25 A Ranco.

Page 39

1 Q And what were the valves on the trailers?
 2 A Versa.
 3 Q And how do you know they were Versa?
 4 A Two reasons. One, I actually saw the valve. And the
 5 other reason is that all the Ranco trailers owned by
 6 Lakeside Specialized Transportation have Versa valves on them, to
 7 my knowledge.
 8 Q Okay. And was it the first or second trailer that had
 9 the belly dump on this specific?
 10 A Second trailer.
 11 Q And then what was the second incident you actually
 12 observed occur where the belly dump opened up and the items in the
 13 trailer dumped on the ground?
 14 A Okay. That would have been probably December 2013. It
 15 would have -- on Highway 99 heading southbound near -- south of
 16 Woodland, California, near Woodland, California.
 17 Q Okay. And what was the make of this truck?
 18 A I do not recall that.
 19 Q What was the make of the trailers?
 20 A I do not recall that.
 21 Q How many trailers?
 22 A Two.
 23 Q Do you recall if it was the first or second trailer that
 24 dumped?
 25 A I believe it was the second trailer.

Page 40

1 Q Okay. Do you recall what valves were on that truck?
 2 A They appeared to be Versa valves.
 3 Q So you don't know for sure, you just -- or did you see
 4 it, that it was a Versa valve, in fact?
 5 A Well, I remember driving by and looking at the trailer
 6 and trying to discern whether it was a Versa valve, and it did
 7 appear to be a Versa valve, yes.
 8 Q Okay. Why were you trying to discern if it was a Versa
 9 valve?
 10 A Because we have -- this was after the first incident we
 11 have. So we're always -- everybody is always trying to figure out
 12 what's going on, what happened, why did this guy dump his load,
 13 what happened.
 14 Q Okay. So just to recap, we have -- to make sure we're
 15 not missing any, we have the three from MDB and the two you
 16 actually observed which we just spoke about on 80 eastbound and
 17 then the one in December 2013, correct?
 18 A Yes.
 19 Q Did you observe any other ones of the actual belly dump
 20 opening and --
 21 A No.
 22 Q So in your 35 years, hundreds of trucks being driven,
 23 you've only actually seen it occur twice, but you have knowledge
 24 of three times at MDB, so a total of five times of what you
 25 actually observed in your time at MDB; is that correct?

Page 41

1 MR. BROWN: Objection, asked and answered.
 2 BY MS. SHREVE:
 3 Q Is that correct?
 4 A It is correct.
 5 Q Okay.
 6 A But I think it's a little skewed because I'm not
 7 watching the other hundred trucks every day. I'm just -- I can
 8 only watch so many trucks a day, so I can't be everywhere, or I
 9 might have seen all the other ones open.
 10 Q Right. But that's what you've seen?
 11 A Yes.
 12 Q So when you -- how many times have you installed a
 13 Versa?
 14 A Personally?
 15 Q Yes.
 16 A Probably ten or more times.
 17 Q How many times has a Versa valve been installed at MDB?
 18 A Four to five times.
 19 Q And who was installed those valves?
 20 A I believe Pat Bigby installed them all. This is since
 21 my time there.
 22 Q And have you ever installed a Versa valve at MDB?
 23 A I do not believe I did.
 24 Q Would anybody else other than Pat Bigby install a
 25 valve -- or, Pat Bigby and yourself install a Versa valve on a

Page 42

1 trailer?

2 A I don't believe so, not after my time there.

3 Q What sort of information would an MDB employee need to

4 know when they are installing a new Versa valve on a trailer?

5 MR. BROWN: Well, object, vague, overbroad.

6 Answer if you can.

7 BY MS. SHREVE:

8 Q I can re-ask it if you need me to.

9 A I'm not sure what you are asking. You would need to

10 know that it needs to be replaced and replace it.

11 Are you talking about what does he -- how -- what does

12 he need to know how to do it?

13 Q Yes. So I'm talking specifically with just installing a

14 valve on to the trailer.

15 Is there any specific knowledge you would need to know

16 to install a valve, a Versa valve?

17 A If you are asking me is it difficult or is it highly

18 technical to install a valve? No, it's not. It's very easy.

19 Q So there's no training that you would need to have on

20 installing a valve, a Versa valve?

21 A You wouldn't want to let somebody install it that's not

22 a mechanic. So if you have your 20, 30 years experience as a

23 mechanic, yes, you could do it. It's very simple.

24 Q Okay. And why is it that you wouldn't want someone

25 other than a mechanic installing the Versa valve?

Page 43

1 A No difference than you wouldn't want anybody working on

2 your car that's not a mechanic. I mean, if they are not

3 mechanically inclined, you don't want them.

4 Q So a mechanic would need to know specific information of

5 how to install a Versa valve?

6 A They would have to have basic mechanical knowledge.

7 Q Okay. So then would it be fair to say that you wouldn't

8 need anything other than basic mechanical knowledge to install a

9 Versa valve?

10 A It would be fair to say that, yes.

11 Q Do you know who designed this system that -- in which

12 the Versa valve is a component of?

13 MR. BROWN: Objection, vague, foundation.

14 THE WITNESS: Can you rephrase that --

15 BY MS. SHREVE:

16 Q Sure.

17 A -- maybe a little bit differently.

18 Q What is the Versa valve connected to?

19 A The Versa valves that we have installed on our trailers

20 operate the gates that open and close to dump your load, hooked to

21 the air cylinders and the air supply tank.

22 Q Okay. So do they work as a system, the Versa valve with

23 the hose and the tank, then, to open the gate?

24 A I don't know if it's a specifically designed system, but

25 I guess they work in concert with each other, yes.

Page 44

1 Q So who installed the Versa valve on Trailer 6775 in

2 August 2013?

3 A Pat Bigby.

4 Q Had he ever installed a Versa valve prior to the

5 installation of that valve on August of 2013?

6 A I'm quite certain that he has, but I can't testify that

7 for sure he has; that he's worked with other companies that have

8 Versa valves, so I'm sure, along the course of his experience, he

9 has done that.

10 Q Do you know if he was provided any training on

11 installing the Versa valve?

12 A I do not think so, no.

13 Q Have you ever provided any training on installing a

14 Versa valve?

15 A No.

16 Q So after the incident that occurred on July -- in

17 July 2013, who made the decision to purchase a new valve to put in

18 Trailer 6775?

19 A We're talking about the 2013 incidence?

20 Q Correct.

21 A That was before I came to work there, where I believe

22 Tracy Shane was the manager at the time and Pat Bigby was the

23 mechanic. Pat Bigby would have said we're going to put a new

24 valve on it, and Tracy said okay and ordered the valve.

25 Q And who determined what valve to -- in 2013, after the

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1 2013 incident, who determined what valve to replace the Versa

2 valve with on the 6775 trailer?

3 A Do you mean which model valve?

4 Q Which model, which brand. Who determined which -- what

5 valve they were going to use to replace the Versa valve that was

6 on Trailer 6775?

7 A It would have been Pat Bigby.

8 Q And why was it determined to -- strike that.

9 What valve was purchased to install on Trailer 6775

10 after the 2013 -- July 2013 incident?

11 A It would have been a Versa valve with the same model

12 number and part number that was currently installed on the

13 trailer.

14 Q And why was it decided to use that, to purchase that

15 Versa valve to install it on the trailer?

16 A Why was it -- can you repeat the question, please.

17 Q Sure.

18 Why was it determined to purchase the Versa valve that

19 was the same as the one that was on Trailer 6775?

20 A You mean why did we replace it with the exact same model

21 number that was on the trailer?

22 Q Yes.

23 A A couple of reasons.

24 One is, as I said before, almost every trailer in this

25 area has a Versa valve to control the gates. So therefore, the

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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

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1 supplied with the Versa valve, but I could not tell you what those
 2 are right now.

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.**

7 A Yes, he would have known at that time.

8 **Q How about the specifications for the pressure for the**
 9 **Versa valve for installing it on 6775?**

10 MR. BROWN: I'm going to object to the extent it calls
 11 for speculation.

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.

15 BY MS. SHREVE:

16 **Q Are you the person most knowledgeable about the**
 17 **installation of Versa valve 6775 on the subject trailer?**

18 A In 2013?

19 **Q Yes.**

20 A I would say I have equal knowledge to what Pat has, but
 21 I didn't actually install it.

22 **Q Okay.**

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

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1 general, business acumen. So -- MDB, in regard to the maintenance
 2 issue.

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.

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.

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.)

13 BY MS. SHREVE:

14 **Q How about specifically, Versa's specifications regarding**
 15 **lubrication of the valve when installing it on Trailer 6775?**

16 **This goes to Versa's -- sorry. This goes to MDB's**
 17 **knowledge of --**

18 MR. BARKLEY: Which category, Counsel?

19 MS. SHREVE: Number 11, installation of the Versa valve.

20 MR. BROWN: No, that's the decision to purchase subject
 21 valve.

22 MS. SHREVE: Oh, sorry. Do I have the wrong number?
 23 Maybe it's 12. Sorry, I wasn't finished with my question.

24 MR. BROWN: I know.

25 MS. SHREVE: Sorry, it's Number 12, not 11.

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1 MR. BARKLEY: Okay. I will note for the record that 12
 2 does not talk about specifications of the manufacturer.

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?

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.
 10 This one is now lubrication.

11 MR. BROWN: Okay.

12 MS. SHREVE: So it's in regards to the installation, if
 13 they --

14 MR. BROWN: Okay. I understand.

15 MS. SHREVE: Okay?

16 BY MR. BROWN:

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?**

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.

25 When I say the person -- I'm specifically talking about

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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.

4 So if there's anything in there about the pressure or
 5 the oil or whatever, he would have known that.

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?**

9 A The same, yes.

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.

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.

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.)

22 BY MR. BROWN:

23 **Q So this is Bates number MDB 016. Can you tell me what**
 24 **this document is.**

25 A It is an invoice from ENGS Motor Truck Company, dated

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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

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1 much.

2 Q So then if this product did come with a warranty, you

3 would not have kept it?

4 A No, I seriously doubt it.

5 Q Does MDB read the warranties that come with their

6 products?

7 A Once again, I don't think so.

8 Q Does MDB read any of the warnings that would come with

9 their product?

10 A Yes.

11 MS. SHREVE: With the product.

12 I am going to do the -- our next exhibit, which would be

13 Number 12.

14 (Exhibit 12 marked for identification.)

15 BY MS SHREVE:

16 Q This is MDB 722.

17 This was a document that was produced by MDB regarding

18 warranty of the Versa valve.

19 Does this document look familiar to you?

20 A Yes, it does.

21 Q Did you -- did MDB read this document prior to

22 installing the Versa valve on the subject Trailer 6775 in

23 August 2013?

24 MR. BROWN: Objection, lack of foundation.

25 THE WITNESS: I seriously doubt that we did, because

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1 this is dated same date. This particular one is dated July

2 of 14th, it appears. So it would have been -- it would have been

3 this -- whatever Versa was putting in their valve at the time.

4 I don't know if it was this exact one at that particular

5 time. You would have to show me the one that came with that, for

6 me -- but, yes, this looks familiar to every one I've ever read.

7 I don't know about the exact language. Maybe in July

8 '14, they changed the language.

9 BY MR. BROWN:

10 Q Okay. So this did not come with the Versa valve that

11 was purchased on August 1st, 2013?

12 A I do not think so.

13 Q Okay.

14 A I think it came with one of the other valves that we

15 purchased.

16 Q Okay. And you kept this in regards to a different valve

17 that you purchased then; is that correct?

18 A Yes. I mean, Versa could provide -- maybe Versa could

19 provide me with the one that came with the one in 2013, because

20 I -- it could be the same as this. I don't know.

21 Q Yeah, I --

22 A Yeah, I'm not asking you to do that. I'm just saying --

23 Q Yeah, I don't know. That's why I was asking you whether

24 the Versa valve actually came packaged. We don't know that.

25 A I don't know that. I can't imagine it would not come

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1 packaged.

2 Q Is there a reason why you would have kept this one, but

3 not the one from the purchase of the August -- was it 1st, 2013?

4 A No, other than the box, I still have the box for that.

5 Q Okay. Is there a reason you kept the box for this one?

6 A It probably had the old valve stuck in it. That's the

7 only thing I can think of.

8 Q And was that valve purchased through ENG -- or

9 ENGS Motor Truck Company?

10 A I don't believe so.

11 You are talking about the --

12 Q The valve that came with this.

13 A I do not think so, no.

14 Q Do you know who you would have purchased it from, if it

15 wasn't ENGS Motor Truck Company?

16 A I believe it was purchased through Peterbilt Truck Parts

17 and Equipment Company.

18 Q Is there a reason you would have purchased it through

19 them, instead of ENGS Motor Truck Company?

20 A The reason would be, if you call up ENGS and they say

21 no, we don't have one and you call up Peterbilt and they say yeah,

22 we have one, and we need one, because we need to replace it today.

23 So that would be the reason.

24 Q When you purchased your parts, do you purchase them new?

25 A All of our parts?

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1 Q If you were -- when you purchase Versa valves, do you

2 purchase Versa valves new?

3 A Oh, yes. Yes.

4 Q Do you know who originally owned Trailer 6775?

5 A No.

6 If I understand the question, you mean who originally

7 purchased it?

