IN THE SUPREME COURT OF THE STATE OF NEVADA

MDB TRUCKING, LLC, Appellant/Cross-Respondent, vs. VERSA PRODUCTS COMPANY, INC., Respondent/Cross-Appellant.	Supreme Court Case No. 75022 Consolidated with Case Nos. 75319, 75321, 76395, 76396 and 76397 [District Court Case Nos.: CV15-02349, CV16-00976 and CV16-01914]

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JOINT APPENDIX VOLUME 16 OF 18

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

NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
JEREMY J. THOMPSON
Nevada Bar No. 12503
COLLEEN E. MCCARTY
Nevada Bar No. 13186
CLARK HILL PLLC
3800 Howard Hughes Pkwy., Ste. 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Appellant/Cross-Respondent
MDB Trucking, LLC

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Clerk of the Court
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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 Third-Party Defendant VERSA PRODUCTS COMPANY, INC.

DISTRICT COURT

WASHOE COUNTY, NEVADA

GENEVA M. REMMERDE, Plaintiff, vs. DANIEL ANTHONY KOSKI; MDB TRUCKING, LLC; DOES I-X and ROE I-V, Defendants.	Case No. CV16-00976 Dept. 10 **THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S MOTION FOR ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 37 AND NRCP 68**
AND ALL RELATED CASES.	

COMES NOW, Third-Party 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 hereby submits its Motion for Attorneys' Fees and Costs Pursuant to NRCP 37 and NRCP 68.

This Motion is made and based upon the pleadings and papers on file in this matter, Nevada Rule of Civil Procedure 37, Nevada Rule of Civil Procedure 68, the attached Memorandum of Points and Authorities, the entire record in this case, the attached Affidavit of Josh Cole Aicklen, Esq., the Verified Memorandum of Fees and

Costs, filed concurrently herewith, the attached exhibits, and any such argument as the Court may entertain at the hearing on this Motion.

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 Defendant/Cross-Defendant
VERSA PRODUCTS COMPANY, INC.

AFFIDAVIT OF JOSH COLE AICKLEN, ESQ. IN SUPPORT OF THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S MOTION FOR ATTORNEYS' FEES, COSTS AND INTEREST PURSUANT TO NRCP 37 AND NRCP 68

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

JOSH COLE AICKLEN, ESQ., being first duly sworn, deposes and states 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 Third-Party 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 CV16-00976.

2. I am a member of the United States Supreme Court Bar; the California State Bar since 1990; and the Nevada State Bar since 2000.

3. I am admitted in the Ninth Circuit Court of Appeals, the United States Central District Court of California and the U.S. District Court of Nevada.

4. I graduated from the University of Southern California in 1985 with a Bachelor of Arts degree in Political Science. I graduated from Whittier College School of Law with a Juris Doctor degree, Magna Cum Laude, in 1990. From 1990 until the present the majority of my work has been representing defendants in general liability civil litigation. Prior to moving to Las Vegas, I was Adjunct Professor of Law at Whittier College School of Law, teaching courses on legal research and writing and civil discovery practice. In twenty eight years of practicing law, I reasonably estimate that I have taught approximately 85 legal and professional workshop courses, including classes on how to detect and litigate fraudulent claims; seminar courses on jury selection; trying jury trials in automobile accident cases; legal writing; employment law; electronic discovery; trial skills; conducting mock trials; and civil procedure. I reasonably estimate that I have tried

approximately 95 cases to jury verdict or court judgment. In 2001, after 11 years of civil practice, I received an AV rating by the Martindale-Hubbell peer review rating system. I billed my time in this matter at $235.00 per hour which I believe to be very reasonable.

5. During the defense of this case, I supervised the work and activities of Partner David B. Avakian, Esq., associates Paige S. Shreve, Esq., Bradley M. Marx, Esq., and Robert Loftus, Esq., and Senior Associate Brandon D. Wright, Esq. Mr. Avakian's time was billed at $215.00; Mrs. Shreve, Mr. Marx, and Mr. Loftus' times were billed at $175.00; and Mr. Wright's time was billed at $185.00. All of the aforementioned counsel are licensed and in good standing in the State of Nevada.

6. On May 4, 2017, VERSA served MDB with an Offer of Judgment in the amount of $1,000.00. See, Offer of Judgment dated May 4, 2017, true and correct copies of which are attached as **Exhibit 1**. MDB rejected VERSA's Offer of Judgment.

5. From May 4, 2017 to the present, VERSA incurred a total of **$731.00** in attorneys' fees and **$413.00** in costs defending against MDB's claims. See, Verified Memorandum of Attorneys' Fees and Costs, attached as **Exhibit 2**; see also, Redacted copies of attorneys' fees and invoices, true and correct copies of which are attached hereto as **Exhibit 3**.

7. The aforesaid legal services and costs were actually and necessarily incurred and were reasonable in amount.

8. Counsel's work included communication with counsel for the other parties, review of multiple parties pleadings and papers, preparing VERSA's pleadings and papers for the Court, extensive law and motion practice, communication with the client, trial preparation and conducting an evidentiary hearing.

9. Attached hereto as **Exhibit 4** is a true and correct copy of VERSA's Motion to Strike MDB's Third-Party Complaint pursuant to NRCP 37 (pleading only).

10. Attached hereto as **Exhibit 5** is a true and correct copy of the Notice of Entry of Order Granting VERSA's Motion to Strike MDB's Third-Party Complaint pursuant to NRCP 37.

FURTHER AFFIANT SAYETH NAUGHT.

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant/Third-Party Plaintiff, MDB TRUCKING, LLC ("hereinafter referred to as "MDB"), brought Third-Party/Cross-Claims[1] against VERSA PRODUCTS COMPANY, INC. (hereinafter referred to as "VERSA"), in which it asserted a contribution claim against VERSA for personal injury claims brought by Plaintiffs, Ernest Fitzsimmons and Carol Fitzsimmons ("Fitzsimmons"); Angela Wilt ("Wilt"); Rosa, Benjamin, Cassandra and Natalie Robles ("Robles"); Sonya Corthell ("Corthell"); Beverly, Patrick and Ryan Crossland ("Crossland"); Olivia and Naykyla John ("John"); Kandise Baird ("Kins"); James Bible ("Bible"); and Geneva Remmerde ("Remmerde") (collectively referred to as "Plaintiffs"). Plaintiffs were driving westbound on IR80 when a semi-trailer driven by Defendant Daniel Koski and owned by Defendant/Third-Party Plaintiff MDB spilled gravel on the freeway, causing multiple automobile accidents and the injuries alleged by the Plaintiffs. MDB's contribution claim was based on its allegation that the inadvertent gravel dump was due to an alleged "defect" with the VERSA valve on the subject trailer.

II. PROCEDURAL HISTORY

MDB first served VERSA with a Third-Party Complaint on June 27, 2016. Plaintiffs', Defendants' and Third-Party Defendants' conducted discovery over the next several months. On May 4, 2017, VERSA served an Offer of Judgment to MDB for the amount of $1,000.00. See, **Exhibit 1**. On May 5, 2017, the parties attended mediation in an attempt to resolve this matter. All the claims were settled with the Plaintiffs.

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

In all nine of the above mentioned lawsuits, MDB filed cross-claims/third-party action against VERSA for Indemnity and Contribution. VERSA filed a Motion to Dismiss MDB's Indemnity claim against VERSA in all nine cases. The Court granted VERSA's Motions to Dismiss the indemnity claims, leaving MDB with a cross-claim for contribution only against VERSA. All Plaintiffs have settled their personal injury claims.

Unfortunately, MDB and VERSA were unable to resolve the cases. In an attempt to resolve the matters, two business days later VERSA offered the amount MDB requested at mediation, but MDB refused to even discuss settlement. On May 15, 2017, VERSA filed its Motion to Strike MDB's Third-Party Complaint pursuant to NRCP 37. See, **Exhibit 4**. On May 22, 2017, VERSA's Offer of Judgment.J to MDB lapsed. On December 12, 2017, VERSA filed its request for submission on its Motion to Strike MDB's Third-Party Complaint. On January 22, 2018, granted VERSA's Motion to Strike incorporating the December Order from the FITZSIMMONS matter.

Due to MDB's refusal to resolve the case, the parties began preparing for a costly jury trial. Simply put, MDB rejected VERSA's Offer of Judgment and refused to even negotiate. On October 13, 2017, a couple weeks before trial, the Court held an evidentiary hearing on VERSA's Motion to Strike MDB's Cross-Claim for spoliation of evidence. MDB and VERSA called numerous experts and witnesses to testify and issued several subpoenas. The Court ultimately agreed with VERSA's arguments, holding that "due to the severity of MDB's discovery abuse there are no lesser sanctions that are suitable" and struck MDB's Cross-Claim against VERSA due to repeated and egregious spoliation of critical evidence. See, **Exhibit 5**.

MDB's claims against VERSA have always been highly suspect, as the experts found the VERSA valve performed as intended and MDB destroyed critical evidence VERSA needed for its defense. MDB's stricken Third-Party claims clearly did not beat VERSA's $1,000.00 Offer of Judgment. MDB's refusal to accept VERSA's Offer of Judgment caused VERSA to incur significant attorneys' fees and litigation expenses. Lastly, MDB knew it had spoliated critical evidence to prove its case prior to asserting its Third-Party claims against VERSA. Therefore, VERSA is also entitled to an award of attorneys' fees and costs pursuant to NRCP 37.

III. LEGAL ARGUMENT

Nevada law permits an award of attorneys' fees if authorized under a statute, rule or contract. See, Thomas v. City of N. Las Vegas, 122 Nev. 82, 90, 127 P.3d 1057, 1063

(2006). A claim for attorneys' fees must be made by motion and supported by competent evidence. See, NRCP 54(d)(2)(A). VERSA is entitled to recover attorneys' fees against MDB pursuant to its May 4, 2017 Offer of Judgment and MDB's failure to obtain a more favorable judgment pursuant to NRCP 68. VERSA moves to recover its reasonable attorneys' fees and costs given its Offer of Judgment and the Court's January 22, 2018 order granting VERSA's Motion to Strike MDB's Third-Party Complaint. See, **Exhibits 2, 3 and 5**. Additionally, VERSA is entitled to recover attorneys' fees and costs against MDB pursuant to NRCP 37 for MDB's spoliation of evidence.

A. VERSA is Entitled to Its Attorneys' Fees And Costs Pursuant to NRCP 37

NRCP 37(b) provides that where a Court strikes a party's pleading, "[i]n lieu of any of the foregoing orders **or in addition thereto**, the court **shall** require the party . . . to pay the reasonable expenses, including attorney's fees. . . unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust." Indeed, where a Court strikes a party's pleading, awarding attorney's fees and costs is warranted. See, Skeen v. Valley Bank, 89 Nev. 301, 511 P.2d 1053 (1973); Schatz v. Devitte, 75 Nev. 124, 335 P.2d 783 (1959); Foster v. Dingwall, 227 P.3d 1042, 227 P.3d 1042 (2010). The Court has broad power in terms of the sanctions that can be invoked when a party fails to participate in the discovery process. See, Temora Trading Co. v. Perry, 98 Nev. 229, 231, 645 P.2d 436, 437, cert. denied, 459 U.S. 1070, 103 Sup.Ct. 489, 74. L.Ed. 2d 632 (1982); Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990)(The District Court dismissed Young's Complaint and ordered Young to pay JRBI's attorneys' fees and costs as a sanction for his willful fabrication of evidence and lies.); Havas v. Bank of Nev., 96 Nev. 567, 613 P.2d 706 (1980).

MDB destroyed critical electrical evidence in this case which denied VERSA the ability to defend itself against MDB's unfounded claims. There is no substantial justification for MDB's failure to preserve the evidence other than to obstruct discovery and frustrate the progress of this litigation. Because MDB was "complicit of benign

neglect and indifference to the needs of Versa regarding discovery in this action," MDB significantly prejudiced VERSA's ability to defend against MDB's Third-Party claims, while at the same time substantially increasing VERSA' attorneys' fees and costs. See, **Exhibit 5**. Consequently, the Court should award VERSA its attorneys' fees and costs incurred in the suit pursuant to the plain language of NRCP 37.

