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Jacqueline Bryant
Clerk of the Court
Transaction # 6567742 : yviloria

EXHIBIT 4

CASE NO. 16-10DC-0824
DEPT NO. I

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COURT CLERK
BKellie Hooten DEPUTY

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CHURCHILL

JAMES BIBLE, Plaintiff, vs. MDB TRUCKING, LLC, a Nevada Limited Liability Company; RMS LAMAR HOLDINGS, INC. a Colorado Corporation; VERSA PRODUCTS COMPANY, INC., a New Jersey Corporation; DANIEL ANTHONY KOSKI; ABC CORPORATIONS; BLACK AND WITH COMPANIES; XYZ PARTNERSHIPS; and DOES I through X, inclusive Defendants.	Case No. 16-10DC-0824 Dept. No. I
VERSA PRODUCTS COMPANY, INC., Cross-Claimant, vs. MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI; and DOES I - X, inclusive, Cross-Defendants.	

DEFENDANT/CROSS-CLAIMIANT VERSA PRODUCTS COMPANY, INC.'S ANSWER TO PLAINTIFF JAMES BIBLE'S COMPLAINT AND CROSS-CLAIM AGAINST MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI; and DOES I - X, INCLUSIVE

COMES NOW, Defendant/Cross-Claimant VERSA PRODUCTS COMPANY, INC. ("Defendant") by and through it's attorneys of record, Josh Cole Aicklen, Esq., and David Avakian, Esq., of LEWIS BRISBOIS BISGAARD & SMITH LLP, and hereby responds to Plaintiff's Complaint and Cross-Claims as follows:

RESPONSES TO GENERAL ALLEGATIONS

1. Answering Paragraphs 1, 2 and 3 of Plaintiff's Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraphs and, on that basis, denies each and every allegation of set forth therein.

2. Answering Paragraph 4 of Plaintiff's Complaint, Defendant admits VERSA PRODUCTS COMPANY, INC. is a New Jersey corporation. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations the remainder of said paragraph and, on that basis, denies each and every allegation set forth therein.

3. Answering Paragraphs 5, 6 and 7 of Plaintiff's Complaint Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraphs and, on that basis, denies each and every allegation set forth therein.

RESPONSES TO FIRST CAUSE OF ACTION
(Negligence)

4. Answering Paragraph 8 of Plaintiff's Complaint, Defendant repeats and realleges its responses to Paragraphs 1-7 as if fully set forth herein.

5. Answering Paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of Plaintiff's Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraphs and, on that basis, denies each and every allegation set forth therein.

RESPONSES TO SECOND CAUSE OF ACTION
(Negligence *per se*)

6. Answering Paragraph 21 of Plaintiff's Complaint, Defendant repeats and realleges its responses to Paragraphs 1-20 as if fully set forth herein.

7. Answering Paragraphs 22, 23 and 24 of Plaintiff's Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the

allegations of said paragraphs and, on that basis, denies each and every allegation set forth therein.

RESPONSES TO THIRD CAUSE OF ACTION
(Strict Products Liability as to RMC LAMAR HOLDINGS, INC.)

8. Answering Paragraph 25 of Plaintiff's Complaint, Defendant repeats and realleges its responses to Paragraphs 1-24 as if fully set forth herein.

9. Answering Paragraphs 26, 27, 28, 29, 30 and 31 of Plaintiff's Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraphs and, on that basis, denies each and every allegation set forth therein.

RESPONSES TO FOURTH CAUSE OF ACTION
(Strict Products Liability as to VERSA PRODUCTS COMPANY, INC.)

10. Answering Paragraph 32 of Plaintiff's Complaint, Defendant repeats and realleges its responses to Paragraphs 1-31 as if fully set forth herein.

11. Answering Paragraphs 33, 34, 35, 36, 37 and 38 of Plaintiff's Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraphs and, on that basis, denies each and every allegation set forth therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

That it has been necessary for Defendant to employ the services of an attorney to defend this action and a reasonable sum should be allowed it as and for attorneys' fees, together with costs expended in this action.

SECOND AFFIRMATIVE DEFENSE

Defendant alleges that no contract exists between the parties sufficient to support a claim for property damage and/or personal injuries.

THIRD AFFIRMATIVE DEFENSE

Defendant avers that the allegations contained in the Complaint fail to state a

cause of action upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages.

FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that the damages, if any, suffered by Plaintiff, as set forth in the Complaint, were caused in whole or in part by the negligence of a third party over which Defendant had no control.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff by his conduct has waived and/or abandoned any and all claims as alleged herein against Defendant.

SEVENTH AFFIRMATIVE DEFENSE

Defendant cannot be compelled to make contribution beyond its equitable share.

EIGHTH AFFIRMATIVE DEFENSE

The claims in Plaintiff's Complaint are barred or limited by the doctrines of estoppel, waiver, release and/or license.

NINTH AFFIRMATIVE DEFENSE

The damages, if any, incurred by Plaintiff are not attributable to any act, conduct or omission on the part of Defendant; that Defendant denies that it was negligent in any manner or in any degree with respect to the matter set forth in the Plaintiff's Complaint.

TENTH AFFIRMATIVE DEFENSE

If, in fact, any untoward, unsafe, or defective condition existed in the product mentioned in the Complaint, which this answering Defendant denies, said condition was caused and contributed to by the negligence of the Plaintiff and/or other third parties, and not by any tortious actions or failure to act by this answering Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

If, in fact, any untoward, unsafe, or defective condition existed in the product mentioned in the Complaint, which this answering Defendant denies, said condition was caused and contributed to by the actions or inactions of Plaintiff and/or other third parties,

in that it/they changed and altered said product, thereby barring Plaintiff's right to recovery against this answering Defendant.

TWELFTH AFFIRMATIVE DEFENSE

Between this answering Defendant and the Plaintiff and/or other third parties, the equities do not so preponderate in favor of the Plaintiff so as to allow recovery against this answering Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

That any and all events and happenings in connection with the allegations contained in the Complaint, and any resulting injuries and damages, were proximately caused and contributed to by the negligence of other entities; and that Defendant's liability to Plaintiff, if any, is proportionate only to its respective degree of negligence in comparison to all other responsible entities, as determined by the trier of fact.

FOURTEENTH AFFIRMATIVE DEFENSE

That the events, injuries and damages complained of in Plaintiff's Complaint, if any, were the result of an unavoidable accident insofar as Defendant is concerned and incurred without any negligence, want of care, default, breach of warranty or other breach of duty to Plaintiff on the part of Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that the Plaintiff and/or other third-parties are responsible for comparative fault in the matter set forth in the Complaint and said comparative fault on the Plaintiff and/or other third-parties part caused or contributed to the injuries or damages complained of, if any. The Court is requested to determine and allocate the percentage of negligence attributable to said Plaintiff and/or other third-parties.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff and/or other third-parties had knowledge of the risks and hazards set forth in the Complaint and the magnitude thereof, and did voluntarily assume the risks thereof.

SEVENTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that the injury, damage, or loss, if any, sustained by the Plaintiff and/or other third-parties was due to and proximately caused by the misuse, abuse, and misapplication of the product described in the Complaint.

EIGHTEENTH AFFIRMATIVE DEFENSE

Defendant alleges that the injury, damage or loss, if any, sustained by the Plaintiff and/or other third parties, was due to the use of a product for a purpose for which it was not intended.

NINETEENTH AFFIRMATIVE DEFENSE

The product identified in the Complaint was altered or modified in such a way that was not reasonably foreseeable by Defendant and precludes or reduces the liability of Defendant, if any.

TWENTIETH AFFIRMATIVE DEFENSE

The product identified in the Complaint conformed with the state of the art at the time of the sale.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff and/or other third-parties use of the subject product identified in the Complaint was contrary to instructions and/or warnings provided with the subject product thereby precluding recovery against or reducing the liability of this answering Defendant.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff and/or other third-parties injuries, if any, were aggravated by their failure to mitigate such damages.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff and/or other third-parties claims are barred by disclaimer.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff and/or other third-parties and this answering Defendant are not in privity of contract.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Defendant had no duty to warn of any alleged danger where such danger was open and obvious to all persons of ordinary intelligence and experience, including the Plaintiff and/or other third parties.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in that a manufacturer or seller has no duty to warn of patent or obvious dangers.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in that the product was not in a reasonably dangerous or defective condition at the time it left Defendant's control.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in that Defendant was not and is not a merchant within the meaning of the implied warranty of merchantability.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in that this answering Defendant is not the manufacturer of the allegedly defective product(s).

THIRTIETH AFFIRMATIVE DEFENSE

Plaintiff's damages, if any there were, are barred and/or Plaintiff's recovery must be reduced due to Plaintiff's own comparative fault.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserves the right to seek leave of court to amend this Answer to specifically assert any such defenses. Such defenses are herein incorporated by reference for the specific purpose of not waiving any such defenses.

DEFENDANT/CROSS-CLAIMANT VERSA PRODUCTS COMPANY, INC.'S CROSS-CLAIM AGAINST MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI; AND DOES I-X, INCLUSIVE

COMES NOW, Defendant/Cross-Claimant VERSA PRODUCTS COMPANY, INC. (hereinafter "Cross-Claimant") and alleges and files a Cross-Claim against MDB TRUCKING, LLC; DANIEL ANTHONY KOSK;I and DOES I - X, inclusive, and each of them, as follows:

FIRST CROSS-CLAIM

(Contribution against Cross-Defendants MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI; and DOES I through X, inclusive, and each of them)

That Cross-Claimant VERSA PRODUCTS COMPANY, INC. is at all times relevant hereto, a foreign limited liability company.

1. Cross-Claimant is unaware of the true names and legal capacities, whether individual, corporate, associate, or otherwise, of the Cross-Defendants sued herein as DOES I - X, inclusive, and therefore sues said Cross-Defendants by fictitious names. Cross-Claimant prays for leave of court to insert said Cross-Claim true names and legal capacities when they are ascertained.

2. Cross-Claimant is informed and believes, and thereupon alleges, that each of the Cross-Defendants designated herein as a DOE is in some way directly or vicariously responsible and liable for the events referred to herein and proximately caused the damages alleged, if any, in that the DOE negligently owned, operated, maintained, serviced and/or entrusted the subject tractor trailer.

3. Cross-Claimant alleges that Cross-Defendants MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI; and DOES I - X, inclusive, and each of them, negligently operated, maintained, owned, serviced and/or entrusted the subject tractor trailer as alleged by Plaintiff in her Complaint.

4. Cross-Claimant alleges that Cross-Defendants MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI and DOES I - X, inclusive, and each of them, are liable to Cross-Claimant for any judgment rendered against it in this action.

5. In the event of any judgment for the Plaintiff and against Cross-Claimant, said Cross-Claimant is entitled to contribution from said Cross-Defendants MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI and DOES I - X, inclusive, and each of them, pursuant to NRS 17.225, et. seq.

6. By reason of this action it has been necessary for Cross-Claimant to incur costs and retain an attorney to defend and prosecute this action on their behalf, and therefore Cross-Claimant VERSA PRODUCTS COMPANY, INC. is entitled to costs of suit and reasonable attorneys' fees incurred.

PRAYER FOR RELIEF

WHEREFORE, Defendant/Cross-Claimant VERSA PRODUCTS, INC. prays for judgment as follows:

1. For judgment over and against Cross-Defendants MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI and DOES I - X, inclusive, inclusive, and each of them, for their pro-rata share and contribution for the amount of any judgment entered against the Cross-Claimant and in favor of Plaintiffs JAMES BIBLE.

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2. That Plaintiff JAMES BIBLE's Complaint be dismissed with prejudice;

3. For an award of attorneys' fees and costs incurred herein; and

4. For such other and further relief as this Court deems just and proper.

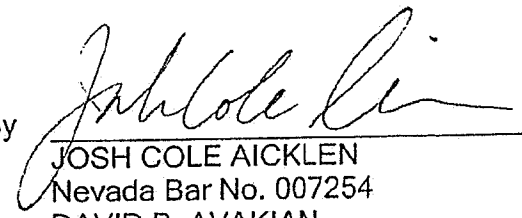
AFFIRMATION

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

DATED this 28th day of July, 2016

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By 

JOSH COLE AICKLEN
Nevada Bar No. 007254
DAVID B. AVAKIAN
Nevada Bar No. 009502
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
Attorneys for Defendant VERSA PRODUCTS COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 2016, a true and correct copy of DEFENDANT/CROSS-CLAIMIANT VERSA PRODUCTS COMPANY, INC.'S ANSWER TO PLAINTIFF JAMES BIBLE'S COMPLAINT AND CROSS-CLAIM AGAINST MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI and DOES I - X, INCLUSIVE was served by U.S. Mail addressed as follows:

James F. Sloan, Esq.
JAMES F. SLOAN LTLD.
977 W. Williams Ave.
Fallon, NV 894063
Attorney for Plaintiff
JAMES BIBLE

An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

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Jacqueline Bryant
Clerk of the Court
Transaction # 6567742 : yviloria

EXHIBIT 3

CV16-01914 DC-09900080656-045
JAMES BIBLE VS MDB TRUCKING, 7 Pages
District Court 09/20/2016 04:07 PM
Washoe County 1500
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CASE NO. 16-10DC-0824
DEPT. NO. I
[The undersigned hereby affirms this document does not contain a social security number]

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JACQUELINE BRYANT
CLERK OF THE COURT
BY _____ DEPUTY

FILED
2016 AUG 15 PM 3:54
SUE SEVON
COURT CLERK
BY _____ DEPUTY

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CHURCHILL

JAMES BIBLE,

Plaintiff,

vs.

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

Defendants.

MDB TRUCKING, LLC, a Nevada limited liability company,

Cross-Claimant,

vs.

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

Cross-Defendants.

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

CV16 01914
D1

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

FIRST CLAIM FOR RELIEF

(General Allegations)

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

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

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

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

5. A Complaint was filed on July 7, 2016 in the Tenth Judicial District Court, Case No. 16-10DC-0824, Department I in which the Plaintiff James Bible prayed for damages against Defendant MDB Trucking, LLC alleging negligence with regard to an accident which occurred on July 7, 2014 where a Ranco trailer owned by MDB Trucking, LLC spilled a load of gravel causing an accident and injury which are claims presented by Plaintiffs.

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

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

THORNDAL ARMSTRONG
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& EISINGER
590 S. McCarran, Suite B
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(775) 786-2882

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Implied Indemnification as to RMC LAMAR)

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

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

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

SECOND CLAIM FOR RELIEF

(Contribution as to RMC LAMAR)

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

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

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

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THORNDAL ARMSTRONG
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THIRD CLAIM FOR RELIEF

(Implied Indemnification as to VERSA)

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

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

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

FOURTH CLAIM FOR RELIEF

(Contribution as to VERSA)

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

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

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

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

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

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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 12th 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

CERTIFICATE OF SERVICE

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

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

_____ hand delivery

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

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

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

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

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

DATED this 15 day of August, 2016.

An employee of Thorndal Armstrong
Delk Balkenbush & Eisinger

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

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Jacqueline Bryant
Clerk of the Court
Transaction # 6567742 : yviloria

EXHIBIT 2

Vendor No.: **93565** **Judicial District Court, Tenth** Check No.: **11783**

Invoice Date	Invoice No.	Description	Disb. Code	Voucher No.	Account No./ File No.	Amount
7/28/16	LV-05022	Filing for Cross-Claim regarding Bible v. Versa Products	5	2021758	27350-1553	198.00
					Total Amount:	**198.00**

WARNING - Do not cash unless you can verify a color change - Rub Briskly to Verify

LEWIS BRISBOIS BISGAARD & SMITH LLP
ATTORNEYS
LAS VEGAS OFFICE
6385 SOUTH RAINBOW BOULEVARD, SUITE 600
LAS VEGAS, NEVADA 89118
(702) 893-3383

WELLS FARGO BANK, N.A.
San Francisco, CA

CHECK NO. **11783**

11-24/1210

DATE **07/29/2016**

$ **********198.00

PAY: **One Hundred Ninety-Eight and 00/100**********

Draft void 120 days from issued.
LEWIS BRISBOIS BISGAARD & SMITH LLP

TO THE ORDER OF **TENTH JUDICIAL DISTRICT COURT**

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WARNING - VERIFY WORD VALID BY TOUCHING, RUBBING OR BREATHING ON.

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Jacqueline Bryant
Clerk of the Court
Transaction # 6567742 : yviloria

EXHIBIT 1

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2018-02-09 11:33:48 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6524896 : yviloria

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Las Vegas, Nevada 89118
702.893.3383
FAX: 702.893.3789
Attorneys for Cross-Defendant VERSA PRODUCTS COMPANY, INC.

DISTRICT COURT

WASHOE COUNTY, NEVADA

JAMES BIBLE, Plaintiff, vs. MDB TRUCKING, LLC, et. al. Defendants.	Case No. CV16-01914 Dept. 10 **CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S VERIFIED MEMORANDUM OF COSTS**
AND ALL RELATED CASES.	

COMES NOW, Cross-Defendant VERSA PRODUCTS COMPANY, INC., by and through its attorneys of record, Josh Cole Aicklen, Esq., David B. Avakian, Esq. and Paige S. Shreve, Esq., of LEWIS BRISBOIS BISGAARD & SMITH, LLP, and submits the following Verified Memorandum of Costs to be recovered against Cross-Claimant MDB TRUCKING, LLC pursuant to NRS 18.005; NRS 18.020; and NRS 18.110.

This Memorandum of Costs and Disbursements is based upon VERSA's Offer of Judgment under NRCP 68, NRS 18.005, NRS 18.020; and NRS 18.110, the pleadings and papers on file herein, the verification of attorneys' fees and costs by defense counsel, and any evidence to be considered by this Court.

VERSA submits its verified Memorandum of Costs within five (5) days of entry of Judgment pursuant to NRS 18.110(1).

The undersigned hereby verifies, under penalty of perjury, that the following costs were incurred by Cross-Defendant in the defense of this matter:

COSTS FROM LEWIS BRISBOIS BISGAARD & SMITH, LLP (LBBS)

1.	Court Filing Fees	$ 398.00
2.	Mail	$ 43.74
3.	Records Reproduction	$ 834.00

LEGAL COSTS: $1,274.74

AFFIRMATION

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

DATED this 9th day of February, 2018.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Josh Cole Aicklen

JOSH COLE AICKLEN
Nevada Bar No. 007254
DAVID B. AVAKIAN
Nevada Bar No. 009502
PAIGE S. SHREVE
Nevada Bar No. 013773
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Cross-Defendant
VERSA PRODUCTS COMPANY, INC.

AFFIDAVIT OF JOSH COLE AICKLEN IN SUPPORT OF CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S VERIFIED MEMORANDUM OF COSTS

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

I, JOSH COLE AICKLEN, ESQ., do declare and state as follows:

1. I am an Owner of Lewis Brisbois Bisgaard & Smith LLP, and am duly licensed to practice law in the State of Nevada. I am competent to testify to the matters set forth in this Affidavit, and will do so if called upon. I am the attorney of record representing Cross-Defendant VERSA PRODUCTS COMPANY, INC. in the subject lawsuit currently pending in Department 10 of the Second Judicial District Court for the State of Nevada, Case Number CV16-01914.

2. I participated in the entirety of the litigation, which culminated in an evidentiary hearing on October 13, 2017 in the FITZSIMMONS and BIBLE matter with the Court finding in favor of Cross-Defendant and striking MDB's cross-claims.

3. The total costs in the case were $ 1,275.74.

4. The entirety of the costs in this case were reasonable and customary for Washoe County.

By _____
JOSH COLE AICKLEN, ESQ.

SUBSCRIBED AND SWORN to before me this 9th day of February, 2018.

_____
NOTARY PUBLIC in and for said COUNTY and STATE

E. WILCZYNSKI
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 01-27-20
Certificate No: 12-6840-1

LEWIS BRISBOIS BISGAARD & SMITH LLP
ATTORNEYS AT LAW

LIST OF EXHIBITS

Exhibit 1	Disbursement Diary and Supporting Documentation for Costs

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2018 a true and correct copy of **CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S VERIFIED MEMORANDUM OF COSTS** was served via the Court's electronic e-filing system addressed as follows:

Matthew C. Addison, Esq.
McDONALD CARANO WILSON LLP
100 W. Liberty St., 10th Floor
Reno, NV 89501
RMC LAMAR HOLDINGS, INC.

Nicholas M. Wieczorek, Esq.
Jeremy J. Thompson, Esq.
CLARK HILL PLLC
3800 Howard Hughes Pkwy, Ste. 500
Las Vegas, NV 89169
Attorneys for MDB TRUCKING, LLC and
DANIEL ANTHONY KOSKI

/s/ Susan Kingsbury
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

FILED
Electronically
CV16-01914
2018-02-09 11:33:48 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6524896 : yviloria

EXHIBIT 1

27350 Hartford Insurance Company
1553 Bible, James v Versa Products Company, Inc

Selections: Client-Matter: 27350-1553 to 27350-1553 *Include Write-Offs*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
7/29/16	5	Court filing fee: Tenth Judicial District Court Inv#:LV-05022 Filing for Cr regarding Bible v. Versa Products	11783			198.00	P A/P-P	1740978
7/29/16	5	Court filing fee: Tenth Judicial District Court Inv#:LV-05023 Fee to file D Jury Trial regarding Bible v. Versa Products	11784			320.00	P A/P-P	1740978
8/05/16	F	Federal Express Mail: Federal Express Inv#:5-504-03131 07/29/16 Recipient: Judicial District Court Sender: Josh Cole Aicklen 776880733313	165792			21.87	W A/P-P	
9/16/16	F	Federal Express Mail: Federal Express Inv#:5-547-56483 09/07/16 Recipient: Churchill County Sender: David B. Avakian 777173407850	168900			21.87	W A/P-P	
5/09/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759911 Records of Bible, James from Department of Health and Human Services on 04/25/17.	189865			81.00	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759981 Records of Bible, James from Remsa Ambulance Service on 04/25/17.	189865			81.00	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759952 Records of Bible, James from YRC Freight on 04/25/17.	189865			81.00	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759937 Records of Bible, James from Nevada Prescription Monitoring Progra on 04/25/17.	189865			81.00	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759919 Records of Bible, James from Raivs Team on 04/25/17.	189865			261.50	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759989 Records of Bible, James from Reno Radiological Associates CHTD on 04/25/17.	189865			86.50	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759984 Records of Bible, James from Renown Regional Medical Center on 04/25/17.	189865			81.00	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759982 Records of Bible, James from Renown Regional Medical Records Processing Center on 04/25/17.	189865			81.00	P A/P-P	1909232
6/14/17	5	Court filing fee: Comerica Commercial Card Services Inv#:063017STMT-SBOWERS Trans Date: 05/03/2017 Washoe Co 2nd Dist Gen, Filing fee for motio for summary judgment.				200.00	P A/P-P	1909232
12/18/17	5	Court filing fee: SECOND JUDICIAL DISTRICT COURT- COURT FILING FEE.				320.00-	C/R	

Disbursements by Type:

5	Court filing fee	398.00
F	Federal Express Mail	43.74
RR	Records Reproduction	834.00
	Matter Total	**1,275.74**

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,060
Check#: 11783
Amount: 198.00

Lewis Brisbois Bisgaard & Smith LLP

Cost Advance Ticket
Check Request

 # LV-05022

1. **Check — Date Needed:** 7/28/16
2. **Type of Expense:**

****Finance Committee approval required**

☒	Filing Fee	5	☐	Court Reporter Fee	CR
☐	Witness Fee	7	☐	Mediation / Arbitration Fee**	AM
☐	Prof. Consulting / Service Fee	S	☐	COD Transcription (Invoice Needed)**	G
☐	Expert Witness Fee**	J	☐	Reproduction / Copies	R
☐	Jury Fees	JF	☐	Reproduction / Medical Records	RR
☐	Deposition	H			

Any client-related requests over $500.00 require Lane Ashley's approval. All educational expenses/seminars require Karl Loureiro's approval.