8 Q Yes, who originally -- I'm sorry.

9 A Maybe I do. Maybe Western Nevada Transport is who we

10 purchased it from. I do believe they bought them new, but I can't

11 say for sure.

12 Q When you say you purchased them from --

13 A Well --

14 Q -- lease -- do you mean who you lease it from? Is

15 that --

16 A Yeah, let me restate that, when SKS purchased them from

17 WNT and leased them to MDB Trucking.

18 I do believe that Western Nevada Transport is the

19 original owner of those trailers, but I could be wrong. I'm just

20 making that assumption.

21 Q MDB leased Trailer 6775 from Western Nevada Transport,

22 correct?

23 A For a period of time, yes.

24 Q Did MDB lease 6775 brand-new?

25 A No.

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1 Q Does MDB have the history of Trailer 6775 prior to
 2 leasing the trailer?
 3 A Are you talking maintenance records?
 4 Q Maintenance records, yes.
 5 A No. I do not have them.
 6 Q Did MDB inquire as to any of the maintenance that
 7 occurred on Trailer 6775 prior to leasing the trailer?
 8 A Did we inquire about that when we leased them or at any
 9 time?
 10 Q When you first leased the --
 11 A I do not know. I wasn't there at that particular time.
 12 But I would imagine -- we purchased them from
 13 Western Nevada Transport, and they do maintenance and they -- the
 14 same way we do it. They are a reputable company. I'm sure they
 15 were maintaining them correctly.
 16 But when we first leased them, we would have went
 17 completely through them, make sure they are fit for service.
 18 Q If Western Nevada would have provided MDB with
 19 maintenance records of the trailers prior to leasing it, would MDB
 20 keep those records?
 21 A Well, yes.
 22 Q Does MDB have any of those records?
 23 A No.
 24 MS. SHREVE: I'm going to go to the next exhibit.
 25 Let's do Exhibit 13.

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1 (Exhibit 13 marked for identification.)
 2 BY MS SHREVE:
 3 Q This is MDB 723. Have you seen this document before?
 4 A Yes, I have.
 5 Q What is this document?
 6 A It's an invoice from Western Nevada Transport to
 7 SKS Corporation for the purchase of two sets of Ranco trailers.
 8 And these would be our Trailers 6773, 6774, 6775, 6776, 6777, and
 9 6778.
 10 Q Do you lease the truck that pulls the trailer separate
 11 from the trailers?
 12 Like, does -- sorry, strike that. That's kind of a bad
 13 question.
 14 Who owns Truck --
 15 A 5694?
 16 Q Yes. I'm confusing all the numbers.
 17 A SKS Corporation.
 18 Q Okay.
 19 MR. BUNDICK: Can you say that name again. I'm sorry, I
 20 didn't hear it.
 21 MS. SHREVE: SKS Corporation.
 22 BY MR. BROWN:
 23 Q Did SKS Corporation purchase the truck from
 24 Western Nevada Transport?
 25 A No.

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1 Q Okay. So the truck was separate from the trailers?
 2 A The transaction to purchase it --
 3 Q Yes.
 4 A -- from SKS? Yes.
 5 MS. SHREVE: All right. I'm going to go to -- actually.
 6 Can we take another break?
 7 (A discussion was held off the record.)
 8 MS. SHREVE: Never mind. We're not going for a break.
 9 Are you guys still there on the phone?
 10 MR. BUNDICK: Yeah.
 11 MS. QUIGLEY: Yeah.
 12 MS. SHREVE: Are we still on the record?
 13 So I'm going to do this next exhibit, which will be
 14 Exhibit 14.
 15 (Exhibit 14 marked for identification.)
 16 BY MS. SHREVE:
 17 Q This is MDB 726 through 731. Will you take a moment and
 18 look at this.
 19 Does this look familiar to you?
 20 A Yes.
 21 Q And what is this document?
 22 A This is an equipment lease agreement between
 23 SKS Corporation and MDB Trucking, LLC.
 24 Q And how long is this lease for?
 25 A Looks like it's a 12-month lease.

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1 Q Did MDB renew this lease after the 12 months?
 2 A I would imagine so, yes.
 3 Q Does MDB keep records of all of their lease agreements?
 4 A I would say yes.
 5 Q Does MDB have a lease agreement for Trailer 6775?
 6 A We do have -- there is an equipment lease. Are you
 7 asking for the particular document?
 8 Q Would MDB have retained the lease agreement document?
 9 A Its actual document?
 10 Q For Trailer 6775.
 11 A We should have, yes. If I'm not mistaken, we could not
 12 produce that; is that correct?
 13 Q Correct.
 14 A Okay. So it got lost or -- apparently. I don't know.
 15 Q So you don't have that lease agreement -- or, MDB does
 16 not have --
 17 A I do not have it, no.
 18 Q Who -- strike that.
 19 Does SKS Corporation perform any maintenance on the
 20 trailers MDB leases?
 21 A No.
 22 Q Does SKS Corporation ask for any documents from MDB
 23 regarding any maintenance and repairs done on the trailers that
 24 they lease?
 25 A Not specifically. But MDB Trucking and SKS Corporation

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1 are owned by -- have the same common ownership, so the records are
 2 easily available to them.

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?

6 A Exactly, yes.

7 Q Did SKS Corp. provide MDB with any suppliers' or
 8 manufacturers' warranties that came with the trailer or the
 9 trailers leased?

10 A No.

11 Q Does MDB typically lease their trailers?

12 A Yes.

13 Q Does MDB lease all of their trailers from
 14 SKS Corporation?

15 A To my knowledge, yes, they do.

16 Q Does Equipment Number 5695 -- is it always connected
 17 with Trailer 6773, 6774 and 6775?

18 A I think you said 5695. I think you mean --

19 Q 5694.

20 A Yeah. Is it always connected with those trailers?

21 Q Yes.

22 A No.

23 Q When is it not connected to those trailers?

24 A When it's pulling another trailer, getting worked on.

25 Q How often does it occur that it pulls -- that Truck 5694

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1 pulls trailers other than 6773, 6774 and 6775?

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?

5 Q So we'll go per month.

6 So in a month, is it typical for Truck 5694 to run with
 7 or to pull 6773, 6774 and 6775?

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.

12 And even during the summer, summertime, it can be
 13 unhooked, hooked to an end dump.

14 This is normal course of business for us, trucks
 15 switching trailers.

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.

19 Q So since -- strike that.

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?

24 A I would say we disconnect it 40 percent of the time.

25 Q And then the same would go for the July 7th, 2014,

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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?

3 A Probably more.

4 Q And why would it be more?

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.

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.

13 Q Are Trailer 6773, 6774 and 6775 always connected?

14 A Not always.

15 Q When are they not connected?

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.

19 Q Would you ever run the -- just the back two trailers?

20 A No, not possible, not practically possible, no.

21 Q Okay. I'm going to go back to Exhibit 2.

22 MR. BROWN: I'm sorry, Counsel, did you say Exhibit 2?

23 MS. SHREVE: Yes.

24 BY MS. SHREVE:

25 Q Would Trailer 6773, 6774 or 6775 run with a truck other

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1 than 6 -- 5694?

2 A Yes.

3 Q If -- strike that.

4 Okay. We'll go to Exhibit 2, MDB 483.

5 Yeah, you can pull that off.

6 Would this be a time that all three trailers, 6773, 6774
 7 and 6775, were not run together?

8 Or, can you read the truck number and then the trailer
 9 numbers for -- on this daily driver sheet.

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.

12 But I would have no idea why that would be.

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.

15 Q So it's not typical to run 6774 and 6775 without 6773?

16 A Correct, and also not behind a transfer truck. But I
 17 guess you could do it.

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.

22 Q Okay.

23 A But it is technically possible to run it behind.

24 Technically possible, it's not practical.

25 Q Okay. From July 2013 to the subject incident on

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1 July 7th, 2014 -- again, you can give me percentages --
 2 approximately how many times a month are Trailers 6773, 6774 and
 3 6775 disconnected, or were they disconnected?
 4 A From 5694 or any --
 5 Q From each other.
 6 A Oh, two percent possibly.
 7 Q So not very often?
 8 A No. Very rare.
 9 Q How about from the subject incident of July 7th, 2014,
 10 until the present, how often has Trailer 6773, 6774 and 6775 been
 11 disconnected?
 12 A Probably the same, five percent.
 13 I mean, I could be wrong. There are times when we run
 14 the front trailer by itself, and in 2014, we might have ran it
 15 five percent of the time.
 16 Q Okay.
 17 A But it's not a common configuration.
 18 Q If you perform maintenance on any of those trailers, do
 19 you disconnect them?
 20 A No, not generally, not normal maintenance, not
 21 preventative maintenance.
 22 The only time we unhook them, if we want to put it in
 23 the shop and close the doors, because it won't fit in the shop
 24 without disconnecting it.
 25 Q So with the maintenance records, if there was

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1 maintenance done on any of these trailers and it indicates it was
 2 done in the shop, then the trailer would have been -- the trailers
 3 would have been disconnected?
 4 A Depends on what time of the year it is. In the
 5 summertime, you just pull it in the shop, work on it, pull it out.
 6 Wintertime, snowing outside, they probably disconnect,
 7 more than -- if you have more than a little bit of work to do on
 8 the trailer, they disconnect it, bring it in the shop and close
 9 the doors.
 10 Q Is there any way to determine whether or not the trailer
 11 was disconnected when the maintenance was performed?
 12 A No.
 13 Q Okay.
 14 MS. WOELFEEL: Take a break? It's 12:02.
 15 MS. SHREVE: We'll go off the record.
 16 (A recess was taken.)
 17 MS. SHREVE: Can we go back on the record.
 18 BY MS. SHREVE:
 19 Q Mr. Palmer, you understand you are still under oath
 20 today, correct?
 21 A Yes.
 22 Q So in regards to the July 2013 incident that occurred --
 23 A Uh-huh.
 24 Q -- did anyone from MDB consult Versa or reach out to
 25 Versa to ask what Versa valve they should purchase to replace the

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1 valve that was on the Truck --
 2 MR. BROWN: Objection, asked and answered.
 3 BY MS. SHREVE:
 4 Q -- 6775?
 5 A No, we did not. Didn't think there was a need to,
 6 especially considering the brand-new trailers were coming with the
 7 same valve. So they are still shipping the same valves on the
 8 same trailers, so I would imagine that's still the standard
 9 de facto valve.
 10 Q I'm going to go back to Exhibit Number 9. So it's the
 11 work orders on Equipment 6777.
 12 A Okay. Thank you.
 13 Q Earlier, you testified that you were aware of a
 14 different Versa valve model that Versa used. I believe you said
 15 in April 2014, you were aware of a different Versa valve.
 16 A That was the first time I seen one installed on a bottom
 17 dump trailer, yes, something different.
 18 Q So if you look at MDEMINT 000321.
 19 A Okay.
 20 Q And this is dated December 1st, 2014. And this
 21 indicates that the -- you replaced the Versa valve, correct?
 22 A Correct.
 23 Q Did you -- did MDB ever contact Versa to inquire about
 24 the difference in the Versa valve model that you were aware of and
 25 the one that was purchased to replace this Versa valve?

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1 A Do you mean in regards to before purchasing this valve
 2 to replace the valve on this trailer?
 3 Q Yes, to replace.
 4 A No, because the valve -- we had already installed a
 5 lockout device on the valve, our own version of a lockout device.
 6 So there's no reason to purchase a valve that was
 7 different. We already had the lockout device in place at this
 8 particular instance. This was after we put the lockout devices on
 9 there.
 10 Q And so then that's the reason why you chose that valve
 11 as well to purchase to replace the Versa valve that was already on
 12 that trailer?
 13 A Is that why, because we already had a lockout device in
 14 place?
 15 Q Yes. Was that your -- strike that. Let me rephrase.
 16 Why did you decide to purchase the same Versa valve to
 17 replace the one on Equipment Number 6777 on -- for this
 18 December 1st, 2014, replacement?
 19 A Because that's the valve -- I think I stated before that
 20 that's the valve that people stock, so that's the standard valve
 21 that people use.
 22 And we had already installed a lockout device for that
 23 style of valve, so we just went back to that valve.
 24 Q Okay. Thank you.
 25 Earlier, you testified that there are times that you

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1 have disconnected Trailer 6773, 6774 and 6775 from each other
 2 after the July 14th -- or, July 7th, 2014, incident; is that
 3 correct?
 4 A Yes.
 5 Q And when you reconnect those trailers, do you do any
 6 testing on the Versa valves to make sure that they open or close?
 7 A We would perform the same routine as we would for a
 8 pre-trip inspection. So you would hook it up, make sure
 9 everything is properly connected, all the lights work, the
 10 trailers build air.
 11 And you -- I think I said before, it's up to the driver
 12 to decide whether he wants to test the functionality with the
 13 switches in the cab.
 14 But I, myself, I just make sure the gates open manually
 15 and there's air pressure to the gates and make sure they're
 16 closed. And that's how you test it.
 17 Q Then you would test on the trailer after it has been
 18 connected?
 19 A Yes. You don't want to put it back on the road if it's
 20 not going to work.
 21 Q Does MDB have any written policies regarding the
 22 operation of the trucks?
 23 MR. BROWN: I'll object, vague as to "operation."
 24 Go ahead.
 25 THE WITNESS: Does MDB -- yeah, MDB specific?