B. VERSA is Entitled to an Award of Attorneys' Fees And Costs Pursuant to NRCP 68

VERSA is entitled to an award of its attorneys' fees and costs pursuant to NRCP 68 from the date it served its offer (May 4, 2017) to the day MDB pays VERSA's fees and costs.

NRCP 68 states, in relevant part:

> (e) Failure to Accept Offer. If the offer is not accepted within 10 days after service, it shall be considered rejected by the offeree and deemed withdrawn by the offeror. Evidence of the offer is not admissible except in a proceeding to determine costs and fees. The fact that an offer is made but not accepted does not preclude a subsequent offer. . . **Any offeree who fails to accept the offer may be subject to the penalties of this rule**.
>
> (f) Penalties for Rejection of Offer. **If the offeree rejects an offer and fails to obtain a more favorable judgment**,
>
> (1) the offeree cannot recover any costs or attorney's fees and shall not recover interest for the period after the service of the offer and before the judgment; and
>
> (2) **the offeree shall pay the offeror's post-offer costs, applicable interest on the judgment from the time of the offer to the time of entry of the judgment and reasonable attorney's fees, if any be allowed, actually incurred by the offeror from the time of the offer**.

See, NRCP 68 (emphasis added).

Offer of Judgment encourage settlement and punish unreasonable rejections of the opposing party's reasonable settlement offers. The offer of judgment rules penalize an unreasonable plaintiff (by way of awarding adverse attorneys' fees and costs) for rejecting a defendant's offer after a plaintiff fails to receive a more favorable judgment at trial. See, Albios v. Horizon, 122 Nev. 409, 418, 132 P.3d 1022, 1012 (2006). The Court

should punish MDB in this matter because it rejected VERSA's $1,000.00 per Plaintiff Offer of Judgment and then its Cross-Claim was stricken due to spoliation of evidence.

The Court must consider the following when evaluating whether to award attorneys' fees following the rejection of an Offer of Judgment and then the failure to recover at trial:

- Whether the plaintiff's claim was brought in good faith;
- Whether the defendant's offer of judgment was reasonable and in good faith in both its time and amount;
- Whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and
- Whether the fees and costs sought as punishment for rejecting the Offer of Judgment and then failing to receive a more favorable jury award are reasonable and justified given the litigation.

See, RTTC Communications LLC v. Saratoga Flier, Inc.,121 Nev. 34, 41, 110 P.3d 24, 28 (2005); Wynn v. Smith, 117 Nev. 6, 13, 16 P.3d 424, 428 (2001); Uniroyal Goodrich Tire Company v. Mercer, 111 Nev. 318, 323, 890 P.2d 785, 789 (1995); Beattie v. Thomas, 99 Nev. 579, 588-89, 688 P.2d 268, 274 (1983).

While no single Beattie factor is determinative, a review of the factors proves this Court should award VERSA its attorneys' fees and costs following MDB's unreasonable rejection of VERSA's Offer of Judgment. See e.g., Yamaha Motor Co., U.S.A. v. Arnoult, 114 Nev. 233, 252 n. 16, 955 P.2d 661, 673 (1998).

1. MDB Should Pay VERSA's Attorneys' Fees and Costs Because its Cross-Claim Was Not Brought and/or Maintained in Good Faith

MDB's claims were not brought and/or maintained in good faith because it had no factual (or legal) basis to recover damages from VERSA, arising from MDB's truck dumping a load of gravel on the interstate. MDB destroyed crucial evidence VERSA needed to prove its defense to the Third-Party claims. Even knowing it destroyed critical evidence, MDB disagreed and refused to even negotiate. VERSA sought to "buy its peace" from MDB on May 4, 2017 despite these issues in order to avoid costly litigation.

See, **Exhibit 1**. In addition, VERSA agreed to pay MDB the settlement amount it requested within five (5) days of the mediation. MDB refused to negotiate. MDB, however, rejected VERSA's O Offer of Judgment and then failed to recover anything from VERSA, as the Court struck its Cross-Claims due to willful destruction of crucial evidence. See, **Exhibit 5**. Consequently, MDB's claims against VERSA were not brought and/or maintained in good faith and MDB should pay VERSA's attorneys' fees and costs incurred after May 4, 2017, for rejecting VERSA's good faith Offer of Judgment.

2. VERSA's Offer of Judgment Was Reasonable in Both Time and Amount and Made in Good Faith

VERSA has maintained throughout the litigation that MDB had no evidence to support its Third-Party claims that the subject valve was defective and that it caused the subject incident. Both VERSA and MDB's experts found no defect with the VERSA valve when it was subjected to destructive testing. More importantly, MDB destroyed crucial evidence VERSA needed to defend MDB's claims. In light of all of this, VERSA wanted to "buy its peace" to avoid costly litigation and negative publicity. MDB clearly had a different agenda.

On May 4, 2017, VERSA served Offer of Judgment to Plaintiff for $1,000.00. VERSA's Offer of Judgment was more than reasonable given the fact that MDB had destroyed the evidence needed for VERSA to defend itself in this matter.

VERSA's $1,000.00 Offer of Judgment should have resolved these matters. MDB, however, rejected VERSA's Offer of Judgment, choosing trial over settlement. VERSA's Offer of Judgment was reasonable (and made in good faith) in every way. MDB's refusal to accept it was not. Consequently, this factor weighs strongly in favor of awarding VERSA its attorneys' fees and costs.

3. MDB's Rejection of VERSA's Reasonable Offer of Judgment was Grossly Unreasonable

MDB's rejections of VERSA's $1,000.00 Offer of Judgment was grossly unreasonable. MDB's case against VERSA was highly suspect and unsupported from

day one. VERSA informed MDB it could not recover against them because they destroyed crucial evidence and had no evidence to support its Third-Party claims that there was any defect or malfunction with the VERSA valve. In fact, both MDB and VERSA's experts all opined that the valve worked as it was intended and had no mechanical defect. MDB failed to listen to its own experts and rejected VERSA's Offer of Judgment.

MDB unreasonably rejected VERSA's Offer of Judgment, forcing VERSA to incur significant litigation expenses defending against MDB's unfounded case. MDB's rejection of VERSA's Offer of Judgment was grossly unreasonable, given the expert testimony and destructive testing; MDB's destruction of critical evidence; and VERSA's Offer of Judgment amounts. Ultimately, the Court agreed with VERSA's characterization of MDB's destruction of evidence, further bolstering VERSA's arguments that MDB's rejection of VERSA's Offer of Judgment was grossly unreasonable. Consequently, this factor strongly favors awarding VERSA its attorneys' fees and costs.

4. VERSA's Attorneys' Fees and Costs Following the Offer of Judgment are Reasonable and Justified in Amount

VERSA's attorneys fees following service of its Offer of Judgment (May 4, 2017) on MDB are reasonable and justified in amount considering MDB's destruction of evidence, the lack of evidence of any valve defect, and the amount of work involved in the defense of the case. In Nevada, "the method upon which a reasonable fee is determined is subject to the discretion of the court," which "is tempered only by reasons of fairness." See, Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 864 (2005). The lodestar approach is the most appropriate approach for this case, and involves the simple multiplication of the number of hours spent by the hourly rate. The lodestar approach applies the following factors in determining the fee award:

> (1) the qualities of the advocate: his [counsel's] ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of

> the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived.

Brunzell v. Golden Gate Nat'l Bank, 85 Nev. 345, 349 (1969).

The lodestar approach favors awarding the attorneys' fees and costs reasonably incurred by VERSA. This matter necessitated an expert witness, over a dozen depositions (including travel), detailed analysis of thousands of pages of maintenance records, extensive motion practice, hearing preparation, trial preparation, etc. Mr. Aicklen, Mr. Avakian, Ms. Shreve (and others) all worked diligently on this matter. See, **Exhibit 2** and **3**. The quality of Mr. Aicklen and Mr. Avakian's trial advocacy cannot be disputed given their expertise, trial experience and results.

The nuanced evaluation of this matter's evidence and issues of law required significant work by VERSA's defense team. The factual and legal issues in this matter were intricate, including: analyzing MDB's maintenance records; the scope of admissibility of MDB's many experts; the destruction of crucial evidence; and the evaluation of legal authority and documents to refute MDB's claims against VERSA.

The amount of VERSA's attorneys' fees and costs are reasonable given MDB's questionable legal position and destruction of critical evidence. VERSA is entitled to an award of its attorneys' fees and costs after May 4, 2017, to the present. Consequently, Defendant seeks an award of **$731.00** in attorneys' fees and **$413.00** in costs, totaling **$1,144.00** See, **Exhibits 1, 2 and 3.**

III. CONCLUSION

For the foregoing reasons, VERSA requests an award of its attorneys' fees and costs totaling **$1,144.00** ($731.00 in attorneys' fees and $413.00 in costs) pursuant to NRCP 37 and NRCP 68. Furthermore, VERSA requests that this Court award the attorneys' fees and costs incurred in bringing the instant Motion. VERSA will supplement its Reply with an affidavit regarding these additional fees and expenses.

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 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 Defendant/Cross-Defendant
VERSA PRODUCTS COMPANY, INC.

LIST OF EXHIBITS

Exhibit 1	Offer of Judgment, May 4, 2017
Exhibit 2	Verified Memorandum of Costs
Exhibit 3	Redacted Copies of Attorneys' Fees and Invoices
Exhibit 4	VERSA's Motion to Strike MDB's Third-Party Complaint Pursuant to NRCP 37
Exhibit 5	Notice of Entry of Order Granting VERSA's Motion to Strike MDB's Third-Party Complaint Pursuant to NRCP 37

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2018, a true and correct copy of **THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S MOTION FOR ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 37 AND NRS 68** 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

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Jacqueline Bryant
Clerk of the Court
Transaction # 6524529 : pmsewell

EXHIBIT 1

4845-3057-6394.1

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 Third-Party Defendant
VERSA PRODUCTS COMPANY, INC.

IN THE SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

GENEVA M. REMMERDE, Plaintiff, vs. DANIEL ANTHONY KOSKI; MDB TRUCKING, LLC; DOES I-X and ROE I-V, Defendants.	Case No. CV16-00976 Dept. 10 **THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S OFFER OF JUDGMENT TO THIRD-PARTY PLAINTIFF MDB TRUCKING, LLC**
MDB TRUCKING, LLC, a Nevada limited liability company, Third-Party Plaintiff, vs. RMC LAMAR HOLDINGS, INC., a Colorado corporation; VERSA PRODUCTS COMPANY, INC., a New Jersey corporation; 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, Third-Party Defendants.	

THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S OFFER OF JUDGMENT TO THIRD-PARTY PLAINTIFF MDB TRUCKING, LLC

Third-Party 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 the law firm LEWIS BRISBOIS BISGAARD & SMITH, LLP, pursuant to NRCP 68(c)(2), offers to Third-Party Plaintiff MDB TRUCKING, LLC the total sum of one thousand dollars and zero cents ($1,000.00) and a waiver of any presently or potentially recoverable attorney's fees, costs and interest in full and final settlement of the above-referenced case.

This offer shall not be construed to allow MDB TRUCKING, LLC to seek costs, attorney's fees, or prejudgment interest from the Court in addition to the amount stated in the offer, should MDB TRUCKING, LLC accept the offer.

Pursuant to N.R.C.P. 68, this Offer shall be open for a period of ten (10) days from the date of service of this Offer. In the event this Offer of Judgment is accepted by MDB TRUCKING, LLC, VERSA PRODUCTS COMPANY, INC. will obtain a dismissal of the claim as provided by N.R.C.P. 68(d) rather than to allow judgment to be entered against VERSA PRODUCTS COMPANY, INC. Accordingly, and pursuant to these rules and statutes, judgment against VERSA PRODUCTS COMPANY, INC. could not be entered unless ordered by the District Court.