3. **Client and File Name:** Bible v. Versa Products
4. **Client and Matter No.:** 27350-1553
5. **Amount:** $198.00
6. **Payee / Vendor:** Tenth Judicial District Court
7. **Mailing Address:** 73 N. Maine St., Ste. B
   Fallon, NV 89406
8. **Payee's Telephone No.:** 775-423-6088
9. **Payee's Tax I.D. No.:**
10. **Explanation for billing purposes:** Filing for Cross-Claim

Attorney: David B. Avakian **Ext:** 1720
Secretary: Susan Kingsbury **Ext:** 4383

Auth. by: _____ Date 7/28/16
Signature

Return to:
Floor:

Remember to have Attorney Sign and Attach all Supporting Backup

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021758 Distribution 4752915 Distribution Level
Doc ID: 0001MHYZ Page 1

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,060
Check#: 11783
Amount: 198.00

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021758 Distribution 4752915 Distribution Level
Doc ID: 0001MHYZ Page 2

TENTH JUDICIAL DISTRICT COURT
CHURCHILL
OFFICIAL FEE SCHEDULE
Effective July 1, 2015 - Updated Changes Highlighted in Red

Please be advised that all payments that relate to filing fees fines, administrative assessments, restitution, etc. must be submitted in the form of a cashier's check or money order. The Court will continue to accept payment by check from legal counsel and from businesses who have received Court approval of this method of payment. Any exceptions to this policy may only be approved by the Court Administrator. Cash will continue to be accepted for copies and certification of documents as long as the amount does not exceed $28.00.

Adoptions	When filing a new Adoption proceeding NRS 19.013 (844), 19.020 (33), 19.031 (325), 19.03135 (310), 19.0302 (999), CC 4.090.080 (320)	$213.00
	When filing a new Adoption proceeding for a special needs child pursuant to NRS 19.034	$1.00
Answer or Appearance	When a defendant answers a complaint, to be paid upon the filing of the first paper in the action for Civil cases and Domestic cases not contained in NRS 125 NRS 19.013 (344), 19.031 (325), 19.03135 (310), 19.0302 (999), CC 4.090.080 (320)	$198.00
	For each additional defendant named in a civil answer or first appearance NRS 19.0336 (330)	$30.00
	When a defendant answers an action for constructional defect or any other action defined as complex NRS 19.013 (344), 19.031 (325), 19.03135 (310), 19.0302 (349), CC 4.090.080 (320)	$448.00
	Divorce, Annulment, Separate Maintenance answer or first appearance NRS 19.013 (344), 19.031 (314), 19.03135 (310), 19.0302 (999), CC 4.090.080 (320)	$187.00
	Child Custody answer or first appearance NRS 19.013 (344), 19.031 (314), 19.03135 (310), 19.0302 (999), CC 4.090.080 (320)	$187.00
Appeal from a Justice or Municipal Court	When filing an appeal from a Justice Court or Municipal Court NRS 19.013 (342), 19.020 (35), 19.030 (332), 19.031 (325), 19.03135 (310.00), CC 4.090.080 (320)	$134.00
Appeal/Supreme Court	When filing a Notice of Appeal NRS 19.013 (324)	$24.00
	Bonds for Costs on Appeal - Cash or surety deposited by the appellant in the district court with the Notice of Appeal NRS 2.250, N.R.A.P. 7	$500.00
	Supreme Court Appeal filing fee (payable to the Clerk of the Supreme Court)	$250.00
Complaints		
Annulment or Separate Maintenance	When filing a Complaint for Annulment or a Complaint for Separate Maintenance NRS 19.013 (999), 19.020 (33), 19.030 (332), 19.031 (314), 19.03135 (310), 19.030 (320), 440.080 (310), 19.0302 (999), CC 4.090.080 (320)	$274.00
Child Custody	When filing a Complaint for Child Custody NRS 19.013 (344), 19.020 (33), 19.030 (332), 19.031 (314), 19.03135 (310), 19.0302 (999), CC 4.090.080 (320)	$234.00
Civil	When filing a new Civil action or proceeding NRS 19.013 (344), 19.020 (33), 19.030 (332), 19.031 (325), 19.03135 (310), 19.0302 (999), CC 4.090.080 (320)	$245.00
	For each additional plaintiff named in a civil complaint or amended civil complaint NRS 19.0336 (330)	$30.00
	When filing an action for constructional defect or other action defined as complex NRS 19.013 (344), 19.020 (33), 19.030 (332), 19.031 (325), 19.03135 (310), 19.0302 (349), CC 4.090.080 (320)	$495.00
	When filing a third party complaint 19.0302 (9136)	$135.00
Divorce	When filing for a Divorce NRS 19.013 (999), 19.020 (33), 19.030 (332), 19.031 (314), 19.03135 (310), 19.030 (320), 440.080 (310), 19.0302 (999), CC 4.090.080 (320)	$274.00
Domestic Not Specified Above	When filing a domestic case not specified above NRS 19.013 (344), 19.020 (33), 19.030 (332), 19.031 (325), 19.03135 (310), 19.0302 (999), CC 4.090.080 (320)	$245.00
Confession of Judgment	For filing a Confession of Judgment NRS 17.110 (320)	$26.00
Contest/Objection (Probate/Guardianship)	When filing a petition to contest any will or codicil, or on the filing of an objection or cross-petition to the appointment of an executor, administrator or guardian or an objection to the settlement of account or any answer in an estate or guardianship matter NRS 19.013 (344), 19.031 (325), 19.03135 (310), 19.0302 (999), CC 4.090.080 (320)	$198.00

Copies	For each page copied from any file stamped document(s); unless such fee is waived by Clerk of Court NRS 19.013 (§.50)	$0.50
	For each page copied that is not a file stamped document	$0.25
	For each CD/DVD Requested of Court Hearings or Documents	$25.00
Certify/Exemplify	To certify copies of any document(s) prepared by the clerk NRS 19.013 (§3)	$3.00
(Copy fees of $.50 per page also apply)	To exemplify any document(s) prepared by the clerk NRS 19.013 (§6)	$6.00
	To examine and certify a copy of any document(s) prepared by another NRS 19.013 (§5)	$5.00
	To examine and exemplify a copy of any document(s) prepared by another	$9.00
Declaration of Domicile	Filing of Declaration of Domicile NRS 41.195	$5.00
Demand for Jury Trial	When filing a Demand for Jury Trial NRCP Rule 38 (d)	$320.00
Domestic Case-Reopen	When filing a motion or other paper that seeks to modify or adjust a final order issued pursuant to NRS 125, 125B and 125C and on filing any answer or response to such a motion or other paper, excluding those exceptions noted in NRS 19.0312. (effective 11/04/02)	$25.00
Foreign Judgment or Order	Filing and registration of Foreign Judgment or Order NRS 17.350 - NRS 19.013 (§56), 19.030 (§3), 19.030 (§32), 19.031 (§25), 19.03135 (§10), 19.0302 (§66), CC 4.090.080 (§20)	$246.00
Foreign Support Order or Decrees (UIFSA)	Filing Foreign Support Orders or Decrees NRS 130.601	NO FEE
Guardian Ad Litem	Petition for appointment of Guardian Ad Litem (Civil fee paid upon filing of complaint)	NO FEE
Guardianship/Probate	Where value of Estate is $2,500 or less NRS 19.013	NO FEE
	Where value of Estate is $100,000 or less or Unknown NRS 19.013 (§72), 19.020 (§1.50), 19.030 (§32), 19.031 (§25), 19.03135 (§10), CC 4.090.080 (§20)	$160.50
	Where value of Estate is between $100,000 and $200,000 NRS 19.013 (§72), 19.020 (§1.50), 19.030 (§32), 19.031 (§25), 19.03135 (§10), 19.0302 (§99), CC 4.090.080 (§20)	$259.50
	Where value of Estate is more than $200,000 NRS 19.013 (§72), 19.020 (§1.50), 19.030 (§32), 19.031 (§25), 19.03135 (§10), 19.0302 (§352), CC 4.090.080 (§20)	$512.50
Liens, Frivolous or Excessive	When filing an application regarding frivolous or excessive liens NRS 19.030 (§3), 19.030 (§32), 19.031 (§25), 19.03135 (§10), 108.2275 (§96)	$155.00
Minor's Compromise	When filing a Petition to Compromise a Minor's Claim NRS 41.200	NO FEE
Miscellaneous Filings	To file other papers to be kept by the clerk, except for papers filed in court or filed by public officers in their official capacity, and not otherwise provided for NRS 19.013 (§5), 19.03135 (§10)	$15.00
	For issuing any certificate under seal, not otherwise provided for NRS 19.013 (§6)	$6.00
Motions	For filing a motion for summary judgment or joinder 19.0302 (§200)	$200.00
	For filing a motion to certify/decertify class 19.0302 (§349)	$349.00
Joint Petition Divorces Only	1st Time Filing Motion to Modify, Adjust or Enforce Decree of Divorce SB388 - New Section to NRS 19	$129.00

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,060
Check#: 11783
Amount: 198.00

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021758 Distribution 4752915 Distribution Level
Doc ID: 0001MHYZ Page 3

Joint Petition Divorces Only	1st Time Opposing Motion Modify, Adjust, Enforce Decree of Divorce ..... SB386 - New Section to NRS 19	$87.00
Name Change	Filing a petition for a name change..... NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.060.060 ($20)	$245.00
Packets of Forms	Initiating Case Packets	$10.00
	All other Multi document packets	$5.00
	Waiver of Fees and Costs	No Fee
Peremptory Challenge	Peremptory challenge of a Judge (payable to the Clerk of the Supreme Court).....	$450.00
Petition to Seal Records	When filing a new Petition to Seal Records ..... NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.060.060 ($20)	$245.00
Power of Attorney	For filing a certified copy of a Bondsman's Appointment by Power of Attorney..... NRS 697.270 - 19.013 ($16)	$15.00
Searches	For performing a search of the records per year, per name; unless such fee is waived by Clerk of Court NRS 19.013 ($.50)	$0.50
Termination of Parental Rights	Petition for Termination of Parental Rights..... NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.060.060 ($20)	$245.00
Transfer from another District Court or County	To transfer an action or proceeding from another District Court or County..... NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.060.060 ($20)	$245.00
Transfer from a Justice or Municipal Court	When transferring a case from a Justice Court or Municipal Court..... NRS 19.013 ($42), 19.030 ($3), 19.030 ($32), 19.0302 ($99), 19.031 ($25), 19.03135 ($10), CC 4.060.060 ($20)	$231.00
Will	When filing an original Will (no petition included)..... NRS 19.013 ($5), 19.03135 ($10)	$15.00
Writs	For the issuance of any writ of attachment, writ of garnishment, writ of execution or any other writ designed to enforce any judgment of the court..... 19.0302 ($10)	$10.00
Writ of Habeas Corpus	Filing a petition for Writ of Habeas Corpus..... NRS 19.013(5)	NO FEE

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,060
Check#: 11783
Amount: 198.00

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021758 Distribution 4752915 Distribution Level
Doc ID: 0001MHYZ Page 4

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,070
Check#: 11784
Amount: 320.00

Lewis Brisbois Bisgaard & Smith LLP

Cost Advance Ticket
Check Request

 # LV-05023

1. **Check — Date Needed:** 7/28/16
2. **Type of Expense:**

****Finance Committee approval required**

☐	Filing Fee	5	☐	Court Reporter Fee	CR
☐	Witness Fee	7	☐	Mediation / Arbitration Fee**	AM
☐	Prof. Consulting / Service Fee	S	☐	COD Transcription (Invoice Needed)**	G
☐	Expert Witness Fee**	J	☐	Reproduction / Copies	R
☒	Jury Fees	JF	☐	Reproduction / Medical Records	RR
☐	Deposition	H			

Any client-related requests over $500.00 require Lane Ashley's approval. All educational expenses/seminars require Karl Loureiro's approval.

3. **Client and File Name:** Bible v. Versa Products
4. **Client and Matter No.:** 27350-1553
5. **Amount:** $320.00
6. **Payee / Vendor:** Tenth Judicial District Court
7. **Mailing Address:** 73 N. Maine St., Ste. B
   Fallon, NV 89406
8. **Payee's Telephone No.:** 775-423-6088
9. **Payee's Tax I.D. No.:**
10. **Explanation for billing purposes:** Fee to file Demand for Jury Trial

Attorney: David Avakian **Ext:** 1720
Secretary: Susan Kingsbury **Ext:** 4383

Auth. by/ _____ Date 7/28/16
Signature

Return to:
Floor:

Remember to have Attorney Sign and Attach all Supporting Backup

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021762 Distribution 4752916 Distribution Level
Doc ID: 0001MHZ2 Page 1

CASE NO. 16-10DC-0824
DEPT NO. I

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CHURCHILL

JAMES BIBLE, Plaintiff, vs. MDB TRUCKING, LLC, a Nevada Limited Liability Company; RMS LAMAR HOLDINGS, INC. a Colorado Corporation; VERSA PRODUCTS COMPANY, INC., a New Jersey Corporation; DANIEL ANTHONY KOSKI; ABC CORPORATIONS; BLACK AND WITH COMPANIES; XYZ PARTNERSHIPS; and DOES I through X, inclusive Defendants.	Case No. 16-10DC-0824 Dept. No. I
VERSA PRODUCTS COMPANY, INC., Cross-Claimant, vs. MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI and DOES I - X, inclusive, Cross-Defendants.	

DEMAND FOR JURY TRIAL

COMES NOW, Defendant VERSA PRODUCTS COMPANY, INC. by and through its attorneys of record, Josh Cole Aicklen, Esq. and David B. Avakian, Esq. of LEWIS

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

4826-6278-7381.1

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,070
Check#: 11784
Amount: 320.00

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021762 Distribution 4752916 Distribution Level
Doc ID: 0001MHZ2 Page 2

BRISBOIS BISGAARD & SMITH LLP, and hereby demands a jury trial of all of the issues in the above-captioned matter.

AFFIRMATION

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

DATED this ___ day of July, 2016

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By _____

JOSH COLE AICKLEN
Nevada Bar No. 007254
DAVID B. AVAKIAN
Nevada Bar No. 009502
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
Attorneys for Defendant VERSA PRODUCTS COMPANY, INC.

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,070
Check#: 11784
Amount: 320.00

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021762 Distribution 4752916 Distribution Level
Doc ID: 0001MHZ2 Page 3

CERTIFICATE OF SERVICE

I hereby certify that on this __ day of July, 2016, a true and correct copy of DEMAND FOR JURY TRIAL was served by U.S. Mail addressed as follows:

James F. Sloan, Esq.
JAMES F. SLOAN LTLD.
977 W. Williams Ave.
Fallon, NV 894063
Attorney for Plaintiff
JAMES BIBLE

An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

LEWIS BRISBOIS BISGAARD & SMITH LLP

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,070
Check#: 11784
Amount: 320.00

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021762 Distribution 4752916 Distribution Level
Doc ID: 0001MHZ2 Page 4

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 8/05/16
WIP Seq#: 511,210,870
Check#: 165792
Amount: 21.87

Vendor: 34224 Federal Express
Voucher: 2027648 Distribution
Doc ID: 0001MVT6 Page 35 4768866 Distribution Level

My Profile | Support | Locations | English Search or tracking number Subt

FedEx. Shipping | Tracking | Manage Learn | FedEx Office

FedEx Billing Online

View Cart 0.00 Printer-friendly Logout Help

Account Summary | Search/Download | My Options | Manage Center

Back

Tracking ID Details

Tracking ID Summary

Hide Hide

Billing Information

Tracking ID no.	<Prev 774880723313 Next>
Invoice no	5-904-03131
Account no.	1732-8829-9
Ship date	07/29/2016
Invoice date	08/05/2016
Due date	09/30/2016
Tracking ID Balance due	$21.87
Status	Open

View Invoice History
View signature proof of delivery

Messages

FedEx has audited this shipment for correct packag Read More..
Distance Based Pricing, Zone 4
The Earned Discount for this ship date has been ca Read More..
Fuel Surcharge - FedEx has applied a fuel surcharg Read More..
The package weight exceeds the maximum for the pac Read More..

Transaction Details

Hide Hide

Sender Information

JOSH COLE AICKLEN
LEWIS BRISBOIS BISGAARD & SMIT
6385 SOUTH RAINBOW BLVD
LAS VEGAS NV 89118
US

Shipment Details

Ship date	07/29/2016
Payment type	Shipper
Service type	FedEx Priority Overnight
Zone	04
Package type	FedEx Pak
Weight	1.00 lbs
Pieces	1
Master No	104750586
Declared value	50.00

Original Reference

Customer reference no.	27350-1553
Department no	
Reference #2	
Reference #3	

Proof of Delivery

Delivery date	08/01/2016 12:53 PM
Service area code	
Signed by	SHOOTEN

View signature proof of delivery

Recipient Information

TENTH JUDICIAL DISTRICT COURT
TENTH JUDICIAL DISTRICT COURT
73 N MAIN STREET
FALLON NV 89406
US

Charges

Transportation Charge	47.48
Fuel Surcharge	9.43
Weekday Delivery	0.00
Discount	-38.10
Earned Discount	-2.37
DAS Comm	2.46
Total charges	$21.87

Error source page

Updated Reference Edit

Customer reference no.
Department no
Reference #2
Reference #3

Cost Allocation Reference Edit

Cost allocation
Shipment Notes

Approve/notify user | Dispute | Pay

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United States - English

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 9/16/16
WIP Seq#: 515,427,110
Check#: 168900
Amount: 21.87

Vendor: 34224 Federal Express
Voucher: 2042938 Distribution
Doc ID: 0001NOTY Page 12 4808856 Distribution Level

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Tracking ID Details

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Tracking ID Summary

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Billing Information

Tracking ID no 1 Prev 777173407850 Next 2
Invoice no. 5-547-89453
Account no. 1732-0629-6
Ship date 09/07/2016
Invoice date 09/16/2016
Due date 10/01/2016
Tracking ID Balance due 521.87
Status Open

View Invoice History
View signature proof of delivery

Messages

FedEx has audited this shipment for correct packing Read More..
Distance Based Pricing, Zone 4
The Earned Discount for this ship date has been as Read More..
Fuel Surcharge - FedEx has applied a fuel surcharg Read More..
The package weight exceeds the maximum for the pac Read More..

Transaction Details

Hide Hide

Sender Information

DAVID E. AVAKIAN
LEWIS BRISBOIS BISGAARD & SMIT
6385 SOUTH RAINBOW BLVD
LAS VEGAS NV 89118
US

Recipient Information

CHURCHILL COUNTY
DISTRICT COURT
73 N. MAIN STREET
FALLON NV 89406
US

Shipment Details

Ship date	09/07/2016
Payment type	Shipper
Service type	FedEx Priority Overnight
Zone	04
Package type	FedEx Pak
Weight	1.00 lbs
Pieces	1
Meter No.	104750686
Declared value	$0.00

Charges

Transportation Charge	47.46
Fuel Surcharge	0.43
Weekday Delivery	0.00
Discount	-36.10
Earned Discount	-2.37
DAS Comm	2.45
Total charges	521.87

Enter reason code

Original Reference

Customer reference no 27350-1553
Department no.
Reference #2
Reference #3

Updated Reference Edit

Customer reference no
Department no
Reference #2
Reference #3

Proof of Delivery

Delivery date 09/08/2016 16:06 PM
Service area code
Signed by J BERMINGHAM
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Cost Allocation Reference Edit

Cost allocation
Shipment Notes

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27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/09/17
WIP Seq#: 544,141,160
Check#: 189865
Amount: 81.00

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2130236 Distribution 5055527 Distribution Level
Doc ID: 0001SGXO Page 1

COMPEX Legal Services, Inc.

INVOICE NO.: 22759911
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/09/17

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE V MDB TRUCKING
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
6385 SOTUH RAINBOW BOULEVARD, SUITE #600
LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

PLEASE REMIT TO:
P.O. BOX 2738
TORRANCE, CA 90509-2738
TEL 800.788.8831 FAX 310.781.9720

PHONE #: 702-893-3383
ACCOUNT #: 43138

H80567- A	DEPARTMENT OF HEALTH AND HUMAN S ERVICES CLAUSE: MEDICAL/BILLS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Field Trip	1	14.50	14.50
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			81.00
		TOTAL DUE			81.00

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ACCOUNTS PAYABLE-LA

22759911 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,460
Check#: 189865
Amount: 81.00

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129628 Distribution 5053736 Distribution Level
Doc ID: 0001SFN7 Page 1

COMPEX Legal Services, Inc.

INVOICE NO.: 22759981
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE, V MDB TRUCKING,
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

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LAS VEGAS, NV 89118
DAVID B. AVAKIAN
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PHONE #: 702-893-3383
ACCOUNT #: 43138

H89634- A	REMSA AMBULANCE SERVICE CLAUSE: AUTH - MEDS/BILLS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Field Trip	1	14.50	14.50
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			81.00
		TOTAL DUE			81.00
22759981 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT					

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MAY 16 2017
ACCOUNTS PAYABLE-LA

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,470
Check#: 189865
Amount: 81.00

INVOICE NO.: 22759952
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

COMPEX
Legal Services, Inc.

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE, V MDB TRUCKING,
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TUCKING
DATE OF LOSS:

BILLED TO:
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P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
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LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

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PHONE #: 702-893-3383
ACCOUNT #: 43138

H89540- A	YRC FREIGHT CLAUSE: SPECIAL (OTHER) NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Field Trip	1	14.50	14.50
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			81.00
		TOTAL DUE			81.00

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22759952 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129629 Distribution 5053737 Distribution Level
Doc ID: 0001SFNA Page 1

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,480
Check#: 189865
Amount: 81.00

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129630 Distribution 5053738 Distribution Level
Doc ID: 0001SFNE Page 1

COMPEX Legal Services, Inc.

INVOICE NO.: 22759937
ORDER DATE: 04/25/17
INVOICE DATE/DATE OF SERVICE: 05/10/17

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE V MDB TRUCKING
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
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LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

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PHONE #: 702-893-3383
ACCOUNT #: 43138

H89658- A	NEVADA PRESCRIPTION MONITORING PROGRAM CLAUSE: MEDICAL/BILLS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Field Trip	1	14.50	14.50
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			81.00
		TOTAL DUE			81.00
22759937 ->	PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT				

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ACCOUNTS PAYABLE-LA

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,490
Check#: 189865
Amount: 261.50

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129631 Distribution 5053739 Distribution Level
Doc ID: 0001SFNK Page 1

COMPEX Legal Services, Inc.

INVOICE NO.: 22759919
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE V MDB TRUCKING
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
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LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

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PHONE #: 702-893-3383
ACCOUNT #: 43138

H86554- A	RAIVS TEAM CLAUSE: SPECIAL (OTHER) NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Out of Area	1	20.00	20.00
		Custodial Fee	1	200.00	200.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			261.50
		TOTAL DUE			261.50

RECEIVED
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22759919 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,500
Check#: 189865
Amount: 86.50

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129633 Distribution 5053741 Distribution Level
Doc ID: 0001SFNS Page 1

COMPEX Legal Services, Inc.

INVOICE NO.: 22759969
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE, V MDB TRUCKING,
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
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LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

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PHONE #: 702-893-3383
ACCOUNT #: 43138

H89534- D	RENO RADIOLOGICAL ASSOCIATES CHT D CLAUSE: AUTH - MEDS/BILLS/FILMS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Out of Area	1	20.00	20.00
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			86.50
		TOTAL DUE			86.50

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22759969 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,510
Check#: 189865
Amount: 81.00

INVOICE NO.: 22759984
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

COMPEX
Legal Services, Inc.

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE, V MDB TRUCKING,
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
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6385 SOTUH RAINBOW BOULEVARD, SUITE #600
LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

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PHONE #: 702-893-3383
ACCOUNT #: 43138

H86534- C	RENOWN REGIONAL MEDICAL CENTER CLAUSE: AUTH - MEDS/BILLS/FILMS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Field Trip	1	14.50	14.50
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			81.00
		TOTAL DUE			81.00
22759984 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT					

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Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129634 Distribution 5053742 Distribution Level
Doc ID: 0001SFOC Page 1

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,520
Check#: 189865
Amount: 81.00

INVOICE NO.: 22759962
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

COMPEX
Legal Services, Inc.