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1 BY MS. SHREVE:
 2 Q Yes. Does MDB have any policy and procedures on how to
 3 work a truck, like, drive it, the switches, all of that?
 4 MR. BROWN: I'm going to object, vague, overbroad.
 5 Do you understand the question?
 6 THE WITNESS: I do.
 7 I was able to find a policy and procedures manual. Did
 8 you get a copy of that, or no? I don't know if I --
 9 MS. SHREVE: I did not.
 10 THE WITNESS: Did I --
 11 MR. BROWN: It wasn't one of the ones that Thierry gave
 12 you or that I gave you?
 13 MS. SHREVE: Huh-uh. This is --
 14 THE WITNESS: But that's what we use currently. We
 15 just -- you are talking about during this particular time or now?
 16 BY MS. SHREVE:
 17 Q I'm talking about at that particular time.
 18 A I do not believe so, no.
 19 MR. BROWN: I'm going to just say, can we say 2013,
 20 2014. There's, I think, three different times.
 21 BY MS. SHREVE:
 22 Q July 2014.
 23 A I do not believe so, no.
 24 Q How about July 2013?
 25 A No, I do not believe so.

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1 Q When do you believe the policy or a handbook of some
 2 sort that -- regarding the operation of the trucks came about from
 3 MDB?
 4 A I became aware of a policy and procedures manual that
 5 was implemented in 2016. I don't know that -- I can't tell you
 6 specifically if it tells you -- how much detail it goes into the
 7 actual operation of the truck, how to operate the switches or that
 8 kind of stuff.
 9 I know it specifically tells you to -- that the trailers
 10 are equipped with lockout devices, and they must be -- trailers
 11 are -- the Versa valves are -- have a lockout device and they must
 12 be attached at all times.
 13 Q Okay. And then I was going to ask for trailers, but you
 14 kind of touched on the trailers as well.
 15 A Right.
 16 Q So would the trailers be the same as the truck? Would
 17 it be one policy and procedure?
 18 A Yes, just one, yes.
 19 Q If there wasn't any sort of policy and procedure
 20 regarding operation of the truck, how would an employee know how
 21 to operate a truck? And I'm just talking specifically the truck.
 22 A Are you talking about operating the truck in the
 23 capacity of dumping the trailers, or are you talking about just
 24 generally operating a truck?
 25 Q Generally operating a truck in 2013, July of 2013.

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1 A Well, all of our drivers are properly licensed with
 2 CDLs, and they are certified. I mean, they have CDLs and they
 3 have to have proper endorsements to drive doubles, triples.
 4 And we don't hire drivers that don't have experience.
 5 So they have to provide you with at least a couple years, three
 6 years of experience doing what we do.
 7 Q Okay.
 8 A And then you do a -- you know, you do go on a road trip
 9 with them, make sure that they know how to operate the vehicle
 10 properly.
 11 Q Okay. How does MDB explain to its employees how to
 12 operate the belly dump of the trailers?
 13 MR. BROWN: I'm going to object again. Overbroad.
 14 BY MS. SHREVE:
 15 Q How do you operate the belly dump of the trailer?
 16 A Depends on what kind of job you are on.
 17 If you are on a job that requires dumping with the
 18 switches, then you would just pull on to the job. When the dump
 19 man tells you where to dump, you lift up the cover and dump the
 20 switch.
 21 How do we actually tell the driver that? He's trained
 22 on that verbally. And most all the drivers have years of
 23 experience doing this.
 24 Q So if you act -- if you are going to activate the belly
 25 dump with a switch, you just lift up the switch?

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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

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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

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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,

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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

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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.

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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

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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,

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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

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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.

3 **Q What would be the way to stop it?**

4 A If you are concerned with the gates opening up by the
 5 valve, then we put a lockout device on the valve.

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?**

9 A Oh, yes. That's what they are designed for, yes.

10 **Q Are you able to still drive the truck with the chains**
 11 **shortened?**

12 A Yes.

13 **Q Are you aware -- or, is MDB aware of any regulations**
 14 **requiring a pin, a lockout pin on a Versa valve?**

15 A No, not in Nevada. I mean, there might be some state
 16 regulations, but none that I know of.

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?**

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.

24 **Q How about for employees that perform maintenance on the**
 25 **trucks and trailers?**

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1 A Is there any certification that's required?

2 **Q Yes.**

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.

7 **Q But for regular routine maintenance and repairs, there's**
 8 **no -- MDB doesn't require any specific certifications or license?**

9 A No.

10 MS. SHREVE: Okay. I'm going to go to the next exhibit,
 11 which is 15.
 12 (Exhibit 15 marked for identification.)

13 BY MS. SHREVE:

14 **Q So this is MDB 007 through MDB 10. Have you seen this**
 15 **before?**

16 A Have I seen this specific document before?

17 **Q Yes.**

18 A I don't think -- I'm not sure.

19 **Q Are you familiar with what this document is?**

20 A Yes.

21 **Q And what is this?**

22 A It's part of the SMS, Safety Measurement System, part of
 23 Federal Highway, FMCSA.

24 **Q And do you keep records of these documents?**

25 A I suppose, on occasion, I do.

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1 **Q If you flip to MDB 008.**

2 A Okay.

3 **Q What do all of these inspection data numbers, state**
 4 **plates -- what are all of these?**

5 A These are inspections of vehicles for whatever, for --
 6 performed by law enforcement, it looks like.

7 **Q And do you get copies of these inspections?**

8 A Oh, yes, I do. Yes.

9 **Q And do you have copies of these inspections?**

10 A At this particular point in time?

11 **Q Yes. Does MDB.**

12 A Probably. They are also available online, are they not?
 13 I don't --

14 **Q No.**

15 A Oh.

16 **Q I would request that you search for these, and if you**
 17 **have them, please provide them to your attorney.**

18 MR. BROWN: The ones that match up with these, on this
 19 document?

20 MS. SHREVE: Well, we had requested everything through
 21 the present from -- I believe it was June 30th through the
 22 present. And --

23 MR. BROWN: What did you call these?

24 MS. SHREVE: The SMS system.

25 And this document -- I was told this was everything

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1 through the present, but this document, obviously, is
 2 April 2014 -- or April 4th. You understand.

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.

5 MR. BROWN: We'll see what we can find.

6 MS. SHREVE: Perfect. Thank you.

7 THE WITNESS: I don't think I ever was asked for those.
 8 BY MS. SHREVE:

9 **Q If you can just look to see and provide to your**
 10 **attorney, I would appreciate that.**

11 **So let's go down to -- it looks like on 7/7/2014 --**

12 A Okay.

13 **Q That's the day of the specific incident.**

14 **It looks like there was an inspection done on the**
 15 **subject truck; is that correct?**

16 MR. BROWN: It's on the next page.

17 THE WITNESS: Oh, you are on Number 9? I'm sorry.

18 MS. SHREVE: No, on Number 8.

19 MS. WOELFEL: It's five lines down. If you look at the
 20 inspection date, start at the top and go five.

21 THE WITNESS: I see the 7/7, yes. What's it
 22 specifically that you are asking for?

23 BY MS. SHREVE:

24 **Q Is that -- for the subject truck and trailer on the day**
 25 **of the incident, the subject incident?**

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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.

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1 Q And there also seems to be a lot missing here and there.

2 Do you know if you provided all the driver's logs that MDB has, to

3 your attorney?

4 A So are these all of the logs that we produced, or these

5 are just a sampling of the logs that we produced?

6 Q I have the rest of them right here. I want through all

7 of them, and these are the ones that I pulled out that were around

8 either right before or right after the time of the incident --

9 A Okay.

10 Q -- for '13 and '14. I can give you all of them to look

11 at if you would like to review them.

12 A Oh, no, I just -- because there is a lot missing here.

13 So that's why I'm wondering if these are just the ones you have

14 questions on.

15 Q Yes, these are just a sample of them that I took out

16 that were around the subject incident. I have the rest of them

17 that was produced here.

18 A I thought -- didn't we look at these yesterday, though,

19 the ones from that day?

20 MR. BROWN: I thought so.

21 BY MS. SHREVE:

22 Q We looked at them from 2014. I'm talking about the 2013

23 incident.

24 A Oh, okay.

25 Q And there was nothing after -- the 2014 incident is the

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1 last one that was produced. There's nothing past 2014 that was

2 produced.

3 A I believe that's all that was requested, or at least of

4 me. Do you want --

5 MR. BROWN: We'll find them. If they didn't get

6 produced, we'll get them.

7 THE WITNESS: You wanted all of them through a certain

8 time?

9 MS. SHREVE: Yes. Yeah, through the present. That was

10 the request. Well, yes.

11 MR. BROWN: I don't have their request in front of me,

12 but we'll find it.

13 MS. SHREVE: We'll talk about that.

14 THE WITNESS: Are you talking about for the specific

15 trucks or the driver?

16 MS. SHREVE: It was for the trucks and the trailer, not

17 driver specific, but it was the trucks and trailer.

18 THE WITNESS: Okay.

19 MS. WOELFEL: Paige, is it okay if we take a five-minute

20 break right now?

21 MS. SHREVE: Sure. We can go off the record.

22 (A recess was taken.)

23 MS. SHREVE: We can go back on the record.

24 BY MS. SHREVE:

25 Q Mr. Palmer, you understand you are still under oath,

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1 correct?

2 A Yes.

3 Q When was Mr. Koski hired?

4 A I would have to go look. I would have to look that up.

5 2013, I believe. 2012? I don't know. I don't have it right off

6 the top of my head.

7 Q Do you know who hired him?

8 A Yes, Tracy Shane.

9 Q And what qualifications did Mr. Koski have before he was

10 hired by MDB?

11 A He worked for numerous trucking companies as a CDL

12 driver, hauling aggregate and dump trucks, similar to what we do.

13 He had a CDL, medical card, proper endorsements.

14 Q Okay. I'm sorry, I wasn't having this as an exhibit,

15 but I'm just going to pull it out to help refresh your memory in

16 regards to Mr. Koski's employment.

17 A I'm guessing it was 2012.

18 MS. SHREVE: Hold on one second.

19 I don't have copies of this, but we can get copies made?

20 This will be Exhibit 16, and it is the employment file of

21 Mr. Koski that was produced by MDB. It's MDB 683 through 691.

22 MS. WOELFEL: Do you want me to make quick copies right

23 now?

24 MR. BROWN: Yes.

25 MS. SHREVE: We can go off the record for a second.

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1 Sorry about that.

2 (A recess was taken.)

3 (Exhibit 16 marked for identification.)

4 MS. SHREVE: We're going to go back on the record.

5 BY MS SHREVE:

6 Q So off the record, I handed you a document that was

7 produced as Mr. Koski's employment file. We have marked this as

8 Exhibit 16.

9 Does this reflect your recollection of when Mr. Koski

10 was hired?

11 A Yes and no. I'm somewhat confused by the dates on here

12 that I'm reading, if I'm not -- if I'm reading them correctly.

13 Q Okay. What --

14 A Date of application, I'm reading that as August 8th,

15 2010. Is that what everybody looks like they see?

16 Q That is what I see, yes.

17 A But then you go down to the bottom here, he's got an

18 accident on 5/13, 2011. So I know that can't be true.

19 And then you go to the next page or the third page, and

20 it says he worked for a couple of companies up until 2012.

21 So I'm assuming that this is 6/8/2012 when he filled out

22 the application.

23 Q I will help you. How about, go to MDB 689.

24 A Yes, I saw that. I-9 form --

25 Q So this may --

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1 A -- was also signed also on 6/8/2012. So provided that
 2 the I-9 form was filled out properly at the time that he was
 3 hired, that was his hire date.
 4 Q And who does it say is the representative from MDB?
 5 A Tracy Shane.
 6 Q And what's the date there?
 7 A 6/8/2012.
 8 Q So safe to say that, likely, he was hired on June 8th,
 9 2012?
 10 A Yes.
 11 Q When Mr. Koski was hired, what training did he undergo?
 12 A He would have went underwent the normal training
 13 procedures that we train our drivers on, on how we expect them to
 14 operate in accordance with our values, as far as you are expected
 15 to do proper pre-trip inspections, you are expected to obey the
 16 traffic laws.
 17 You are trained on where you are going to -- you know,
 18 how to haul the material that we haul, how to fill out the
 19 paperwork, how to dump the material what -- at the place. And
 20 this is all done hands-on.
 21 Q Okay. And how long does this training -- how long would
 22 this training have lasted?
 23 A It usually lasts one to two days, full days.
 24 Q Did he -- was he provided any other training other than
 25 from MDB, like any outside company?