This Offer of Judgment is made solely for the purposes intended by N.R.C.P. 68 and is not to be construed as an admission in any form, shape or manner that VERSA PRODUCTS COMPANY, INC. is liable for any of the allegations made by Plaintiffs and/or MDB TRUCKING, LLC in the Complaint or Third-Party Complaint. Nor is it an admission that Plaintiffs and/or MDB TRUCKING, LLC is entitled to any relief, including, but not limited to, an award of damages, attorney's fees, costs or interest. By virtue of this Offer, VERSA PRODUCTS COMPANY, INC. waives no defenses asserted in its Answer to Plaintiffs' Complaints and MDB TRUCKING, LLC Third-Party Complaint.

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 4th day of May, 2017

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ David B. Avakian

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 Third-Party Defendant VERSA PRODUCTS COMPANY, INC.

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EXHIBIT 2

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Clerk of the Court
Transaction # 6524284 : swilliam

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 Third-Party Defendant VERSA PRODUCTS COMPANY, INC.

DISTRICT COURT

WASHOE COUNTY, NEVADA

GENEVA M. REMMERDE, Plaintiff, vs. DANIEL ANTHONY KOSKI; MDB TRUCKING, LLC; DOES I-X and ROE I-V, Defendants. AND ALL RELATED CASES.	Case No. CV16-00976 Dept. 10 **THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S VERIFIED MEMORANDUM OF COSTS**

COMES NOW, Third-Party 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 Third-Party Plaintiff 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 Defendant in the defense of this matter:

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

1.	Court Filing Fees	$ 413.00
	LEGAL COSTS:	**$413.00**

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 Third-Party Defendant VERSA PRODUCTS COMPANY, INC.

AFFIDAVIT OF JOSH COLE AICKLEN IN SUPPORT OF THIRD-PARTY 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 Third-Party 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 CV16-00976.

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

3. The total costs in the case were $413.00.

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: 12-6640-1

LEWIS BRISBOIS BISGAARD & SMITH LLP
ATTORNEYS AT LAW

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Clerk of the Court
Transaction # 6524284 : swilliam

EXHIBIT 1

From 0/00/00 Through 0/00/00 *Public/ladc-sqln01#acct/LDBData

27350 Hartford Insurance Company **Selections: Client-Matter: 27350-1555 to 27350-1555 *Include Write-Offs***

1555 Remmerde, Geneva v Versa Products Company, Inc

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
8/08/16	5	Court filing fee: Wells Fargo Commercial Card Services Inv#:073116STMT-SBOWERS Trans Date: 07/19/2016 Washoe Co 2nd Dist Genera, Filing fee of IAFD first appeal with motion to dismiss				213.00	P A/P-P	1740980
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	1909234

Disbursements by Type:

5	Court filing fee	413.00
	Matter Total	**413.00**

27350-1555
Hartford Insurance Company
Remmerde, Geneva v Versa Products Company, Inc
Date: 8/08/16
WIP Seq#: 513,682,140
Amount: 213.00

Date / Time 7/19/2016 8:26:33 AM

Cashier WashoeAPI

Transaction ID 30992413

$213.00 Amount

Court Fees CourtFilingFee
Submission ID 5614156

27350-1555

Payment Summary : Visa payment for $213.00.
Payment Acct Last4 : ********6392
Billing Name : Stacy Bowers
Billing Address : 6385 South Rainbow Boulevard
Las Vegas, NV 89118
Phone Number : 7028933383
Email Address : stacy.bowers@lewisbrisbois.com

IAFD/
1st Appeal
M/Dismiss

Signature

Description: Filing fee of/for

Vendor: 82739 Wells Fargo Commercial Card Services
Voucher: 2035444 Distribution 4789353 Distribution Level
Doc ID: 0001NGCW Page 259

27350-1555

Date / Time	5/3/2017 1:30:30 PM	Cashier	WashoeAPI
Transaction ID	47998777	$200.00	Amount

Court Fees CourtFilingFee
Submission ID 6082213

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

27350-1555
Hartford Insurance Company
Remmerde, Geneva v Versa Products Company, Inc
Date: 6/14/17
WIP Seq#: 546,027,920

Amount: 200.00

Vendor: 94005 Comerica Commercial Card Services
Voucher: 2146974 Distribution 5098731 Distribution Level
Doc ID: 0001TUFN Page 184

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

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Jacqueline Bryant
Clerk of the Court
Transaction # 6524529 : pmsewell

EXHIBIT 3

Timekeeper: DBA1 David Avakian

Date	Description	Hours	Amount	Invoice #
5/04/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of association of counsel for Dragon	.10	21.50 B	1909234
	Day Total:	**.10**	**21.50 B**	
5/11/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Discovery Motions: Draft/Revise: Finalize motion for protective order	.50	107.50 B	1909234
	Day Total:	**.50**	**107.50 B**	
5/15/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Dispositive Motions: Draft/Revise: Finalize Motion for spoliation sanctions against MDB	.50	107.50 B	1909234
	Day Total:	**.50**	**107.50 B**	
	MONTH TOTAL:	**1.10**	**236.50 B**	
		.00	**.00 N**	
		1.10	**236.50 T**	
6/06/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Draft/Revise: Prepare request for submission re motion for summary judgment	.20	43.00 B	1909234
	Day Total:	**.20**	**43.00 B**	
6/22/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Written Motions and Submissions: Review/Analyze: Detailed legal analysis of Plaintiff's motion for determination of good faith settlement	.30	64.50 B	1909234
	27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of non-opposition to MDB's motion for pood faith settlement	.10	21.50 B	1909234
	Day Total:	**.40**	**86.00 B**	
6/28/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the order granting MDB's request for a continuance to brief Opposition to Versa's motion for summary judgment	.10	21.50 B	1909234
	Day Total:	**.10**	**21.50 B**	
	MONTH TOTAL:	**.70**	**150.50 B**	
		.00	**.00 N**	
		.70	**150.50 T**	
7/07/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of association of counsel	.10	21.50 B	1964176

Blank = Billable/Unbilled * = From Time Entry E=From Error File B = Billed N = Non-billable T = Total W = Written Off

Timekeeper: **DBA1 David Avakian**

Date	Description	Hours	Amount	Invoice #
	Day Total:	**.10**	**21.50 B**	
7/10/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Dispositive Motions: Review/Analyze: Detailed legal analysis of Plaintiff's Opposition to motion for summary judgment	.30	64.50 B	1964176
	Day Total:	**.30**	**64.50 B**	
7/13/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the request for submission for motion for determination of good faith settlement	.10	21.50 B	1964176
	Day Total:	**.10**	**21.50 B**	
	MONTH TOTAL:	**.50**	**107.50 B**	
		.00	**.00 N**	
		.50	**107.50 T**	
8/01/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the order scheduling hearing on various motions	.10	21.50 B	1964176
	Day Total:	**.10**	**21.50 B**	
8/03/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Draft/Revise: Prepare request for submission re motion for protective order	.20	43.00 B	1964176
	Day Total:	**.20**	**43.00 B**	
8/07/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of MDB's objection to request for submission on motion for protective order	.20	43.00 B	1964176
	Day Total:	**.20**	**43.00 B**	
8/09/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the order setting hearing on motion for protective order	.10	21.50 B	1964176
	Day Total:	**.10**	**21.50 B**	
8/17/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of Modern and Dragon's offer of judgment for $1,000	.10	21.50 B	1964176
	Day Total:	**.10**	**21.50 B**	
	MONTH TOTAL:	**.70**	**150.50 B**	
		.00	**.00 N**	
		.70	**150.50 T**	

Blank = Billable/Unbilled * = From Time Entry E=From Error File B = Billed N = Non-billable T = Total W = Written Off

Timekeeper: **DBA1 David Avakian**

Date	Description	Hours	Amount	Invoice #
12/07/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc**			
	Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the return of jury fees	.10	21.50 B	2021410
	Day Total:	**.10**	**21.50 B**	
12/12/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc**			
	Fact Investigation/Development: Draft/Revise: Prepare request for submission on motion to strike	.20	43.00 B	2021410
	Day Total:	**.20**	**43.00 B**	
	MONTH TOTAL:	**.30**	**64.50 B**	
		.00	**.00 N**	
		.30	**64.50 T**	
1/22/18	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc**			
	Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the order dismissing MDB's cross-claim	.10	21.50	
	Day Total:	**.10**	**21.50**	
	MONTH TOTAL:	**.10**	**21.50 B**	
		.00	**.00 N**	
		.10	**21.50 T**	
	TIMEKEEPER TOTAL:	**3.40**	**731.00 B**	
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Date	Description		Hours	Amount	Invoice #
		FINAL TOTAL:	**3.40**	**731.00 B**	
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			3.40	**731.00 T**	

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EXHIBIT 4

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2017-05-15 01:22:59 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6100499 : 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 Third-Party Defendant
VERSA PRODUCTS COMPANY, INC.

IN THE SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

GENEVA M. REMMERDE, Plaintiff, vs. DANIEL ANTHONY KOSKI; MDB TRUCKING, LLC; DOES I-X and ROE I-V, Defendants.	Case No. CV16-00976 Dept. 10 **THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S MOTION TO STRIKE DEFENDANT/THIRD-PARTY PLAINTIFF MDB TRUCKING, LLC's THIRD-PARTY COMPLAINT PURSUANT TO NRCP 35; OR IN THE ALTERNATIVE, FOR AN ADVERSE JURY INSTRUCTION**
MDB TRUCKING, LLC, a Nevada limited liability company, Third-Party Plaintiff, vs. RMC LAMAR HOLDINGS, INC., a Colorado corporation; VERSA PRODUCTS COMPANY, INC., a New Jersey corporation; 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, Third-Party Defendants.	

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

COMES NOW, Third-Party 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 the law firm LEWIS BRISBOIS BISGAARD & SMITH, LLP, and hereby request an Order dismissing Defendant/Third-Party Plaintiff MDB TRUCKING, LLC's Third-Party Complaint against it, or in the alternative issuing an adverse jury instruction.

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

DATED this 15th day of May, 2017

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ David B. Avakian

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 Third-Party Defendant
VERSA PRODUCTS COMPANY, INC.

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

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

1. I am a Partner at LEWIS BRISBOIS BISGAARD & SMITH LLP, and 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 Third-Party 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 CV16-00976.

4. Attached hereto as **Exhibit 1** is a true and correct copy of MDB's Third-Party Complaint.

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

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

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

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

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

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

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

FURTHER AFFIANT SAYETH NAUGHT.

DAVID B. AVAKIAN, ESQ.

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

NOTARY PUBLIC
In and for said County and State

MITCHELL COX
Notary Public-State of Nevada
APPT. NO. 14-12973-1
My App. Expires February 14, 2018

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

---

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

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

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

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

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

II. FACTUAL BACKGROUND

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

> Q. I'm going to ask you the same question again for after the July 2014 incident on Trailer 6775. Did MDB in their investigation after the dump-- again, this is right after, not since litigation-- did MDB find any defect with that Versa valve?
>
> MR. PALMER: No. That remained in service until such time litigation started.

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

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

Q. Okay.

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

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

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

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

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

Q. And what was this work order for?

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

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

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

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

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

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

MR. PALMER: 2/5/15.

Q. And what is this work order for?

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

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

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

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

Id. at P. 91:10-23.

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

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

Id. at P. 92:6-7.

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

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

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

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

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

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

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

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

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

MR. PALMER: 12/2/15?

Q. Uh-huh.

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

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

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

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

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

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

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

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

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

REQUEST FOR ADMISSION NO. 13:

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

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Admitted.

REQUEST FOR ADMISSION NO. 14:

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

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Admitted.