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE, V MDB TRUCKING,
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
6385 SOTUH RAINBOW BOULEVARD, SUITE #600
LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

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TEL 800.788.8831 FAX 310.781.9720

PHONE #: 702-893-3383
ACCOUNT #: 43138

H89634- B	RENOWN REGIONAL MEDICAL RECORDS PROCESSING CENTER CLAUSE: AUTH - MEDS/BILLS/FILMS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Field Trip	1	14.50	14.50
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			81.00
		TOTAL DUE			81.00
22759962 ->	PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT				

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MAY 16 2017
ACCOUNTS PAYABLE-LA

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129635 Distribution 5053743 Distribution Level
Doc ID: 0001SFOH Page 1

27350-1553

Date / Time	5/3/2017 1:55:34 PM	Cashier	WashoeAPI
Transaction ID	48000911	$200.00	Amount

Court Fees CourtFilingFee
Submission ID 6082232

Payment Summary : Mastercard payment for $200.00.
Payment Acct Last4 : ********0164
Billing Name : Stacy Bowers
Billing Address : 633 W. 5th St., Ste. 4000
Los Angeles, CA 90071
Phone Number : 7028933383
Email Address : stacy.bowers@lewisbrisbois.com

Signature Motion for Summary Judgment

47

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 6/14/17
WIP Seq#: 546,027,930

Amount: 200.00

Vendor: 94005 Comerica Commercial Card Services
Voucher: 2146974 Distribution 5098732 Distribution Level
Doc ID: 0001TUFN Page 797

Stat: blank-WIP Open; W-WIP Written-off; B-Billed & Unpaid; P-Paid; SN-Sent to client for direct payment; PW-partially paid/partially written-off.
Source: A/P-Accounts Payable Vendor Not Paid; A/P-P-Accounts Payable-Vendor Paid; DSB-Disb entry; APWFL-A/P Workflow

FILED
Electronically
CV16-01914
2018-03-08 01:13:00 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6567742 : yviloria

JOSH COLE AICKLEN
Nevada Bar No. 007254
Josh.aicklen@lewisbrisbois.com
DAVID B. AVAKIAN
Nevada Bar No. 009502
David.avakian@lewisbrisbois.com
PAIGE S. SHREVE
Nevada Bar No. 013773
Paige.shreve@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
702.893.3383
FAX: 702.893.3789
Attorneys Cross-Defendant VERSA
PRODUCTS COMPANY, INC.

DISTRICT COURT

WASHOE COUNTY, NEVADA

JAMES BIBLE, Plaintiff, vs. MDB TRUCKING, LLC, et. al. Defendants.	Case No. CV16-01914 Dept. 10 **DEFENDANT/CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S OPPOSITION TO CROSS-CLAIMANT MDB TRUCKING LLC'S MOTION TO RETAX AND SETTLE COSTS**
AND ALL RELATED CASES.	

COMES NOW, Defendant/Cross-Defendant VERSA PRODUCTS COMPANY, INC., by and through it's attorneys of record, Josh Cole Aicklen, Esq., David B. Avakian, Esq. and Paige S. Shreve, Esq., of LEWIS BRISBOIS BISGAARD & SMITH, LLP, and hereby opposes MDB TRUCKING LLC'S Motion to Retax and Settle Costs.

This Opposition is made and based on the pleadings and papers filed herein, the Memorandum of Points and Authorities; NRS 18.020; NRS 18.110; NRS 18.005; the entire records in this case, the attached Affidavit of Paige S. Shreve, Esq.; and any other evidence the Court may entertain at the Hearing on this Motion.

DATED this 8th day of March, 2018.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Josh Cole Aicklen

JOSH COLE AICKLEN
Nevada Bar No. 007254
DAVID B. AVAKIAN
Nevada Bar No. 009502
PAIGE S. SHREVE
Nevada Bar No. 013773
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Cross-Defendant VERSA PRODUCTS COMPANY, INC.

AFFIDAVIT OF PAIGE S. SHREVE, ESQ. IN SUPPORT OF DEFENDANT/CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S OPPOSITION TO CROSS-CLAIMANT MDB TRUCKING LLC'S MOTION TO RETAX AND SETTLE COSTS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

PAIGE S. SHREVE, ESQ., being first duly sworn, deposes and states as follows:

1. I am an Associate at LEWIS BRISBOIS BISGAARD & SMITH LLP, and I am duly licensed to practice law in the State of Nevada.

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

3. I am an attorney of record representing Defendant/Cross-Defendant VERSA PRODUCTS COMPANY, INC. in the subject lawsuit currently pending in Department 10 of the Second Judicial District Court for the State of Nevada, Case Number CV16-01914.

4. Attached hereto as **Exhibit 1** is a true and correct copy of VERSA timely filed its Verified Memorandum of Costs and Disbursements.

5. Attached hereto as **Exhibit 2** is a true and correct copy of check for filing fees.

6. Attached hereto as **Exhibit 3** is a true and correct copy of MDB's Cross-Claim.

7. Attached hereto as **Exhibit 4** is a true and correct copy of VERSA's Answer to Plaintiff's Complaint and MDB's cross-claim and VERSA's cross-claim against MDB.

FURTHER AFFIANT SAYETH NAUGHT.

PAIGE S. SHREVE, ESQ.

SUBSCRIBED AND SWORN to before me
this 8 day of March, 2018.

NOTARY PUBLIC
In and for said County and State

E. WILCZYNSKI
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 01-27-20
Certificate No: 12-6840-1

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On February 8, 2018, VERSA filed the Notice of Entry of Judgment in this matter. On February 9, 2018, VERSA timely filed its Verified Memorandum of Costs and Disbursements, a true and correct copy of which is attached hereto as **Exhibit 1**. Thereafter, MDB filed the instant Motion, disputing some of VERSA's costs. MDB mistakenly argues that the Court must reject all $1,275.74 of VERSA's costs for one of the following reasons: 1) VERSA failed to provide "justifying documentation;" 2) Costs are unrelated to MDB's Cross-claim for contribution; and 3) Costs were incurred after the Offer of Judgement. However, MDB's arguments are wholly unsupported. There is simply no requirement, pursuant to NRS 18.110, that VERSA provide justifying documentation, *i.e.*, a disbursement diary and vendor bills, at that time. However, VERSA properly itemized it's costs into the various categories, provided a disbursement diary, which totals the itemization on the memorandum of costs and provided numerous vendor bills. Id.

VERSA had no reason to believe that MDB would oppose the requested costs as they are clearly reasonable and were necessarily incurred in defending MDB's cross-claim. Id. Additionally, VERSA had no reason to believe that a disbursement diary which shows the court fees paid, etc., invoices and documentation with the check number paid would not be a sufficient "justifying document." If MDB did not oppose the costs, VERSA would still be entitled to an award of costs without going through the costly effort of gathering each and every credit card receipt/vendor bills, even for items which are justified in the disbursement diary.

However, at MDB's request, VERSA has provided a copy of the check, a copy of which is attached hereto as **Exhibit 2**. If the Court feels these documents are insufficient to establish "justifying documentation," VERSA will provide gladly provide any additional documentation the Court believes it needs in addition to what was already provided.

VERSA is entitled to all of the requested costs as they were reasonable and necessarily incurred in defending MDB's cross-claims. See, **Exhibit 1**. As such, VERSA respectfully requests an Order, awarding Defendant its costs in the amount of **$1,275.74**.

II. LEGAL ARGUMENT

A. VERSA Provided "Specific Itemization" and "Justifying Documents" for an Award of Costs Pursuant to NRS 18.110

MDB mistakenly claims that $198.00 of the $1,275.74 in costs was not specifically itemized or no "justifying documentation" was provided. However, VERSA attached a disbursement diary and additional "justifying documentation," rendering MDB's argument moot. The $198.00 reflects the filing fee for VERSA's Answer to Plaintiff's Complaint and MDB's cross-claim. See, **Exhibit 4**. The documentation provided shows the check number and the amount paid.

Further, none of the case law cited by MDB explicitly requires the justifying documentation to be attached to the Memorandum of Costs and Disbursements. Such a requirement would conflict with NRS 18.110, which only requires that the pleading be verified and state that "the items are correct, and that the costs have been necessarily incurred in the action or proceeding." See, NRS 18.110. In any event, VERSA has now provided the Court a detailed disbursement diary (**Exhibit 1**) and a copy of the check (**Exhibit 1 & 2**), which allows this Court to adjudicate the reasonableness of VERSA's costs. Therefore, MDB's legal argument is without any merit.

B. All of VERSA's Costs Were Related to MDB's Cross-Claim for Contribution

MDB mistakenly argues that $1,053.87 of VERSA's costs were unrelated to MDB's cross-claim. However, the medical records MDB cited in its Motion are clearly relevant to MDB's cross-claim against VERSA. MDB's cross-claim sought contribution "with respect to any settlement, judgement, awards, or any other type of resolution of claims brought forward by the Plaintiffs in their First Amended Complaint. See, MDB's Cross-Claim, a true and correct copy of which is attached hereto as **Exhibit 3** at P.5:19-21. As such, any depositions, medical records, etc. that involve the Plaintiff or his claimed damages

directly relate to MDB's cross-claim as it sought contribution from VERSA for all of Plaintiff's claimed damages and any amount paid in settlement. Additionally, as MBD is aware, Plaintiff's counsel in this case did not provide any medical records to opposing counsel, only authorizations. Further, the authorizations were provided weeks before the mediation which necessitated the rush.

Lastly, in regards to the filing fee[1] and the federal express postage, this case was originally filed in Churchill County, which does not have electronic service. As such, VERSA had to mail all documents to ensure proper and timely service. As indicated above, the charges specifically relate to VERSA's response to MDB's cross-claim. As such, filing of a response to MDB's cross-claim and the postage to file the document was necessary in defending against the cross-claim. See, **Exhibit 4**. Therefore, all of these costs are clearly awardable.

B. VERSA is Entitled to All Costs as the Prevailing Party Pursuant to NRS 18.020 and NRS 18.005

MDB mistakenly argues that the Court must reject $21.87 in costs because the documentation clearly demonstrates the costs were incurred after the offer of judgment. However, this argument is irrelevant as VERSA is entitled to an award of its costs pursuant to NRS 18.020 as the prevailing party[2]. NRS 18.020 states in relevant part as follows:

> **Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered**, in the following cases:
>
> 3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500.

See, NRS 18.020 (emphasis added).

---

[1] Which MDB appears to duplicate from the above section.

[2] This is also indicated on VERSA's Verified Memorandum of Costs. See, **Exhibit 1** at P. 1:23-28.

A prevailing party is allowed to recover a number of costs under NRS 18.005 including:

> 2. Reporters' fees for depositions, including a reporter's fee for one copy of each deposition.
>
> * * *
>
> 5. Reasonable fees of not more than five expert witnesses in an amount of not more than $1,500 for each witness, **unless the court allows a larger fee after determining that the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee.**
>
> * * *
>
> 15. Reasonable costs for travel and lodging incurred taking depositions and conducting discovery.

See, NRS 18.005(5) (emphasis added).

MDB alleges it suffered damages in excess of $10,000.00 in damages. Thus, NRS 18.020(3) is applicable to this matter. The use of the word "must" in NRS 18.020 makes an award of VERSA's costs as outlined in NRS 18.050 (as the prevailing party) mandatory, rather than discretionary.

VERSA prevailed against MDB on it's Motion to Strike MDB's Cross-Claim, thus requiring MDB to pay VERSA's costs. The statute makes no mention that the costs in which the prevailing party is allowed is only applicable after an offer of judgement. VERSA's costs are itemized (with supporting documentation) in the Verified Memorandum of Costs. See, **Exhibits1** and **2**. As such, these costs are awardable following judgment in this action.

III. CONCLUSION

Based on the foregoing, VERSA respectfully requests that this Court deny MDB's Motion to Retax and Settle Costs in it's entirety. Further, VERSA respectfully requests that the Court award the full amount of costs in this matter.

AFFIRMATION

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

DATED this 8th of March, 2018.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/Josh Cole Aicklen

JOSH COLE AICKLEN
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Attorneys for Cross-Defendant VERSA PRODUCTS COMPANY, INC.

LIST OF EXHIBITS

Exhibit 1	VERSA timely filed its Verified Memorandum of Costs and Disbursements.
Exhibit 2	Check paid for filing fees.
Exhibit 3	MDB's Cross-Claim
Exhibit 4	VERSA's Answer to Plaintiff's Complaint and MDB's cross-claim and VERSA's cross-claim against MDB.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th of March, 2018, a true and correct copy of **DEFENDANT/CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S OPPOSITION TO CROSS-CLAIMANT MDB TRUCKING LLC'S MOTION TO RETAX AND SETTLE COSTS** was served electronically via the Court's e-filing system addressed as follows:

Matthew C. Addison, Esq.
Jessica L. Woelfel, Esq.
McDONALD CARANO WILSON LLP
100 W. Liberty St., 10th Floor
Reno, NV 89501
RMC LAMAR HOLDINGS, INC.

Nicholas M. Wieczorek, Esq.
Jeremy J. Thompson, Esq.
CLARK HILL PLLC
3800 Howard Hughes Pkwy, Ste. 500
Las Vegas, NV 89169
Attorneys for MDB TRUCKING, LLC and DANIEL ANTHONY KOSKI

/s/ Susan Kingsbury
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

EXHIBIT "A"

F I L E D
Electronically
CV16-01914
2018-02-20 12:47:38 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6539636 : pmsewell

EXHIBIT "A"

	Cost	Description	Amount	Date	Grounds for Retaxing	Taxable Amount
1	NRS 18.005(1)	Filing Fee – Versa Cross Claim against MDB	$198.00	7/29/2016	-No justifying documentation; -Not related to MDB cross-claim; -Pre-dates OOJ	$0.00
2	NRS 18.005(14)	Federal Express	$21.87	8/5/2016	-Pre-dates OOJ	$0.00
3	NRS 18.005(14)	Federal Express	$21.87	9/16/16	-Not related to MDB cross-claim; -Pre-dates OOJ	$0.00
4	NRS 18.005(17)	Compex Legal Services – Health & Human Services	$81.00	5/9/2012	-Not related to MDB cross-claim; -Not taxable cost	$0.00
5	NRS 18.005(17)	Compex Legal Services – REMSA ambulance	$81.00	5/10/2017	-Not related to MDB cross-claim; -Not taxable cost	$0.00
6	NRS 18.005(17)	Compex Legal Services – YRC Freight	$81.00	5/10/2017	-Not related to MDB cross-claim; -Not taxable cost	$0.00
7	NRS 18.005(17)	Compex Legal Services – NV Prescription Monitoring Program	$81.00	5/10/2017	-Not related to MDB cross-claim; -Not taxable cost	$0.00
8	NRS 18.005(17)	Compex Legal Services – RAIVS Team	$261.50	5/10/2017	-Not related to MDB cross-claim; -Not taxable cost	$0.00
9	NRS 18.005(17)	Compex Legal Services – Reno Radiological	$86.50	5/10/2017	-Not related to MDB cross-claim; -Not taxable cost	$0.00
10	NRS 18.005(17)	Compex Legal Services – Renown Med. Center	$81.00	5/10/2017	-Not related to MDB cross-claim; -Not taxable cost	$0.00
11	NRS 18.005(17)	Compex Legal Services – Renown Med. Center	$81.00	5/10/2017	-Not related to MDB cross-claim; -Not taxable cost	$0.00

FILED
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2018-02-20 12:47:38 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6539636 : pmsewell

2430
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MDB Trucking, LLC

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

JAMES BIBLE Plaintiff, vs. MDB TRUCKING, LLC, et al Defendants. AND ALL RELATED CASES.	Case No.: CV16-01914 Dept. No.: 10 **CROSS-CLAIMANT MDB TRUCKING LLC'S MOTION TO RETAX AND SETTLE CROSS-DEFENDANT VERSA PRODUCTS COMPANY INC.'S VERIFIED MEMORANDUM OF COSTS**

Pursuant to NRS 18.110(4), Cross-Claimant MDB Trucking, LLC ("MDB"), by and through its counsel of record Nicholas M. Wieczorek, Esq., Jeremy J. Thompson, Esq. and Colleen E. McCarty, Esq. of the law firm of Clark Hill PLLC, hereby moves this Court to retax and settle the costs contained in Cross-Defendant Versa Products Company, Inc.'s Verified Memorandum of Costs ("Memorandum"), which was filed on February 9, 2018.[1] As set forth

[1] MDB's argument in opposition to Versa's Motion for Attorneys' Fees and Costs Pursuant to NRCP 37 and NRCP 68, which if granted would result in the disallowance of all costs, is incorporated by reference herein. The remainder of MDB's Motion will address why the majority of Versa's specific claimed costs should be retaxed and settled in the event the Court determines it is appropriate to consider them at all.

Docket 76396 Document 2018-30088

below, Versa's Memorandum seeks costs that are not supported by justifying documentation, not related to MDB's cross-claim for contribution, not timely because they pre-date Versa's Offer of Judgment, and are not authorized by NRS 18.005.

This Motion to Retax and Settle Costs ("Motion") is made and based on the following Memorandum of Points and Authorities, the exhibits thereto, the pleadings and papers on file in this case, and any oral argument permitted by the Court.

Dated this 20 day of February, 2018.

CLARK HILL PLLC

By: _____

NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
JEREMY J. THOMPSON
Nevada Bar No. 12503
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Telephone: (702) 862-8300
Attorneys for Cross-Claimant
MDB Trucking, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Memorandum filed by Cross-Defendant Versa Products Company, Inc. ("Versa"), seeks $1,274.74[2] in costs which it claims it incurred (1) in defense of the cross-claim for Contribution brought against it by Cross-Claimant, MDB Trucking LLC ("MDB"), and (2) after it served MDB with an Offer of Judgment on May 4, 2017. *See* Versa's Motion for Attorneys' Fees and Costs Pursuant to NRCP 37 and NRCP 68 ("Motion for Attorneys' Fees and Costs") at 4:13-14 [Affidavit of Josh Cole Aicklen]. Even a cursory review of the Memorandum,

[2] In what is assumed to be an error in calculation, the amounts claimed by Versa add up to **$1,275.74**, not $1,274.74 as plead.

however, reveals that these assertions are false and contain numerous deficiencies which require the Court to deny all of the costs being claimed.[3]

First, the Memorandum improperly seeks costs which are devoid of any documentation to substantiate that they are reasonable, necessary and actually incurred. Specifically, the costs asserted for Court Filing Fees are identified only by Versa's counsel's self-serving "Disbursement Diary" and "Check Request," but have no corresponding bills, invoices or receipts. Second, even for those claimed costs with purported supporting documentation, the Memorandum improperly seeks reimbursement for amounts clearly unrelated to MDB's Contribution cross-claim, which is the only matter in which Versa can assert prevailing party status. Third, the Memorandum improperly seeks reimbursement for amounts incurred prior to Versa's May 4, 2017 Offer of Judgment, despite Versa's counsel's claim to the contrary. Finally, the Memorandum improperly seeks reimbursement for amounts not permitted by the authorizing statute, NRS 18.005, period.

Based on these substantial and indefensible deficiencies, MDB respectfully requests this Court deny all improper costs requests contained in Versa's Memorandum, as discussed more fully below.

II.

ARGUMENT

A. LEGAL STANDARD.

Statutes permitting an award of costs are strictly construed in Nevada, and an award of costs is improper when requested without appropriate or sufficient documentation. *Bobby Berosini, Ltd. v. PETA*, 114 Nev. 1348, 1352, 971 P.2d 383, 385-86 (1998). In *Bobby Berosini, Ltd.*, the Nevada Supreme Court held that it is an abuse of discretion to award costs based on a Memorandum that fails to contain "specific itemization" or "justifying documentation." *Id.* Without such documentation it is impossible to determine the reasonableness of the alleged

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[3] Exhibit A to this Motion is a table that analyzes the cost provided for each item and recalculates accordingly.

costs, making an award based on such a deficient memorandum improper. *Id.* And, as the Nevada Supreme Court recently clarified, "'justifying documentation' must mean something more than a memorandum of costs. In order to retax and settle costs upon motion of the parties pursuant to NRS 18.110, a district court must have before it evidence that the costs were reasonable, necessary, and actually incurred." *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049, 1054 (2015). Any cost that is not substantiated by justifying documentation should be stricken. *Id.* at 1055 (reversing certain awards of costs and modifying others due to lack of documentary support).

Accordingly, the party seeking costs bears the burden of providing documentation to establish that each cost was actually incurred and the reason for each cost. *Vill. Builders 96, L.P. v. U.S. Labs, Inc.*, 121 Nev. 261, 277-78, 112 P.3d 1082, 1093 (2005); *see also Bobby Berosini, Ltd.*, 114 Nev. at 1352-53, 971 P.2d at 386 (reversing a district court award for investigative fees, photocopy fees, long distance phone costs, and juror's fees because the party failed to show "how such fees were necessary to and incurred in the present action" and failed to provide supporting documentation to show that the fees "were accurately assessed" and reasonably incurred); *Waddell v. L.V.R.V., Inc.*, 122 Nev. 15, 25-26, 125 P.3d 1160, 1166-67 (2006) (refusing to allow a party to recover costs for computerized legal research "because those costs were not sufficiently itemized").

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Although not specifically itemized in the Motion, the chart reflects the multiple bases upon which this Court may

B. ANALYSIS.

1. Versa Failed to Provide "Specific Itemization" or "Justifying Documentation" for $198.00 of the $1,274.74 Being Claimed.

Versa has not provided any documentation or explanation to show that $198.00 of its costs were reasonable, necessary, and actually incurred. The Court may exclude expenses if the party does not offer any proof or explanation of the services provided or their necessity. *Gilman v. Nev. Bd. of Veterinary Med. Exam'rs*, 120 Nev. 263, 273-74, 89 P.3d 1000,1007 (2004) (excluding costs related to investigation and hearing attendance fees for individuals because billing statements did not provide any explanation of the services provided). This requirement applies to each and every cost a party seeks.

First, each cost must be sufficiently itemized. *Waddell*, 112 Nev. at 25-26, 125 P.3d at 1166-67 (affirming order denying computerized legal research because the costs were not sufficiently itemized). In order to satisfy this burden, a party must provide more than the type, date and amount of each cost. *Bobby Berosini, Ltd.*, 114 Nev. at 1353, 971 P.2d at 386 (holding that the district court abused its discretion in awarding long distance telephone charges that were not itemized and photocopying charges for which the party had provided only the date and amount of each charge). Even if the Court were to consider Versa's counsel's internal accounting set forth in its "Disbursement Diary" and "Check Request" to be sufficiently reliable, Versa has provided nothing more than a date, type and amount with respect to $198.00 of its claimed filing fees. The Memorandum contains no receipts, invoices, or proof of payment for these costs and without such proper supporting documentation Versa cannot demonstrate a right to recovery.

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deny each cost.

2. Versa Improperly Seeks $1,053.87 of the Remaining $1,076.74 in Costs, Where the Costs Are Unrelated to MDB's Cross-Claim for Contribution Or Not Permitted by the Authorizing Statute.

Even for the remaining $1,076.74 in costs for which Versa provided documentation, $1,053.87 of that amount must be denied because it does not pertain to the claim upon which Versa prevailed, i.e. MDB's Contribution cross-claim. Costs cannot be awarded to a party unless that party is the "prevailing party" in an action – i.e. the party that obtained judgment. *See* NRS 18.020 (costs may be awarded to the "prevailing party"); *Nevada N. R. R. v. Ninth Judicial Dist. Court*, 51 Nev. 201, 204-05, 273 P. 177, 178 (1928) (in determining which party is the "prevailing party," courts must primarily consider "the end attained").

In the instant case, no reasonable argument can be made that Versa was the prevailing party in the underlying plaintiff's claims. As this Court is aware, MDB settled plaintiff's claims pre-trial on May 5, 2017, without any contribution from Versa. Thereafter, on July 17, 2017, this Court granted the motion for good faith settlement resolving the instant personal injury action against MDB and Versa. Versa in no way prevailed in this matter and is not entitled to recover any costs related thereto, as follows:

- Compex Legal Services – Health and Human Services $81.00
- Compex Legal Services – REMSA Ambulance $81.00
- Compex Legal Services – YRC Frieght $81.00
- Compex Legal Services – NV Prescription Monitoring Program $81.00
- Compex Legal Services – RAIVS Team $261.50
- Compex Legal Services – Reno Radiological $86.50
- Compex Legal Services – Renown Med. Center $81.00
- Compex Legal Services – Renown Med. Center $81.00
- Filing Fee – Versa's Cross-Claim against MDB $198.00
- Federal Express – delivery of Versa Cross-Claim $21.87

See Exhibit 1 to the Memorandum.