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1 A Not after he was hired by us, no. Well -- no.
 2 Q Did Mr. Koski receive any company policies or handbooks
 3 when he was hired?
 4 A I'm not sure if he received the Federal Motor Carrier
 5 green book, they call it. I'm not sure if he received that.
 6 There's no record in his file that says he received it.
 7 Q Okay.
 8 A So I'm not sure.
 9 When you say "other training," I mean, he went to MSHA
 10 training. I mean, that's really nothing to do with driving a
 11 truck, but --
 12 Q What training was that?
 13 A MSHA, Mine Safety Health Administration training. He
 14 did three days of training with that so he could get on to mine
 15 sites, but that's really nothing to do with driving a truck.
 16 Q Okay. Any other training, whether it was related to
 17 driving the truck or not?
 18 A No.
 19 This is an individual that's known to us, known to
 20 Tracy Shane. I've known him for 25 years. Everybody knows he has
 21 driven trucks his whole life. So he's got experience. You put
 22 him in the truck, you can see that he can do the job.
 23 Q You said you've known Mr. Koski for over 25 years?
 24 A I have, yes.
 25 Q And how have you -- how did you first meet Mr. Koski?

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1 A First time I met him, he was driving for Rainbow Rock.
 2 And we had a yard right next to Rainbow Rock, so he used to cut
 3 through our yard every day. So I've known him since at least
 4 1994.
 5 Q So you've known him in the truck driving capacity, I
 6 guess?
 7 A Absolutely.
 8 So everybody -- the word of mouth is he's a good driver.
 9 Everybody knows he is a good driver, that kind of thing. That's
 10 how -- that's how you know a driver.
 11 Q Okay.
 12 A By his reputation.
 13 And you also work with him. You are out there driving
 14 with him on days.
 15 Q Okay. After Mr. Koski was employed through when --
 16 actually, strike that.
 17 Is Mr. Koski still employed by MDB?
 18 A No.
 19 Q How long ago did he stop working for MDB?
 20 A I believe he stopped working for us sometime around
 21 January, February of 2015.
 22 Q Okay. And why does -- how come he no longer works for
 23 MDB?
 24 A From my understanding, he had some sort of a mini stroke
 25 and that -- he was off work for a while.

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1 He actually came in from the job and said he felt dizzy
 2 and left, and they took him to the hospital. He ended up having
 3 sort of a mini stroke, and he hasn't been the same since. So he
 4 decided to retire.
 5 Q And do you recall when that was?
 6 A That would have been around January, February of 2015,
 7 to the best of my recollection.
 8 Q So Mr. Koski retired from MDB; is that correct?
 9 A Yes.
 10 Q So from the time he started until when he retired in,
 11 roughly, January or February 2015, was Mr. Koski ever provided any
 12 additional company policies or handbooks or training manuals?
 13 A Not from my knowledge. I mean, not that I can say for
 14 sure, I should say. He may have, but I don't -- I can't prove
 15 that he was.
 16 Q How did MDB decide to assign Truck --
 17 A 5694.
 18 Q -- to Mr. Koski?
 19 A That was just the truck that probably would have been
 20 available at the time. We may have just recently purchased it,
 21 and he -- he was next in line to get that truck and that -- he
 22 started driving that truck and he liked it, so you just keep him
 23 in there.
 24 Q Did Mr. Koski drive any other trucks?
 25 A Oh, yes.

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1 Q What other trucks did he drive?

2 A I'm sure he would have driven just about every one of

3 our trucks at one time or another.

4 Q So was Truck 6590 --

5 A 5694.

6 Q -- 5694 specifically assigned to Mr. Koski, or could

7 other drivers drive it?

8 A It was assigned to him, yes, but that doesn't mean

9 somebody else couldn't drive it. I drove it quite a bit.

10 Q And when did you drive it?

11 A I drove it -- I have driven it off and on since I've

12 been there, you know. But there have been times when I would

13 drive it for maybe a month while he was driving another truck.

14 Q And would you drive it with Trailers 6773, 6774 and

15 6775?

16 A Most of the time if I was, in fact, hauling aggregate

17 and bottom dumps, but not necessarily.

18 Q Other than yourself and Mr. Koski, did anybody else

19 drive Truck 5694?

20 A Yes.

21 Q Who else drove, between July 2013 and the present?

22 A Oh, gosh. It's probably been ten different drivers or

23 more drive it.

24 Q From July 2013 to the present, has any other driver

25 pulled Trailer 6773, 6774 and 6775 other than Mr. Koski?

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1 A Yes.

2 Q How many different drivers?

3 A Oh, probably half a dozen.

4 Q Was Mr. Koski subject to any discipline in regards to

5 the July 2013 incident?

6 A No, he was not. He didn't do anything wrong as far

7 as -- no.

8 Q Did MDB do any investigation in regards to Mr. Koski's

9 actions on that day?

10 MR. BROWN: Objection, asked and answered.

11 THE WITNESS: We spoke with him, and we were sure that

12 he wasn't the cause of the accident, or the cause of the spill of

13 the rock. I shouldn't say the accident; the incident.

14 BY MS. SHREVE:

15 Q And what did he say in regards to the July 2013 incident

16 when you spoke with him?

17 A That he was just driving down the road and the gates

18 opened.

19 Q Did MDB do any inspection in the truck after the

20 July 2013 incident?

21 MR. BROWN: Objection, asked and answered.

22 THE WITNESS: Are you talking about, did we inspect the

23 truck after it happened?

24 BY MS. SHREVE:

25 Q Yes.

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1 A Immediately after it happened?

2 Q After you spoke with Mr. Koski and he told you that the

3 truck dumped on the road.

4 A Well, we did. That's when we replaced the Versa valve

5 on the back trailer and did all of the wiring -- did a few wiring

6 changes in the truck. But, yes, we did do that inspection and did

7 some revamping of things.

8 Q Was Mr. Koski disciplined for his -- for his actions on

9 the day of the subject incident of July 7th, 2014?

10 A No.

11 Q Did you speak with Mr. Koski on the day of the subject

12 incident? Did someone from MDB speak with him?

13 A Yes.

14 Q Did someone from MDB inspect the truck on the day of

15 this incident?

16 MR. BROWN: Objection, asked and answered.

17 THE WITNESS: I don't believe we actually inspected the

18 truck. That was the day we put the lockout devices on it. And

19 they haven't had a problem since, so yeah.

20 BY MS. SHREVE:

21 Q Did the subject truck and trailer -- you just indicated

22 that you put the lockout device on the day that it occurred.

23 So did the truck -- was the truck and trailer -- truck

24 and trailers in service the following day, since it had the

25 lockout device on it?

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1 A I believe so, yes. I think it was critical that we had

2 them back in service the next day.

3 Q I'm going into some of your knowledge about the sand

4 truck, which was the truck you were driving on the day of the

5 subject incident.

6 A Okay.

7 Q So can you just explain to me the process of your day on

8 that day, July 7th, 2014, like from when you got to work.

9 MR. BROWN: I'm just going to object. He has already

10 answered this about what time he got there.

11 But you can tell her again.

12 THE WITNESS: If I remember correctly, the truck and the

13 trailers were already hooked together the night before.

14 So I came to work at 4:45 a.m., proceeded to do my

15 pre-trip inspection on the truck and the trailers, make sure

16 everything is working, and left the yard at 5 o'clock and headed

17 to the Paiute pit.

18 If I remember right, my load time that day was 5:31.

19 And the reason it's 5:31 is specifically to show the two trucks

20 loading at 5:30, which order for them to load up.

21 If you just put both of them at 5:30, then nobody knows

22 which -- who to load in front of. So I'm 5:31, that means you

23 load behind the guy at 5:30. That's all that means.

24 BY MS. SHREVE:

25 Q Okay. And what load did you pick up that day?

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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.

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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

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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

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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

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1 second and third trailer, if the belts aren't on, your last
 2 trailer won't fit.
 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?**
 6 A Uh-huh.
 7 **Q And how did you unload that?**
 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.
 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.
 14 I physically get out of the truck and walk back there
 15 and use the hand valve to dump the trailer by hand.
 16 **Q Okay.**
 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.
 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.
 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

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1 kind of let the rock flow in there.
 2 **Q Uh-huh. So you -- just clarifying, you open the lever**
 3 **so that the belly gate only opens halfway; is that correct?**
 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.
 9 **Q Okay. So when you are dumping your first load, did**
 10 **you -- you didn't -- just trying to clarify.**
 11 **The belly dump wasn't completely open as far as it could**
 12 **go; is that correct?**
 13 A Not when you first start opening it, no.
 14 **Q When -- do you ever open it fully?**
 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.
 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.
 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

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1 pressure.
 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?**
 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.
 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.
 12 **Q And then did you close that before you pulled up to**
 13 **unload your second?**
 14 A Oh, yeah.
 15 **Q And did you do the same thing with your -- the second**
 16 **trailer as you did with the first?**
 17 A Exactly the same thing.
 18 **Q And did you do the exact same thing for the third**
 19 **trailer?**
 20 A Yes.
 21 **Q So now that you've unloaded your truck, what did you do**
 22 **next?**
 23 A Left the plant, went back to Paiute and got another
 24 load.
 25 **Q When you arrived at Paiute, did you check to see if**

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1 **your -- if the gates were open?**
 2 A No.
 3 **Q Did you check the pressure gauges?**
 4 A No.
 5 **Q Did the person loading the truck, to your knowledge,**
 6 **check?**
 7 A No.
 8 **Q Okay. So you arrived, you said -- so it looked like**
 9 **7:05, correct?**
 10 A Yes.
 11 **Q So tell me what happened once you arrived.**
 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.
 16 You switch to sand, rock, sand, rock, depending on what
 17 bin is getting full or what they need.
 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.
 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

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1 on how many buckets he puts in because of the weight of the sand,
 2 but the same scenario.
 3 Q Okay. And then after your sand was all loaded, did you
 4 check to see if your gates were closed?
 5 A No.
 6 Q Did you check the pressure?
 7 A No.
 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.
 11 Q And then, so after you were loaded, what -- what
 12 happened next?
 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.
 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.
 20 Q Okay. And with this load, did you manually use -- did
 21 you use the manual lever to open the belly dump?
 22 A Yes.
 23 Q Did you do that for all three trailers?
 24 A Yes.
 25 Q And did you open it in the same manner as you did with

Page 123

1 the first load?
 2 A Yes.
 3 Q Did you ensure that all trailers were closed prior to
 4 leaving?
 5 A Yes.
 6 Q Did you check the pressure on all three trailers?
 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.
 10 Q Okay. And so after you were unloaded, what did you do
 11 next?
 12 A This is on the second load?
 13 Q Yeah, the second.
 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.
 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?
 20 A No.
 21 Q Did you check the pressure gauge?
 22 A No.
 23 Q Did you check the connections between the trailers?
 24 A No.
 25 Q Did you do any inspection of your truck or trailers?

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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.
 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?
 7 A No.
 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 --
 11 A No.
 12 Q -- and trailers?
 13 A No.
 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?
 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.
 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.
 23 Q So you say you do your visual inspection. Do you have a
 24 routine visual inspection that you do?
 25 A I mean -- me, personally?

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1 Q Yes.
 2 A Yeah, I'm always looking at my equipment as I'm walking
 3 by it.
 4 Q Do you have kind of a mental checklist of --
 5 A Yes. Uh-huh, yeah.
 6 Q And what does your mental checklist include of your
 7 visual inspection?
 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.
 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.
 14 But for the most part, you are just looking to make sure
 15 everything looks right.
 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.
 19 Q So you did your visual inspection after you had your
 20 load when you were walking?
 21 A Uh-huh.
 22 Q And then -- and you didn't notice anything in your
 23 visual inspection?
 24 A No.
 25 Q And then what occurred?

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1 A I left the pit and headed to Reno to dump at the same
 2 Cemex Concrete plant.
 3 Q Okay. And did anything occur on your drive to the
 4 plant?
 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?

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1 A I was at Vista Boulevard heading into town. I'm not
 2 sure what exit that is. 21?
 3 Q Do you know approximately how long it had been since you
 4 had left?
 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

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1 do?
 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

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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.

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1 Q And what occurred at the yard?

2 A Well, after doing a cursory inspection at plant, seeing

3 if there's nothing obviously wrong with the valve, with the

4 plumbing or the wiring, nothing -- there's nothing that was

5 broken, going to the yard, looking at it there, there's no obvious

6 thing that -- once again, there's nothing obvious that pointed to

7 why this thing opened, I decided to put the truck out of service

8 and to fabricate the lockout devices.

9 Q Did you tell anyone about what occurred with your truck

10 and trailer?

11 A No. Everybody already knew it.

12 You are talking about did I tell my supervisor at the

13 time?

14 Q Yes.

15 A Yeah, he already knew it. Yes, I talked to him about

16 it.

17 Q How did he already know?

18 A Because everybody -- news travels fast. I'm sure

19 everybody in Northern Nevada knew somebody lost a load, as soon

20 as -- you know.

21 Q So there's a lot of gossip going around?

22 A Yes.

23 Q And at that time, had you heard about Daniel Koski's

24 load?

25 A Yes.

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1 Q And did you speak with anyone regarding your load and

2 his load both occurring that day?

3 A Well, my immediate contact was Pat Bigby. And I just

4 said, you know, I'm putting these trailers out of service, I'm

5 going to fabricate these, and that's what I'm going to do, because

6 it's just -- we had already been through this the year before. We

7 couldn't find anything wrong. We still can't explain why it

8 happened.

9 So we just decided to go the -- this route, where his --

10 make it so the handle cannot move.