REQUEST FOR ADMISSION NO. 15:

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

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Admitted.

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

REQUEST FOR ADMISSION NO. 24:

Admit that you or someone on your behalf continued to use and operate the subject VERSA valve on the same subject trailer from the time of the subject incident to the present.
RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Admitted.

Id. at P. 6:8-12

REQUEST FOR ADMISSION NO. 26:

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

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

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

Id. at P. 6:18-23.

III. LEGAL ARGUMENT

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

It is well established in Nevada that a party is entitled to have the jury instructed on all of her case theories that are supported by the evidence. Bass-Davis v. Davis, 122 Nev. 442, 447, 134 P.3d 103, 106 (2006). Accordingly, even when an action has not been

commenced and there is only a potential for litigation, the litigant is under a duty to preserve evidence which it knows or reasonably should know is **relevant to the action.** Fire Ins. Exch. v. Zenith Radio Corp., 103 Nev. 648, 651, 747 P.2d 911, 914 (1987). Thus, where a party is on notice of potential litigation, the party is subject to sanctions for actions taken which prejudice the opposing party's discovery efforts. Fire Ins. Exch. v. Zenith Radio Corp., 103 Nev. 648, 651, 747 P.2d 911, 914 (1987)

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

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

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

B. This Court Should Strike MDB's Third-Party Complaint Because of MDB's Discovery Violations Pursuant to NRCP 37 and Prevailing Case Law

1. MDB's Discovery Violations Are Abusive Litigation Practices

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

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

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

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

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

> Q. Okay. Did you save the plugs that you changed after the July 2014 event until the time that the forensic inspection, electrical inspection had occurred?
>
> MR. PALMER: No.
>
> Q. What did you do with the plugs or any plugs that you changed on the subject trailers?
>
> MR. PALMER: We throw them in the garbage after that, yeah.

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

To state the obvious, such electrical components support VERSA's defense that something other than the valve itself (such as a defect or malfunction like the electrical components MDB destroyed) activated the subject valve and caused the underlying accident. Accordingly, applying Parkinson, because ***MDB destroyed highly relevant evidence that VERSA requires to prove the case is meritless,*** this Court should strike

MDB's Third-Party Complaint against VERSA to curtail any further unnecessary litigation costs and free up the Court's docket for cases with actual veracity.

2. A Young Factor Analysis Supports the Court Striking MDB's Third-Party Complaint

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

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 alternative, less severe sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party;

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 both the parties and future litigants from similar abuses.

Id.

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

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

Here, after being on notice to preserve all relevant evidence, MDB: 1) compromised the evidence's integrity by continuing to operate the subject truck, trailers,

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

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

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

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

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

c. Dismissal of MDB's Third-Party Complaint Balances the Harm of MDB's Destruction of Evidence Necessary for VERSA to Assert a Proper Defense

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

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

d. Unquestionably, MBD Irreparably Destroyed Highly Relevant Evidence

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

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

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

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

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

f. Public Policy Favors Dismissing this Meritless Claim

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

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

Party Complaint is meritless and MDB irreparably destroyed key defense evidence, this factor strongly weighs in favor of the Court striking MDB's Third-Party Complaint.

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

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

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

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

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

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

Court striking MDB's Third-Party Complaint.

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

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

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

Here, as addressed in the Young analysis, MDB willfully destroyed crucial evidence that is pertinent to VERSA's liability defenses. See, **Exhibit 3** at P. 169:16-22; **Exhibit 6** at P. 4:8-22; P. 6:8-23. With MDB's continual use of the subject truck, trailers, and valve after the subject accident, MDB corrupted the integrity and value of such evidence. Such continued use after being on notice to preserve evidence demonstrates MDB's intent to harm the integrity of the evidence and harm VERSA's defense of the case. Additionally, MDB's cognizant destruction of the key electrical components, that cause the valve to activate, demonstrate by a preponderance of the evidence that MDB intended to harm VERSA by destroying the evidence that supports VERSA's liability defenses. Id. MBD may try to hide behind a procedural argument that it threw away the critical evidence as part of its business operations; however, such an argument would constitute a red hearing because MDB should not have even operated the subject truck,

trailers and valve to artificially create a situation that called for replacement and repair of such components. Id. Accordingly, applying Bass-Davis, because MDB intentionally suppressed and destroyed crucial evidence, this Court should advise the jury that such evidence would be adverse against MDB if MDB had properly produced such evidence.

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

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

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

IV. CONCLUSION

Based on the foregoing, VERSA respectfully requests that the Court grant VERSA's Motion and strike MDB's Third-Party Complaint, or in the alternative, issue an adverse instruction against MDB.

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 15th day of May, 2017

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ David B. Avakian

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 Third-Party Defendant
VERSA PRODUCTS COMPANY, INC.

EXHIBIT LIST

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

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2017, a true and correct copy of **MOTION TO STRIKE DEFENDANT/THIRD-PARTY PLAINTIFF MDB TRUCKING, LLC's THIRD-PARTY COMPLAINT PURSUANT TO NRCP 35; OR IN THE ALTERNATIVE, FOR AN ADVERSE JURY INSTRUCTION** was served via U.S. Mail 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.
MORRIS POLICH & PURDY LLP
3800 Howard Hughes Pkwy, Ste. 500
Las Vegas, NV 89169
Attorneys for MDB TRUCKING, LLC and
DANIEL ANTHONY KOSKI

Katherine F. Parks, Esq.
Brian M. Brown, Esq.
Thierry V. Barkley, Esq.
THORNDAL, ARMSTRONG, DELK
BALKENBUSH & EISINGER
6590 S. McCarran, Ste. B
Reno, Nevada 89509
P: 775-786-2882
Attorneys MDB TRUCKING, LLC and
DANIEL ANTHONY KOSKI

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

F I L E D
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Jacqueline Bryant
Clerk of the Court
Transaction # 6524529 : pmsewell

EXHIBIT 5

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2018-02-08 01:13:47 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6522570

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 Third-Party Defendant VERSA PRODUCTS COMPANY, INC.

DISTRICT COURT

WASHOE COUNTY, NEVADA

GENEVA M. REMMERDE, Plaintiff, vs. DANIEL ANTHONY KOSKI; MDB TRUCKING, LLC; DOES I-X and ROE I-V, Defendants.	Case No. CV16-00976 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

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 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:

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

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Jacqueline Bryant
Clerk of the Court
Transaction # 6522570

EXHIBIT 1

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Jacqueline Bryant
Clerk of the Court
Transaction # 6492566

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

***

GENEVA M. REMMERDE,

Plaintiff,

Case No. CV16-00976

Dept. No. 10

vs.

DANIEL ANTHONY KOSKI; MDB TRUCKING, LLC; et al.,

Defendants.

_____/

ORDER

Presently before the Court is THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S MOTION TO STRIKE DEFENDANT/THIRD-PARTY PLAINTIFF MDB TRUCKING, LLC's THIRD-PARTY COMPLAINT 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.

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 JAMES BIBLE v. MDB TRUCKING, LLC et al., CV16-01914 ("the Bible Action"). The instant action was filed on May 2, 2016. The Bible Action was filed September 20, 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") June 22, 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, 4:6-8. 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, 4:9-11. 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, 4:15-22.

The Motion is the same as the motion practice in the Fitzsimmons Action and the Bible 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 December Order case concluding sanctions were an appropriate sanction for MDB's spoliation of

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

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** THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S MOTION TO STRIKE DEFENDANT/THIRD-PARTY PLAINTIFF MDB TRUCKING, LLC's THIRD-PARTY COMPLAINT 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"

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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

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[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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CV16-00976
2018-02-09 09:40:37 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6524406 : swilliam

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 Third-Party Defendant VERSA PRODUCTS COMPANY, INC.

DISTRICT COURT

WASHOE COUNTY, NEVADA

GENEVA M. REMMERDE, Plaintiff, vs. DANIEL ANTHONY KOSKI; MDB TRUCKING, LLC; DOES I-X and ROE I-V, Defendants.	Case No. CV16-00976 Dept. 10 **THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S VERIFIED MEMORANDUM OF COSTS**
AND ALL RELATED CASES.	

COMES NOW, Third-Party 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 Third-Party Plaintiff 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 Defendant in the defense of this matter:

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

1.	Court Filing Fees	$ 413.00
	LEGAL COSTS:	**$413.00**

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 Third-Party Defendant VERSA PRODUCTS COMPANY, INC.

AFFIDAVIT OF JOSH COLE AICKLEN IN SUPPORT OF THIRD-PARTY 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 Third-Party 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 CV16-00976.

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

3. The total costs in the case were $413.00.

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: 12-6640-1

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 **THIRD-PARTY 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
CV16-00976
2018-02-09 09:40:37 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6524406 : swilliam

EXHIBIT 1

27350 Hartford Insurance Company
1555 Remmerde, Geneva v Versa Products Company, Inc

Selections: Client-Matter: 27350-1555 to 27350-1555 *Include Write-Offs*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
8/08/16	5	Court filing fee: Wells Fargo Commercial Card Services Inv#:073116STMT-SBOWERS Trans Date: 07/19/2016 Washoe Co 2nd Dist Genera, Filing fee of IAFD first appeal with motion to dismiss				213.00	P A/P-P	1740980
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	1909234

Disbursements by Type:

5	Court filing fee	413.00
	Matter Total	**413.00**

27350-1555
Hartford Insurance Company
Remmerde, Geneva v Versa Products Company, Inc
Date: 8/08/16
WIP Seq#: 513,682,140
Amount: 213.00

Date / Time 7/19/2016 8:26:33 AM

Cashier WashoeAPI

Transaction ID 30992413

$213.00 Amount

Court Fees CourtFilingFee
Submission ID 5614156

27350-1555

Payment Summary : Visa payment for $213.00.
Payment Acct Last4 : ********6392
Billing Name : Stacy Bowers
Billing Address : 6385 South Rainbow Boulevard
Las Vegas, NV 89118
Phone Number : 7028933383
Email Address : stacy.bowers@lewisbrisbois.com

IAFD/
1st Appeal
M/Dismiss

Signature

Description: Filing fee of/for

Vendor: 82739 Wells Fargo Commercial Card Services
Voucher: 2035444 Distribution 4789353 Distribution Level
Doc ID: 0001NGCW Page 259

27350-1555

Date / Time	5/3/2017 1:30:30 PM	Cashier	WashoeAPI
Transaction ID	47998777	$200.00	Amount
Court Fees	CourtFilingFee		
Submission ID	6082213		

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

27350-1555
Hartford Insurance Company
Remmerde, Geneva v Versa Products Company, Inc
Date: 6/14/17
WIP Seq#: 546,027,920

Amount: 200.00

Vendor: 94005 Comerica Commercial Card Services
Voucher: 2146974 Distribution 5098731 Distribution Level
Doc ID: 0001TUFN Page 184

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

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

EXHIBIT 1

From 0/00/00 Through 0/00/00 *Public/ladc-sqln01#acct/LDBData

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

1553 Bible, James v Versa Products Company, Inc

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

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

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

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

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

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: 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

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 | Message Center

Tracking ID Details Back

Tracking ID Summary

Help Hide

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
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

Help 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
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

Back

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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 4808856 Distribution Level
Doc ID: 0001NOTY Page 12

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Tracking ID Details Back

Tracking ID Summary

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Billing Information

Tracking ID no.	< Prev 777173407850 Next >
Invoice no.	5-547-58483
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

Help Hide

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 PM
Service area code	
Signed by	J BERMINGHAM

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Cost Allocation Reference Edit

Cost allocation
Shipment Notes

Approve/notify user | Dispute | Pay
Back

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Small Business Center	FedEx SameDay	FedEx Ground	
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	Healthcare Solutions	FedEx Custom Critical	
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	FedEx Compatible		

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

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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				

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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#: 541,390,460
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:
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LAS VEGAS, NV 89118
DAVID B. AVAKIAN
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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:
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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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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: 21296630 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

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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

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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:
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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

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

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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

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:
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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

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ACCOUNTS PAYABLE-LA

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

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

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

PLEASE REMIT TO:
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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

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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:
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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

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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
CV15-02349
2018-02-12 02:26:43 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6527848 : csulezic

3785
NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
Email: NWieczorek@clarkhill.com
JEREMY J. THOMPSON
Nevada Bar No. 12503
Email: JThompson@clarkhill.com
COLLEEN E. McCARTY
Nevada Bar No. 13186
Email: CMcCarty@clarkhill.com
CLARK HILL PLLC
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Facsimile: (702) 862-8400
Attorneys for Cross-Claimant
MDB Trucking, LLC

SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

ERNEST BRUCE FITZSIMMONS and CAROL FITZSIMMONS, Husband and Wife, Plaintiffs, vs. MDB TRUCKING, LLC; DANIEL ANTHONY KOSKI; et al., Defendants. AND ALL RELATED CASES.	Case No.: CV15-02349 Dept. No.: 10 [Consolidated Proceeding] **CROSS-CLAIMANT MDB TRUCKING LLC'S REPLY IN SUPPORT OF MOTION TO RETAX AND SETTLE CROSS-DEFENDANT VERSA PRODUCTS COMPANY INC.'S VERIFIED MEMORANDUM OF COSTS**

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 replies to Cross-Defendant Versa Products Company, Inc.'s Opposition to Cross-Claimant MDB trucking LLC's Motion to Retax Costs ("Opposition" and "Motion to Retax Costs," respectively).