Despite Versa's characterization of some of the above-referenced costs as "Records Reproduction," the invoices reflect legal services to authorize, rush and ship the medical records/bills and tax information of plaintiff James Bible, as opposed to the actual cost of

making photocopies. Such services are not a taxable costs pursuant to NRS 18.005. Further, Mr. Bible's medical records/bills and tax information were in no way relevant to the strict products liability theory at issue in MDB's cross-claim against Versa, i.e. the inadvertent activation of the Versa valve when exposed to external electromagnetic fields. Such records related only to Mr. Bible's personal injury claims and not MDB's cross-claim for Contribution against Versa.

Likewise, Versa did not prevail on its cross-claim against MDB, yet it seeks clerk's fees for its filing, and additional mailing costs for its delivery to the Tenth Judicial District Court. As these costs are in no way associated with MDB's cross-claim for Contribution against Versa, and with respect to the legal services fees are not authorized by statute, Versa's request for $1,053.87 legal services fees, filing fees and postage must also be denied.

2. Versa Improperly Seeks $21.87 of the Remaining Costs, Where the Costs Were Incurred Prior to Versa's May 4, 2017 Offer of Judgment.

The remaining $21.87 in mailing costs must be denied because the documentation clearly demonstrates the costs were incurred prior to Versa serving MDB with its Offers of Judgment on May 4, 2017. Where Versa based its entitlement to costs on NRCP 68 (*see* Memorandum at 1:26) and falsely claimed that all costs were subsequently incurred (*see* Motion for Attorneys' Fees and Costs at 4:13-14), the remaining $21.87 must also be denied.

III.

CONCLUSION

For the reasons set forth above, Cross-Claimant MDB respectfully requests that this Court retax and settle the costs claimed by Cross-Defendant Versa by denying all unsupported and improperly applied for costs in Versa's Verified Memorandum of Costs in the amount of $1,275.74.

/ / /

/ / /

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that this document does not contain the social security number of any person.

Dated this 20 day of February, 2018.

CLARK HILL PLLC

By: _____

NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
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Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Cross-Claimant
MDB Trucking, LLC

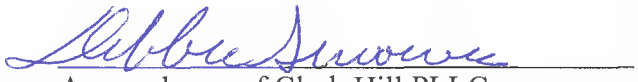
LIST OF EXHIBITS

EXHIBIT A: Chart of Costs.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Clark Hill PLLC, and that on this 20 day of February, 2018, I served a true and correct copy of **CROSS-CLAIMANT MDB TRUCKING, LLC'S MOTION TO RETAX AND SETTLE CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S VERIFIED MEMORANDUM OF COSTS** via electronic means, by operation of the Court's electronic filing system upon each party in this case who is registered as an electronic case filing user with the Clerk, or by U.S. Mail, postage prepaid thereon, to:

JOSH COLE AICKLEN, ESQ.
DAVID B. AVAKIAN, ESQ.
PAIGE S. SHREVE, ESQ.
LEWIS BRISBOIS BISGAARD
& SMITH LLP
6385 S. Rainbow Blvd., Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendant
VERSA PRODUCTS COMPANY, INC.



An employee of Clark Hill PLLC

F I L E D
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Jacqueline Bryant
Clerk of the Court
Transaction # 6524896 : yviloria

EXHIBIT 1

4845-3057-6394.1

27350 Hartford Insurance Company
1553 Bible, James v Versa Products Company, Inc

Selections: Client-Matter: 27350-1553 to 27350-1553 *Include Write-Offs*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
7/29/16	5	Court filing fee: Tenth Judicial District Court Inv#:LV-05022 Filing for Cr regarding Bible v. Versa Products	11783			198.00	P A/P-P	1740978
7/29/16	5	Court filing fee: Tenth Judicial District Court Inv#:LV-05023 Fee to file D Jury Trial regarding Bible v. Versa Products	11784			320.00	P A/P-P	1740978
8/05/16	F	Federal Express Mail: Federal Express Inv#:5-504-03131 07/29/16 Recipient: Judicial District Court Sender: Josh Cole Aicklen 776880733313	165792			21.87	W A/P-P	
9/16/16	F	Federal Express Mail: Federal Express Inv#:5-547-56483 09/07/16 Recipient: Churchill County Sender: David B. Avakian 777173407850	168900			21.87	W A/P-P	
5/09/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759911 Records of Bible, James from Department of Health and Human Services on 04/25/17.	189865			81.00	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759981 Records of Bible, James from Remsa Ambulance Service on 04/25/17.	189865			81.00	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759952 Records of Bible, James from YRC Freight on 04/25/17.	189865			81.00	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759937 Records of Bible, James from Nevada Prescription Monitoring Progra on 04/25/17.	189865			81.00	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759919 Records of Bible, James from Raivs Team on 04/25/17.	189865			261.50	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759989 Records of Bible, James from Reno Radiological Associates CHTD on 04/25/17.	189865			86.50	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759984 Records of Bible, James from Renown Regional Medical Center on 04/25/17.	189865			81.00	P A/P-P	1909232
5/10/17	RR	Records Reproduction: Compex Legal Services, Inc. Attn: Accts Receivable In 22759982 Records of Bible, James from Renown Regional Medical Records Processing Center on 04/25/17.	189865			81.00	P A/P-P	1909232
6/14/17	5	Court filing fee: Comerica Commercial Card Services Inv#:063017STMT-SBOWERS Trans Date: 05/03/2017 Washoe Co 2nd Dist Gen, Filing fee for motio for summary judgment.				200.00	P A/P-P	1909232
12/18/17	5	Court filing fee: SECOND JUDICIAL DISTRICT COURT- COURT FILING FEE.				320.00-	C/R	

Disbursements by Type:

5	Court filing fee	398.00
F	Federal Express Mail	43.74
RR	Records Reproduction	834.00
	Matter Total	**1,275.74**

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,060
Check#: 11783
Amount: 198.00

Lewis Brisbois Bisgaard & Smith LLP

Cost Advance Ticket
Check Request

 # LV-05022

1. **Check — Date Needed:** 7/28/16
2. **Type of Expense:**

****Finance Committee approval required**

☒	Filing Fee	5	☐	Court Reporter Fee	CR
☐	Witness Fee	7	☐	Mediation / Arbitration Fee**	AM
☐	Prof. Consulting / Service Fee	S	☐	COD Transcription (Invoice Needed)**	G
☐	Expert Witness Fee**	J	☐	Reproduction / Copies	R
☐	Jury Fees	JF	☐	Reproduction / Medical Records	RR
☐	Deposition	H			

Any client-related requests over $500.00 require Lane Ashley's approval. All educational expenses/seminars require Karl Loureiro's approval.

3. **Client and File Name:** Bible v. Versa Products
4. **Client and Matter No.:** 27350-1553
5. **Amount:** $198.00
6. **Payee / Vendor:** Tenth Judicial District Court
7. **Mailing Address:** 73 N. Maine St., Ste. B
   Fallon, NV 89406
8. **Payee's Telephone No.:** 775-423-6088
9. **Payee's Tax I.D. No.:**
10. **Explanation for billing purposes:** Filing for Cross-Claim

Attorney: David B. Avakian **Ext:** 1720
Secretary: Susan Kingsbury **Ext:** 4383

Auth. by: _____ Date 7/28/16
Signature

Return to:
Floor:

Remember to have Attorney Sign and Attach all Supporting Backup

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021758 Distribution 4752915 Distribution Level
Doc ID: 0001MHYZ Page 1

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,060
Check#: 11783
Amount: 198.00

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021758 Distribution 4752915 Distribution Level
Doc ID: 0001MHYZ Page 2

TENTH JUDICIAL DISTRICT COURT
CHURCHILL
OFFICIAL FEE SCHEDULE
Effective July 1, 2015 - Updated Changes Highlighted in Red

Please be advised that all payments that relate to filing fees fines, administrative assessments, restitution, etc. must be submitted in the form of a cashier's check or money order. The Court will continue to accept payment by check from legal counsel and from businesses who have received Court approval of this method of payment. Any exceptions to this policy may only be approved by the Court Administrator. Cash will continue to be accepted for copies and certification of documents as long as the amount does not exceed $28.00.

Adoptions	When filing a new Adoption proceeding NRS 19.013 ($56), 19.020 ($3), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$213.00
	When filing a new Adoption proceeding for a special needs child pursuant to NRS 19.034	$1.00
Answer or Appearance	When a defendant answers a complaint; to be paid upon the filing of the first paper in the action for Civil cases and Domestic cases not contained in NRS 125 NRS 19.013 ($44), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$198.00
	For each additional defendant named in a civil answer or first appearance NRS 19.0335 ($30)	$30.00
	When a defendant answers an action for constructional defect or any other action defined as complex NRS 19.013 ($44), 19.031 ($25), 19.03135 ($10), 19.0302 ($349), CC 4.090.060 ($20)	$448.00
	Divorce, Annulment, Separate Maintenance answer or first appearance NRS 19.013 ($44), 19.031 ($14), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$187.00
	Child Custody answer or first appearance NRS 19.013 ($44), 19.031 ($14), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$187.00
Appeal from a Justice or Municipal Court	When filing an appeal from a Justice Court or Municipal Court NRS 19.013 ($42), 19.020 ($5), 19.030 ($32), 19.031 ($25), 19.03135 ($10.00), CC 4.090.060 ($20)	$134.00
Appeal/Supreme Court	When filing a Notice of Appeal NRS 19.013 ($24)	$24.00
	Bonds for Costs on Appeal - Cash or surety deposited by the appellant in the district court with the Notice of Appeal NRS 2.250, N.R.A.P. 7	$500.00
	Supreme Court Appeal filing fee (payable to the Clerk of the Supreme Court)	$250.00
Complaints		
Annulment or Separate Maintenance	When filing a Complaint for Annulment or a Complaint for Separate Maintenance NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($14), 19.03135 ($10), 19.033 ($30), 440.805 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$274.00
Child Custody	When filing a Complaint for Child Custody NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($14), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$234.00
Civil	When filing a new Civil action or proceeding NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$245.00
	For each additional plaintiff named in a civil complaint or amended civil complaint NRS 19.0335 ($30)	$30.00
	When filing an action for constructional defect or other action defined as complex NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($349), CC 4.090.060 ($20)	$495.00
	When filing a third party complaint 19.0302 ($135)	$135.00
Divorce	When filing for a Divorce NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($14), 19.03135 ($10), 19.033 ($30), 440.805 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$274.00
Domestic Not Specified Above	When filing a domestic case not specified above NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$245.00
Confession of Judgment	For filing a Confession of Judgment NRS 17.110 ($28)	$28.00
Contest/Objection (Probate/Guardianship)	When filing a petition to contest any will or codicil, or on the filing of an objection or cross-petition to the appointment of an executor, administrator or guardian or an objection to the settlement of account or any answer in an estate or guardianship matter NRS 19.013 ($44), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$198.00

Copies	For each page copied from any file stamped document(s); unless such fee is waived by Clerk of Court NRS 19.013 ($.50)	$0.50
	For each page copied that is not a file stamped document	$0.25
	For each CD/DVD Requested of Court Hearings or Documents	$25.00
Certify/Exemplify	To certify copies of any document(s) prepared by the clerk NRS 19.013 ($3)	$3.00
(Copy fees of $.50 per page also apply)	To exemplify any document(s) prepared by the clerk NRS 19.013 ($6)	$6.00
	To examine and certify a copy of any document(s) prepared by another NRS 19.013 ($5)	$5.00
	To examine and exemplify a copy of any document(s) prepared by another	$9.00
Declaration of Domicile	Filing of Declaration of Domicile NRS 41.195	$5.00
Demand for Jury Trial	When filing a Demand for Jury Trial NRCP Rule 38 (d)	$320.00
Domestic Case-Reopen	When filing a motion or other paper that seeks to modify or adjust a final order issued pursuant to NRS 125, 125B and 125C and on filing any answer or response to such a motion or other paper, excluding those exceptions noted in NRS 19.0312. (effective 11/04/02)	$25.00
Foreign Judgment or Order		
	Filing and registration of Foreign Judgment or Order NRS 17.350 - NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$245.00
Foreign Support Order or Decrees (UIFSA)		
	Filing Foreign Support Orders or Decrees NRS 130.601	NO FEE
Guardian Ad Litem	Petition for appointment of Guardian Ad Litem (Civil fee paid upon filing of complaint)	NO FEE
Guardianship/Probate		
	Where value of Estate is $2,500 or less NRS 19.013	NO FEE
	Where value of Estate is $100,000 or less or Unknown NRS 19.013 ($72), 19.020 ($1.50), 19.030 ($32), 19.031 ($25), 19.03135 ($10), CC 4.090.060 ($20)	$160.50
	Where value of Estate is between $100,000 and $200,000 NRS 19.013 ($72), 19.020 ($1.50), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$259.50
	Where value of Estate is more than $200,000 NRS 19.013 ($72), 19.020 ($1.50), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($352), CC 4.090.060 ($20)	$512.50
Liens, Frivolous or Excessive		
	When filing an application regarding frivolous or excessive liens NRS 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 108.2275 ($85)	$155.00
Minor's Compromise	When filing a Petition to Compromise a Minor's Claim NRS 41.200	NO FEE
Miscellaneous Filings	To file other papers to be kept by the clerk, except for papers filed in court or filed by public officers in their official capacity, and not otherwise provided for NRS 19.013 ($5), 19.03135 ($10)	$15.00
	For issuing any certificate under seal, not otherwise provided for NRS 19.013 ($6)	$6.00
Motions	For filing a motion for summary judgment or joinder 19.0302 ($200)	$200.00
	For filing a motion to certify/decertify class 19.0302 ($349)	$349.00
Joint Petition Divorces Only	1st Time Filing Motion to Modify, Adjust or Enforce Decree of Divorce SB388 - New Section to NRS 19	$129.00

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,060
Check#: 11783
Amount: 198.00

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021758 Distribution 4752915 Distribution Level
Doc ID: 0001MHYZ Page 3

Joint Petition Divorces Only	1st Time Opposing Motion Modify, Adjust, Enforce Decree of Divorce SB388 - New Section to NRS 19	$57.00
Name Change	Filing a petition for a name change NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$245.00
Packets of Forms	Initiating Case Packets All other Multi document packets Waiver of Fees and Costs	$10.00 $5.00 No Fee
Peremptory Challenge	Peremptory challenge of a Judge (payable to the Clerk of the Supreme Court)	$450.00
Petition to Seal Records	When filing a new Petition to Seal Records NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$245.00
Power of Attorney	For filing a certified copy of a Bondsman's Appointment by Power of Attorney NRS 697.270 - 19.013 ($15)	$15.00
Searches	For performing a search of the records per year, per name; unless such fee is waived by Clerk of Court NRS 19.013 ($.50)	$0.50
Termination of Parental Rights	Petition for Termination of Parental Rights NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$245.00
Transfer from another District Court or County	To transfer an action or proceeding from another District Court or County NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.060 ($20)	$245.00
Transfer from a Justice or Municipal Court	When transferring a case from a Justice Court or Municipal Court NRS 19.013 ($42), 19.020 ($3), 19.030 ($32), 19.0302 ($99), 19.031 ($25), 19.03135 ($10), CC 4.090.060 ($20)	$231.00
Will	When filing an original Will (no petition included) NRS 19.013 ($5), 19.03135 ($10)	$15.00
Writs	For the issuance of any writ of attachment, writ of garnishment, writ of execution or any other writ designed to enforce any judgment of the court 19.0302 ($10)	$10.00
Writ of Habeas Corpus	Filing a petition for Writ of Habeas Corpus NRS 19.013(5)	NO FEE

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,060
Check#: 11783
Amount: 198.00

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021758 Distribution 4752915 Distribution Level
Doc ID: 0001MHYZ Page 4

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,070
Check#: 11784
Amount: 320.00

Lewis Brisbois Bisgaard & Smith LLP

Cost Advance Ticket
Check Request

 # LV-05023

1. **Check — Date Needed:** 7/28/16
2. **Type of Expense:**

****Finance Committee approval required**

☐	Filing Fee	5	☐	Court Reporter Fee	CR
☐	Witness Fee	7	☐	Mediation / Arbitration Fee**	AM
☐	Prof. Consulting / Service Fee	S	☐	COD Transcription (Invoice Needed)**	G
☐	Expert Witness Fee**	J	☐	Reproduction / Copies	R
☒	Jury Fees	JF	☐	Reproduction / Medical Records	RR
☐	Deposition	H			

Any client-related requests over $500.00 require Lane Ashley's approval. All educational expenses/seminars require Karl Loureiro's approval.

3. **Client and File Name:** Bible v. Versa Products
4. **Client and Matter No.:** 27350-1553
5. **Amount:** $320.00
6. **Payee / Vendor:** Tenth Judicial District Court
7. **Mailing Address:** 73 N. Maine St., Ste. B
   Fallon, NV 89406
8. **Payee's Telephone No.:** 775-423-6088
9. **Payee's Tax I.D. No.:**
10. **Explanation for billing purposes:** Fee to file Demand for Jury Trial

Attorney: David Avakian **Ext:** 1720
Secretary: Susan Kingsbury **Ext:** 4383

Auth. by: _____ Date 7/28/16
Signature

Return to:
Floor:

Remember to have Attorney Sign and Attach all Supporting Backup

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021762 Distribution 4752916 Distribution Level
Doc ID: 0001MHZ2 Page 1

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,070
Check#: 11784
Amount: 320.00

CASE NO. 16-10DC-0824
DEPT NO. I

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CHURCHILL

JAMES BIBLE, Plaintiff, vs. MDB TRUCKING, LLC, a Nevada Limited Liability Company; RMS LAMAR HOLDINGS, INC. a Colorado Corporation; VERSA PRODUCTS COMPANY, INC., a New Jersey Corporation; DANIEL ANTHONY KOSKI; ABC CORPORATIONS; BLACK AND WITH COMPANIES; XYZ PARTNERSHIPS; and DOES I through X, inclusive Defendants.	Case No. 16-10DC-0824 Dept. No. I
VERSA PRODUCTS COMPANY, INC., Cross-Claimant, vs. MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI and DOES I - X, inclusive, Cross-Defendants.	

DEMAND FOR JURY TRIAL

COMES NOW, Defendant VERSA PRODUCTS COMPANY, INC. by and through its attorneys of record, Josh Cole Aicklen, Esq. and David B. Avakian, Esq. of LEWIS

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

4826-6278-7381.1

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021762 Distribution 4752916 Distribution Level
Doc ID: 0001MHZ2 Page 2

BRISBOIS BISGAARD & SMITH LLP, and hereby demands a jury trial of all of the issues in the above-captioned matter.

AFFIRMATION

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

DATED this ___ day of July, 2016

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By _____

JOSH COLE AICKLEN
Nevada Bar No. 007254
DAVID B. AVAKIAN
Nevada Bar No. 009502
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Tel. 702.893.3383
Attorneys for Defendant VERSA PRODUCTS COMPANY, INC.

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,070
Check#: 11784
Amount: 320.00

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021762 Distribution 4752916 Distribution Level
Doc ID: 0001MHZ2 Page 3

CERTIFICATE OF SERVICE

I hereby certify that on this __ day of July, 2016, a true and correct copy of **DEMAND FOR JURY TRIAL** was served by U.S. Mail addressed as follows:

James F. Sloan, Esq.
JAMES F. SLOAN LTLD.
977 W. Williams Ave.
Fallon, NV 894063
Attorney for Plaintiff
JAMES BIBLE

An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 7/29/16
WIP Seq#: 508,648,070
Check#: 11784
Amount: 320.00

Vendor: 93565 Tenth Judicial District Court
Voucher: 2021762 Distribution 4752916 Distribution Level
Doc ID: 0001MHZ2 Page 4

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 8/05/16
WIP Seq#: 511,210,870
Check#: 165792
Amount: 21.87

Vendor: 34224 Federal Express
Voucher: 2027648 Distribution 4768866 Distribution Level
Doc ID: 0001MVT6 Page 35

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Billing Information

Tracking ID no.	<Prev 776880733313 Next>
Invoice no	5-504-03131
Account no.	1732-8829-8
Ship date	07/29/2016
Invoice date	08/05/2016
Due date	08/20/2016
Tracking ID Balance due	$21.87
Status	Open

View invoice history
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Messages

FedEx has audited this shipment for correct packag Read More..
Distance Based Pricing, Zone 4
The Earned Discount for this ship date has been ca Read More..
Fuel Surcharge - FedEx has applied a fuel surcharg Read More..
The package weight exceeds the maximum for the pac Read More..

Transaction Details

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Sender Information

JOSH COLE AICKLEN
LEWIS BRISBOIS BISGAARD & SMIT
6385 SOUTH RAINBOW BLVD
LAS VEGAS NV 89118
US

Shipment Details

Ship date	07/29/2016
Payment type	Shipper
Service type	FedEx Priority Overnight
Zone	04
Package type	FedEx Pak
Weight	1.00 lbs
Pieces	1
Meter No	104750596
Declared value	$0.00

Recipient Information

TENTH JUDICIAL DISTRICT COURT
TENTH JUDICIAL DISTRICT COURT
73 N MAIN STREET
FALLON NV 89406
US

Charges

Transportation Charge	47.46
Fuel Surcharge	0.43
Weekday Delivery	0.00
Discount	-26.10
Earned Discount	-2.37
DAS Comm	2.45
Total charges	$21.87

Enter promo code

Original Reference

Customer reference no.	27350-1553
Department no	
Reference #2	
Reference #3	

Updated Reference Edit

Customer reference no.
Department no
Reference #2
Reference #3

Proof of Delivery

Delivery date	08/01/2016 13:53
Service area code	PM
Signed by	S.HOOTEN

View signature proof of delivery

Cost Allocation Reference Edit

Cost allocation
Shipment Notes

Approve/notify user | Dispute | Pay

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Customer Support

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27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 9/16/16
WIP Seq#: 515,427,110
Check#: 168900
Amount: 21.87

Vendor: 34224 Federal Express
Voucher: 2042938 Distribution 4808856 Distribution Level
Doc ID: 0001NOTY Page 12

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Tracking ID Summary

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Billing Information

Tracking ID no.	< Prev 777173407850 Next >
Invoice no.	5-547-56483
Account no.	1732-8829-8
Ship date	09/07/2016
Invoice date	09/16/2016
Due date	10/01/2016
Tracking ID Balance due	$21.87
Status	Open

View Invoice History
View signature proof of delivery

Messages

FedEx has audited this shipment for correct packag Read More..
Distance Based Pricing, Zone 4
The Earned Discount for this ship date has been ca Read More..
Fuel Surcharge - FedEx has applied a fuel surcharg Read More..
The package weight exceeds the maximum for the pac Read More..

Transaction Details

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Sender Information

DAVID B. AVAKIAN
LEWIS BRISBOIS BISGAARD & SMIT
6385 SOUTH RAINBOW BLVD
LAS VEGAS NV 89118
US

Recipient Information

CHURCHILL COUNTY
DISTRICT COURT
73 N. MAIN STREET
FALLON NV 89406
US

Shipment Details

Ship date	09/07/2016
Payment type	Shipper
Service type	FedEx Priority Overnight
Zone	04
Package type	FedEx Pak
Weight	1.00 lbs
Pieces	1
Meter No.	104750598
Declared value	$0.00

Charges

Transportation Charge	47.46
Fuel Surcharge	0.43
Weekday Delivery	0.00
Discount	-26.10
Earned Discount	-2.37
DAS Comm	2.45
Total charges	$21.87

Enter promo code

Original Reference

Customer reference no.	27350-1553
Department no.	
Reference #2	
Reference #3	

Updated Reference Edit

Customer reference no.
Department no.
Reference #2
Reference #3

Proof of Delivery

Delivery date	09/08/2016 16:05
Service area code	PM
Signed by	J BERMINGHAM

View signature proof of delivery

Cost Allocation Reference Edit

Cost allocation
Shipment Notes

Approve/notify user | Dispute | Pay
Back

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United States - English

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/09/17
WIP Seq#: 544,141,160
Check#: 189865
Amount: 81.00

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2130236 Distribution 5055527 Distribution Level
Doc ID: 0001SGXO Page 1

COMPEX Legal Services, Inc.