11 Q At any point, did you guys -- or, did anyone from MDB

12 suggest maybe shortening of the gate chains just as a safety

13 precaution to ensure that it wouldn't -- the belly gates would not

14 fully open?

15 A After this issue or before this issue?

16 Q Any time -- I guess any time after January -- or, sorry,

17 July 2013.

18 A Maybe somebody suggested it. I'm not sure. I wouldn't

19 have suggested it, because, like I say, it's not a positive

20 lockout device.

21 Some of the Ranco trailers have a way to do that, but

22 our back two trailers don't have a way of doing that.

23 Q Do you have an idea of who may have suggested shortening

24 the gate?

25 A Oh, everybody has got their ideas about how to solve

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1 problems. So it could have been, I don't know, the driver.

2 Tracy Shane might have said -- I don't know.

3 Q Did anyone implement that?

4 A I don't know. I never did. As a driver, I never did

5 it.

6 Q Okay. Would shortening the gate chain help ensure that

7 the belly gate dump wouldn't fully open?

8 A Oh, yes.

9 Q So that would be a way to help secure your load from

10 unloading, I guess, fully?

11 A I suppose it could. I mean, it could help, yes.

12 MS. SHREVE: Can we take a short break so I can just do

13 a quick review over my notes to make sure that I don't have

14 anything else.

15 MS. WOELFEL: Sure.

16 MS. SHREVE: We're going to go off the record.

17 (A recess was taken.)

18 MS. SHREVE: So we'll go back on the record.

19 BY MS. SHREVE:

20 Q Mr. Palmer, you understand you are still under oath,

21 correct?

22 A Yes.

23 MS. SHREVE: So next, I'm going to hand to you, which is

24 Exhibit 17. This was brought to us today by your counsel.

25 (Exhibit 17 marked for identification.)

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1 BY MS. SHREVE:

2 Q Yesterday and possibly today as well, you testified that

3 the -- that your drivers provide vehicle inspection reports when

4 they do their inspection. Is that correct?

5 A At the time of this happening, our drivers --

6 MS. SHREVE: Can you repeat my question to him. Sorry.

7 (The question was read by the reporter.)

8 THE WITNESS: That was correct up until the point that

9 they changed the law.

10 BY MS SHREVE:

11 Q Okay. What is the -- what law was changed?

12 A The requirement to fill out the DVIRs is now only

13 required to fill it out if there's a defect noted.

14 Q Okay. And when was that change?

15 A I don't know, approximately a year and a half ago.

16 Q And what was required prior to the law change?

17 A You had to fill out a DVIR every day regardless of if

18 there is a defect or not.

19 Q So approximately a year and a half ago, that was changed

20 to only if the driver noted some sort of defect, correct?

21 A Correct.

22 Q Okay. And so what you brought to us today is what a

23 Driver Vehicle Inspection Report is for MDB that would be filled

24 out?

25 A Correct, even though, if you look at that, it says

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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**

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1 than these two that you have provided today?

2 A I mean, I have other -- not provided by my employer, I

3 do not think so. I have air-conditioning certifications to be

4 able to perform air-conditioning work on a commercial vehicle.

5 Q Any other certifications in regards to performing any

6 repair work or maintenance on these vehicles?

7 A I don't think so.

8 MS. SHREVE: I think that's all the questions I have

9 right now. I reserve the right to ask some more after other

10 counsel continues.

11 So at this moment, I would pass the witness.

12 MS. WOELFEL: Great. Thank you.

13 MS. SHREVE: Do you want to take a break and switch?

14 MS. WOELFEL: No, we can get started. I'll just try to

15 speak up.

16 If you can't hear me, let me know.

17 THE WITNESS: Okay.

18

19 EXAMINATION

20 BY MS. WOELFEL:

21 Q My name is Jessica Woelfel. I represent RMC Lamar.

22 I'll get through as much as I can today, then we'll pick

23 back up tomorrow morning, just depending where we are.

24 So I want to go back to, just really quickly, Exhibit 17

25 that you were just looking at, the Driver Vehicle Inspection

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1 Report.

2 A Can you explain something for a second.

3 Q Sure.

4 A RMC Lamar, is that the parent company to Ranco, or is

5 that the company who purchased Ranco? I'm not sure who --

6 Q That's the company that sold to Dragon. So that's --

7 A Okay. Just in relation to Ranco trailers?

8 Q Yes, manufacturer of the trailer, original manufacturer.

9 Okay. With respect to this trailer -- this is Trailer

10 Number 6775 on the first page -- the remarks here -- well, first

11 of all, can you tell me who the mechanic's signature is on this

12 document, first page of Exhibit 17?

13 A Are you talking about the --

14 Q First page of the Driver's Vehicle Inspection Report.

15 A Oh, that would be my signature, that the defects were

16 corrected.

17 Q Okay. And the remarks were that the cab switch is not

18 opening the gate. What does that mean?

19 A That means that the switch inside the cab, that has the

20 cover on that you open to activate the trailer to dump it with the

21 electric solenoid, was not operating, something that -- the

22 trailer was not being -- you cannot operate from the truck cab.

23 It doesn't necessarily mean it was the switch, it

24 just -- it could be the wiring between the switch and the valve.

25 Somewhere along the lines, it wasn't working, wasn't operating.

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1 Q So there was a wiring issue that was preventing the

2 switch from operating the gate?

3 A Correct.

4 Q How did you correct that problem?

5 A I believe I unplugged the four-way from the front of the

6 front trailer, cleaned it, put it back in and it worked.

7 Q And you used the same four-way?

8 A Yes.

9 Q And cleaning that four-way fixed the problem?

10 A Yes, because when you clean it, you are also -- if it

11 gets any kind of corrosion on it whatsoever, the switch -- it's

12 not really corrosion, it just -- basically, you are just cleaning

13 it with a wire brush and spreading the prongs out slightly and

14 plugging it back in and it worked.

15 Q Is that a pretty typical issue where you would have some

16 sort of corrosion or debris in one of these plugs that would

17 prevent or that would cause some sort of a malfunction in the

18 wiring?

19 A It's possible. When I say "corrosion," that's probably

20 a bad choice.

21 It's more of oxidation of the brass. It doesn't make

22 good contact. So you have to get in there and clean it with a

23 wire brush.

24 Q Do you do any type of regular inspections of the wiring

25 to check for those types of issues, or do you just wait until a

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1 driver brings it to your attention that a cab switch isn't

2 working?

3 A When they come in for the routine inspections, we check

4 to make sure that the wire is in place and the wire is not --

5 everything looks mechanically correct, in other words, it's not

6 broken, the wire is not broken, the four-way plug is not

7 physically broken.

8 But we do not unplug and clean it every time we check it

9 off, no.

10 Q Do you ever, in the annual inspection, unplug and clean

11 and check the wires at that point?

12 A On the annual inspection? I would -- I don't think so,

13 no.

14 It -- you have to understand the nature of these plugs,

15 and you change them all the time anyway because of damage. And

16 so --

17 Q Okay. So going all the way back --

18 A Okay.

19 Q -- to the very beginning, I want to go to when MDB first

20 leased the Trailer 6775 from Western Nevada Transport.

21 A Okay.

22 Q Do you know what year MDB first leased Trailer 6775?

23 A I believe it was 2012.

24 Q Can you tell me how MDB came to work with Western Nevada

25 Transport to lease trailers and vehicles?

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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.

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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

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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,

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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,

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1 which would be a rub point. You check that.
 2 You check seven-way and the four-way connection in the
 3 front of the trailer, make sure that the plug looks good, check it
 4 in the back of the trailer.
 5 Now, you do have cords that go between the trailers.
 6 Those, you check. You pull out the seven-ways and the four-ways,
 7 make sure that they are all -- they all look good. You put it all
 8 back together.
 9 But the main thing you are looking for when you are
 10 testing the lights is the lights work and you don't have a ground
 11 issue. Then, generally, you don't have -- generally, you don't
 12 have to look any farther.
 13 Q Okay. All right. And then with respect to regular
 14 maintenance on the electrical system, we kind of touched on that,
 15 but you said that you would do a visual inspection when the
 16 trailer came in on your regular kind of multi-week inspections.
 17 A Uh-huh.
 18 Q Is that a "yes"?
 19 A Yes. I'm sorry. Yes.
 20 Q And then you would -- when somebody would bring it to
 21 your attention that there was a problem with a connection, you
 22 might pull a plug, replace a plug or check for debris or
 23 corrosion, correct?
 24 A Yes.
 25 Q And then during your annual inspections, what would you

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1 do with respect to the electrical system on the trailer?
 2 A We would go through the same process. We don't
 3 actually -- I mean, it's not like we pull all the wiring out. I
 4 mean, we're talking a major project. We are talking a two-day
 5 project to pull all the wiring out.
 6 We wouldn't do that in every trailer if it didn't show
 7 any signs of malfunctioning.
 8 Q Okay. When MDB first leased Trailer 6775 in 2012, do
 9 you know if they had it repainted?
 10 A No, we did not. To my knowledge, I do not believe we
 11 had it painted.
 12 Q Have you repainted any of your trailers since 2012?
 13 A No.
 14 Any of our trailers?
 15 Q Yes.
 16 A Oh, boy, I think we have. Not any of these trailers.
 17 Q Tell me, when you do repaint a trailer, do you remove
 18 any components from the trailer before you do a repaint?
 19 A If we were to repaint a trailer, we would remove a lot
 20 of components, lights, fenders, tires, wheels, that sort of
 21 things.
 22 Q And none of the trailers at issue that we've been
 23 discussing, 6773, 6774, 6775, none of those have been repainted --
 24 A No.
 25 Q -- since MDB has leased those trailers?

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1 A Absolutely -- no, they have not. There's no evidence --
 2 they have not been repainted.
 3 Q Okay. Now, SKS is owned by the same owners of MDB; is
 4 that correct?
 5 A That's correct.
 6 Q Is there any difference in ownership?
 7 A It's a different structure. One is a limited liability
 8 company and -- each of them being a member.
 9 Q Correct.
 10 A And the other one is -- SKS is a corporation where
 11 Travis Bonanno was the president and Kari Bonanno, I think, is the
 12 secretary-treasurer.
 13 Q So it's Travis Bonanno and Kari Bonanno, correct?
 14 A Yes.
 15 Q And they are -- are they the sole members of
 16 MDB Trucking?
 17 A Yes.
 18 Q Are they the sole shareholders of SKS?
 19 A Yes. As far as I know, the last time I looked.
 20 Q Now, you mentioned yesterday that you report to a person
 21 named Terry Davis?
 22 A Yes.
 23 Q What company does he work for?
 24 A He's officially employed by Bonanno Concrete, but I
 25 think he works for both Bonanno Concrete and MDB Trucking.

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1 Q Do you know what his job title is?
 2 A Now, on his email, it says "safety coordinator."
 3 Q How long has he worked with Bonanno Concrete and/or MDB?
 4 Can you tell me approximately when he started working with MDB?
 5 A Approximately a year ago.
 6 Q So can you narrow that down a little bit more? Are we
 7 talking about approximately March of 2016, or -- is that your best
 8 recollection of when Terry Davis started working with MDB,
 9 approximately March 2016?
 10 A Yeah, that sounds about right, yes.
 11 Q Now, you said he was working with Bonanno Concrete
 12 approximately two years ago; is that correct?
 13 A Yes.
 14 Q Okay. How long have you had to report to Terry Davis?
 15 MR. BROWN: Object to foundation.
 16 Go ahead.
 17 THE WITNESS: I'm sorry.
 18 BY MS. WOELFEL:
 19 Q Do you report to Terry Davis?
 20 A I communicate to him.
 21 Q How often do you communicate with him?
 22 A A couple times a week, two or three times a week,
 23 sometimes three or four times a day, depends on what we're doing.
 24 Q And what types of issues do you communicate with
 25 Terry Davis about?

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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.

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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.

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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**

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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?**

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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.