This Reply is made and based on the following Memorandum of Points and Authorities, the pleadings and papers on file in this case, and any oral argument the Court may permit at a hearing of this matter.

Dated this 12th day of February, 2018.

CLARK HILL PLLC

By:

NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
JEREMY J. THOMPSON
Nevada Bar No. 12503
COLLEEN E. MCCARTY
Nevada Bar No, 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Cross-Claimant
MDB Trucking, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Opposition filed by Cross-Defendant Versa Products Company, Inc. ("Versa") provides no legitimate counter-argument to the vast majority of MDB's Motion to Retax Costs. Versa provides no countervailing case law to that asserted by MDB. Indeed the only authority cited or argued by Versa relates to its opposing interpretation of the factors for considering an expert witness fee request in excess of $1,500.00, and even that fails to provide the justification necessary to grant its request for nearly ten times the statutory limitation. With the exception of certain duplications and other miscellaneous costs, which MDB no longer disputes, MDB

respectfully requests that its Motion to Retax Costs be granted and that Versa's cost award, if any, be limited to a total of $16,410.80.[1]

II.

ARGUMENT

A. Versa's Untimely Attempt to Cure Its Documentary Deficiencies Must Fail.

In its Opposition, Versa completely ignores MDB's legal assertion that 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). Citing no contrary case law, Versa opted instead to simply argue that its printout titled "Disbursement Diary," which was utterly lacking in any necessary detail, and the inclusion of some "additional 'justifying documentation'" rendered MDB's argument moot. *See* Opposition at 5:12-14.

As the Court is well aware, however, the Nevada Supreme Court has long held that it is an abuse of discretion to award costs based on a Memorandum that fails to contain "specific itemization" or "justifying documentation." *Bobby Berosini, Ltd.,* 114 Nev. at 1352, 971 P.2d at 385-86. And, more recently, the Court clarified that, "'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). The Court further held that any cost 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).

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[1] In its Verified Memorandum of Costs, Versa requested the outlandish total sum of $58,773.06. In its Motion to Retax Costs, MDB asserted multiple bases upon which the Court would properly disallow the total sum of $44,565.17. Even though Versa purports to have cured the glaring failure to provide specific itemization and/or justifying documentation for a portion of its requested costs, MDB's remaining arguments still mandate disallowance of these amounts. With the exception, then, of $2,202.86 (Ms. Shreve's hotel in New York and the

In its Opposition, Versa claims that the requirements stated above "would conflict with 18.110." See Opposition at 5:15-16. On the contrary, the requirements stated above are exactly those the Nevada Supreme Court imposes when interpreting NRS 18.110. And, Versa's eleventh-hour attempt to supply the necessary detail and supporting documents to justify its claimed costs, if accepted by the Court, would render the *Bobby Berosini, Ltd.* and *Cadle Co.* cases meaningless. Accordingly, MDB's Motion to Retax Costs in the initial amount of $16,410.80 should be granted.

B. <u>Versa's Costs Incurred in Defense of the Underlying Plaintiffs' Claims May Not Be Taxed to MDB</u>.

In its Opposition, without citing to any legal authority, Versa makes the blanket assertion that "any depositions, medical records, etc. that involve the Plaintiffs directly relate to MDB's cross-claim." *See* Opposition at 6:2-3. Versa conveniently neglects to remind the court that is was also a defendant in the underlying personal injury actions and necessarily incurred these costs in its own defense. And, it is well-settled Nevada law that costs cannot be awarded to a party unless that party is the "prevailing party" in an action. 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").

As this Court is aware, MDB settled all of the Plaintiffs' causes of action without any contribution from Versa. And, the costs for the depositions and medical records of Plaintiffs Ernest and Carol Fitzsimmons 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. The Fitzsimmons' testimony was strictly

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deposition fees of MDB's experts) no longer being disputed by MDB (*see* Section II(D)(2), *supra*), the amount of potentially allowable costs is reduced to $16,410.55.

limited to their account of the subject spill, their resulting injuries and medical treatment. Likewise, the deposition of Plaintiff Sonya Corthell and the authorization for her medical records related only to her case-specific claims and would in no way impact whether the Versa valve was defective and would subject Versa to MDB's cross-claim for Contribution.

Accordingly, MDB's Motion to Retax Costs should be granted as to the additional amount of $2,018.68, where such costs were wholly unrelated to MDB's cross-claim for Contribution, the only claim upon which Versa prevailed.[2]

C. Versa's Costs, By Its Own Admission, Must be Limited To Only Those Incurred After Its May 4, 2017 Offer of Judgment.

In its Opposition, Versa again completely ignores the argument advanced by MDB and attempts instead to misdirect the Court by making arguments completely contrary to its own costs memorandum and sworn testimony. Specifically, Versa clearly and unequivocally stated that "This Memorandum of Costs and Disbursements is based upon VERSA's Offer of Judgment under NRCP 68," and related documents. *See* Verified Memorandum of Costs at 2:1-2. And, the previously filed sworn statement of Versa's lead counsel, Josh Cole Aicklen, squarely placed all of the costs being sought in the time period 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 at 4:14-16.

MDB does not attempt to argue that the costs statute is only applicable after service of an offer of judgment, as claimed by Versa. *See* Opposition at 7:11-13. MDB's argument is simply that Versa should not be allowed to ignore its own prior filings, completely contradict itself now in opposition to MDB Motion to Retax Costs, and make yet another new argument,

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[2] It is even doubtful Versa is the "prevailing party" on MDB's claim. MDB's cross-claim was stricken as an evidentiary sanction, even though this court found MDB's claims to be persuasive. Versa hardly prevailed on the merits.

this time for the application of NRS 18.020. Versa's Offer of Judgment is the stated basis for its entitlement to costs, and, as such, MDB's Motion to Retax Costs should be granted in the additional amount of $10,541.36, which costs predated the Offer of Judgment.

C. Versa Failed to Justify Its Excessive Expert Witness Fees and May Not Recover These and Others Costs Beyond the Scope of 18.005.

1. Expert Witness Fees.

Under NRS 18.005, expert witness fees are limited to $1,500.00 per expert witness, unless "the circumstances surrounding the expert's testimony were of such necessity as to require the larger fee." *Frazier v. Drake*, 131 Nev. Adv. Op. 64, 357 P.3d 365, 377-78 (Nev. App. 2015). Further, "the resolution of such requests will necessarily require a case-by-case examination of the appropriate factors." *Frazier*, 357 P.3d at 378 (citations omitted) (emphasis added). Versa attempts to take MDB to task for addressing only certain Frazier factors but makes no argument for the applicability of any additional factors. *See* Opposition at 7:18-19, fn. 2. And, indeed, there is none.

As MDB pointed out in its Motion to Retax Costs, none of the appropriate *Frazier* factors warrant an award of costs in excess of $1,500.00 for Versa's use of Garrick Mitchell's services. Both Mitchell's report and testimony at the evidentiary hearing made clear Mitchell had no useful and/or admissible opinions to provide to the trier of fact. Mitchell's testimony did not aid the Court in any meaningful way, and Versa does not dispute in its Opposition that it tracked closely with MDB's expert, Dr. Bosch. *See* Opposition at 9:25-27. Further, Mitchell did not report having conducted any independent testing, and, ultimately, as a mechanical engineer, he simply did not possess the requisite knowledge, education or training in the relevant areas of electrical engineering and electricity to warrant any additional award beyond the statutory minimum.

Accordingly, Versa's requested expert witness fees should be reduced by a minimum $12,206.49, which is that amount claimed in excess of the $1,500.00 presumed statutory cap.

2. Other Claimed Costs.

In its Opposition, Versa argues "[t]here is nothing in NRS 18.005(2) that would prohibit the recovery" of reporter's fees for depositions, including courier fees and exhibits. See Opposition at 11:22-23. As the Court is aware, however, statutes permitting an award of costs must be strictly construed. *Bobby Berosini, Ltd.,* 114 Nev. at 1352, 971 P.2d at 385-86. NRS 18.005(2) limits taxable costs for depositions to reporters' fees and the cost for one copy of each deposition. Accordingly, Versa's request for courier fees for the delivery of its depositions of $40.00, compact disc fees of $150.00, and exhibit fees of $121.20, which are not provided for by statute (total $311.20), must also be denied.

As a final matter, for purposes of this Reply, MDB withdraws its dispute to the matters discussed in Versa's Opposition at 11:25-12:3 and 12:13-14, i.e. Ms. Shreve's hotel in New York and the deposition fees of MDB's experts, which amounts total $2,202.86.

III.

CONCLUSION

For the reasons set forth above, Cross-Claimant MDB respectfully requests that its Motion to Retax Costs be granted in its entirety and that Cross-Defendant Versa's costs to be allowed, if any, are not to exceed $16,410.80.

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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 12th day of February, 2018.

CLARK HILL PLLC

By: Colleen E. McCarty

NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
JEREMY J. THOMPSON
Nevada Bar No. 12503
COLLEEN E. MCCARTY
Nevada Bar No, 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Cross-Claimant
MDB Trucking, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Clark Hill PLLC, and that on this 12th day of February, 2018, I served a true and correct copy of **CROSS-CLAIMANT MDB TRUCKING, LLC'S REPLY IN SUPPORT OF 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

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Clerk of the Court
Transaction # 6539636 : pmsewell

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NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
Email: NWieczorek@clarkhill.com
JEREMY J. THOMPSON
Nevada Bar No. 12503
Email: JThompson@clarkhill.com
COLLEEN E. McCARTY
Nevada Bar No. 13186
Email: CMcCarty@clarkhill.com
CLARK HILL PLLC
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Facsimile: (702) 862-8400
Attorneys for Cross-Claimant
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.

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
COLLEEN E. MCCARTY
Nevada Bar No. 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
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

[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. <u>Versa Improperly Seeks $21.87 of the Remaining Costs, Where the Costs Were Incurred Prior to Versa's May 4, 2017 Offer of Judgment</u>.

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.

<u>CONCLUSION</u>

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.