INVOICE NO.: 22759911
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/09/17

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE V MDB TRUCKING
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
6385 SOTUH RAINBOW BOULEVARD, SUITE #600
LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

PLEASE REMIT TO:
P.O. BOX 2738
TORRANCE, CA 90509-2738
TEL 800.788.8831 FAX 310.781.9720

PHONE #: 702-893-3383
ACCOUNT #: 43138

H89567- A	DEPARTMENT OF HEALTH AND HUMAN SERVICES CLAUSE: MEDICAL/BILLS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Field Trip	1	14.50	14.50
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			81.00
		TOTAL DUE			81.00
22759911 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT					

RECEIVED
MAY 16 2017
ACCOUNTS PAYABLE-LA

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,460
Check#: 189865
Amount: 81.00

INVOICE NO.: 22759981
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

COMPEX
Legal Services, Inc.

TERMS : NET 30 DAYS

TAX ID: 95-4443964

CASE NAME: JAMES BIBLE, V MDB TRUCKING,
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
6385 SOTUH RAINBOW BOULEVARD, SUITE #600
LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

PLEASE REMIT TO:
P.O. BOX 2738
TORRANCE, CA 90509-2738
TEL 800.788.8831 FAX 310.781.9720

PHONE #: 702-893-3383
ACCOUNT #: 43138

H89534- A	REMSA AMBULANCE SERVICE CLAUSE: AUTH - MEDS/BILLS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Field Trip	1	14.50	14.50
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			81.00
		TOTAL DUE			81.00

RECEIVED
MAY 16 2017
ACCOUNTS PAYABLE-LA

22759981 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129628 Distribution 5053736 Distribution Level
Doc ID: 0001SFN7 Page 1

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,470
Check#: 189865
Amount: 81.00

INVOICE NO.: 22759952
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

COMPEX
Legal Services, Inc.

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE, V MDB TRUCKING,
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
6385 SOTUH RAINBOW BOULEVARD, SUITE #600
LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

PLEASE REMIT TO:
P.O. BOX 2738
TORRANCE, CA 90509-2738
TEL 800.788.8831 FAX 310.781.9720

PHONE #: 702-893-3383
ACCOUNT #: 43138

H89540- A	YRC FREIGHT CLAUSE: SPECIAL (OTHER) NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Field Trip	1	14.50	14.50
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			81.00
		TOTAL DUE			81.00

RECEIVED
MAY 16 2017
ACCOUNTS PAYABLE-LA

22759952 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129629 Distribution 5053737 Distribution Level
Doc ID: 0001SFNA Page 1

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,480
Check#: 189865
Amount: 81.00

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129630 Distribution 5053738 Distribution Level
Doc ID: 0001SFNE Page 1

COMPEX Legal Services, Inc.

INVOICE NO.: 22759937
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

TERMS : NET 30 DAYS

TAX ID: 95-4443964

CASE NAME: JAMES BIBLE V MDB TRUCKING
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
6385 SOTUH RAINBOW BOULEVARD, SUITE #600
LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

PLEASE REMIT TO:
P.O. BOX 2738
TORRANCE, CA 90509-2738
TEL 800.788.8831 FAX 310.781.9720

PHONE #: 702-893-3383
ACCOUNT #: 43138

H89558- A	NEVADA PRESCRIPTION MONITORING PROGRAM CLAUSE: MEDICAL/BILLS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Field Trip	1	14.50	14.50
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			81.00
		TOTAL DUE			81.00

RECEIVED
MAY 16 2017
ACCOUNTS PAYABLE-LA

22759937 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,490
Check#: 189865
Amount: 261.50

COMPEX Legal Services, Inc.

INVOICE NO.: 22759919
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE V MDB TRUCKING
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
6385 SOTUH RAINBOW BOULEVARD, SUITE #600
LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

PLEASE REMIT TO:
P.O. BOX 2738
TORRANCE, CA 90509-2738
TEL 800.788.8831 FAX 310.781.9720

PHONE #: 702-893-3383
ACCOUNT #: 43138

H89554- A	RAIVS TEAM CLAUSE: SPECIAL (OTHER) NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authortzation Prep	1	.00	.00
		Authortzation Service	1	.00	.00
		Out of Area	1	20.00	20.00
		Custodial Fee	1	200.00	200.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			261.50
		TOTAL DUE			261.50

RECEIVED
MAY 16 2017
ACCOUNTS PAYABLE-LA

22759919 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129631 Distribution 5053739 Distribution Level
Doc ID: 0001SFNK Page 1

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,500
Check#: 189865
Amount: 86.50

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129633 Distribution 5053741 Distribution Level
Doc ID: 0001SFNS Page 1

COMPEX Legal Services, Inc.

INVOICE NO.: 22759989
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

TERMS : NET 30 DAYS

TAX ID: 95-4443964

CASE NAME: JAMES BIBLE, V MDB TRUCKING,
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
6385 SOTUH RAINBOW BOULEVARD, SUITE #600
LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

PLEASE REMIT TO:
P.O. BOX 2738
TORRANCE, CA 90509-2738
TEL 800.788.8831 FAX 310.781.9720

PHONE #: 702-893-3383
ACCOUNT #: 43138

H89534- D	RENO RADIOLOGICAL ASSOCIATES CHT D CLAUSE: AUTH - MEDS/BILLS/FILMS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30. 00	30. 00
		Phone Call/Status	1	3. 50	3. 50
		Authorization Prep	1	. 00	. 00
		Authorization Service	1	. 00	. 00
		Out of Area	1	20. 00	20. 00
		Rush	1	25. 00	25. 00
		Shipping and Handling	1	8. 00	8. 00
		SUB TOTAL			86. 50
		TOTAL DUE			86. 50

RECEIVED
MAY 16 2017
ACCOUNTS PAYABLE-LA

22759989 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,510
Check#: 189865
Amount: 81.00

COMPEX
Legal Services, Inc.

INVOICE NO.: 22759984
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

TERMS : NET 30 DAYS

TAX ID: 95-4443964

CASE NAME: JAMES BIBLE, V MDB TRUCKING,
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
6385 SOTUH RAINBOW BOULEVARD, SUITE #600
LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

PLEASE REMIT TO:
P.O. BOX 2738
TORRANCE, CA 90509-2738
TEL 800.788.8831 FAX 310.781.9720

PHONE #: 702-893-3383
ACCOUNT #: 43138

H89534- C	RENOWN REGIONAL MEDICAL CENTER CLAUSE: AUTH - MEDS/BILLS/FILMS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30. 00	30. 00
		Phone Call/Status	1	3. 50	3. 50
		Authorization Prep	1	. 00	. 00
		Authorization Service	1	. 00	. 00
		Field Trip	1	14. 50	14. 50
		Rush	1	25. 00	25. 00
		Shipping and Handling	1	8. 00	8. 00
		SUB TOTAL			81. 00
		TOTAL DUE			81. 00

RECEIVED
MAY 16 2017
ACCOUNTS PAYABLE-LA

22759984 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT

Vendor: 640 Compex Legal Services, Inc.
Voucher: 2129634 Distribution 5053742 Distribution Level
Doc ID: 0001SFOC Page 1

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 5/10/17
WIP Seq#: 541,390,520
Check#: 189865
Amount: 81.00

INVOICE NO.: 22759982
ORDER DATE: 04/25/17
INVOICE DATE\DATE OF SERVICE: 05/10/17

COMPEX Legal Services, Inc.

TERMS : NET 30 DAYS
TAX ID: 95-4443964

CASE NAME: JAMES BIBLE, V MDB TRUCKING,
RECORDS OF: BIBLE, JAMES
FILE/CLAIM NO.: 27350.1553/27350.1553

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

BILLED TO:
LEWIS BRISBOIS BISGAARD & SMITH
P.O. BOX 86367
LOS ANGELES, CA 90086-0367
DAVID B. AVAKIAN

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
6385 SOTUH RAINBOW BOULEVARD, SUITE #600
LAS VEGAS, NV 89118
DAVID B. AVAKIAN
702-893-3383

PLEASE REMIT TO:
P.O. BOX 2738
TORRANCE, CA 90509-2738
TEL 800.788.8831 FAX 310.781.9720

PHONE #: 702-893-3383
ACCOUNT #: 43138

H89534- B	RENOWN REGIONAL MEDICAL RECORDS PROCESSING CENTER CLAUSE: AUTH - MEDS/BILLS/FILMS NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Field Trip	1	14.50	14.50
		Rush	1	25.00	25.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			81.00
		TOTAL DUE			81.00

RECEIVED
MAY 16 2017
ACCOUNTS PAYABLE-LA

22759982 -> PLEASE USE 8 DIGIT INVOICE NUMBER TO INSURE PROMPT CREDIT

Vendor: 640 Compex Legal Services, Inc.
Voucher: 21296635 Distribution 5053743 Distribution Level
Doc ID: 0001SFOH Page 1

27350-1553

Date / Time	5/3/2017 1:55:34 PM	Cashier	WashoeAPI
Transaction ID	48000911	$200.00	Amount

Court Fees CourtFilingFee
Submission ID 6082232

Payment Summary : Mastercard payment for $200.00.
Payment Acct Last4 : ********0164
Billing Name : Stacy Bowers
Billing Address : 633 W. 5th St., Ste. 4000
Los Angeles, CA 90071
Phone Number : 7028933383
Email Address : stacy.bowers@lewisbrisbois.com

Signature Motion for Summary Judgment

47

27350-1553
Hartford Insurance Company
Bible, James v Versa Products Company, Inc
Date: 6/14/17
WIP Seq#: 546,027,930

Amount: 200.00

Vendor: 94005 Comerica Commercial Card Services
Voucher: 2146974 Distribution 5098732 Distribution Level
Doc ID: 0001TUFN Page 797

Stat: blank-WIP Open; W-WIP Written-off; B-Billed & Unpaid; P-Paid; SN-Sent to client for direct payment; PW-partially paid/partially written-off.
Source: A/P-Accounts Payable Vendor Not Paid; A/P-P-Accounts Payable-Vendor Paid; DSB-Disb entry; APWFL-A/P Workflow

FILED
Electronically
CV16-01914
2018-02-09 11:33:48 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6524896 : yviloria

JOSH COLE AICKLEN
Nevada Bar No. 007254
Josh.aicklen@lewisbrisbois.com
DAVID B. AVAKIAN
Nevada Bar No. 009502
David.avakian@lewisbrisbois.com
PAIGE S. SHREVE
Nevada Bar No. 013773
Paige.shreve@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
702.893.3383
FAX: 702.893.3789
Attorneys for Cross-Defendant VERSA PRODUCTS COMPANY, INC.

DISTRICT COURT

WASHOE COUNTY, NEVADA

JAMES BIBLE, Plaintiff, vs. MDB TRUCKING, LLC, et. al. Defendants.	Case No. CV16-01914 Dept. 10 **CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S VERIFIED MEMORANDUM OF COSTS**
AND ALL RELATED CASES.	

COMES NOW, Cross-Defendant VERSA PRODUCTS COMPANY, INC., by and through its attorneys of record, Josh Cole Aicklen, Esq., David B. Avakian, Esq. and Paige S. Shreve, Esq., of LEWIS BRISBOIS BISGAARD & SMITH, LLP, and submits the following Verified Memorandum of Costs to be recovered against Cross-Claimant MDB TRUCKING, LLC pursuant to NRS 18.005; NRS 18.020; and NRS 18.110.

This Memorandum of Costs and Disbursements is based upon VERSA's Offer of Judgment under NRCP 68, NRS 18.005, NRS 18.020; and NRS 18.110, the pleadings and papers on file herein, the verification of attorneys' fees and costs by defense counsel, and any evidence to be considered by this Court.

VERSA submits its verified Memorandum of Costs within five (5) days of entry of Judgment pursuant to NRS 18.110(1).

The undersigned hereby verifies, under penalty of perjury, that the following costs were incurred by Cross-Defendant in the defense of this matter:

COSTS FROM LEWIS BRISBOIS BISGAARD & SMITH, LLP (LBBS)

1.	Court Filing Fees	$ 398.00
2.	Mail	$ 43.74
3.	Records Reproduction	$ 834.00
LEGAL COSTS:		**$1,274.74**

AFFIRMATION

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

DATED this 9th day of February, 2018.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Josh Cole Aicklen

JOSH COLE AICKLEN
Nevada Bar No. 007254
DAVID B. AVAKIAN
Nevada Bar No. 009502
PAIGE S. SHREVE
Nevada Bar No. 013773
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Cross-Defendant
VERSA PRODUCTS COMPANY, INC.

AFFIDAVIT OF JOSH COLE AICKLEN IN SUPPORT OF CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S VERIFIED MEMORANDUM OF COSTS

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

I, JOSH COLE AICKLEN, ESQ., do declare and state as follows:

1. I am an Owner of Lewis Brisbois Bisgaard & Smith LLP, and am duly licensed to practice law in the State of Nevada. I am competent to testify to the matters set forth in this Affidavit, and will do so if called upon. I am the attorney of record representing Cross-Defendant VERSA PRODUCTS COMPANY, INC. in the subject lawsuit currently pending in Department 10 of the Second Judicial District Court for the State of Nevada, Case Number CV16-01914.

2. I participated in the entirety of the litigation, which culminated in an evidentiary hearing on October 13, 2017 in the FITZSIMMONS and BIBLE matter with the Court finding in favor of Cross-Defendant and striking MDB's cross-claims.

3. The total costs in the case were $ 1,275.74.

4. The entirety of the costs in this case were reasonable and customary for Washoe County.

By _____
JOSH COLE AICKLEN, ESQ.

SUBSCRIBED AND SWORN to before me this 9th day of February, 2018.

_____
NOTARY PUBLIC in and for said COUNTY and STATE

E. WILCZYNSKI
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 01-27-20
Certificate No: 12-6840-1

LIST OF EXHIBITS

Exhibit 1	Disbursement Diary and Supporting Documentation for Costs

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2018 a true and correct copy of **CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S VERIFIED MEMORANDUM OF COSTS** was served via the Court's electronic e-filing system addressed as follows:

Matthew C. Addison, Esq.
McDONALD CARANO WILSON LLP
100 W. Liberty St., 10th Floor
Reno, NV 89501
RMC LAMAR HOLDINGS, INC.

Nicholas M. Wieczorek, Esq.
Jeremy J. Thompson, Esq.
CLARK HILL PLLC
3800 Howard Hughes Pkwy, Ste. 500
Las Vegas, NV 89169
Attorneys for MDB TRUCKING, LLC and
DANIEL ANTHONY KOSKI

/s/ Susan Kingsbury
An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

F I L E D
Electronically
CV16-01914
2018-02-08 01:14:40 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6522573

EXHIBIT 1

4845-3057-6394.1

FILED
Electronically
CV16-01914
2018-01-22 04:08:51 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6492531

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

JAMES BIBLE,

Plaintiff,

Case No. CV16-01914

Dept. No. 10

vs.

MDB TRUCKING, LLC; et al.,

Defendants.

_____/

ORDER

Presently before the Court is 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 ("the Motion"). The Motion was filed by Defendant/Cross-Claimant/Cross-Defendant VERSA PRODUCTS COMPANY, INC. ("Versa") on May 15, 2017. Defendant/Cross-Claimant MDB TRUCKING, LLC ("MDB") did not file an Opposition to the Motion.[1] *See* WDCR 12(2). The Motion was submitted for the Court's consideration on December 12, 2017.

This case arises from a personal injury action. A COMPLAINT was filed by plaintiffs Ernest Bruce Fitzsimmons and Carol Fitzsimmons, on December 4, 2015 ("the Fitzsimmons Action"). The Fitzsimmons Action was assigned Second Judicial District Court case number CV15-02349.

---

[1] The issues presented in the Motion were fully briefed in FITZSIMMONS, et al. v. MDB TRUCKING, LLC, et al., CV15-02349.

Numerous other plaintiffs were joined into the Fitzsimmons Action. Two additional cases were filed and prosecuted outside of the Fitzsimmons Action: the instant case and GENEVA M. REMMERDE v. MDB TRUCKING, LLC et al., CV16-00976 ("the Remmerde Action"). The instant action was filed on September 20, 2016. The Remmerde Action was filed May 2, 2016. It is alleged in all three actions that on July 7, 2014, Defendant Daniel Anthony Koski ("Koski"), while driving a truck for MDB, negligently spilled a load of gravel into the roadway. The spilled gravel caused the driving plaintiffs to lose control of their vehicles and numerous accidents occurred resulting in the three separate cases. The plaintiffs sustained physical and emotional injuries as a result of the accidents. In response to the complaint filed in the instant action, MDB filed a THIRD-PARTY COMPLAINT ("the MDB Cross-Claim") September 20, 2016. The MDB Cross-Claim had two causes of action relative to Versa: Implied Indemnification and Contribution.[2] MDB alleges it was not Koski's negligence that caused the gravel to spill; rather, the spill was caused by the "unreasonably dangerous and defective" design and manufacture of the trailer that held the gravel. The MDB Cross-Claim, 4:3-5. Therefore, MDB brought the Cross-Claim against the manufacturers of the trailer and its components, including Versa. MDB avers Versa produced a solenoid valve which would, "activate inadvertently allowing the gates to open and release the load [of gravel] carried by the trailer." The MDB Cross-Claim, 4:6-8. MDB also claims there were safer alternatives available to Versa; the solenoid valve was unreasonably dangerous and defective; and Versa failed to provide appropriate safety mechanisms regarding the solenoid valve. The MDB Cross-Claim, 4:12-15.

The Motion is the same as the motion practice in the Fitzsimmons Action and the Remmerde Action. The issues are identical, as are the relevant parties. The Court issued an ORDER ("the December Order") on December 8, 2017, in the Fitzsimmons Action. The December Order conducted a thorough analysis of the issue presented in the Motion. *See generally Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), and NRCP 37. The Court found in the

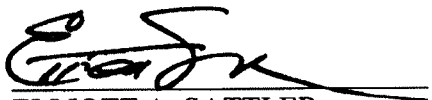
---

[2] Versa filed CROSS-DEFENDANT VERSA PRODUCTS COMPANY INC.'S MOTION TO DISMISS CROSS-CLAIMANT MDB TRUCKING, LLC'S THIRD CAUSE OF ACTION FOR IMPLIED INDEMNITY PURSUANT TO NRCP 12(B)(5) ("the MTD") on September 21, 2016. A Stipulation was filed on November 23, 2016, agreeing to dismiss MDB's Cross-Claim for Implied Indemnity. The only remaining cause of action alleged by MDB against Versa is for Contribution.

December Order case concluding sanctions were an appropriate sanction for MDB's spoliation of critical evidence. The Court finds a restatement of the December Order is unnecessary in the instant action. Given the indistinguishable issues the Court attaches hereto and incorporates herein as EXHIBIT A the December Order which shall be considered dispositive of the issue raised in the Motion.[3]

It is hereby **ORDERED** 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 is **GRANTED**. MDB TRUCKING, LLC'S CROSS-CLAIM is **DISMISSED.**

DATED this 22 day of January, 2018.



ELLIOTT A. SATTLER
District Judge

[3] The Court notes D.C.R. 13(3) states, "[f]ailure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same." Versa has not moved to have the Motion granted under this standard.

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of January, 2018, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 22 day of January, 2018, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MATTHEW ADDISON, ESQ.
JOSH AICKLEN, ESQ.
KATHERINE PARKS, ESQ.
BRIAN BROWN, ESQ.
THIERRY BARKLEY, ESQ.
SARAH QUIGLEY, ESQ.
JESSICA WOELFEL, ESQ.
JACOB BUNDICK, ESQ.
NICHOLAS M. WIECZOREK, ESQ.

Sheila Mansfield
Judicial Assistant

EXHIBIT "A"

FILED
Electronically
CV15-02349
2017-12-08 02:59:29 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6431279

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

ERNEST BRUCE FITZSIMMONS, et al.,

Plaintiffs,

Case No. CV15-02349

Dept. No. 10

vs.

MDB TRUCKING, LLC; et al.,

Defendants.

_____/

ORDER

Presently before the Court is 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 ("the Motion"). The Motion was filed by Defendant/Cross-Claimant/Cross-Defendant VERSA PRODUCTS, INC. ("Versa") on May 15, 2017.[1] Defendant/Cross-Claimant, MDB Trucking, LLC ("MDB") filed MDB'S OPPOSITION TO VERSA PRODUCTS COMPANY, INC.'S MOTION TO STRIKE AND/OR SPOLIATION INSTRUCTIONS ("the Opposition") on June 2, 2017. Versa filed DEFENDANT/CROSS-CLAIMANT/CROSS-DEFENDANT VERSA

[1] Versa filed the ERRATA TO 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 37; OR IN THE ALTERNATIVE, FOR AN ADVERSE JURY INSTRUCTION ("the Errata") on May 5, 2017. The Errata clarifies Versa is bringing the Motion pursuant to NRCP 37, not NRCP 35 as noted in the caption to the Motion. The reference to NRCP 35 is made only in the caption to the pleading; therefore, the Court presumes it is merely a typographical error.

PRODUCTS COMPANY, INC.'S REPLY TO MDB'S OPPOSITION TO VERSA PRODUCTS COMPANY, INC.'S MOTION TO STRIKE MDB TRUCKING, LLC'S CROSS-CLAIM PURSUANT TO NRCP 37; OR IN THE ALTERNATIVE, FOR AN ADVERSE JURY INSTRUCTION ("the Reply") on June 12, 2017, and contemporaneously submitted the matter for the Court's consideration. The Court entered an ORDER on August 1, 2017, setting the Motion for oral argument.[2] The Court heard the arguments of counsel on August 29, 2017, and took the matter under submission.

The Court felt case concluding sanctions were a potential discovery sanction for the alleged abuse following the oral argument. An evidentiary hearing affording both sides the opportunity to present witnesses was required given this conclusion. *See generally, Nevada Power v. Fluor Illinois*, 108 Nev. 638, 837 P.2d 1354 (1992). The Court entered an ORDER ("the September Order") on September 22, 2017, directing the parties to set the matter for an evidentiary hearing. The evidentiary hearing was conducted on October 13, 2017 ("the October Hearing"). Versa called one expert witness, Scott Palmer ("Palmer"), and one lay witness Garrick Mitchell ("Mitchell") at the October Hearing. MDB called one expert witness, Dr. David Bosch ("Dr. Bosch"), and two lay witnesses, Patrick Bigby ("Bigby") and Erik Anderson ("Anderson") at the October Hearing. The Court admitted numerous exhibits during the October Hearing. The Court permitted the parties to argue their respective positions. Trial was scheduled to begin on October 30, 2017. The Court was aware of its obligation to make detailed findings of facts and conclusions of law. Further, the Court wanted to fulfill these obligations in a thoughtful manner and in writing pursuant to the mandates of the Nevada Supreme Court. The Court informed the parties the Motion would be granted and vacated the trial date. The Court took the matter under submission. This written ORDER follows.

This case arises from a personal injury action. A COMPLAINT ("the Complaint") was filed by Plaintiffs Ernest Bruce Fitzsimmons and Carol Fitzsimmons, on December 4, 2015. Numerous other plaintiffs were joined into the Fitzsimmons case. It is alleged on July 7, 2014, Defendant Daniel Anthony Koski ("Koski"), while driving a truck for MDB, negligently spilled a load of

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[2] There were numerous other pre-trial motions scheduled for oral argument on the same date.

gravel into the roadway. The spilled gravel caused the driving plaintiffs to lose control of their vehicles and numerous accidents occurred. The plaintiffs sustained physical and emotional injuries as a result of the accidents. In response to the Complaint, MDB filed a THIRD-PARTY COMPLAINT ("the MDB Cross-Claim") June 15, 2016. The MDB Cross-Claim had two causes of action relative to Versa: Implied Indemnification and Contribution.[3] MDB alleges it was not Koski's negligence that caused the gravel to spill; rather, the spill was caused by the "unreasonably dangerous and defective" design and manufacture of the trailer that held the gravel. The MDB Cross-Claim, 3:5-7. Therefore, MDB brought the Cross-Claim against the manufacturers of the trailer and its components, including Versa. MDB avers Versa produced a solenoid valve which would, "activate inadvertently allowing the gates to open and release the load [of gravel] carried by the trailer." The MDB Cross-Claim, 3:10-11. MDB also claims there were safer alternatives available to Versa; the solenoid valve was unreasonably dangerous and defective; and Versa failed to provide appropriate safety mechanisms regarding the solenoid valve. The MDB Cross-Claim, 3:12-18.