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1 So the wire -- which is, actually, you know, to us, is
 2 unacceptable to run the wire for the dump wire through the
 3 seven-way and use that as -- so we thought that was very unusual,
 4 so we eliminated that completely.
 5 So the four-way wires simply go straight to the Versa
 6 valve. They don't go in through the seven-way at all.
 7 **Q Did you think there was anything with respect to the way**
 8 **that the wiring was routed that led to the inadvertent dump on**
 9 **July 7th, or whatever it was, July 2013?**
 10 A I wouldn't say there was, like, a smoking gun there,
 11 like, there was something obvious that would have caused it, no.
 12 **Q And you did not maintain that wiring at all?**
 13 A No. We would have thrown it away.
 14 **Q Okay. And then you modified the way that the wiring was**
 15 **run when you rewired it; is that correct?**
 16 A Correct.
 17 **Q Did you modify the way that the wiring had previously**
 18 **run in any other manner, other than what you just described to me?**
 19 A No. We just kept the seven-way and the four-way wires
 20 separated from each other.
 21 **Q Okay. In July 2013, was SKS the owner of the trailer or**
 22 **was Western, do you recall?**
 23 A I believe Western Nevada Transport was still the
 24 owner --
 25 **Q In July 2013?**

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1 A -- and we were leasing them directly from them.
 2 **Q Did you notify Western of the inadvertent dump in July**
 3 **of 2013?**
 4 A Once again, I didn't have to notify them. Everybody
 5 knows. They knew, yes. I didn't notify them, but they already
 6 knew. Everybody knows this already.
 7 **Q Is there any documentation relating to notification of**
 8 **Western of the 2013 dump?**
 9 A No.
 10 **Q Do you know who notified Western of the dump in 2013?**
 11 A No.
 12 **Q And you testified that the Versa valve, at the end of --**
 13 **after the dump in 2013 was also replaced.**
 14 **And I believe you said that MDB kept the old Versa valve**
 15 **that it removed; is that correct?**
 16 A I'm assuming that we kept it, because we don't throw
 17 that kind of stuff out. Plus, we would keep it for spare parts or
 18 whatever, even though we generally never reuse them.
 19 But we don't like to throw that kind of stuff out.
 20 **Q Did you run any tests on the Versa valve that was**
 21 **removed?**
 22 A No.
 23 **Q Or did MDB run any tests?**
 24 A No. There's really no reason to test any of the stuff,
 25 because we know why -- I mean, we know it opened electrically, so

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1 it -- I mean, it didn't malfunction mechanically.
 2 **Q Did you know where the Versa valve -- the old Versa**
 3 **valve that was removed was kept or stored?**
 4 A It would have been kept in our parts room, but I don't
 5 think I could identify it, if we have more than one there.
 6 **Q Does MDB still have that Versa valve?**
 7 A I don't know.
 8 I know we have a couple of Versa valves laying around
 9 there in different states of repair, you know.
 10 But we share the shop with WNT, and they have Versa
 11 valves. So, you know, we share parts or whatever as far as if
 12 somebody needs a used part.
 13 So there's no way I could identify which valve it was.
 14 **Q So you share a workshop with Western Nevada Transport?**
 15 A We do now, yes.
 16 **Q When did you start sharing that shop with them?**
 17 A 2014.
 18 **Q What month?**
 19 A January.
 20 **Q Do you label the parts that belong to you versus the**
 21 **parts that belong to WNT?**
 22 A No. They have their side of the shop with their parts
 23 room, we have our side of the shop with our parts room. So it's
 24 pretty easy to figure out whose is what.
 25 **Q Okay. Did you alert the ownership about the July 2013**

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1 **release?**
 2 A Are you talking about ownership of --
 3 **Q Of MDB.**
 4 A Oh, yes.
 5 **Q Do you know what their response was or their direction**
 6 **was in response to finding out that there had been a release in**
 7 **July of 2013?**
 8 A Yeah, make sure it doesn't -- I mean, figure out what's
 9 going on.
 10 **Q And did they instruct you to investigate the problem and**
 11 **try to figure out the cause of the incident?**
 12 A Yes.
 13 **Q And you said that you were confident -- or, I believe**
 14 **you said you were confident that it was a Versa valve failure that**
 15 **led to this; is that correct?**
 16 A No, I don't think that's the correct -- I don't think
 17 that's what I said.
 18 I think I said that -- I believe that what caused this
 19 is the Versa valve inadvertently becoming energized by a manner
 20 other than by our truck, but it was definitely energized
 21 electrically.
 22 **Q And how could it have become inadvertently electrolyzed**
 23 **by a manner that's not through your truck?**
 24 **And we are talking about July of 2013 right now.**
 25 A Okay. We can talk about that day or any of the days.

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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?

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1 Q At any time in your 35-year career, have you utilized
 2 that chain system?
 3 A Oh, yes, extensively, but not to keep the gates from
 4 opening, to keep the gates -- to restrict the opening of the
 5 gates, yes --
 6 Q Okay. So you have used them --
 7 A -- for the size of windrow they want on a job site, yes.
 8 Q Have you ever been injured in putting the chains on or
 9 off?
 10 A All the trailers that I have ever chained are semi
 11 trailers that have ten feet between the axles and the gates. So
 12 you walk under the trailer and you chain them.
 13 These are short trailers. They have -- it's only,
 14 like -- you can barely get your head in there to chain them.
 15 Q So my question is, have you ever been injured setting up
 16 the chaining device --
 17 A No.
 18 Q -- under a truck?
 19 A No.
 20 Q Are you aware of any other employee that you've worked
 21 with being injured setting up a chain device underneath a belly
 22 dumper?
 23 MR. BROWN: Objection, foundation.
 24 THE WITNESS: I don't know of any.
 25 ///

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1 BY MS. WOELFEL:
 2 Q Okay. So going to the July 2014 release, my
 3 understanding is that Mr. Koski contacted MDB while he was at the
 4 site of the dump and he had pulled over; is that correct? He had
 5 contacted them to advise them that this incident in July of 2014
 6 had occurred?
 7 A Yes.
 8 Q And do you know who he spoke to?
 9 A Tracy Shane.
 10 Q Okay. And do you know if anybody requested that
 11 Mr. Koski take any photos or do any documentation of the truck or
 12 the site of the event?
 13 MR. BROWN: Objection, foundation.
 14 THE WITNESS: Okay. The site of the event was a mile
 15 back down the road. So it would be pretty hard for him to walk
 16 down the freeway a mile to take pictures, especially while they
 17 are waiting for fire and rescue to arrive.
 18 He's on the side of the road, talking to a
 19 Highway Patrol officer at the time. I don't think that would be
 20 the time for Mr. Koski to be to do an independent investigation of
 21 what happened.
 22 BY MS. WOELFEL:
 23 Q So my question is, did anybody from MDB ask him to take
 24 any photos or document the truck?
 25 A At the scene of the accident?

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1 Q At the scene of the accident.
 2 A Well, the truck was not at the scene of the accident.
 3 Q Well, the truck pulled over to the side of the road.
 4 A No, he was not asked to do that.
 5 Q Okay. Thank you.
 6 Did you test the electrical system of any of the three
 7 trailers that were involved in this incident upon its return to
 8 the yard?
 9 A No.
 10 Q Why not?
 11 A There was no need to.
 12 Q Why was there no need to?
 13 A Because we put lockout devices on there, which prevents
 14 the gates from opening.
 15 We had already rewired the trailers completely. We had
 16 already checked the trailers out extensively.
 17 At this point, we felt that putting a lockout device was
 18 the best way to prevent this from happening again. And so far, it
 19 has been two and a half years and we haven't had a problem.
 20 Q So when you were -- when the truck came back to the
 21 yard -- and you said you had already rewired the trailer
 22 completely, you are talking about the rewire that took place one
 23 year ago?
 24 A Yes.
 25 Q And there was no inspection of the electrical system

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1 after July of 2014?
 2 A No, not -- not in direct relation to that incident, no.
 3 Well, I shouldn't say that. We didn't do that
 4 inspection. The forensic -- the people -- the scientists and
 5 forensic people came out and did a complete inspection, all -- a
 6 year later, or whatever it was, a year and a half later.
 7 Q After the lawsuit had been filed?
 8 A Yeah.
 9 Q And the wiring system in the trailers, the subject
 10 trailers, is it your statement that the wiring system was exactly
 11 the same as the wiring system that was installed in July of 2013?
 12 A To the best of my knowledge, yes, it was. I don't
 13 think -- we never -- we didn't make any modifications to it, no.
 14 Q No modifications to it outside of changing plugs?
 15 A Maybe -- exactly, something like that, yes.
 16 Q Okay. Did you save the plugs that you changed after the
 17 July 2014 event until the time that the forensic inspection,
 18 electrical inspection had occurred?
 19 A No.
 20 Q What did you do with the plugs or any plugs that you
 21 changed on the subject trailers?
 22 A We throw them in the garbage after that, yeah.
 23 Q Did you do any testing -- outside of creating this pin
 24 system, did you do any testing to the Versa valve to see if it was
 25 malfunctioning in any way?

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1 A No, other than visual inspection of making sure it was
 2 mechanically sound, which means that it's still in place, the
 3 handle is still in place, there's no damage to it, it's still
 4 operating correctly, it's just got a pin in there now.
 5 Q Okay. Did you take a written statement from Mr. Koski
 6 after the July of 2013 release?
 7 A I don't believe so.
 8 MS. SHREVE: Take a rest room break?
 9 MS. WOELFEL: Sure. Take a five-minute rest room break.
 10 That's fine.
 11 MS. SHREVE: We can go off the record.
 12 (A recess was taken.)
 13 MS. WOELFEL: Okay. We can go back on the record.
 14 BY MS. WOELFEL:
 15 Q Can you tell me if anybody was injured in relationship
 16 to the July 2013 dump incident?
 17 A To my knowledge, nobody was injured.
 18 Q And, obviously, there were some injuries with respect to
 19 July of 2014, or alleged injuries, which is why this lawsuit has
 20 occurred.
 21 A Yes. Yes.
 22 Q Was MDB aware of those injuries on -- or the alleged
 23 injuries, on the day that the incident occurred?
 24 A Oh, yes, definitely.
 25 Q Was MDB concerned that they might get sued on the date

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1 of the incident?
 2 MR. BROWN: Objection to the extent it calls for
 3 speculation.
 4 You can answer.
 5 THE WITNESS: The sentiment in the company was everybody
 6 was concerned for the people that got hurt, and everybody really
 7 actually felt bad because we thought we tried everything to keep
 8 this from happening.
 9 And, yeah, I don't think anybody talked about getting a
 10 lawsuit. I don't think that was ever even a topic.
 11 BY MS. WOELFEL:
 12 Q Was -- did you think that it was a possibility that MDB
 13 might be involved in litigation as a result of the incident?
 14 MR. BROWN: Objection to the extent it calls for
 15 speculation, asked and answered.
 16 THE WITNESS: No, I didn't think anything about that,
 17 no. I mean --
 18 BY MS. WOELFEL:
 19 Q Did you -- I'm sorry, you can go ahead and finish.
 20 Did you have any discussions with ownership or --
 21 A Terry Davis?
 22 Q Yes, thank you.
 23 -- or Terry Davis?
 24 MR. BROWN: Don't.
 25 THE WITNESS: Oh, sorry.

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1 MR. BROWN: Just kidding.
 2 THE WITNESS: I don't think Terry -- I wasn't talking to
 3 Terry Davis at that -- I don't even think he was working there at
 4 that particular time. I'm not sure.
 5 BY MS. WOELFEL:
 6 Q Was there a go-between between you and ownership before
 7 Terry Davis arrived?
 8 A Okay. At 2014, Tracy Shane was the manager.
 9 Q Okay. And would Tracy talk directly with the two
 10 owners?
 11 A With the owner, with Travis Bonanno. Kari wasn't that
 12 involved with the business. It would be Travis Bonanno. And he
 13 would talk with him directly, yes.
 14 Q And once Travis left, is that when Terry Davis came
 15 onboard?
 16 A Travis? No, Travis is still around, he's just kind of
 17 too busy with the concrete stuff. So I think Terry helps him out
 18 as sort of his right-hand man type of thing, I think his position
 19 is sort of, yeah.
 20 Q Are you aware of any conversations amongst the ownership
 21 and/or management related to the possibly of litigation involving
 22 this accident after July 2014?
 23 MR. BROWN: Objection, vague as to time.
 24 Go ahead.
 25 THE WITNESS: No, there was no talk about that. Nobody

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1 was talking about that.
 2 BY MS. WOELFEL:
 3 Q Was there any instruction or discussion regarding
 4 preserving the evidence after this incident occurred on July 7th
 5 of 2014?
 6 A No. Once again, we didn't think it -- we did not think
 7 it was an issue.
 8 I think the Highway Patrol came out and did an
 9 inspection as well after this happened.
 10 Q When did the Highway Patrol do their inspection?
 11 A I might be misspeaking here, but I believe they did --
 12 came out the following day, did a cursory inspection. I'm not --
 13 follow-up to their --
 14 Q And did they come to the yard to do that inspection?
 15 A I think so, yes.
 16 Q Were you there when this inspection occurred?
 17 A Possibly not. I might have been out driving that day.
 18 Q Do you know who was there when this inspection occurred?
 19 A If it did, in fact, occur, which I'm not sure -- like I
 20 said, I believe it did -- Tracy Shane would have been there, and
 21 Pat Bigby would have been there.
 22 Whether they participated in it or they just let the
 23 Highway Patrol do their job, I'm not sure.
 24 Q Do you have any documents in MDB's possession related to
 25 this inspection by the Highway Patrol?

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1 A I would have to look and see if there is.

2 Q And I would ask that you take a look, and if you do have

3 anything --

4 A Yes.

5 Q -- to turn it over to your attorney.

6 Are you aware of any findings by the Highway Patrol in

7 regards to this inspection?

8 A No.

9 Q When -- after July 7th of 2014, when did you finish

10 making your pinning system?

11 A I finished in the same day.

12 Q And -- that was fast.

13 A On -- on the subject trailer.

14 Q On the subject three trailers.

15 A Actually, I'm not sure. I did one whole set the first

16 day. And I don't remember if it was my set or his set.

17 Q And a set is a set of three?

18 A Yes.

19 Q Okay.

20 A So after that incident happened, no bottom dumps left

21 the yard to haul material without the lockout device in place.

22 But they were all done within a day or two of this incident.

23 Q And you manufactured that lockout system?

24 A I did the majority of them, yes. I think Pat Bigby made

25 one for a trailer that -- yes, I think he made one.