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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
JEREMY J. THOMPSON
Nevada Bar No. 12503
COLLEEN E. MCCARTY
Nevada Bar No, 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Cross-Claimant
MDB Trucking, LLC

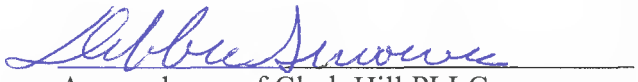
LIST OF EXHIBITS

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

EXHIBIT "A"

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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

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Clerk of the Court
Transaction # 6539629 : pmsewell

2430
NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
NWieczorek@clarkhill.com
JEREMY J. THOMPSON
Nevada Bar No. 12503
JThompson@clarkhill.com
COLLEEN E. MCCARTY
Nevada Bar No. 13186
CMcCarty@clarkhill.com
CLARK HILL PLLC
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Facsimile: (702) 862-8400
Attorneys for Cross-Claimant
MDB Trucking, LLC

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

GENEVA M. REMMERDE Plaintiff, vs. MDB TRUCKING, LLC, et al Defendants. AND ALL RELATED CASES.	Case No.: CV16-00976 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.

below, Versa's Memorandum seeks costs that are not timely because they pre-date Versa's Offer of Judgment.

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
COLLEEN E. MCCARTY
Nevada Bar No. 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
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 $413.00 in costs which it claims it incurred (1) in defense of the cross-claim for Contribution brought against it by 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] already on file herein. Even a cursory review of the Memorandum, however, reveals that all of the purported costs were incurred prior to Versa's May 4, 2017 Offer of Judgment, despite Versa's counsel's claim to the contrary. Accordingly, MDB respectfully requests this Court deny the improper costs request contained in Versa's Memorandum.

II.

ARGUMENT

VERSA IMPROPERLY SEEKS $413.00 IN COSTS INCURRED PRIOR TO VERSA'S MAY 4, 2017 OFFER OF JUDGMENT.

Versa seeks $413.00 in filing fees paid to the Second Judicial District Court. While its internal and self-serving "Disbursement Diary" indicates the costs were incurred on August 8, 2016 and June 14, 2017, the receipts from the Second Judicial District Court reflect the actual dates on which the costs were incurred. According to the receipts, which were provided by Versa, the claimed costs in the amount of $213.00 and $200.00 were incurred on July 19, 2016 and May 3, 2017, respectively. (*See* Exhibit 1 to the Memorandum). And both payments were made prior to the Offers of Judgment served by Versa 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 claimed costs in the amount of $413.00 dated prior to the service of the Offers of Judgment must 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 the improperly applied for costs in Versa's Verified Memorandum of Costs in their entirety.

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///

///

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
JEREMY J. THOMPSON
Nevada Bar No. 12503
COLLEEN E. MCCARTY
Nevada Bar No, 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Cross-Claimant
MDB Trucking, LLC

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

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Jacqueline Bryant
Clerk of the Court
Transaction # 6557197 : yviloria

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NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
NWieczorek@clarkhill.com
JEREMY J. THOMPSON
Nevada Bar No. 12503
JThompson@clarkhill.com
COLLEEN E. MCCARTY
Nevada Bar No. 13186
CMcCarty@clarkhill.com
CLARK HILL PLLC
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Facsimile: (702) 862-8400
Attorneys for Cross-Claimant
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 OPPOSITION TO CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.' S MOTION FOR ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 37 AND NRCP 68**

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 files this Opposition to Cross-Defendant Versa Products Company, Inc.'s Motion for Attorneys' Fees and Costs Pursuant to NRCP 37 and NRCP 68 ("Opposition" and "Motion" respectively).

This Opposition is made and based on the following Memorandum of Points and Authorities; the pleadings and papers on file herein; and any oral argument the Court may permit at the hearing of this matter.

Dated this 1st day of March, 2018.

CLARK HILL PLLC

By: Colleen E. McCarty

NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
JEREMY J. THOMPSON
Nevada Bar No. 12503
COLLEEN E. MCCARTY
Nevada Bar No. 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Cross-Claimant
MDB Trucking, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

As set forth in greater detail in the Argument, below, further sanctions beyond those set forth in the Court's Order dated December 8, 2017 ("Order"), specifically Versa's request for attorneys' fees and costs, should not be awarded under NRCP 37 because the Court did not find MDB's actions to be intentional. *See GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995) (further sanctions only appropriate where the court finds willful noncompliance). Further, no award of attorneys' fees and costs is appropriate under NRCP 68, where such an award is discretionary and all factors the Court must consider weigh in favor of MDB. *See Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983) (awarding fees and costs without consideration of four factors is an abuse of discretion).

For these reasons, MDB respectfully requests this Court deny all requests for attorneys' fees and costs set forth in Versa's Motion.

II.

ARGUMENT

A. MDB Should Not Be Further Sanctioned Under NRCP 37 for Its "Benign" Actions.

Further sanctions against MDB are not warranted pursuant to NRCP 37, where, as here, its failure to retain certain electrical components was in no way willful or intended to harm Versa. This Court already imposed the most severe sanction available to it, case ending sanctions against MDB, based upon its analysis of the factors set forth in *Young v. Johnny Ribeiro Building Inc.,* 106 Nev. 88, 787 P.2d 777 (1990). To impose additional punishment in the form of an award of attorneys' fees and costs to Versa, based upon the specific facts and circumstances surrounding MDB's failure to preserve evidence, would be patently unjust. As stated in its Order: "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." Order at 8:20-23. "Benign neglect" and "indifference" to Versa's needs, while regrettable, is not the measure of willful noncompliance generally required for the magnitude of further sanctions requested by Versa under NRCP 37. *See e.g. GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995).

Further, contrary to Versa's assertions, NRCP 37(b) does not mandate the imposition of attorney's fees and costs. Instead, the applicable provision states in pertinent part:

> (C) *Payment of Expenses*. Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified <u>or other circumstances make an award of expenses unjust</u>.

NRCP 37(b)(2)(C) (Emphasis added). Here, as the Court has already entered case concluding sanctions against MDB for its failure to preserve evidence, further sanctions would be wholly unjust, particularly in light of the substantial sums of money MDB alone paid to settle the underlying personal injury actions and relieve Versa of its independent tort liability.

Further, the cases Versa cites in support of its Motion are either wholly inapposite or in no way reflective of the facts and circumstances at issue here, where the failure to preserve evidence was in no way an effort to hamper the litigation. For example, in *Skeen v. Valley Bank*, 89 Nev. 301, 304, 511 P.2d 1053 (1973), attorney's fees were awarded pursuant to a contractual provision, not as a sanction under NRCP 37. And, in *Skeen*, *Schatz v. Devitte*, 75 Nev. 124, 335 P.2d 783 (1959), and *Foster v. Dingwall*, 227 P.3d 1042, 227 P.3d 1042 (2010), the misconduct sanctioned by the court was intentional, willful and specifically intended to hinder the litigation. As this Court correctly concluded, the MDB employees who disposed of certain electrical components did so in the course of the routine maintenance, and not with any malicious purpose. Accordingly, Versa's request for further sanctions under NRCP 37 should be denied.

B. <u>Versa May Not Be Awarded Attorneys' Fees and Costs Pursuant to Its Offer of Judgment Under NRCP 68</u>.

When an offeree fails to obtain a more favorable judgment than an amount offered pursuant to NRCP 68, an award of attorneys' fees and costs to the offeror is not automatic and is soundly within the discretion of the trial court. *See, e.g. Trustees of Carpenters v. Better Bldg. Co.*, 101 Nev. 742, 746, 710 P.2d 1379, 1382 (1985) (quoting *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), holding that the purpose of Rule 68 "is not to force plaintiffs unfairly to forego legitimate claims"). Indeed, when considering whether an award of attorneys' fees and

costs should be granted in such instances, Nevada courts must carefully evaluate the four-factor test set forth by the Nevada Supreme Court in *Beattie v. Thomas*, to wit:

> (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

99 Nev. at 588-89, 668 P.2d at 274; *see also Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318, 323, 890 P.2d 785, 789 (1995).

After weighing the foregoing factors, the district judge may, where warranted, award up to the full amount of the fees and costs requested; on the other hand, where the court has failed to consider these factors and has made no findings based on evidence that the attorneys' fees sought are reasonable and justified, it is an abuse of discretion for the court to award the full amount of fees requested. *Beattie v. Thomas*, 99 Nev. at 588-89, 668 P.2d at 274 (emphasis added). Furthermore, in *Wynn v. Smith*, 117 Nev. 6, 16 P.3d 424 (2001), the Nevada Supreme Court reasoned in affirming the lower court's decision not to award attorneys' fees:

> Even though the district court did not explicitly address each factor separately in its order, where it considered each of the Beattie factors, the district court's refusal to award attorneys' fees was not an abuse of discretion.

117 Nev. at 13-14, 16 P.3d at 429. Utilizing the *Beattie* factors in conjunction with the facts and circumstances of the instant case, this Court should deny Versa's Motion in its entirety.

1. MDB's Contribution Claim was Brought in Good Faith.

Versa argues, wholly without basis, that the Cross-Claim for Contribution brought by MDB had no factual or legal support. Motion at 10:23-24. As Versa is well aware, however, this Court reached a different conclusion. After hearing the testimony of five key witnesses at the evidentiary hearing, the Court expressed in its Order: "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." Order at 11:3-6.

Far from a frivolous suit, as Versa speciously asserts, MDB's cross-claim based on a theory of strict products liability appropriately sought contribution for the defect in the Versa valve which caused the subject truck and trailer to dump its load on the highway. The uncommanded activation of the Versa valve caused the traffic accidents that prompted the underlying personal injury claims, which MDB alone resolved. The testimony of MDB's experts, Dr. David Bosch and Erik Anderson, clearly set forth the only theory for consideration by the trier of fact, i.e. that the Versa valve inadvertently activated when exposed to external electromagnetic fields ("EMF"). Versa's expert, Garrick Mitchell, offered no opinion as to the cause of the subject incident. Transcript at 110:3-5. There simply can be no dispute that MDB brought the cross-claim in good faith and Versa has offered no legitimate argument to the contrary. Accordingly, the first *Beattie* factor weighs solidly in MDB's favor.

2. Versa's Offers of Judgment for $7,000 Were Grossly Unreasonable in Both Timing and Amount and Made in Bad Faith.

Versa inexplicably trumpets its service of seven (7), one thousand dollar ($1,000.00) Offers of Judgment, a total of seven thousand dollars ($7,000.00), as the basis upon which this Court should award it attorneys' fees and costs. Motion at 11:20-23. What Versa fails to advise this Court, however, and of which it is well aware, is that its Offers of Judgment amounted to less than one half of one percent (0.005) of the total settlement amount MDB paid to plaintiffs to settle nine,[2] not seven as Versa contends, personal injury matters. And, that MDB settled the

[2] In addition to the seven cases consolidated in *Fitzsimmons v. MDB Trucking, LLC et al*, Case No. CV15-02349, MDB settled *Geneva M. Remmerde v. MDB Trucking, LLC et al.*, Case No. CV 16-00976 and the instant matter.

underlying personal injury cases for less than the total amount of plaintiffs' claims. To argue that Offers of Judgment totaling $7,000 were reasonable to resolve claims in the multi-millions of dollars is frankly, startling. The $7,000 total offer could not even compensate MDB for the deposition costs associated with the case, let alone begin to address the personal injury claims of sixteen (16) individuals engaged in nine (9) separate lawsuits.

Not only were Versa's Offers of Judgment grossly unreasonable in amount, they were also unreasonable with respect to their timing. Versa served its Offers of Judgment on May 4, 2017, the day before the scheduled mediation of this matter. Rather than participate in the mediation in good faith, as it asserts, Versa merely appeared. Motion at 6:20-21. At the mediation, Versa refused to negotiate or to contribute to the resulting settlement, yet now disingenuously attempts to blame MDB for its failure to resolve the cross-claim prior to trial. Motion at 6:20:21 and 7:1-3. In reality, Versa's Offers of Judgment were nothing more than a tactic to avoid meaningful participation in the mediation process, and as such, were unreasonable in timing and devoid of good faith.