Versa has denied its product is defective and further denies any responsibility for the spilling of the gravel. Additionally, Versa filed DEFENDANT/CROSS-CLAIMANT VERSA PRODUCTS COMPANY, INC.'S ANSWER TO PLAINTIFFS ERNEST BRUCE FITZSIMMONS AND CAROL FITZSIMMONS' FIRST AMENDED COMPLAINT AND CROSS-CLAIM AGAINST MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI; AND DOES I-X, INCLUSIVE ("the Versa Cross-Claim") on June 29, 2016. The Versa Cross-Claim alleges one cause of action against MDB: Contribution. Versa alleges MDB "negligently operated, maintained, owned, serviced and/or entrusted the subject trailer...." The Versa Cross-Claim, 10:17-18. Versa and MDB are the only remaining parties in this litigation: all of the plaintiffs consolidated into these proceedings, and all of the other defendants have been dismissed and/or settled.

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[3] Versa filed CROSS-DEFENDANT VERSA PRODUCTS COMPANY INC.'S MOTION TO DISMISS CROSS-CLAIMANT, MDB TRUCKING, LLC'S THIRD CAUSE OF ACTION FOR IMPLIED INDEMNITY PURSUANT TO NRCP 12(B)(5) ("the MTD") on June 27, 2016. The Court granted the MTD on October 19, 2016. The only remaining cause of action alleged by MDB against Versa is for Contribution.

The Motion avers MDB has destroyed or disposed of critical evidence which directly impacts Versa's ability to represent itself in the instant litigation. Specifically, the Motion contends after the accident MDB continued to use the truck in question; failed to keep the truck in the same condition as it was on the day in question; serviced the truck routinely; repaired and replaced the electrical systems that control the solenoid which operated the Versa valve; and failed to take steps to preserve this critical evidence knowing litigation was highly probable. The Opposition contends there has been no spoliation of evidence in this case. Further, the Opposition posits there was nothing more than routine maintenance done on the trailer; therefore, Versa's ability to defend itself has not been impaired.

The Motion avers MDB had a duty to preserve the discarded electrical systems in anticipation of the underlying action. In *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 651, 747 P.2d 911, 914 (1987), the Nevada Supreme Court held, "even where an action has not been commenced and there is only a potential for litigation, the litigant is under a duty to preserve the evidence which it knows or reasonably should know is relevant to the action." The Motion concludes the appropriate sanction for the failure to preserve this crucial evidence should be dismissal of the entire action. *See generally Young v. Johnny Ribeiro Building Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), and NRCP 37.

Discovery sanctions are within the discretion of the trial court. *See Stubli v. Big D Int'l Trucks, Inc.*, 107 Nev. 309, 312, 810 P.2d 785, 787 (1991), and *Kelly Broadcasting v. Sovereign Broadcast,* 96 Nev. 188, 192, 606 P.2d 1089, 1092 (1980). "Generally, sanctions may only be imposed where there has been willful noncompliance with the court's order, or where the adversary process has been halted by the actions of the unresponsive party." *Zenith*, 103 Nev. at 651, 747 P.2d at 913 (citing *Finkelman v. Clover Jewelers Blvd. Inc.*, 91 Nev. 146, 147, 532 P.2d 608, 609 (1975) and *Skeen v. Valley Bank of Nevada*, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973)). *Accord GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995). Dismissal of an entire action with prejudice is a dramatic punishment for a discovery abuse. The Nevada Supreme Court cautions district courts the use of such a Draconian sanction should be approached with caution. "The dismissal of a case, based upon a discovery abuse such as the

destruction or loss of evidence, 'should be used only in extreme situations; if less drastic sanctions are available, they should be utilized.'" *GNLV*, 111 Nev. at 870, 900 P.2d at 326 (citation omitted). Additionally, the *Nevada Power* Court held it was an abuse of discretion for a district court to grant case concluding sanctions without an evidentiary hearing. The *Nevada Power* Court held the party facing a case terminating sanction needs an "opportunity to present witnesses or to cross-examine [the movant] or their experts with regard to [the discovery violations]." *Nevada Power*, 108 Nev. at 646, 837 P.2d at 1360. *Cf. Bahena v. Goodyear Tire & Rubber Co. ("Bahena II")*, 126 Nev. 606, 612, 245 P.3d 1182, 1186 (2010).

The Nevada Rules of Civil Procedure provide that a party who fails to comply with discovery orders or rules can be sanctioned for that failure. NRCP 37(b). Sanctions against a party can be graduated in severity and can include: designation of facts to be taken as established; refusal to allow the disobedient party to support or oppose designated claims or defenses; prohibition of the offending party from introducing designated matters in evidence; an order striking out pleadings or parts thereof or dismissing the action; or rendering a judgment by default against the disobedient party. NRCP 37(b)(2). Case concluding sanctions need not be preceded by other less severe sanction. *GNLV*, 111 Nev. at 870, 900 P.2d at 325. A disobedient party can also be required to pay the reasonable expenses, including attorney fees caused by the failure. NRCP 37(b)(2)(E).

The *Young* Court adopted an eight factor analysis ("the *Young* factors") district courts must go through if they feel a discovery abuse is so severe it warrants dismissal. The *Young* Court held, "every order of dismissal with prejudice as a discovery sanction be supported by an express, careful and preferably written explanation of the court's analysis of the pertinent factors." *Young*, 106 Nev. at 93, 787 P.2d at 780. The *Young* factors are as follows: (1) the degree of willfulness of the offending party; (2) the extent to which the non-offending party would be prejudiced by a lesser sanction; (3) the severity of the sanction of dismissal relative to the severity of the discovery abuse; (4) whether any evidence has been irreparably lost; (5) the feasibility and fairness of less severe sanctions; (6) the policy favoring adjudication on the merits; (7) whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney; and (8) the need to deter parties and future litigants from similar abuses. *Id.* In discovery abuse situations where possible case-

concluding sanctions are warranted, the trial judge has discretion in deciding which factors are to be considered on a "case-by-case" basis. *Bahena II*, 126 Nev. at 610, 245 P.3d at 1185 (citing *Higgs v. State*, 126 Nev. 1, 17, 222 P.3d 648, 658 (2010)). The *Young* factor list is not exhaustive and the Court is not required to find that all factors are present prior to making a finding. "Fundamental notions of fairness and due process require that discovery sanctions be just and . . . relate to the specific conduct at issue." *GNLV*, 111 Nev. at 870, 900 P.2d at 325.

The Nevada Supreme Court has addressed orders of case concluding sanctions on numerous occasions. The *Zenith* Court found a party whose agent destroyed and/or lost a television prior to the commencement of the underlying action, after the party's expert had an opportunity to test the television and opine on the television as a cause of a fire, had committed a discovery abuse warranting case concluding sanctions.[4] The *Zenith* Court held, "[t]he actions [of the appellant] had the effect of reserving to itself all expert testimony based upon examination of the television set." 103 Nev. at 652, 747 P.2d at 914.

The *Kelly Broadcasting* Court held the striking of an answer and entry of a judgment in favor of the non-offending party (Kelly) was an appropriate sanction for failing to complete discovery by the offending party (Sovereign). *Kelly Broadcasting*, 96 Nev. at 192, 606 P.2d at 1092. Sovereign argued a lesser sanction of striking only the affirmative defense to which the interrogatories applied was a more appropriate sanction. The *Kelly Broadcasting* Court disagreed, noting "[t]he question is not whether this court would as an original matter have entered a default judgment as a sanction for violating a discovery rule; it is whether the trial court abused its discretion in so doing. We do not find an abuse of discretion in this case." *Id.*

The *Stubli* Court upheld case concluding sanctions when the appellant or its agents failed to preserve evidence related to the cause of a trucking accident. The respondent provided expert affidavits which posited the cause of the accident could have been something other than the respondent's work on the truck. "The experts further asserted that appellant's failure to preserve the

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[4] The trial court actually struck the appellant's expert witness from the trial. The appellant indicated it had insufficient evidence to proceed without its expert and the trial court granted summary judgment in favor of the respondent. *Zenith*, 103 Nev. at 651, 747 P.2d at 913.

[truck and its components] had made it impossible for respondents to establish their defense theory." *Stubli*, 107 Nev. at 312, 810 P.2d at 787. *See also, North American Properties v. McCarran International Airport*, 2016 WL 699864 (Nev. Supreme Court 2016). *But see, GNLV, supra* (case concluding sanctions not appropriate when other evidence existed which experts could use to assist in their analysis including the statements of witnesses who saw the spoliated evidence).

The Court has considered the arguments of counsel, all of the pleadings on file in the instant action, the testimony of the witnesses at the evidentiary hearing, the exhibits admitted at that hearing, and the relevant case law discussed, *supra*. The issue presented in the case is actually very narrow: MDB claims it was a defective solenoid manufactured by Versa that malfunctioned causing a truck full of gravel to dump onto one of the two busiest roadways in Washoe County. MDB does not dispute the electrical systems were not preserved in anticipation of the trial or potential testing. MDB took no steps to warn its employees to keep any components in the electrical system should they need to be replaced. There are no pictures taken of the electrical system or the components. MDB's employees cannot testify to the condition of the components when they were replaced. Versa avers there were other potential causes of the malfunction, including an electrical issue. Versa further contends it cannot present these issues to the jury in support of its defense because the evidence no longer exists. The Court reviews the *Young* factors as follows:

I. *Willfulness*

The first *Young* factor is willfulness. In *Childers v. State*, 100 Nev. 280, 283, 680 P.2d 598, 599 (1984), the Nevada Supreme Court found the term willful, "implies simply a purpose or willingness to commit the act or to make the omission in question. The word does not require in its meaning any intent to violate law, or to injure another, or to acquire any advantage." Willfulness may be found when a party fails to provide discovery and such failure is not due to an inability on the offending party's part. *Havas v Bank of Nevada*, 96 Nev. 567, 570, 613 P.2d 706, 708 (1980). The Nevada Supreme Court has not opined that it is necessary to establish wrongful intent to establish willfulness.

Clearly MDB should have anticipated extensive litigation as a result of the incident that occurred on July 7, 2014. This was not a mere "slip and fall" where the putative plaintiff initially claims he/she is not injured only later to come back and sue. There were numerous accidents and injuries as a result of collisions occurring on a highway. MDB, or its counsel, had to know there would be litigation as a result of these events. The Court heard no testimony that MDB took any steps to preserve the truck or trailer in any way. There was no testimony indicating memorialization of the condition of the vehicle was ever contemplated by anyone at MDB. On the contrary, the truck and trailer continued to be in use after the events of July 7, 2014. It was subject to "routine" maintenance. The Court may have condoned the continued use of the truck, and even the trailer, had there been *any* steps taken to preserve the appearance of these items as they existed at the time of the event, or prior to the "routine" maintenance. The memorialization did not occur.

It would have been simple to inform the shop staff to photograph the truck and trailer on or about July 7, 2014. It would have required minimal effort to inform the shop staff to preserve any electrical parts taken off the truck or trailer during the maintenance. If these steps had been taken the Court would be looking at this case through the prism of *GNLV* because both parties would have had alternative ways to prove or disprove their theory of the case. Based on the inaction of MDB in preserving or memorializing the condition of the truck and trailer the Court must view this case through the prism of *Stubli* and *Zenith*: MDB alone has the ability to call experts to support their position. Versa's expert has a theory he can neither confirm nor refute based on the loss of the electrical components. The Court does not find MDB intentionally disposed of the components in order to harm Versa, nor were MDB's employees acting with any malevolence; however, the Court does find MDB is complicit of benign neglect and indifference to the needs of Versa regarding discovery in this action.

II. <u>The possibility of a lesser sanction</u>

The second *Young* factor is possible prejudice to Versa if a lesser sanction were imposed. The Court would consider lesser sanctions, including an adverse inference instruction, a rebuttable presumption instruction, and the striking of the MDB's expert as alternative sanctions. The Court

does not find any of these sanctions strike the appropriate balance between MDB's actions and the harm imposed on Versa's case. Should the Court strike Dr. Bosch from being a witness at the trial MDB would be in the same position as the appellant in *Zenith*: unable to prove its case given the lack of expert testimony and subject to a motion for summary judgment. This outcome would be a patent waste of limited judicial resources and of the jury's time. The Court does not find an adverse inference instruction pursuant to NRS 47.250(3) and *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006), is appropriate under the circumstances before the Court.[5] As noted by the *Zenith* Court, "[t]he actions of [MDB] had the effect of reserving to itself all expert testimony based upon examination of the [electronic components]. Any adverse presumption which the court might have ordered as a sanction for the spoliation of evidence would have paled next to the testimony of the expert witness." *Zenith*, 103 Nev. at 652, 747 P.2d at 914. Additionally, an adverse inference instruction requires an "intent to harm another party through the destruction and not simply the intent to destroy evidence." *Bass-Davis*, 122 Nev. at 448, 134 P.3d at 106. The Court does not find MDB intended to harm Versa by destroying or disposing of the electrical components; therefore, it could not give this instruction. The Court can conceive of no other sanction which would be appropriate under these circumstances.

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[5] At oral argument counsel for MDB stated:

> Recently the Nevada Supreme Court has declared that the Bass versus Davis case is the prevailing case on the spoliation of evidence, not Young versus Ribeiro. And in a case called Walmart Stores, Inc. versus the Eighth Judicial District, No. 48488, January 31st of 2008, the court said, "It is an abuse of discretion for a district court not to consider the case of Bass-Davis versus Davis when imposing sanctions pursuant to Nevada Rule of Civil Procedure 37 for an allegation of spoliation."

TRANSCRIPT OF PROCEEDINGS, EVIDENTIARY HEARING, 208:15-24. The citation to an unpublished disposition of the Nevada Supreme Court issued prior to January 1, 2016, is a violation of ADKT 0504 and SCR 123 (the SCR was repealed by the ADKT). The Court found it difficult to believe the Nevada Supreme Court would make such a sweeping change to firmly established precedent as that represented by counsel in an unpublished disposition. The Court was unfamiliar with *Walmart*, so the Court endeavored to familiarize itself with the case. The Court looked up the case number provided by counsel on the Nevada Supreme Court webpage. Troublingly, the Court was unable to verify the veracity of the proposition proffered by MDB *because the parties agreed to dismiss their proceedings and the Nevada Supreme Court vacated the order upon which MDB makes its argument.* The Nevada Supreme Court had granted a Writ of Mandamus on January 31, 2008; however, it withdrew that order on a subsequent date. The Nevada Supreme Court webpage indicates the parties contacted the Supreme Court on February 2, 2008, and indicated they had settled their case. The Nevada Supreme Court entered an order vacating the January 31, 2008, order upon which MDB relies and "den[ied] the petition as moot" on February 13, 2008. In short, the "case" MDB relies upon does not even exist.

III. The severity of the sanction of dismissal relative to the severity of the discovery abuse

"The dismissal of a case, based upon a discovery abuse . . . should be used only in extreme situations; if less drastic sanctions are available, they should be utilized." *GNLV*, 111 Nev. at 870, 900 P.2d at 325 (*citing Young*, 106 Nev. at 92, 787 P.2d at 779-80). The Court is keenly aware that granting the Motion effectively ends the case. The Court does not take this action lightly. The *only* issue in this case is why the door to the trailer opened causing the gravel to dump into the roadway. The Court finds MDB's disposal of the electronic components without memorializing them in any way effectively halted the adversarial process. It left all of the "cards" in MDB's hands and left Versa with nothing other than a theory it could neither prove nor disprove. MDB could simply rely on its expert during trial and argue Versa had no proof of its theory and the theory itself was preposterous. This is the position taken by MDB at the evidentiary hearing. Versa is left with no way of verifying its theory of the case.

Counsel for MDB directed the Court's attention at the evidentiary hearing to the strength of their expert (Dr. Bosch) and the weakness of Versa's expert (Palmer). Counsel further emphasized the lack of plausibility of the Palmer's conclusions that it could have been an abraded wire which caused an electrical failure rather than some issue with the solenoid or the Versa valve. The Court is not convinced this should be the deciding factor in resolving the issue of case concluding sanctions for the following reasons:

1. MDB's own employee (the same employees who serviced the truck and trailer) acknowledged at the evidentiary hearing that the abrasions Palmer referenced actually do occur;[6] and

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[6] Q: Okay. You also mentioned that you want to replace those cords, the seven and the – the seven-conductor and the four-conductor cords because they will get cut on the deck plate, they will get abraded, they will become cracked; is that correct?

A: I have seen that, yes.

TRANSCRIPT OF PROCEEDINGS, EVIDENTIARY HEARING (testimony of Patrick Bigby), 154:1-6.

2. Dr. Bosch had to acknowledge, though grudgingly and with great circumspection, that it was possible though highly unlikely the electrical system could have caused the valve in question to open.[7]

The Court's decision regarding the issue presented in the Motion is not predicated on who has the "stronger case" or the "better expert" at the evidentiary hearing. If this were the analysis the Court would agree with MDB: Dr. Bosch is a very credible witness and it is likely MDB has the more compelling argument to present to the jury. This, however, is not the issue. The issue in the Court's analysis is MDB's actions deprived Versa of *any* ability to prove its case: the adversarial process was stymied by MDB regarding the most critical pieces of evidence. Had MDB's witnesses testified the abrasions never occur, or abrasions were photographed and/or documented and none existed on this truck, the Court's conclusion may have been different. Here we know it *could have occurred* as Palmer suggested.

IV. Whether evidence is irreparably lost

Clearly the relevant evidence is lost. The employees of MDB testified at the evidentiary hearing the electronic components had been thrown away.

V. The feasibility and fairness of a less severe sanctions

The Court discussed the possibility of less severe sanctions in section II. The same analysis applies here. There does not appear to be any sanction short of case concluding sanctions which would be appropriate under the circumstances of this case. The Court also acknowledges that progressive sanctions are not always necessary. The circumstances presented in the Motion are unique and the most severe sanction is appropriate.

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[7]Q: Is there any scenario under which current from the seven-prong cord having contact with the four-prong cord could open the versa valve?

A: Anything is possible, but it's highly improbable in this case.

TRANSCRIPT OF PROCEEDINGS, EVIDENTIARY HEARING (testimony of Dr. Bosch), 161:5-9. Dr. Bosch's testimony clearly established he did not believe there was a short or other electrical failure that caused the valve to open.

VI. The policy favoring adjudication on the merits; and

VII. The need to deter parties and future litigants from similar abuse

The Court considers the sixth and eighth *Young* factors together. Nevada has a strong policy, and the Court firmly believes, that cases should be adjudicated on their merits. *See*, *Scrimer v. Dist. Court*, 116 Nev. 507, 516-517, 998 P.2d 1190, 1196 (2000). *See also*, *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992). Further, there is a need to deter litigants from abusing the discovery process established by Nevada law. When a party repeatedly and continuously engaged in discovery misconduct the policy of adjudicating cases on the merits is not furthered by a lesser sanction. *Foster*, 126 Nev. at 65, 227 P.3d at 1048. The case *sub judice* is not one of systemic discovery abuse. However, the Court concludes to allow the case to go forward as it is currently postured would be the antithesis of allowing it to proceed "on the merits." The merits of Versa's case would not be able to be evaluated by the jury because Versa could not test its theory on the actual components. The jury would be left to guess about what may have occurred rather than weigh the competing theories presented. MDB would have an overwhelmingly unfair advantage given its action.

The Court balances the laudable policy of trial on the merits against the need to deter future litigants from abusing the discovery process. The Court turns back to the *Zenith* Court's direction to all potential litigants regarding their duty to preserve evidence. The *Zenith* Court stated, "[i]t would be unreasonable to allow litigants, by destroying physical evidence prior to a request for production, to sidestep the district court's power to enforce the rules of discovery." *Id.* 103 Nev. at 651, 747 P.2d at 913. *Accord, Colfer v. Harmon*, 108 Nev. 363, 832 P.2d 383 (1992). To allow this case to go forward, when the only evidence which may have supported Versa's defense was in the sole possession of MDB and MDB did nothing to preserve or document that evidence, would set a dangerous precedent to similarly situated parties in the future. It would also be antithetical to a potential litigant's obligation to preserve the very evidence it may have to produce during discovery.

When the Court balances the sixth and eighth *Young* factor it concludes dismissal of MDB's claims against Versa are appropriate.

VIII. *Whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney*

There is no evidence to show MDB's counsel directed MDB to destroy or fail to memorialize the evidence in question. The Court finds this factor to be inapplicable to the *Young* analysis.

"Fundamental notions of fairness and due process require that discovery sanctions be just and . . . relate to the specific conduct at issue." *GNLV*, 111 Nev. at 870, 900 P.2d at 325 (*citing Young*, 106 Nev. at 92, 787 P.2d at 779-80). The Court recognizes that discovery sanctions should be related to the specific conduct at issue. The discovery abuse in this case crippled one party's ability to present its case. Weighing all eight factors above the Court concludes the dismissal of the MDB Cross-Claim is appropriate. Due to the severity of MDB's discovery abuse there are no lesser sanctions that are suitable.

It is hereby **ORDERED** 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 is **GRANTED**. MDB TRUCKING, LLC'S CROSS-CLAIM is DISMISSED.

DATED this 8 day of December, 2017.

ELLIOTT A. SATTLER
District Judge

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of December, 2017, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 8 day of December, 2017, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JOSH AICKLEN, ESQ.
MATTHEW ADDISON, ESQ.
KATHERINE PARKS, ESQ.
BRIAN BROWN, ESQ.
THIERRY BARKLEY, ESQ.
SARAH QUIGLEY, ESQ.
JESSICA WOELFEL, ESQ.
JACOB BUNDICK, ESQ.
NICHOLAS WIECZOREK, ESQ.

Sheila Mansfield
Judicial Assistant

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DISTRICT COURT

WASHOE COUNTY, NEVADA

JAMES BIBLE, Plaintiff, vs. MDB TRUCKING, LLC, et. al. Defendants.	Case No. CV16-01914 Dept. 10 **NOTICE OF ENTRY**
AND ALL RELATED CASES.	

TO: ALL INTERESTED PARTIES:

/ / /

/ / /

PLEASE TAKE NOTICE that the Order was entered by the above-entitled Court on the 22nd day of January, 2018, a copy of which is attached hereto as **Exhibit 1** and made a part hereof.

AFFIRMATION

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

DATED this 8th day of February, 2018

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Josh Cole Aicklen

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Attorneys for Defendant/Cross-Defendant
VERSA PRODUCTS COMPANY, INC.

LIST OF EXHIBITS

Exhibit 1	Order

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2018 a true and correct copy of **NOTICE OF ENTRY** was served via the Court's electronic e-filing system addressed as follows:

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

JAMES BIBLE,

Plaintiff,

Case No. CV16-01914

Dept. No. 10

vs.

MDB TRUCKING, LLC; et al.,

Defendants.

_____/

ORDER

Presently before the Court is 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 ("the Motion"). The Motion was filed by Defendant/Cross-Claimant/Cross-Defendant VERSA PRODUCTS COMPANY, INC. ("Versa") on May 15, 2017. Defendant/Cross-Claimant MDB TRUCKING, LLC ("MDB") did not file an Opposition to the Motion.[1] *See* WDCR 12(2). The Motion was submitted for the Court's consideration on December 12, 2017.

This case arises from a personal injury action. A COMPLAINT was filed by plaintiffs Ernest Bruce Fitzsimmons and Carol Fitzsimmons, on December 4, 2015 ("the Fitzsimmons Action"). The Fitzsimmons Action was assigned Second Judicial District Court case number CV15-02349.

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[1] The issues presented in the Motion were fully briefed in FITZSIMMONS, et al. v. MDB TRUCKING, LLC, et al., CV15-02349.