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1 Q And you designed the lockout system?

2 A Yes.

3 Q Did you have to drill or do anything to the Versa valve

4 to make that pinning system work?

5 A No, no modifications at all to the Versa valve. You

6 don't even have to -- you don't even have to remove the Versa

7 valve to put it in place. You do nothing to the Versa valve

8 whatsoever.

9 You just slide the bracket around the handle, mark where

10 the hole is going to be drilled for the safety pin, take it back

11 off, drill the pin, put it back -- drill the hole for the pin, put

12 it back, bolt it on, and you are done.

13 Q So you remove the Versa valve --

14 A No, did not remove the Versa valve.

15 Q You did not remove the Versa valve at all?

16 A No. You fabricate the bracket, you install it -- you

17 drill holes on the trailer where -- below the Versa valve, mount

18 it, figure out where the hole is going to go for the -- behind the

19 handle, mark it, take that bracket back off, drill the hole, put

20 it back on, then you are done.

21 Q Was there discussion on whether to purchase a different

22 Versa valve for the subject trailer, 6775, after the July 7th,

23 2014, dump?

24 A No, because -- I don't know if I should elaborate on

25 this.

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1 I knew of a different valve that had the lockout

2 capabilities. But at that particular point, I can make the

3 bracket and get the trailer back on the road right now, versus

4 buying it, \$700 valve, and replacing all the valves. And it would

5 do the same thing. So, no.

6 If, in fact, the Versa valve had failed -- in hindsight,

7 if I would have known about this, '13, we would have done it then

8 probably. I don't know.

9 Q Are you aware of a dump involving Capurro Trucking

10 sometime in 2012 or 2014?

11 A Uh-huh.

12 Q Is that a "yes"?

13 A Quite a few of them, yes. It was actually maybe even

14 before that time, 2010, '11, '12. Seems to me I remember quite a

15 few.

16 Q Are you aware of any litigation against

17 Capurro Trucking?

18 A Huh-uh, no. I think there might have been, but it's

19 just rumor. It would be a rumor if I said something.

20 Q When had you heard that rumor?

21 A Oh, I don't know. I don't know that anybody was

22 injured. I just know there were some cars that got damage to

23 them.

24 Q Had you heard about that incident shortly after it

25 occurred?

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1 MR. BROWN: Objection, foundation.

2 THE WITNESS: Well, like I say, news travels fast.

3 Everybody knows it immediately. Everybody starts calling people

4 and say, hey, did you hear so-and-so lost a load on the highway.

5 Everybody knows it right away because it's really

6 something that actually concerns everybody.

7 BY MS. WOELFEL:

8 Q How long -- you said you've been in the trucking

9 industry for approximately 35 years; is that correct?

10 A Well, since 19-- late '70s, yes.

11 Q How -- when did you start working with belly dump

12 trailers?

13 A First time I ever used a belly dump trailer was probably

14 1980.

15 Q And have you used them consistently throughout your

16 career since then?

17 A Yeah, off and on, between driving and management

18 positions and mechanical positions, yes.

19 Q And have the belly dump trailers that you've worked with

20 always been Ranco trailers?

21 A No.

22 Q What other types of belly dump trailers have you worked

23 with?

24 A Fruehauf, Cook, Utility, Beall, I'm sure -- Midland. I

25 mean, I'm sure I'm missing some. Trail King, Load King.

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1 Q Okay. I'm going to show you some documents.
 2 A Okay.
 3 MS. WOELFEL: Jump into some documents.
 4 And I apologize to the folks on the phone because I
 5 don't have -- I didn't circulate these earlier.
 6 (Exhibit 19 marked for identification.)
 7 BY MS. WOELFEL:
 8 Q So Exhibit 19 is a document that's Bates-labeled MDB 388
 9 on page 1, 394 on page 2, and 400 on page 3. If you look at the
 10 top, they all relate to Equipment Number 6777.
 11 Do you see that?
 12 A Yes.
 13 Q And can you tell me which piece of Equipment 6777 was or
 14 is.
 15 A I believe 677 -- well, I don't believe it. 677 is the
 16 front -- is the middle trailer of the set that I was pulling on
 17 subject day, July 7th, 2014.
 18 Q Okay. And if we look at the first page of the page that
 19 is Bates-labeled MDB 388, on the work order, it is by you?
 20 A Uh-huh.
 21 Q Scott, that's you, correct?
 22 A Yes.
 23 Q Is there any other person named Scott that works for
 24 MDB?
 25 A No. The work order is made up by me, but the work was

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1 performed by myself and Pat.
 2 Q Okay. And there's a section on each of these work
 3 orders for total time, and I've noticed that most of them are
 4 blank.
 5 Is that to indicate the time it took to perform the work
 6 order or the maintenance that needs to be performed?
 7 A That's what -- that's what that's for, yes, but we don't
 8 generally use that.
 9 Q Why not?
 10 A Because we don't allocate time to a particular piece of
 11 equipment.
 12 And the way we do it, we do it with a separate timesheet
 13 that has got all the trailer numbers and the time it took the --
 14 the mechanic worked on each trailer.
 15 Q So I just want to make sure I understand what you are
 16 saying.
 17 Are you saying that on your timesheet -- for example, if
 18 I wanted to know how long it took you to perform the work that is
 19 indicated on the December 1, 2013, work order, I could figure that
 20 out by looking at your timesheets; is that correct?
 21 A You could. Presently, you could. When this -- November
 22 of 2013, you would not be able to, no.
 23 Q Why not?
 24 A Because that wasn't -- that's not the way we filled our
 25 timecards out then.

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1 Q When did you make this change to your timecards such
 2 that I would be able to allocate your time working on maintenance
 3 issues?
 4 A I think -- I believe it was January of 2015 that we
 5 changed timecard formats.
 6 Q Why did you change your timecard formats in
 7 January 2015?
 8 A Because somebody in the office wanted to start figuring
 9 out how much it was costing to work maintenancewise on each piece
 10 of equipment, but it never really came about.
 11 But that's where -- how it started.
 12 Q Okay. All right. So looking at the first page of this
 13 work order -- and can you read the first -- or read what is listed
 14 or written in under where it says "Additional."
 15 I don't see anything checked on the top. It says
 16 "Additional," and then you have something written. Can you read
 17 that for me.
 18 A Yes. It says rewire trailer to meet MDB standards.
 19 Replace lights with LEDs.
 20 Q Okay. What are MDB standards? What does that mean,
 21 that you are rewiring this trailer to meet MDB standards?
 22 A Our standards is to wire the trailer in conjunction with
 23 FMCSA rules and proper techniques, I would suppose.
 24 Q Okay. You said in conjunction with something,
 25 something, something rules --

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1 A Federal Motor Carrier Safety Administration rules.
 2 Q Okay.
 3 A That would -- that would apply probably to -- more to
 4 ABS system than anything else where they require certain type --
 5 gauge of wire for ABS brakes, that sort of thing.
 6 Q So can you describe for me what you did here to rewire
 7 this trailer to meet MDB standards.
 8 A We installed junction boxes at the front of the trailer
 9 to eliminate the seven-way and the four-way plugs at the front of
 10 trailer, so they could be hard wired in.
 11 I don't -- we installed all new four-way and seven-way
 12 cable on the draw bar and plugs on the draw bar, installed new
 13 three-way wire from front to rear.
 14 Installed junction box at rear of trailer to isolate
 15 wires to dump valves. Replaced all lights with LEDs.
 16 Q So what you just described, that would be considered MDB
 17 standards with respect to the wiring of the trailer?
 18 A Yes, to -- yes, the type of wiring we did, you know, and
 19 the techniques that we used to do it.
 20 Q Would you do this to every trailer so that you ensured
 21 that it met MDB standards?
 22 A Not if it already met MDB standards. If it already met
 23 our standards to begin with, then we wouldn't rewire the trailer,
 24 no.
 25 Q Does any part of this work that you described involve

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1 pulling the wire, the hidden wiring?
 2 A Yes.
 3 Q Okay. So does this mean that -- so how do you know if a
 4 new trailer that you've leased meets MDB standards, unless you
 5 pull the wiring and inspect how it's been wired in the first
 6 place?
 7 A Well, we wouldn't know that.
 8 Q So do you rewire every new trailer that you lease?
 9 A No. That's usually for used trailers.
 10 New to us?
 11 Q New to you.
 12 A Yes. No, but when you look at the wires that are -- if
 13 you are looking at the wiring that you can see and it doesn't meet
 14 our standards, then now is the time to start looking, digging
 15 deeper and start pulling all the wiring out and putting it in
 16 correctly.
 17 Q Okay. So if you see exposed wiring that doesn't meet
 18 MDB standards --
 19 A Yes.
 20 Q -- then your standard procedure -- MDB standard
 21 procedure is to pull all of the wiring in the trailer and rewire
 22 it; is that correct?
 23 A Or we would bring it up to our standards.
 24 It wouldn't necessarily mean we had to pull an all the
 25 wiring out, but generally -- it might entail that.

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1 But I do remember this specific trailer where the
 2 seven-way cable going from the seven-way at the front of the
 3 trailer to the back was spliced.
 4 Somebody had spliced it from ABS to non-ABS seven-way
 5 cord, which does not meet law, the federal law guidelines, or our
 6 standards.
 7 Q Okay.
 8 A So that is what brought us to the conclusion to rewire
 9 the trailer.
 10 Q And can you tell me when MDB first leased Trailer 6777.
 11 A I believe it was December or late October maybe of 2012,
 12 I believe.
 13 Q Okay. And so was this trailer in operation for almost a
 14 year before it was rewired to meet MDB standards?
 15 A Yeah. Well, it wasn't -- yeah, until we determined that
 16 it didn't meet MDB standards.
 17 Q Okay.
 18 A That's sort of a generic term that I use when I wrote
 19 the work order up. It doesn't necessarily mean we have a specific
 20 standard that we go by.
 21 Q Are these standards written out?
 22 A No. They are just in my -- Pat and I's head. We know
 23 how we do things.
 24 MS. SHREVE: The next two are also in Exhibit 9.
 25 THE WITNESS: And I do believe -- I don't want to be

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1 misspeaking, but I do believe you can go down and buy a brand-new
 2 Ranco trailer that still doesn't meet our standards, but so be it.
 3 BY MS. WOELFEL:
 4 Q And this is your personal standards?
 5 A Yeah. So it doesn't necessarily mean --
 6 Q That there's a defect in the product?
 7 A Exactly.
 8 Q Okay. What gauge of wire do you use when you are
 9 rewiring?
 10 MR. BROWN: Objection, foundation.
 11 BY MS. WOELFEL:
 12 Q Let's talk about 6777.
 13 MR. BROWN: Same objection.
 14 THE WITNESS: What gauge of wire do we use?
 15 BY MS. WOELFEL:
 16 Q Yes.
 17 A That's kind of a broad question. There are multiple
 18 gauges in the trailer.
 19 Q Okay. What types of gauges are in the trailer, and a
 20 trailer like 6777?
 21 A For instance, the four-way wire is four wires in a
 22 casing, and they are all 14-gauge.
 23 Q Okay. What other types of wire?
 24 A The seven-way cable, that is your main -- that's your
 25 main lights, turn signals, brake lights, ABS, ground, we use only

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1 ABS cable.
 2 When I say it meets ABS standards, it means it's got an
 3 8-gauge ground, 10-gauge stop light, and the rest are 12-gauge.
 4 Q Okay. And that would be -- the type of wiring in, you
 5 just said Equipment Number 6777, would that be the same --
 6 A Yes.
 7 Q -- in 6775?
 8 A Yes. Yes.
 9 MS. WOELFEL: I'm sorry, my exhibits are in a little bit
 10 of a mess here. I'm looking for a specific one.
 11 Let's go ahead and mark in next in line.
 12 I'll apologize in advance if there are any duplicates.
 13 I tried to prevent that from occurring, but it's certainly a
 14 possibility.
 15 (Exhibit 20 marked for identification.)
 16 BY MS. WOELFEL:
 17 Q Exhibit 20 is a series of documents that all relate to
 18 Equipment Number 6775. And these are Bates-labeled MDB 239, 240,
 19 246, 253, 256, 258, 262 and 15.
 20 And I just want to walk through these -- each of these
 21 quickly.
 22 And Equipment Number 6775 is the subject trailer that
 23 Mr. Koski was driving that inadvertently opened; is that correct?
 24 A That is correct.
 25 Q And on July 18th, 2013, can you -- looks like this is a

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1 work order prepared by Pat; is that correct?
 2 A Pardon?
 3 Q This is a work order that was prepared by Pat, is that
 4 correct, so far as you can tell?
 5 A You know, actually, it was prepared by his wife.
 6 Q I was going to say it's really nice handwriting.
 7 A He must have had a bunch of them to do and took them
 8 home and dictated them, I guess. But it is Pat's work order, yes.
 9 Q And the work was performed by Pat?
 10 A Yes.
 11 Q And can you describe for me the work that was performed
 12 here.
 13 A Troubleshoot air leak at the gate control valve.
 14 Q Do you know if this work order was before or after the
 15 July '13 dump incident, because there's some confusion as to the
 16 date. So I'm wondering if you know whether this work order is
 17 from before that incident or after that incident.
 18 A Well, it's kind of a loaded question.
 19 MR. BROWN: Well, ask -- listen to what she said, do you
 20 know. And all you can say is yes or no, whether you know or not.
 21 THE WITNESS: Well, if you are saying is it after the
 22 July 13th incident, then, yeah, for sure, it's after the July 13th
 23 incident.
 24 BY MS. WOELFEL:
 25 Q No. Well, I'm not -- the July 2013 incident. So let me