Finally, Versa argues that its grossly unreasonable Offers of Judgment were somehow justified because: (1) both Versa's and MDB's experts found no defect in the Versa valve during destructive testing; and (2) MDB destroyed crucial evidence Versa needed to defend its claims. Motion at 11:10-14. Notwithstanding that neither argument addresses the reasonableness of the amount or timing of the Offers of Judgment, Versa again provides a wholly self-serving and largely inaccurate account of the facts and circumstances at issue.

While it is correct that no mechanical defect was identified during destructive testing, Versa was well aware that MDB's experts identified the defect in the Versa valve as its susceptibility to inadvertent activation when exposed to external EMF. And, while the Court never considered MDB's Emergency Motion to Strike Answer, Enter Judgment on Claim for

Contribution, and Award Attorneys' Fees and Costs, filed October 4, 2017, MDB discovered shortly before the evidentiary hearing that Versa willfully suppressed critical evidence and falsely represented the fact that Versa had concerns regarding EMF and tested for it long before MDB's experts offered their opinions. By contrast, this Court concluded that MDB's failure to preserve evidence was the result of routine maintenance of its vehicles and equipment and was not "intended to harm Versa." Order at 9:14.

For all of these reasons, Versa's Offers of Judgment were both unreasonable in amount and timing and made in bad faith. As such, the second *Beattie* factor clearly weighs in favor of MDB.

3. MDB's Decision to Reject Versa's Offers of Judgment in the Total Amount of $7,000 Was Reasonable and in Good Faith.

MDB's rejection of the Offers of Judgment was neither grossly unreasonable nor in bad faith, not only for the reasons stated above, but also based upon MDB's reasonable assessment of the strengths and weaknesses of its case. As this Court recognized, "... Dr. Bosch is a very credible witness and it is likely MDB has the more compelling argument to present to the jury." Order at 11:3-6. Indeed, MDB invested significant resources to identify what caused not one, but two inadvertent activations of the Versa valve with different MDB drivers only minutes apart, on the same day, in the same location, and under the same circumstances. Dr. Bosch and Mr. Anderson, based on significant investigation and testing, opined that the only logical explanation for these inadvertent activations was a defect in the design of the Versa valve which rendered it susceptible to EMF. And, Versa's expert offered no scientific explanation for the failures of the Versa valve. Contrary to Versa's assertions, MDB had ample evidence to support its cross-claim, while Versa provided little by way of defense.

Given this context, as Versa's combined Offers of Judgment for $7,000 amounted to less than one half of one percent (0.005) of the total amount committed by MDB to settle the

underlying personal injury claims, MDB not only rejected them, it considered them extended in bad faith. Accordingly, MDB's decision to reject Versa's Offers of Judgment was reasonable and the third *Beattie* factor weighs in MDB's favor.

4. Versa's Purported Attorneys' Fees and Costs are Unreasonable and Not Justified.

Versa seeks attorneys' fees in the amount of $724.50 and costs in the amount of $1,274.74 which it claims to have incurred following the service of the combined $7,000.00 Offers of Judgment on May 4, 2017. Motion at 13:18-20. Notwithstanding the unreasonable claim for costs already rebutted in Cross-Claimant MDB Trucking LLC's Motion to Retax and Settle Cross-Defendant Versa Products Company Inc.'s Verified Memorandum of Costs, incorporated herein by reference, Versa's purported attorneys' fees are also unreasonable and not justified.

A cursory review of the Timekeeper Diary provided by Versa in support of its Motion reveals the vast majority of the claimed legal work was applicable to all of the associated cases, and not specific to the instant matter. *See* Exhibit 3 to the Motion. For example, the first entry dated May 4, 2017 lists a description which states: "Initial receipt, review and legal analysis of the notice of association of counsel for Dragon." *See id.* The Notice of Association of Counsel ("Notice") for Dragon ESP, Ltd. was also filed in the *Remmerde* and *Fitzsimmons* matters. And, pursuant to the Timekeeper Diary submitted as an Exhibit to Versa's Motion in all three cases, the instant matter, *Remmerde* and *Fitzsimmons*, Versa billed for the review of the same Notice in each case. *See* Exhibits A-1 and A-2. It is wholly unreasonable for Versa to seek fees for the review of the same notice three times. And, that is but one example. Accordingly, the fourth *Beattie* factor also weighs in MDB's favor and against any award of attorneys' fees and costs to Versa pursuant to Rule 68.

III.

CONCLUSION

Based upon the above analysis, MDB respectfully requests that the Court deny Versa's Motion and deny costs based upon its separate request to retax costs.

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 1st day of March, 2018.

CLARK HILL PLLC

By: Colleen E. McCarty

NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
JEREMY J. THOMPSON
Nevada Bar No. 12503
COLLEEN E. MCCARTY
Nevada Bar No. 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Cross-Claimant
MDB Trucking, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Clark Hill PLLC, and that on this 1st day of March, 2018, I served a true and correct copy of **CROSS-CLAIMANT MDB TRUCKING LLC'S OPPOSITION TO CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S MOTION FOR ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 37 AND NRCP 68** 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

INDEX OF EXHIBITS

Exhibit A: Declaration of Colleen E. McCarty

Exhibit A-1: Pertinent part of Exhibit 3 to Cross-Defendant Versa Products Company Inc.'s Motion for Attorneys' fees and Cost Pursuant to NRCP 37 and NRCP 38.

Exhibit A-2: Pertinent part of Exhibit 3 to Versa's Motion filed in Fitzsimmons v. MDB Trucking LLC et al., Case No. CV15-02349

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EXHIBIT A

EXHIBIT A

DECLARATION OF COLLEEN E. MCCARTY, ESQ.

I, Colleen E. McCarty , depose and declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am an associate in the law firm of Clark Hill PLLC, attorneys for Defendant/Cross-Claimant MDB Trucking, LLC

2. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

3. I make this Declaration in support of Cross-Claimant MDB Trucking LLC's Opposition to Cross-Defendant Versa Products Company, Inc.'s Motion for Attorneys' Fees and Costs Pursuant to NRCP 37 and NRCP 68 ("Opposition").

4. Attached hereto as **Exhibit A-1** is a true and correct copy of the pertinent part of Exhibit 3 to Cross-Defendant Versa Products Company, Inc.'s Motion for Attorneys' Fees and Costs Pursuant to NRCP 37 and NRCP 68 ("Motion") filed in *Geneva M. Remmerde v. MDB Trucking LLC et al.*, Case No. CV16-00976.

5. Attached hereto as **Exhibit A-2** is a true and correct copy of the pertinent part of Exhibit 3 to Versa's Motion filed in *Fitzsimmons v. MDB Trucking LLC et al.*, Case No. CV15-02349.

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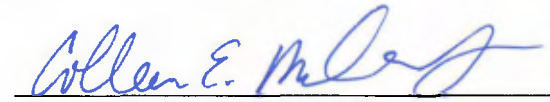
I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045)[1], that the foregoing is true and correct.

Executed this 1st day of March, 2018.



COLLEEN E. MCCARTY

[1]NRS 53.045 Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury.

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Clerk of the Court
Transaction # 6557197 : yviloria

EXHIBIT A-1

EXHIBIT A-1

Timekeeper: DBA1 David Avakian

Date	Description	Hours	Amount	Invoice #
5/04/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of association of counsel for Dragon	.10	21.50 B	1909234
	Day Total:	**.10**	**21.50 B**	
5/11/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Discovery Motions: Draft/Revise: Finalize motion for protective order	.50	107.50 B	1909234
	Day Total:	**.50**	**107.50 B**	
5/15/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Dispositive Motions: Draft/Revise: Finalize Motion for spoliation sanctions against MDB	.50	107.50 B	1909234
	Day Total:	**.50**	**107.50 B**	
	MONTH TOTAL:	**1.10**	**236.50 B**	
		.00	**.00 N**	
		1.10	**236.50 T**	
6/06/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Draft/Revise: Prepare request for submission re motion for summary judgment	.20	43.00 B	1909234
	Day Total:	**.20**	**43.00 B**	
6/22/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Written Motions and Submissions: Review/Analyze: Detailed legal analysis of Plaintiff's motion for determination of good faith settlement	.30	64.50 B	1909234
	27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of non-opposition to MDB's motion for pood faith settlement	.10	21.50 B	1909234
	Day Total:	**.40**	**86.00 B**	
6/28/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the order granting MDB's request for a continuance to brief Opposition to Versa's motion for summary judgment	.10	21.50 B	1909234
	Day Total:	**.10**	**21.50 B**	
	MONTH TOTAL:	**.70**	**150.50 B**	
		.00	**.00 N**	
		.70	**150.50 T**	
7/07/17	**27350-1555 Hartford Insurance Company Remmerde, Geneva v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of association of counsel	.10	21.50 B	1964176

Blank = Billable/Unbilled * = From Time Entry E=From Error File B = Billed N = Non-billable T = Total W = Written Off

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Transaction # 6557197 : yviloria

EXHIBIT A-2

EXHIBIT A-2

Timekeeper: **DBA1 David Avakian**

Date	Description	Hours	Amount	Invoice #
C: 27350	**Hartford Insurance Company**			
M: 1536	**Fitzsimmons, Ernest & Carol v Versa Products, Co**			
5/04/17	Fact Investigation/Development: Appear For/Attend: Attend conference call with adjuster K. Decker re	.30	64.50 B	1909228
5/04/17	Fact Investigation/Development: Plan & Prepare For: Continued detailed legal analysis of all in preparation to attend conference call with adjuster K. Decker re	.50	107.50 B	1909228
5/04/17	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of the redacted schematic materials from Versa (58 pages)	.50	107.50 B	1909228
5/04/17	Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of association of counsel for Dragon	.10	21.50 B	1909228
5/05/17	Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of correspondence from B. Brown, Esq. re status of extending date for opposition to motion for summary judgment	.10	21.50 B	1909228
5/08/17	Fact Investigation/Development: Draft/Revise: Finalize correspondence to adjuster K. Decker re	.40	86.00 B	1909228
5/08/17	Written Discovery: Draft/Revise: Finalize Versa's amended responses to MDB's frist set of requests for production of documents	.30	64.50 B	1909228
5/09/17	Written Motions and Submissions: Review/Analyze: Detailed legal analysis of MDB's motion for continuance of the hearing on motion for summary judgment with attached exhibits and declarations	.60	129.00 B	1909228
5/09/17	Fact Investigation/Development: Review/Analyze: Initial receipt, review and response to correspondence to and from adjuster K. Decker re	.20	43.00 B	1909228
5/09/17	Depositions: Review/Analyze: Initial receipt, review and legal analysis of the PMK deposition notice for RMC Lamar	.10	21.50 B	1909228
5/09/17	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of the deposition of T. Shane and P. Bigby in order to analyze additional spoliation of evidence grounds motions against MDB	1.60	344.00 B	1909228
5/09/17	Expert Discovery: Research: Detailed legal analysis of NRCP 26 and cases regarding trade secrets in order to analyze motion for protective order re schematics of valves	1.40	301.00 B	1909228
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NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
NWieczorek@clarkhill.com
JEREMY J. THOMPSON
Nevada Bar No. 12503
JThompson@clarkhill.com
COLLEEN E. MCCARTY
Nevada Bar No. 13186
CMcCarty@clarkhill.com
CLARK HILL PLLC
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Facsimile: (702) 862-8400
Attorneys for Cross-Claimant
MDB Trucking, LLC

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

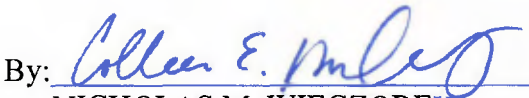
GENEVA M. REMMERDE Plaintiff, vs. MDB TRUCKING, LLC, et al Defendants. AND ALL RELATED CASES.	Case No.: CV16-00976 Dept. No.: 10 **CROSS-CLAIMANT MDB TRUCKING LLC'S OPPOSITION TO CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S MOTION FOR ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 37 AND NRCP 68**

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 files this Opposition to Cross-Defendant Versa Products Company, Inc.'s Motion for Attorneys' Fees and Costs Pursuant to NRCP 37 and NRCP 68 ("Opposition" and "Motion" respectively).