Docket 76396 Document 2018-30088

Numerous other plaintiffs were joined into the Fitzsimmons Action. Two additional cases were filed and prosecuted outside of the Fitzsimmons Action: the instant case and GENEVA M. REMMERDE v. MDB TRUCKING, LLC et al., CV16-00976 ("the Remmerde Action"). The instant action was filed on September 20, 2016. The Remmerde Action was filed May 2, 2016. It is alleged in all three actions that on July 7, 2014, Defendant Daniel Anthony Koski ("Koski"), while driving a truck for MDB, negligently spilled a load of gravel into the roadway. The spilled gravel caused the driving plaintiffs to lose control of their vehicles and numerous accidents occurred resulting in the three separate cases. The plaintiffs sustained physical and emotional injuries as a result of the accidents. In response to the complaint filed in the instant action, MDB filed a THIRD-PARTY COMPLAINT ("the MDB Cross-Claim") September 20, 2016. The MDB Cross-Claim had two causes of action relative to Versa: Implied Indemnification and Contribution.[2] MDB alleges it was not Koski's negligence that caused the gravel to spill; rather, the spill was caused by the "unreasonably dangerous and defective" design and manufacture of the trailer that held the gravel. The MDB Cross-Claim, 4:3-5. Therefore, MDB brought the Cross-Claim against the manufacturers of the trailer and its components, including Versa. MDB avers Versa produced a solenoid valve which would, "activate inadvertently allowing the gates to open and release the load [of gravel] carried by the trailer." The MDB Cross-Claim, 4:6-8. MDB also claims there were safer alternatives available to Versa; the solenoid valve was unreasonably dangerous and defective; and Versa failed to provide appropriate safety mechanisms regarding the solenoid valve. The MDB Cross-Claim, 4:12-15.

The Motion is the same as the motion practice in the Fitzsimmons Action and the Remmerde Action. The issues are identical, as are the relevant parties. The Court issued an ORDER ("the December Order") on December 8, 2017, in the Fitzsimmons Action. The December Order conducted a thorough analysis of the issue presented in the Motion. *See generally Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), and NRCP 37. The Court found in the

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[2] Versa filed CROSS-DEFENDANT VERSA PRODUCTS COMPANY INC.'S MOTION TO DISMISS CROSS-CLAIMANT MDB TRUCKING, LLC'S THIRD CAUSE OF ACTION FOR IMPLIED INDEMNITY PURSUANT TO NRCP 12(B)(5) ("the MTD") on September 21, 2016. A Stipulation was filed on November 23, 2016, agreeing to dismiss MDB's Cross-Claim for Implied Indemnity. The only remaining cause of action alleged by MDB against Versa is for Contribution.

December Order case concluding sanctions were an appropriate sanction for MDB's spoliation of critical evidence. The Court finds a restatement of the December Order is unnecessary in the instant action. Given the indistinguishable issues the Court attaches hereto and incorporates herein as EXHIBIT A the December Order which shall be considered dispositive of the issue raised in the Motion.[3]

It is hereby **ORDERED** 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 is **GRANTED**. MDB TRUCKING, LLC'S CROSS-CLAIM is **DISMISSED.**

DATED this 22 day of January, 2018.

ELLIOTT A. SATTLER
District Judge

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[3] The Court notes D.C.R. 13(3) states, "[f]ailure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same." Versa has not moved to have the Motion granted under this standard.

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of January, 2018, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 22 day of January, 2018, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MATTHEW ADDISON, ESQ.
JOSH AICKLEN, ESQ.
KATHERINE PARKS, ESQ.
BRIAN BROWN, ESQ.
THIERRY BARKLEY, ESQ.
SARAH QUIGLEY, ESQ.
JESSICA WOELFEL, ESQ.
JACOB BUNDICK, ESQ.
NICHOLAS M. WIECZOREK, ESQ.

Sheila Mansfield
Judicial Assistant

EXHIBIT "A"

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Clerk of the Court
Transaction # 6431279

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

ERNEST BRUCE FITZSIMMONS, et al.,

Plaintiffs,

Case No. CV15-02349

Dept. No. 10

vs.

MDB TRUCKING, LLC; et al.,

Defendants.

_____/

ORDER

Presently before the Court is 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 ("the Motion"). The Motion was filed by Defendant/Cross-Claimant/Cross-Defendant VERSA PRODUCTS, INC. ("Versa") on May 15, 2017.[1] Defendant/Cross-Claimant, MDB Trucking, LLC ("MDB") filed MDB'S OPPOSITION TO VERSA PRODUCTS COMPANY, INC.'S MOTION TO STRIKE AND/OR SPOLIATION INSTRUCTIONS ("the Opposition") on June 2, 2017. Versa filed DEFENDANT/CROSS-CLAIMANT/CROSS-DEFENDANT VERSA

[1] Versa filed the ERRATA TO 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 37; OR IN THE ALTERNATIVE, FOR AN ADVERSE JURY INSTRUCTION ("the Errata") on May 5, 2017. The Errata clarifies Versa is bringing the Motion pursuant to NRCP 37, not NRCP 35 as noted in the caption to the Motion. The reference to NRCP 35 is made only in the caption to the pleading; therefore, the Court presumes it is merely a typographical error.

PRODUCTS COMPANY, INC.'S REPLY TO MDB'S OPPOSITION TO VERSA PRODUCTS COMPANY, INC.'S MOTION TO STRIKE MDB TRUCKING, LLC'S CROSS-CLAIM PURSUANT TO NRCP 37; OR IN THE ALTERNATIVE, FOR AN ADVERSE JURY INSTRUCTION ("the Reply") on June 12, 2017, and contemporaneously submitted the matter for the Court's consideration. The Court entered an ORDER on August 1, 2017, setting the Motion for oral argument.[2] The Court heard the arguments of counsel on August 29, 2017, and took the matter under submission.

The Court felt case concluding sanctions were a potential discovery sanction for the alleged abuse following the oral argument. An evidentiary hearing affording both sides the opportunity to present witnesses was required given this conclusion. *See generally, Nevada Power v. Fluor Illinois*, 108 Nev. 638, 837 P.2d 1354 (1992). The Court entered an ORDER ("the September Order") on September 22, 2017, directing the parties to set the matter for an evidentiary hearing. The evidentiary hearing was conducted on October 13, 2017 ("the October Hearing"). Versa called one expert witness, Scott Palmer ("Palmer"), and one lay witness Garrick Mitchell ("Mitchell") at the October Hearing. MDB called one expert witness, Dr. David Bosch ("Dr. Bosch"), and two lay witnesses, Patrick Bigby ("Bigby") and Erik Anderson ("Anderson") at the October Hearing. The Court admitted numerous exhibits during the October Hearing. The Court permitted the parties to argue their respective positions. Trial was scheduled to begin on October 30, 2017. The Court was aware of its obligation to make detailed findings of facts and conclusions of law. Further, the Court wanted to fulfill these obligations in a thoughtful manner and in writing pursuant to the mandates of the Nevada Supreme Court. The Court informed the parties the Motion would be granted and vacated the trial date. The Court took the matter under submission. This written ORDER follows.

This case arises from a personal injury action. A COMPLAINT ("the Complaint") was filed by Plaintiffs Ernest Bruce Fitzsimmons and Carol Fitzsimmons, on December 4, 2015. Numerous other plaintiffs were joined into the Fitzsimmons case. It is alleged on July 7, 2014, Defendant Daniel Anthony Koski ("Koski"), while driving a truck for MDB, negligently spilled a load of

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[2] There were numerous other pre-trial motions scheduled for oral argument on the same date.

gravel into the roadway. The spilled gravel caused the driving plaintiffs to lose control of their vehicles and numerous accidents occurred. The plaintiffs sustained physical and emotional injuries as a result of the accidents. In response to the Complaint, MDB filed a THIRD-PARTY COMPLAINT ("the MDB Cross-Claim") June 15, 2016. The MDB Cross-Claim had two causes of action relative to Versa: Implied Indemnification and Contribution.[3] MDB alleges it was not Koski's negligence that caused the gravel to spill; rather, the spill was caused by the "unreasonably dangerous and defective" design and manufacture of the trailer that held the gravel. The MDB Cross-Claim, 3:5-7. Therefore, MDB brought the Cross-Claim against the manufacturers of the trailer and its components, including Versa. MDB avers Versa produced a solenoid valve which would, "activate inadvertently allowing the gates to open and release the load [of gravel] carried by the trailer." The MDB Cross-Claim, 3:10-11. MDB also claims there were safer alternatives available to Versa; the solenoid valve was unreasonably dangerous and defective; and Versa failed to provide appropriate safety mechanisms regarding the solenoid valve. The MDB Cross-Claim, 3:12-18.

Versa has denied its product is defective and further denies any responsibility for the spilling of the gravel. Additionally, Versa filed DEFENDANT/CROSS-CLAIMANT VERSA PRODUCTS COMPANY, INC.'S ANSWER TO PLAINTIFFS ERNEST BRUCE FITZSIMMONS AND CAROL FITZSIMMONS' FIRST AMENDED COMPLAINT AND CROSS-CLAIM AGAINST MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI; AND DOES I-X, INCLUSIVE ("the Versa Cross-Claim") on June 29, 2016. The Versa Cross-Claim alleges one cause of action against MDB: Contribution. Versa alleges MDB "negligently operated, maintained, owned, serviced and/or entrusted the subject trailer...." The Versa Cross-Claim, 10:17-18. Versa and MDB are the only remaining parties in this litigation: all of the plaintiffs consolidated into these proceedings, and all of the other defendants have been dismissed and/or settled.

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[3] Versa filed CROSS-DEFENDANT VERSA PRODUCTS COMPANY INC.'S MOTION TO DISMISS CROSS-CLAIMANT, MDB TRUCKING, LLC'S THIRD CAUSE OF ACTION FOR IMPLIED INDEMNITY PURSUANT TO NRCP 12(B)(5) ("the MTD") on June 27, 2016. The Court granted the MTD on October 19, 2016. The only remaining cause of action alleged by MDB against Versa is for Contribution.

The Motion avers MDB has destroyed or disposed of critical evidence which directly impacts Versa's ability to represent itself in the instant litigation. Specifically, the Motion contends after the accident MDB continued to use the truck in question; failed to keep the truck in the same condition as it was on the day in question; serviced the truck routinely; repaired and replaced the electrical systems that control the solenoid which operated the Versa valve; and failed to take steps to preserve this critical evidence knowing litigation was highly probable. The Opposition contends there has been no spoliation of evidence in this case. Further, the Opposition posits there was nothing more than routine maintenance done on the trailer; therefore, Versa's ability to defend itself has not been impaired.

The Motion avers MDB had a duty to preserve the discarded electrical systems in anticipation of the underlying action. In *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 651, 747 P.2d 911, 914 (1987), the Nevada Supreme Court held, "even where an action has not been commenced and there is only a potential for litigation, the litigant is under a duty to preserve the evidence which it knows or reasonably should know is relevant to the action." The Motion concludes the appropriate sanction for the failure to preserve this crucial evidence should be dismissal of the entire action. *See generally Young v. Johnny Ribeiro Building Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), and NRCP 37.

Discovery sanctions are within the discretion of the trial court. *See Stubli v. Big D Int'l Trucks, Inc.*, 107 Nev. 309, 312, 810 P.2d 785, 787 (1991), and *Kelly Broadcasting v. Sovereign Broadcast,* 96 Nev. 188, 192, 606 P.2d 1089, 1092 (1980). "Generally, sanctions may only be imposed where there has been willful noncompliance with the court's order, or where the adversary process has been halted by the actions of the unresponsive party." *Zenith*, 103 Nev. at 651, 747 P.2d at 913 (citing *Finkelman v. Clover Jewelers Blvd. Inc.*, 91 Nev. 146, 147, 532 P.2d 608, 609 (1975) and *Skeen v. Valley Bank of Nevada*, 89 Nev. 301, 303, 511 P.2d 1053, 1054 (1973)). *Accord GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995). Dismissal of an entire action with prejudice is a dramatic punishment for a discovery abuse. The Nevada Supreme Court cautions district courts the use of such a Draconian sanction should be approached with caution. "The dismissal of a case, based upon a discovery abuse such as the

destruction or loss of evidence, 'should be used only in extreme situations; if less drastic sanctions are available, they should be utilized.'" *GNLV*, 111 Nev. at 870, 900 P.2d at 326 (citation omitted). Additionally, the *Nevada Power* Court held it was an abuse of discretion for a district court to grant case concluding sanctions without an evidentiary hearing. The *Nevada Power* Court held the party facing a case terminating sanction needs an "opportunity to present witnesses or to cross-examine [the movant] or their experts with regard to [the discovery violations]." *Nevada Power*, 108 Nev. at 646, 837 P.2d at 1360. *Cf. Bahena v. Goodyear Tire & Rubber Co. ("Bahena II")*, 126 Nev. 606, 612, 245 P.3d 1182, 1186 (2010).

The Nevada Rules of Civil Procedure provide that a party who fails to comply with discovery orders or rules can be sanctioned for that failure. NRCP 37(b). Sanctions against a party can be graduated in severity and can include: designation of facts to be taken as established; refusal to allow the disobedient party to support or oppose designated claims or defenses; prohibition of the offending party from introducing designated matters in evidence; an order striking out pleadings or parts thereof or dismissing the action; or rendering a judgment by default against the disobedient party. NRCP 37(b)(2). Case concluding sanctions need not be preceded by other less severe sanction. *GNLV*, 111 Nev. at 870, 900 P.2d at 325. A disobedient party can also be required to pay the reasonable expenses, including attorney fees caused by the failure. NRCP 37(b)(2)(E).

The *Young* Court adopted an eight factor analysis ("the *Young* factors") district courts must go through if they feel a discovery abuse is so severe it warrants dismissal. The *Young* Court held, "every order of dismissal with prejudice as a discovery sanction be supported by an express, careful and preferably written explanation of the court's analysis of the pertinent factors." *Young*, 106 Nev. at 93, 787 P.2d at 780. The *Young* factors are as follows: (1) the degree of willfulness of the offending party; (2) the extent to which the non-offending party would be prejudiced by a lesser sanction; (3) the severity of the sanction of dismissal relative to the severity of the discovery abuse; (4) whether any evidence has been irreparably lost; (5) the feasibility and fairness of less severe sanctions; (6) the policy favoring adjudication on the merits; (7) whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney; and (8) the need to deter parties and future litigants from similar abuses. *Id.* In discovery abuse situations where possible case-

concluding sanctions are warranted, the trial judge has discretion in deciding which factors are to be considered on a "case-by-case" basis. *Bahena II*, 126 Nev. at 610, 245 P.3d at 1185 (citing *Higgs v. State*, 126 Nev. 1, 17, 222 P.3d 648, 658 (2010)). The *Young* factor list is not exhaustive and the Court is not required to find that all factors are present prior to making a finding. "Fundamental notions of fairness and due process require that discovery sanctions be just and . . . relate to the specific conduct at issue." *GNLV*, 111 Nev. at 870, 900 P.2d at 325.

The Nevada Supreme Court has addressed orders of case concluding sanctions on numerous occasions. The *Zenith* Court found a party whose agent destroyed and/or lost a television prior to the commencement of the underlying action, after the party's expert had an opportunity to test the television and opine on the television as a cause of a fire, had committed a discovery abuse warranting case concluding sanctions.[4] The *Zenith* Court held, "[t]he actions [of the appellant] had the effect of reserving to itself all expert testimony based upon examination of the television set." 103 Nev. at 652, 747 P.2d at 914.

The *Kelly Broadcasting* Court held the striking of an answer and entry of a judgment in favor of the non-offending party (Kelly) was an appropriate sanction for failing to complete discovery by the offending party (Sovereign). *Kelly Broadcasting*, 96 Nev. at 192, 606 P.2d at 1092. Sovereign argued a lesser sanction of striking only the affirmative defense to which the interrogatories applied was a more appropriate sanction. The *Kelly Broadcasting* Court disagreed, noting "[t]he question is not whether this court would as an original matter have entered a default judgment as a sanction for violating a discovery rule; it is whether the trial court abused its discretion in so doing. We do not find an abuse of discretion in this case." *Id.*

The *Stubli* Court upheld case concluding sanctions when the appellant or its agents failed to preserve evidence related to the cause of a trucking accident. The respondent provided expert affidavits which posited the cause of the accident could have been something other than the respondent's work on the truck. "The experts further asserted that appellant's failure to preserve the

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[4] The trial court actually struck the appellant's expert witness from the trial. The appellant indicated it had insufficient evidence to proceed without its expert and the trial court granted summary judgment in favor of the respondent. *Zenith*, 103 Nev. at 651, 747 P.2d at 913.

[truck and its components] had made it impossible for respondents to establish their defense theory." *Stubli*, 107 Nev. at 312, 810 P.2d at 787. *See also, North American Properties v. McCarran International Airport*, 2016 WL 699864 (Nev. Supreme Court 2016). *But see, GNLV, supra* (case concluding sanctions not appropriate when other evidence existed which experts could use to assist in their analysis including the statements of witnesses who saw the spoliated evidence).

The Court has considered the arguments of counsel, all of the pleadings on file in the instant action, the testimony of the witnesses at the evidentiary hearing, the exhibits admitted at that hearing, and the relevant case law discussed, *supra*. The issue presented in the case is actually very narrow: MDB claims it was a defective solenoid manufactured by Versa that malfunctioned causing a truck full of gravel to dump onto one of the two busiest roadways in Washoe County. MDB does not dispute the electrical systems were not preserved in anticipation of the trial or potential testing. MDB took no steps to warn its employees to keep any components in the electrical system should they need to be replaced. There are no pictures taken of the electrical system or the components. MDB's employees cannot testify to the condition of the components when they were replaced. Versa avers there were other potential causes of the malfunction, including an electrical issue. Versa further contends it cannot present these issues to the jury in support of its defense because the evidence no longer exists. The Court reviews the *Young* factors as follows:

I. *Willfulness*

The first *Young* factor is willfulness. In *Childers v. State*, 100 Nev. 280, 283, 680 P.2d 598, 599 (1984), the Nevada Supreme Court found the term willful, "implies simply a purpose or willingness to commit the act or to make the omission in question. The word does not require in its meaning any intent to violate law, or to injure another, or to acquire any advantage." Willfulness may be found when a party fails to provide discovery and such failure is not due to an inability on the offending party's part. *Havas v Bank of Nevada*, 96 Nev. 567, 570, 613 P.2d 706, 708 (1980). The Nevada Supreme Court has not opined that it is necessary to establish wrongful intent to establish willfulness.

Clearly MDB should have anticipated extensive litigation as a result of the incident that occurred on July 7, 2014. This was not a mere "slip and fall" where the putative plaintiff initially claims he/she is not injured only later to come back and sue. There were numerous accidents and injuries as a result of collisions occurring on a highway. MDB, or its counsel, had to know there would be litigation as a result of these events. The Court heard no testimony that MDB took any steps to preserve the truck or trailer in any way. There was no testimony indicating memorialization of the condition of the vehicle was ever contemplated by anyone at MDB. On the contrary, the truck and trailer continued to be in use after the events of July 7, 2014. It was subject to "routine" maintenance. The Court may have condoned the continued use of the truck, and even the trailer, had there been *any* steps taken to preserve the appearance of these items as they existed at the time of the event, or prior to the "routine" maintenance. The memorialization did not occur.

It would have been simple to inform the shop staff to photograph the truck and trailer on or about July 7, 2014. It would have required minimal effort to inform the shop staff to preserve any electrical parts taken off the truck or trailer during the maintenance. If these steps had been taken the Court would be looking at this case through the prism of *GNLV* because both parties would have had alternative ways to prove or disprove their theory of the case. Based on the inaction of MDB in preserving or memorializing the condition of the truck and trailer the Court must view this case through the prism of *Stubli* and *Zenith*: MDB alone has the ability to call experts to support their position. Versa's expert has a theory he can neither confirm nor refute based on the loss of the electrical components. The Court does not find MDB intentionally disposed of the components in order to harm Versa, nor were MDB's employees acting with any malevolence; however, the Court does find MDB is complicit of benign neglect and indifference to the needs of Versa regarding discovery in this action.

II. <u>The possibility of a lesser sanction</u>

The second *Young* factor is possible prejudice to Versa if a lesser sanction were imposed. The Court would consider lesser sanctions, including an adverse inference instruction, a rebuttable presumption instruction, and the striking of the MDB's expert as alternative sanctions. The Court

does not find any of these sanctions strike the appropriate balance between MDB's actions and the harm imposed on Versa's case. Should the Court strike Dr. Bosch from being a witness at the trial MDB would be in the same position as the appellant in *Zenith*: unable to prove its case given the lack of expert testimony and subject to a motion for summary judgment. This outcome would be a patent waste of limited judicial resources and of the jury's time. The Court does not find an adverse inference instruction pursuant to NRS 47.250(3) and *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006), is appropriate under the circumstances before the Court.[5] As noted by the *Zenith* Court, "[t]he actions of [MDB] had the effect of reserving to itself all expert testimony based upon examination of the [electronic components]. Any adverse presumption which the court might have ordered as a sanction for the spoliation of evidence would have paled next to the testimony of the expert witness." *Zenith*, 103 Nev. at 652, 747 P.2d at 914. Additionally, an adverse inference instruction requires an "intent to harm another party through the destruction and not simply the intent to destroy evidence." *Bass-Davis*, 122 Nev. at 448, 134 P.3d at 106. The Court does not find MDB intended to harm Versa by destroying or disposing of the electrical components; therefore, it could not give this instruction. The Court can conceive of no other sanction which would be appropriate under these circumstances.

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[5] At oral argument counsel for MDB stated:

> Recently the Nevada Supreme Court has declared that the Bass versus Davis case is the prevailing case on the spoliation of evidence, not Young versus Ribeiro. And in a case called Walmart Stores, Inc. versus the Eighth Judicial District, No. 48488, January 31st of 2008, the court said, "It is an abuse of discretion for a district court not to consider the case of Bass-Davis versus Davis when imposing sanctions pursuant to Nevada Rule of Civil Procedure 37 for an allegation of spoliation."

TRANSCRIPT OF PROCEEDINGS, EVIDENTIARY HEARING, 208:15-24. The citation to an unpublished disposition of the Nevada Supreme Court issued prior to January 1, 2016, is a violation of ADKT 0504 and SCR 123 (the SCR was repealed by the ADKT). The Court found it difficult to believe the Nevada Supreme Court would make such a sweeping change to firmly established precedent as that represented by counsel in an unpublished disposition. The Court was unfamiliar with *Walmart*, so the Court endeavored to familiarize itself with the case. The Court looked up the case number provided by counsel on the Nevada Supreme Court webpage. Troublingly, the Court was unable to verify the veracity of the proposition proffered by MDB *because the parties agreed to dismiss their proceedings and the Nevada Supreme Court vacated the order upon which MDB makes its argument.* The Nevada Supreme Court had granted a Writ of Mandamus on January 31, 2008; however, it withdrew that order on a subsequent date. The Nevada Supreme Court webpage indicates the parties contacted the Supreme Court on February 2, 2008, and indicated they had settled their case. The Nevada Supreme Court entered an order vacating the January 31, 2008, order upon which MDB relies and "den[ied] the petition as moot" on February 13, 2008. In short, the "case" MDB relies upon does not even exist.

III. The severity of the sanction of dismissal relative to the severity of the discovery abuse

"The dismissal of a case, based upon a discovery abuse . . . should be used only in extreme situations; if less drastic sanctions are available, they should be utilized." *GNLV*, 111 Nev. at 870, 900 P.2d at 325 (*citing Young*, 106 Nev. at 92, 787 P.2d at 779-80). The Court is keenly aware that granting the Motion effectively ends the case. The Court does not take this action lightly. The *only* issue in this case is why the door to the trailer opened causing the gravel to dump into the roadway. The Court finds MDB's disposal of the electronic components without memorializing them in any way effectively halted the adversarial process. It left all of the "cards" in MDB's hands and left Versa with nothing other than a theory it could neither prove nor disprove. MDB could simply rely on its expert during trial and argue Versa had no proof of its theory and the theory itself was preposterous. This is the position taken by MDB at the evidentiary hearing. Versa is left with no way of verifying its theory of the case.

Counsel for MDB directed the Court's attention at the evidentiary hearing to the strength of their expert (Dr. Bosch) and the weakness of Versa's expert (Palmer). Counsel further emphasized the lack of plausibility of the Palmer's conclusions that it could have been an abraded wire which caused an electrical failure rather than some issue with the solenoid or the Versa valve. The Court is not convinced this should be the deciding factor in resolving the issue of case concluding sanctions for the following reasons:

1. MDB's own employee (the same employees who serviced the truck and trailer) acknowledged at the evidentiary hearing that the abrasions Palmer referenced actually do occur;[6] and

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[6] Q: Okay. You also mentioned that you want to replace those cords, the seven and the – the seven-conductor and the four-conductor cords because they will get cut on the deck plate, they will get abraded, they will become cracked; is that correct?

A: I have seen that, yes.

TRANSCRIPT OF PROCEEDINGS, EVIDENTIARY HEARING (testimony of Patrick Bigby), 154:1-6.