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1 clarify.
 2 THE WITNESS: Oh, oh, I see. Okay.
 3 MR. BROWN: There you go. We don't know when it is.
 4 BY MS. WOELFEL:
 5 Q I'm not trying to trick you.
 6 A Oh, no, no, I know that.
 7 Q So my question is, we know that a dump occurred sometime
 8 in July of the year 2013 involving Equipment 6775, correct?
 9 A Yes.
 10 Q Okay. We don't know the exact date that that occurred,
 11 but we have a work order in front of us, MDB 239, that's dated
 12 July 18 that discusses an air leak at a gate control valve.
 13 A Uh-huh, yes.
 14 Q My question for you is, did this occur -- or is this
 15 work order from before that incident or after that incident, if
 16 you know?
 17 A I don't know for sure, but I believe it was done before
 18 the incident. I believe that the incident -- the first incident
 19 with the bottom opening inadvertently was the end of the month in
 20 July, so I believe this was done before.
 21 Q Okay. Can you tell me what was done to fix this
 22 problem.
 23 A Pat found the O-rings on the oiler and water separator
 24 leaking. Tried to repair with O-rings, removed units, bypassed
 25 air lines, plumbed solid with pipe fittings, reinstalled, tested

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1 for leaks, okay.
 2 Q Now, this handwriting, we established, is not Pat's.
 3 His wife is writing this, it looks like.
 4 A I think so, yes.
 5 Q Where is his wife getting information? Is Pat making
 6 notes? Is he just telling her what he did? Do you have any idea
 7 where she's getting the information that's included on this
 8 document?
 9 A She is probably getting it from his notes. This is
 10 exactly -- this looks exactly like what Pat would have written if
 11 he wrote it.
 12 It doesn't look -- I mean, it doesn't look -- I
 13 understand what he did, what he was -- so whether she wrote it or
 14 he wrote it, I think it's the same -- same thing, yes.
 15 Q Do you usually keep handwritten notes on something other
 16 than a work order when you are performing work on one of the MDB
 17 trucks or trailers?
 18 A I don't know if he does. I think he does. I do, just
 19 so you don't forget to write the mileage down or the part number
 20 or something like that, and then when you go to do your work --
 21 sit down to do your work order, you have it in front of you, fill
 22 out your work order, throw the paper away, you don't need it now.
 23 Q So you throw away your handwritten notes once you fill
 24 out the work order. Is that your testimony?
 25 A Yes.

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1 Q Go down to the next page --
 2 A Can I make a clarification? This actually wasn't the
 3 gate control valve that we were working on. You guys do know
 4 that, right?
 5 Q Sure, you can make that clarification.
 6 A Yeah, we weren't actually working on the gate control
 7 valve, which would be the Versa valve. We were actually working
 8 on the oiling system that's the head of it, yeah.
 9 Q Thank you for that clarification.
 10 Okay. So on to the next page, which would be MDB 240,
 11 and this work order is dated 8/1/2013. And it says date
 12 completed, 8/2/2013, for Equipment 6777.
 13 Do you see that?
 14 A Yes.
 15 Q Is this Pat's handwriting?
 16 A Yes, it is.
 17 Q And this says investigate unintentional gate opening.
 18 So this is the work order to deal with the unintentional gate
 19 opening that occurred at the end of July 2013; is that correct?
 20 A That is correct.
 21 Q And the total time is not filled out. And was it your
 22 testimony that there's no way to figure out how much time it took
 23 to fix this problem?
 24 A I could only guess.
 25 Q Now, this is the work order for rewiring the trailers,

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1 is that correct, to rewire?
 2 A This, no. I think it's to rewire the truck. He might
 3 have actually done something to the trailer. I'm not sure.
 4 Q Can you actually take a look and tell me what this work
 5 order is for.
 6 A Okay. This was -- his notes was investigation --
 7 investigating unintentional gate opening. So he replaced the
 8 Versa valve and rewired dump valve circuit from valve to truck.
 9 Q What does that mean -- stop you there -- "rewired dump
 10 valve circuit from valve to truck"? Can you describe where those
 11 components are.
 12 A So what he did was, he made sure that the wiring from
 13 the batteries of the truck went to the switches, and from the
 14 switches in the four-way through -- directly to each Versa valve
 15 on each trailer without going through any other wiring, any --
 16 it's not -- inclusive in any other wire. It's separate from all
 17 other -- all other portions of the trailer.
 18 Q Okay. So what you are saying is, the wire from the
 19 truck, he switched the wiring so that it went straight from the
 20 truck -- the battery directly to the Versa valve?
 21 A No, from the battery directly to the switches in the
 22 truck, and from there, directly to each Versa valve, instead of
 23 going through the seven-ways.
 24 Q So before we were speaking, we talked about how you
 25 completely rewired the three trailers --

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1 A Yes.
 2 Q -- in response to this incident, correct?
 3 A I believe so.
 4 Q Is this the work order for the rewiring?
 5 A No, not for the complete trailer.
 6 Q Okay. That would be a different work order?
 7 A Yes. If -- yeah, it would be.
 8 Q Okay. And what's reflected on this work order does
 9 not -- does not discuss or identify the work that you did in
 10 rewiring the three trailers, 6773, 6774 --
 11 A No.
 12 Q -- and 6775?
 13 A No.
 14 Q On to the next document, and that's a work order dated
 15 February 15th, 2014, for Equipment Number 6775.
 16 And can you tell me what this -- first of all, you can't
 17 identify who performed this work because there's no name; is that
 18 correct?
 19 A That is correct. When -- I can identify it by his
 20 handwriting.
 21 Q That looks like Pat's handwriting, too?
 22 A It is Pat's handwriting. And, apparently, he didn't
 23 even put the date on, because that's my handwriting for the date.
 24 Q And it says "replace four-way socket and plug"; is that
 25 correct?

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1 A Yes.
 2 Q And what did you do with -- or, what do you typically do
 3 with the four-way socket and plug that you remove?
 4 A Throw them away.
 5 Q Do you know why you had to remove or replace the
 6 four-way socket and plug here?
 7 A Now, once again, if there's any issues with wiring,
 8 something not making contact, we replace -- these are pretty
 9 high-maintenance items. We replace them, rather than try to clean
 10 them or whatever. We just replace them.
 11 Q Next one is June 4th, 2014. Again, no name on the
 12 bottom. But does that look like Pat's handwriting to you, or is
 13 that your handwriting?
 14 A It's got a little of both. It looks like it's got
 15 Tracy's handwriting, my handwriting and Pat's -- or, no, Tracy's
 16 handwriting and Pat's handwriting -- and my handwriting, yes.
 17 Q And the work order, it says by -- I think that says
 18 Scott?
 19 A Yes, by Scott, but Pat wrote "by Scott," meaning I'm the
 20 one that brought it to his attention and told him, hey, we need to
 21 fix this.
 22 Q Describe to me what this work order entails.
 23 A The trailer came in to the yard. Driver would have
 24 noticed -- let us know by filling out a DVIR, which we may or may
 25 not have at this particular time, that the ABS light was on,

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1 indicating a malfunction in the ABS system on the trailer.
 2 Q And so what did you do to repair that?
 3 A Pat would have hooked up our computer to it, figured out
 4 what was wrong with it, diagnosed it, found that the YE-1 wire was
 5 broken, which is one of the wires going from the modulator to one
 6 of the four wheels, wheel ends.
 7 And he temporarily repaired the broken wire, spliced it,
 8 which you are really not supposed to do, but it does work. And
 9 then he replaced it on -- two days later when the new one came in.
 10 Q Next page is 6775 on 6/30, 2014, and I believe we
 11 touched upon this one earlier in your testimony.
 12 A Yes.
 13 Q Since the last time -- I think you touched upon it
 14 yesterday -- do you have any idea what this work order is about?
 15 A No. In fact, this morning, I pulled this work order out
 16 before coming here and went over it with Pat Bigby.
 17 Q Okay. Tell me what you guys discussed.
 18 A And he says the only thing he can think of is the bolts
 19 were loose and he tightened up the bolts.
 20 Q On the Versa valve?
 21 A Yes. That's the only thing he could think of.
 22 Q Did he have any personal recollection of it, or was he
 23 just kind of speculating as to what it could possibly --
 24 A I think he was speculating, yes.
 25 Q What else did you chat with Pat about this morning

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1 before your deposition? Did you talk about anything else with
 2 respect to your testimony the day before?
 3 A Oh, no. No.
 4 Q Did you get any more clarification or talk through any
 5 other issues?
 6 A Huh-uh.
 7 MR. BROWN: Is that a "no"?
 8 THE WITNESS: Huh?
 9 MR. BROWN: Is that a "no"?
 10 THE WITNESS: Oh, yeah, no, we did not. We had other --
 11 other projects we were trying to figure out before I had to take
 12 off to go to deposition. So, no.
 13 BY MS. WOELFEL:
 14 Q So the only item that you discussed with Pat related to
 15 your testimony or sought clarification from him this morning was
 16 on the document that's Bates-labeled MDB 256; is that correct?
 17 A Yes, that's correct.
 18 Q Did you talk to any person other than Pat this morning,
 19 you know, about seeking clarification or checking on the stuff
 20 that you had testified about?
 21 A No, I did not talk to anybody.
 22 Q All right. Next page, MDB 258, date on there is
 23 July 2nd, 2014. What's going on with this work order?
 24 A Same trailer again, came in with ABS light on again. He
 25 would have done -- gone through his typical diagnostics test,

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1 hooking the computer to it, found both sensors wires to the front
 2 sensors damaged, replaced both wires.
 3 Q And with respect to the wires that he removed, he would
 4 have thrown those away, correct?
 5 A Yes.
 6 Q Next page, MDB 262, that is the work order that was
 7 completed on July 8th, 2014. Can you tell me what's going on with
 8 this one.
 9 A Okay. Apparently, six days later, came back with the
 10 ABS light on again, did the same troubleshooting and found BU-1
 11 circuit fault. Traced circuit to the extension cable, replaced
 12 cable and cleaned or cleared codes.
 13 Q Okay.
 14 A This time, he found the problem with the extension
 15 cable.
 16 Q So the first fix on July 2nd didn't repair the problem.
 17 It looks like the repair that Pat did six days later found the
 18 source of that issue?
 19 A I would say that he replaced the sensors, and the sensor
 20 wires go to an extension that goes the rest of the way. So
 21 apparently -- replacing both sensor wires didn't fix it or just a
 22 coincidence that the extension cable was also broken. But, yeah.
 23 Q And with respect to the items he replaced, he would
 24 throw the ones he removed away; is that correct?
 25 A Yeah. No, we do not have those.

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1 Q You don't keep those?
 2 A No.
 3 Q For any purpose.
 4 Okay. And then the next page -- it's actually out of
 5 chron order here and we have discussed it. It's a repeat. Ignore
 6 that one.
 7 A Okay.
 8 MS. WOELFEL: It's 5 o'clock right now. Why don't we
 9 break and pick it up in the morning.
 10 THE WITNESS: Okay.
 11 MS. WOELFEL: And we'll shoot to have you done by
 12 noontime. We'll do our best to make it happen. Okay?
 13 THE WITNESS: Okay.
 14 MS. WOELFEL: Thank you very much.
 15 THE WITNESS: Yes. Thank you.
 16 MS. SHREVE: Bye, everyone on the phone.
 17 (The proceedings concluded at 4:59 p.m.)
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REPORTER'S CERTIFICATION

1
 2
 3 I, CONSTANCE S. EISENBERG, a Certified Court Reporter in
 4 and for the State of Nevada, do hereby certify;
 5 That on Tuesday, March 7, 2017, at the hour of 9:45 a.m.
 6 of said day, at 100 W. Liberty St., 10th Floor, Reno, Nevada,
 7 personally appeared SCOTT ALLEN PALMER, who was duly sworn by me to
 8 testify in the within-entitled proceedings;
 9 That said deposition was taken in verbatim stenotype
 10 notes by me and thereafter transcribed into typewriting as herein
 11 appears;
 12 That I am not a relative nor an employee of any of the
 13 parties, nor am I financially or otherwise interested in this
 14 action;
 15 That the foregoing transcript, consisting of pages one
 16 through 197, is a full, true and correct transcription of my
 17 stenotype notes of said deposition.
 18 DATED: At Reno, Nevada, this 16th day of March, 2017.
 19
 20
 21
 22
 23
 24
 25

Constance S. Eisenberg

 CONSTANCE S. EISENBERG, CCR #142, RMR, CRR

ERRATA SHEET

2
3
4
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:
13

14	Page	Line	Should read:	Reason for Change:
15				
16	---	---	_____	_____
17			_____	_____
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ERRATA SHEET

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18 Date: _____

Signature of Witness

Name Typed or Printed

EXHIBIT 4