2. Dr. Bosch had to acknowledge, though grudgingly and with great circumspection, that it was possible though highly unlikely the electrical system could have caused the valve in question to open.[7]

The Court's decision regarding the issue presented in the Motion is not predicated on who has the "stronger case" or the "better expert" at the evidentiary hearing. If this were the analysis the Court would agree with MDB: Dr. Bosch is a very credible witness and it is likely MDB has the more compelling argument to present to the jury. This, however, is not the issue. The issue in the Court's analysis is MDB's actions deprived Versa of *any* ability to prove its case: the adversarial process was stymied by MDB regarding the most critical pieces of evidence. Had MDB's witnesses testified the abrasions never occur, or abrasions were photographed and/or documented and none existed on this truck, the Court's conclusion may have been different. Here we know it *could have occurred* as Palmer suggested.

IV. Whether evidence is irreparably lost

Clearly the relevant evidence is lost. The employees of MDB testified at the evidentiary hearing the electronic components had been thrown away.

V. The feasibility and fairness of a less severe sanctions

The Court discussed the possibility of less severe sanctions in section II. The same analysis applies here. There does not appear to be any sanction short of case concluding sanctions which would be appropriate under the circumstances of this case. The Court also acknowledges that progressive sanctions are not always necessary. The circumstances presented in the Motion are unique and the most severe sanction is appropriate.

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[7]Q: Is there any scenario under which current from the seven-prong cord having contact with the four-prong cord could open the versa valve?

A: Anything is possible, but it's highly improbable in this case.

TRANSCRIPT OF PROCEEDINGS, EVIDENTIARY HEARING (testimony of Dr. Bosch), 161:5-9. Dr. Bosch's testimony clearly established he did not believe there was a short or other electrical failure that caused the valve to open.

VI. The policy favoring adjudication on the merits; and

VII. The need to deter parties and future litigants from similar abuse

The Court considers the sixth and eighth *Young* factors together. Nevada has a strong policy, and the Court firmly believes, that cases should be adjudicated on their merits. *See*, *Scrimer v. Dist. Court*, 116 Nev. 507, 516-517, 998 P.2d 1190, 1196 (2000). *See also*, *Kahn v. Orme*, 108 Nev. 510, 516, 835 P.2d 790, 794 (1992). Further, there is a need to deter litigants from abusing the discovery process established by Nevada law. When a party repeatedly and continuously engaged in discovery misconduct the policy of adjudicating cases on the merits is not furthered by a lesser sanction. *Foster*, 126 Nev. at 65, 227 P.3d at 1048. The case *sub judice* is not one of systemic discovery abuse. However, the Court concludes to allow the case to go forward as it is currently postured would be the antithesis of allowing it to proceed "on the merits." The merits of Versa's case would not be able to be evaluated by the jury because Versa could not test its theory on the actual components. The jury would be left to guess about what may have occurred rather than weigh the competing theories presented. MDB would have an overwhelmingly unfair advantage given its action.

The Court balances the laudable policy of trial on the merits against the need to deter future litigants from abusing the discovery process. The Court turns back to the *Zenith* Court's direction to all potential litigants regarding their duty to preserve evidence. The *Zenith* Court stated, "[i]t would be unreasonable to allow litigants, by destroying physical evidence prior to a request for production, to sidestep the district court's power to enforce the rules of discovery." *Id.* 103 Nev. at 651, 747 P.2d at 913. *Accord, Colfer v. Harmon*, 108 Nev. 363, 832 P.2d 383 (1992). To allow this case to go forward, when the only evidence which may have supported Versa's defense was in the sole possession of MDB and MDB did nothing to preserve or document that evidence, would set a dangerous precedent to similarly situated parties in the future. It would also be antithetical to a potential litigant's obligation to preserve the very evidence it may have to produce during discovery.

When the Court balances the sixth and eighth *Young* factor it concludes dismissal of MDB's claims against Versa are appropriate.

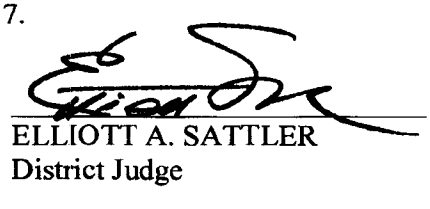
VIII. *Whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney*

There is no evidence to show MDB's counsel directed MDB to destroy or fail to memorialize the evidence in question. The Court finds this factor to be inapplicable to the *Young* analysis.

"Fundamental notions of fairness and due process require that discovery sanctions be just and . . . relate to the specific conduct at issue." *GNLV*, 111 Nev. at 870, 900 P.2d at 325 (*citing Young*, 106 Nev. at 92, 787 P.2d at 779-80). The Court recognizes that discovery sanctions should be related to the specific conduct at issue. The discovery abuse in this case crippled one party's ability to present its case. Weighing all eight factors above the Court concludes the dismissal of the MDB Cross-Claim is appropriate. Due to the severity of MDB's discovery abuse there are no lesser sanctions that are suitable.

It is hereby **ORDERED** 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 is **GRANTED**. MDB TRUCKING, LLC'S CROSS-CLAIM is DISMISSED.

DATED this 8 day of December, 2017.



ELLIOTT A. SATTLER
District Judge

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this ____ day of December, 2017, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 8 day of December, 2017, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JOSH AICKLEN, ESQ.
MATTHEW ADDISON, ESQ.
KATHERINE PARKS, ESQ.
BRIAN BROWN, ESQ.
THIERRY BARKLEY, ESQ.
SARAH QUIGLEY, ESQ.
JESSICA WOELFEL, ESQ.
JACOB BUNDICK, ESQ.
NICHOLAS WIECZOREK, ESQ.

Sheila Mansfield
Judicial Assistant

CV16-01914 DC-0990008056-043
JAMES BIBLE VS MDB TRUCKING, 7 Pages
District Court 09/20/2016 04:05 PM
Washoe County 4180
PMCFMFI1

FILED

2016 SEP 20 PM 4:05

MARGUERITE BRYANT
CLERK OF THE COURT
BY _____ DEPUTY

FILED

2016 AUG 15 PM 3:54

SUE SEVON
COURT CLERK
BY _____ DEPUTY

CASE NO. 16-10DC-0824
DEPT. NO. I
[The undersigned hereby affirms this document does not contain a social security number]

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CHURCHILL

JAMES BIBLE,

Plaintiff,

vs.

MDB TRUCKING, LLC, a Nevada Limited Liability Company; RMC LAMAR HOLDINGS, INC., a Colorado Corporation; VERSA PRODUCTS COMPANY INC., a New Jersey Corporation; DANIEL ANTHONY KOSKI; et al

Defendants.

AND RELATED CROSS-CLAIMS.

MDB TRUCKING, LLC, a Nevada limited liability company,

Third-Party Plaintiff,

vs.

THE MODERN GROUP GP-SUB, INC., a Texas corporation and general partnership; DRAGON ESP, LTD., a Texas limited partnership; and DOES 1-10 and BLACK AND WHITE COMPANIES 1-10,

Third-Party Defendants.

THIRD-PARTY COMPLAINT

CV16 01914
D1

COMES NOW the Defendant/Third-Party Plaintiff, MDB Trucking, LLC (hereinafter "MDB") by and through its counsel of record Thorndal Armstrong Delk Balkenbush & Eisinger, and hereby brings this Third-Party Complaint against Third-Party Defendants the Modern Group GP-Sub, Inc. and Dragon ESP, Ltd. and hereby allege as follows.

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

FIRST CLAIM FOR RELIEF

(General Allegations)

1. Third-Party Plaintiff incorporates herein that Plaintiffs' First Amended Complaint solely for the purposes of establishing that a First Amended Complaint has been filed against MDB Trucking, LLC, but without admitting the truth of any allegation therein except for such allegations which may have been admitted in Third-Party Plaintiff's Answer. Third-Party Plaintiff is informed and believes and therefore alleges that the matters referred to in Third-Party Plaintiff's Complaint were proximately caused by the acts and omissions of Third-Party Defendants.

2. Third-Party Plaintiff MDB Trucking, LLC was at all relevant times a Nevada limited liability company authorized to conduct business within the State of Nevada.

3. Third-Party Defendants DOES 1-10 and BLACK AND WHITE COMPANIES 1-10 are sued herein under fictitious names and the true names and capacities of said Third-Party Defendants are not known by Third-Party Plaintiff who asked leave of court to amend this Third-Party Complaint to set forth same as it becomes known or ascertained.

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

5. Third-Party Defendant the Modern Group GP-Sub, Inc. was at all relevant times hereto a Texas corporation and the general partner of Dragon ESP, Ltd., a Texas limited partnership.

6. Third-Party Defendant Dragon ESP, Ltd. was at all relevant times a Texas limited partnership.

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

7. A Complaint was filed on July 7, 2016 in the Tenth Judicial District Court, Case No. 16-10DC-0824, Department I in which the Plaintiff James Bible prayed for damages against Defendant MDB Trucking, LLC alleging negligence in regards to an accident which occurred on July 7, 2014 where a trailer owned by MDB Trucking, LLC spilled a load of gravel causing an accident and injury which are claims presented by Plaintiff.

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

9. Defendant RMC Lamar Holdings, Inc. manufactured the subject Ranco trailer in 2002 under the vehicle brand Ranco with VIN No. 1R9BP45082L008431 Idaho Plate No. TE3528.

10. Third-Party Defendants acquired Ranch Manufacturing on or about August 1, 2007 through an Asset Purchase Agreement.

11. Upon information and belief, Third-Party Defendant Dragon, ESP has continued to sell Ranco trailers and semi-trailers with the same components within the same general market and to same customers.

12. Third-Party Defendant Dragon ESP has maintained its manufacturing and assembly locations in the same venue of Lamar, Colorado after its acquisition of Ranch Manufacturing Company.

13. William Carder the former President and owner of Ranch Manufacturing, Inc. became an officer with Dragon ESP, Ltd. and maintained his position as Vice-President for Ranco through all relevant times up to and including 2013.

14. Upon information and belief, Dragon ESP, Ltd. is a *de facto* successor to Ranch Manufacturing, Inc. and has engaged in substantial continuation of Ranco's business.

15. Dragon ESP, Ltd. is liable to Third-Party Plaintiff to the same extent as RMC Lamar Holdings, Inc. (fka Ranch Manufacturing Company).

///

THORNDAL ARMSTRONG
DELK BALKENBUSH
& EISINGER
6590 S. McCarran, Suite B
Reno, Nevada 89509
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16. Third-Party Plaintiff MDB Trucking, LLC in 2012 was the last purchaser and end user of the subject Ranco trailer.

17. On or before 2002, the Ranco trailer that left Ranch Manufacturing's control as designed, assembled, and manufactured by Ranco was unreasonably dangerous and defective in one or more of the following respects:

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

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

18. Ranch Manufacturing knew that Versa Products Company, Inc. had a safer design available in the stream of commerce on or about 2002 which employed a manual lock safety design, and that same should have been provided to its end use customers in lieu of the Versa Valve model incorporated in the subject Ranco trailer.

19. To the extent Plaintiff was injured as a proximate result of the unreasonably dangerous conditions and defects at the time of manufacturing or negligent design, such as a direct and proximate result of the negligence of Third-Party Defendants; and any negligence that exists as alleged by the Plaintiffs is expressly denied. Third-Party Defendants were actively negligent and Third-Party Plaintiff was passively negligent.

20. Third-Party Defendants' breach of duty of care owed to the Third-Party Plaintiff and Third-Party Defendants are required to indemnify and hold Third-Party Plaintiff harmless with respect to all allegations and liabilities as set forth in the First Amended Complaint filed in this matter.

21. Third-Party Plaintiff has placed Third-Party Defendants on notice of claims pending in this matter.

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///

///

22. Third–Party Plaintiff is required to expend costs and attorneys' fees in defending the negligence claims in the First Amended Complaint on file herein and for prosecuting the instant Third-Party Complaint.

FIRST CLAIM FOR RELIEF

(Implied Indemnification as to Third-Party Defendants)

23. Third-Party Plaintiff realleges each and every allegation contained in paragraphs 1-22 as more fully set forth herein.

24. Third-Party Plaintiff is therefore entitled to complete indemnification against Third-Party Defendants with respect to all allegations or liabilities set forth in the First Amended Complaint on file in this matter.

25. Third-Party Plaintiff is entitled to all costs and fees expended in the defense of claims of negligence in this matter as well as prosecution of this Third-Party Complaint.

SECOND CLAIM FOR RELIEF

(Contribution as to Third-Party Defendants)

26. Third-Party Plaintiff repeats and realleges each and every allegation contained in paragraphs 1-25 above as if more fully set forth herein.

27. Third-Party Plaintiff is entitled to contribution from Third-Party Defendants with respect to any settlement, judgment, awards or any other type of resolution or claims brought forward by the Plaintiffs in their First Amended Complaint on file herein.

28. Third-Party Plaintiff is entitled to all costs and fees expended in defense of claims of negligence in this matter as well as prosecution of the Third-Party Complaint.

WHEREFORE, Third-Party Plaintiff demands judgment against Third-Party Defendants as follows:

1. For implied indemnification with respect to all negligence claims brought against Third-Party Plaintiff in this matter;
2. For contribution with respect to all negligence claims brought against Third-Party Plaintiff in this matter;
3. For attorneys' fees and costs expended in this matter; and

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

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

DATED this 12th 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/Third-Party Plaintiff
MDB TRUCKING, LLC

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal Armstrong Delk Balkenbush & Eisinger, and that on this date I caused the foregoing **THIRD-PARTY COMPLAINT** to be served on all parties to this action by:

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

_____ hand delivery

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

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

James F. Sloan, Esq.
977 W. Williams Ave
Fallon, Nevada 89406
Attorneys for Plaintiff

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

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

DATED this 15 day of August, 2016.

An employee of Thorndal Armstrong Delk Balkenbush & Eisinger

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

MDB TRUCKING, LLC, Appellant, vs. VERSA PRODUCTIONS COMPANY, INC., Respondent.	Supreme Court No.: 76396 District Court Case No.: CV16-01914 Dept. 10 **DOCKETING STATEMENT** **CIVIL APPEALS**

Electronically Filed
Aug 06 2018 02:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

1. **Judicial District:** Second Judicial District Department: 10

   County: Washoe Judge: The Honorable Elliott A. Sattler

   District Ct. Case No.: CV16-01914

2. **Attorney(s) filing this docketing statement:**

   Attorneys: Nicholas M. Wieczorek, Esq.; Jeremy J. Thompson, Esq.; and Colleen E. McCarty, Esq.

   Telephone: (702) 862-8300

   Firm: Clark Hill PLLC

   Address: 3800 Howard Hughes Parkway, Suite 500, Las Vegas, Nevada 89169

   Client: MDB Trucking, LLC ("MDB")

3. **Attorney(s) representing Respondent(s):**

   Attorney: Josh Cole Aicklen, Esq.; David B. Avakian, Esq.; and Paige S. Shreve, Esq.

   Telephone: (702) 893-3383

   Firm: Lewis Brisbois Bisgaard & Smith LLP

   Address: 6385 S. Rainbow Boulevard, Suite 600, Las Vegas, Nevada 89119

   Client(s): Versa Products Company, Inc. ("Versa")

Docket 76396 Document 2018-30088

4. **Nature of disposition below (check all that apply):**

- ❑ Judgment after bench trial
- ❑ Judgment after jury verdict
- ❑ Summary judgement
- ❑ Default judgment
- ❑ Grant/Denial of NRCP 60(b) relief
- ❑ Grant/Denial of injunction
- ❑ Grant/Denial of declaratory relief
- ❑ Review of agency determination
- ❑ Dismissal
  - ❑ Lack of jurisdiction
  - ❑ Failure to state a claim
  - ❑ Failure to prosecute
  - ❑ Other (specify):
- ❑ Divorce Decree:
  - ❑ Original ❑ Modification

Other disposition (specify): Post-Judgment Order (1) Granting in Part and Denying in Part Versa's Motion for Attorney's Fees and Costs Pursuant to NRCP 37 and NRCP 68 and (2) Granting in Part and Denying in Part MDB's Motion to Retax and Settle Verified Memorandum of Costs

5. **Does this appeal raise issues concerning any of the following?** Not applicable.

- ❑ Child Custody
- ❑ Venue
- ❑ Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

MDB Trucking, LLC v. Versa Products Co., Inc.,
Case Nos. 75022, 75319, 75321, 76395 and 76397

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Fitzsimmons v. MDB Trucking, LLC, et al., Second Judicial District Case No. CV15-02349
Remmerde v. MDB Trucking, LLC, et al., Second Judicial District Case No. CV16-00976

On June 7, 2018, the Court filed its post-judgment Orders in the above-referenced cases, which were the same or substantially similar in outcome to the instant appeal. These Orders were noticed on July 13, 2018 and have also been appealed and cross-appealed.

8. Nature of the action. Briefly describe the nature of the action and the result below:

The matter underlying this appeal arises from a personal injury action. On December 4, 2015, Ernest and Carol Fitzsimmons filed a complaint styled *Fitzsimmons v. MDB Trucking, LLC, et al.*, in the Second Judicial District Court, Case No. CV15-02349 (the "*Fitzsimmons* Action"). Numerous other plaintiffs' cases were subsequently consolidated into the *Fitzsimmons* Action. Two additional cases resulting from the same accident were filed but not consolidated with the *Fitzsimmons* Action, e.g. *Remmerde v. MDB Trucking, LLC*, Case No. CV-00976, and the case which is the subject of the instant appeal, *Bible v. MDB Trucking, LLC*, Case No. CV16-01914. The personal injury claims all related to multiple traffic accidents, which occurred when a semi-trailer owned and operated by MDB inadvertently dumped a load of gravel on the freeway. MDB settled all of the underlying plaintiffs' claims and thereafter pursued a Cross-Claim for Contribution against Versa. The *Fitzsimmons* Action was subsequently dismissed by the District Court's Order entered on December 8, 2017 and noticed on December 29, 2017, which granted case-ending sanctions, pursuant to NRCP 37. And, based upon that decision, the District Court filed an Order dismissing MDB's Cross-Claim in the instant underlying case, as well as in the *Remmerde* matter. All three cases are currently on appeal from that Order, in Supreme Court Case Nos. 75022 (*Fitzsimmons*), 75319 (*Remmerde*) and 75321 (*Bible*), respectively.

On February 9, 2018, Versa filed a post-judgment Motion for Attorneys' Fees and Costs Pursuant to NRCP 37 and NRCP 68 ("Motion for Attorneys' Fees"), and a Verified Memorandum of Costs ("Memorandum of Costs"), wherein it sought attorneys' fees in the amount of $724.50 and costs in the amount of $1,274.74 from MDB. Thereafter, MDB timely filed a Motion to Retax and Settle Costs ("Motion to Retax") and opposed the Motion for Attorneys' Fees. After full briefing, the District Court heard oral argument on the Motion for Attorneys' Fees and Motion to Retax on April 6, 2018, at which time it took the matters under advisement. In a final written Order on the post-judgment motions entered on June 7, 2018, and noticed on June 13, 2018, the District Court granted in part and denied in part the Motion for Attorneys' Fees and Motion to Retax. Specifically, Versa's request for attorneys' fees was denied, and its Verified Memorandum of Costs was reduced by $198.00. MDB was ordered to pay Versa costs in the amount of $1,076.74 and is appealing said cost award in its entirety.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1) Whether the District Court abused its discretion by awarding $1,053.87 in costs to Versa for costs pertaining exclusively to Versa's defense of the underlying plaintiffs' personal injury actions for which Versa was not the prevailing party. *See* NRS 18.020; *see also Nevada N. R. R. v. Ninth Judicial Dist. Court*, 51 Nev. 201, 204-05, 273 P. 177, 178 (1928) (MDB having settled the plaintiffs' personal injury claims pre-trial, without any contribution from Versa, is preclusive of Versa claiming "prevailing party" status).

2) Whether the District Court abused its discretion by awarding $21.87 to Versa for costs which predate its Offers of Judgment, in contravention of its Motion for Attorneys' Fees, wherein Versa specifically requests costs incurred after the service of the Offers of Judgment.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issue raised.

Fitzsimmons v. MDB Trucking, LLC, et al., Case No. 75022
Remmerde v. MDB Trucking, LLC, et al., Case No. 76397

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

X N/A
❑ Yes
❑ No
If not, explain:

12. **Other issues. Does this appeal involve any of the following issues?** Not applicable.

❑ Reversal of well-settled Nevada precedent (identify the cases(s))
❑ An issue arising under the United States and/or Nevada Constitutions
❑ A substantial issue of first impression
❑ An issue of public policy
❑ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
❑ A ballot question
If so, explain:

13. **Assignment to the Court of Appeals or retention in the Supreme Court.**

MDB respectfully asserts that this matter, which is an appeal of a post-judgment Order related to the appeal of a case-ending sanctions Order in Case No. 75321, is presumptively retained by the Supreme Court, pursuant to NRAP 17(a)(10) and/or (11). The Supreme Court previously clarified its spoliation jurisprudence in *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006), but it remains a question of first impression and/or inconsistency in the published decisions of the Appellate Courts what impact the *Bass-Davis* decision has on a district court's exercise of discretion to impose sanctions under NRCP 37. It is MDB's position in the instant case that the District Court failed to recognize the limitations on the degree of sanctions to be imposed for negligent or willful spoliation of evidence under *Bass-Davis* and abused its discretion in entering case concluding sanctions.

To the extent this matter could otherwise be viewed as presumptively assigned to the Court of Appeals pursuant to NRAP (17)(b)(5), MDB respectfully requests the Supreme Court retain the case despite the presumptive assignment for all of the reasons stated above.

14. Trial. If this action proceeded to trial, how many days did the trial last?

Not applicable.

Was it a bench or jury trial?

Not applicable.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

Not applicable.

16. Date of entry of written judgment or order appealed from.

Order filed on June 7, 2018.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review.

Not applicable.

17. Date written notice of entry of judgment or order appealed from: June 13, 2018.

Was service by:

- ❑ Delivery
- X Mail/electronic/fax

18. **Date written notice of entry of Judgment or order was served:** June 13, 2018

19. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59).

Not applicable.

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

- ❑ NRCP 50(b) Date of filing _____
- ❑ NRCP 52(b) Date of filing _____
- ❑ NRCP 59 Date of filing _____

(b) Date of entry of written order resolving tolling motion _____
(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:
❑ Delivery
❑ Mail

20. Date notice of appeal filed: July 13, 2018.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Versa filed a Notice of Cross-Appeal on July 24, 2018.

21. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other.

N.R.A.P. 4(a)(1)

SUBSTANTIVE APPEALABILITY

22. Specify the statue or other authority granting this court jurisdiction to review the judgment or order appeal from:
(a)

X	NRAP 3A(b)(1)	❑	NRS 38.205
❑	NRAP 3A(b)(2)	❑	NRS 233B.150
❑	NRAP 3A(b)(3)	❑	NRS 703.376
❑	Other (specify)		

_____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

N.R.A.P. 3A(b)(1) allows an appeal to be taken from the final judgment or orders of a district court. The District Court's Order resolved all issues in dispute raised by Versa's Motion for Attorneys' Fees and MDB's Motion to Retax. There is nothing remaining to be adjudicated by the parties.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:
(1) MDB Trucking, LLC
(2) Versa Products Company, Inc.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

The claims of all other parties were settled in the district court.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Versa's Motion for Attorneys' Fees against MDB granted in part and denied in part by Order entered on June 7, 2018. MDB's Motion to Retax against Versa granted in part and denied in part by the same Order entered on June 7, 2018.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

X Yes
❑ No

25. If you answered "No" to question 23, complete the following: Not applicable.

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

❑ Yes
❑ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

❑ Yes
❑ No

26. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

Not applicable.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)

- Order of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

MDB Trucking, LLC Name of appellant	Nicholas Wieczorek, Jeremy Thompson and Colleen E. McCarty Name of counsel of record
8/6/18 Date	Signature of counsel of record
Nevada, Clark County State and County where signed	

CERTIFICATE OF SERVICE

I certify that on the 6th day of August, 2018, I served a copy of this completed docketing statement upon all counsel of records:

- ❑ By personally serving it upon him/her; or
- X By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attached a separate sheet with the addresses.)

Josh Cole Aicklen, ESQ.
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