This Opposition is made and based on the following Memorandum of Points and Authorities; the pleadings and papers on file herein; and any oral argument the Court may permit at the hearing of this matter.

Dated this 1st day of March, 2018.

CLARK HILL PLLC

By: 

NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
JEREMY J. THOMPSON
Nevada Bar No. 12503
COLLEEN E. MCCARTY
Nevada Bar No. 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Cross-Claimant
MDB Trucking, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

As set forth in greater detail in the Argument, below, further sanctions beyond those set forth in the Court's Order dated December 8, 2017 ("Order"), specifically Versa's request for attorneys' fees and costs, should not be awarded under NRCP 37 because the Court did not find MDB's actions to be intentional. *See GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995) (further sanctions only appropriate where the court finds willful noncompliance). Further, no award of attorneys' fees and costs is appropriate under NRCP 68, where such an award is discretionary and all factors the Court must consider weigh in favor of MDB. *See Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268, 274 (1983) (awarding fees and costs without consideration of four factors is an abuse of discretion).

For these reasons, MDB respectfully requests this Court deny all requests for attorneys' fees and costs set forth in Versa's Motion.

II.

ARGUMENT

A. MDB Should Not Be Further Sanctioned Under NRCP 37 for Its "Benign" Actions.

Further sanctions against MDB are not warranted pursuant to NRCP 37, where, as here, its failure to retain certain electrical components was in no way willful or intended to harm Versa. This Court already imposed the most severe sanction available to it, case ending sanctions against MDB, based upon its analysis of the factors set forth in *Young v. Johnny Ribeiro Building Inc.,* 106 Nev. 88, 787 P.2d 777 (1990). To impose additional punishment in the form of an award of attorneys' fees and costs to Versa, based upon the specific facts and circumstances surrounding MDB's failure to preserve evidence, would be patently unjust. As stated in its Order: "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." Order at 8:20-23. "Benign neglect" and "indifference" to Versa's needs, while regrettable, is not the measure of willful noncompliance generally required for the magnitude of further sanctions requested by Versa under NRCP 37. *See e.g. GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325 (1995).

Further, contrary to Versa's assertions, NRCP 37(b) does not mandate the imposition of attorney's fees and costs. Instead, the applicable provision states in pertinent part:

> (C) *Payment of Expenses.* Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified <u>or other circumstances make an award of expenses unjust</u>.

NRCP 37(b)(2)(C) (Emphasis added). Here, as the Court has already entered case concluding sanctions against MDB for its failure to preserve evidence, further sanctions would be wholly unjust, particularly in light of the substantial sums of money MDB alone paid to settle the underlying personal injury actions and relieve Versa of its independent tort liability.

Further, the cases Versa cites in support of its Motion are either wholly inapposite or in no way reflective of the facts and circumstances at issue here, where the failure to preserve evidence was in no way an effort to hamper the litigation. For example, in *Skeen v. Valley Bank*, 89 Nev. 301, 304, 511 P.2d 1053 (1973), attorney's fees were awarded pursuant to a contractual provision, not as a sanction under NRCP 37. And, in *Skeen*, *Schatz v. Devitte*, 75 Nev. 124, 335 P.2d 783 (1959), and *Foster v. Dingwall*, 227 P.3d 1042, 227 P.3d 1042 (2010), the misconduct sanctioned by the court was intentional, willful and specifically intended to hinder the litigation. As this Court correctly concluded, the MDB employees who disposed of certain electrical components did so in the course of the routine maintenance, and not with any malicious purpose. Accordingly, Versa's request for further sanctions under NRCP 37 should be denied.

B. <u>Versa May Not Be Awarded Attorneys' Fees and Costs Pursuant to Its Offer of Judgment Under NRCP 68</u>.

When an offeree fails to obtain a more favorable judgment than an amount offered pursuant to NRCP 68, an award of attorneys' fees and costs to the offeror is not automatic and is soundly within the discretion of the trial court. *See, e.g. Trustees of Carpenters v. Better Bldg. Co.*, 101 Nev. 742, 746, 710 P.2d 1379, 1382 (1985) (quoting *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), holding that the purpose of Rule 68 "is not to force plaintiffs unfairly to forego legitimate claims"). Indeed, when considering whether an award of attorneys' fees and

costs should be granted in such instances, Nevada courts must carefully evaluate the four-factor test set forth by the Nevada Supreme Court in *Beattie v. Thomas*, to wit:

> (1) whether the plaintiff's claim was brought in good faith; (2) whether the defendants' offer of judgment was reasonable and in good faith in both its timing and amount; (3) whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and (4) whether the fees sought by the offeror are reasonable and justified in amount.

99 Nev. at 588-89, 668 P.2d at 274; *see also Uniroyal Goodrich Tire Co. v. Mercer*, 111 Nev. 318, 323, 890 P.2d 785, 789 (1995).

After weighing the foregoing factors, the district judge may, where warranted, award up to the full amount of the fees and costs requested; on the other hand, where the court has failed to consider these factors and has made no findings based on evidence that the attorneys' fees sought are reasonable and justified, it is an abuse of discretion for the court to award the full amount of fees requested. *Beattie v. Thomas*, 99 Nev. at 588-89, 668 P.2d at 274 (emphasis added). Furthermore, in *Wynn v. Smith*, 117 Nev. 6, 16 P.3d 424 (2001), the Nevada Supreme Court reasoned in affirming the lower court's decision not to award attorneys' fees:

> Even though the district court did not explicitly address each factor separately in its order, where it considered each of the Beattie factors, the district court's refusal to award attorneys' fees was not an abuse of discretion.

117 Nev. at 13-14, 16 P.3d at 429. Utilizing the *Beattie* factors in conjunction with the facts and circumstances of the instant case, this Court should deny Versa's Motion in its entirety.

1. MDB's Contribution Claim was Brought in Good Faith.

Versa argues, wholly without basis, that the Cross-Claim for Contribution brought by MDB had no factual or legal support. Motion at 10:23-24. As Versa is well aware, however, this Court reached a different conclusion. After hearing the testimony of five key witnesses at the evidentiary hearing, the Court expressed in its Order: "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." Order at 11:3-6.

Far from a frivolous suit, as Versa speciously asserts, MDB's cross-claim based on a theory of strict products liability appropriately sought contribution for the defect in the Versa valve which caused the subject truck and trailer to dump its load on the highway. The uncommanded activation of the Versa valve caused the traffic accidents that prompted the underlying personal injury claims, which MDB alone resolved. The testimony of MDB's experts, Dr. David Bosch and Erik Anderson, clearly set forth the only theory for consideration by the trier of fact, i.e. that the Versa valve inadvertently activated when exposed to external electromagnetic fields ("EMF"). Versa's expert, Garrick Mitchell, offered no opinion as to the cause of the subject incident. Transcript at 110:3-5. There simply can be no dispute that MDB brought the cross-claim in good faith and Versa has offered no legitimate argument to the contrary. Accordingly, the first *Beattie* factor weighs solidly in MDB's favor.

2. Versa's Offers of Judgment for $7,000 Were Grossly Unreasonable in Both Timing and Amount and Made in Bad Faith.

Versa inexplicably trumpets its service of seven (7), one thousand dollar ($1,000.00) Offers of Judgment, a total of seven thousand dollars ($7,000.00), as the basis upon which this Court should award it attorneys' fees and costs. Motion at 11:20-22. What Versa fails to advise this Court, however, and of which it is well aware, is that its Offers of Judgment amounted to less than one half of one percent (0.005) of the total settlement amount MDB paid to plaintiffs to settle nine,[1] not seven as Versa contends, personal injury matters. And, that MDB settled the

[1] In addition to the seven cases consolidated in *Fitzsimmons v. MDB Trucking, LLC et al*, Case No. CV15-02349, MDB settled *James Bible v. MDB Trucking, LLC et al.*, Case No. CV 16-0914 and the instant matter.

underlying personal injury cases for less than the total amount of plaintiffs' claims. To argue that Offers of Judgment totaling $7,000 were reasonable to resolve claims in the multi-millions of dollars is frankly, startling. The $7,000 total offer could not even compensate MDB for the deposition costs associated with the case, let alone begin to address the personal injury claims of sixteen (16) individuals engaged in nine (9) separate lawsuits.

Not only were Versa's Offers of Judgment grossly unreasonable in amount, they were also unreasonable with respect to their timing. Versa served its Offers of Judgment on May 4, 2017, the day before the scheduled mediation of this matter. Rather than participate in the mediation in good faith, as it asserts, Versa merely appeared. Motion at 6:20-21. At the mediation, Versa refused to negotiate or to contribute to the resulting settlement, yet now disingenuously attempts to blame MDB for its failure to resolve the cross-claim prior to trial. Motion at 6:20:21 and 7:1-3. In reality, Versa's Offers of Judgment were nothing more than a tactic to avoid meaningful participation in the mediation process, and as such, were unreasonable in timing and devoid of good faith.

Finally, Versa argues that its grossly unreasonable Offers of Judgment were somehow justified because: (1) both Versa's and MDB's experts found no defect in the Versa valve during destructive testing; and (2) MDB destroyed crucial evidence Versa needed to defend its claims. Motion at 11:10-14. Notwithstanding that neither argument addresses the reasonableness of the amount or timing of the Offers of Judgment, Versa again provides a wholly self-serving and largely inaccurate account of the facts and circumstances at issue.

While it is correct that no mechanical defect was identified during destructive testing, Versa was well aware that MDB's experts identified the defect in the Versa valve as its susceptibility to inadvertent activation when exposed to external EMF. And, while the Court never considered MDB's Emergency Motion to Strike Answer, Enter Judgment on Claim for

Contribution, and Award Attorneys' Fees and Costs, filed October 4, 2017, MDB discovered shortly before the evidentiary hearing that Versa willfully suppressed critical evidence and falsely represented the fact that Versa had concerns regarding EMF and tested for it long before MDB's experts offered their opinions. By contrast, this Court concluded that MDB's failure to preserve evidence was the result of routine maintenance of its vehicles and equipment and was not "intended to harm Versa." Order at 9:14.

For all of these reasons, Versa's Offers of Judgment were both unreasonable in amount and timing and made in bad faith. As such, the second *Beattie* factor clearly weighs in favor of MDB.

3. MDB's Decision to Reject Versa's Offers of Judgment in the Total Amount of $7,000 Was Reasonable and in Good Faith.

MDB's rejection of the Offers of Judgment was neither grossly unreasonable nor in bad faith, not only for the reasons stated above, but also based upon MDB's reasonable assessment of the strengths and weaknesses of its case. As this Court recognized, "... Dr. Bosch is a very credible witness and it is likely MDB has the more compelling argument to present to the jury." Order at 11:3-6. Indeed, MDB invested significant resources to identify what caused not one, but two inadvertent activations of the Versa valve with different MDB drivers only minutes apart, on the same day, in the same location, and under the same circumstances. Dr. Bosch and Mr. Anderson, based on significant investigation and testing, opined that the only logical explanation for these inadvertent activations was a defect in the design of the Versa valve which rendered it susceptible to EMF. And, Versa's expert offered no scientific explanation for the failures of the Versa valve. Contrary to Versa's assertions, MDB had ample evidence to support its cross-claim, while Versa provided little by way of defense.

Given this context, as Versa's combined Offers of Judgment for $7,000 amounted to less than one half of one percent (0.005) of the total amount committed by MDB to settle the

underlying personal injury claims, MDB not only rejected them, it considered them extended in bad faith. Accordingly, MDB's decision to reject Versa's Offers of Judgment was reasonable and the third *Beattie* factor weighs in MDB's favor.

4. Versa's Purported Attorneys' Fees and Costs are Unreasonable and Not Justified.

Versa seeks attorneys' fees in the amount of $731.00 and costs in the amount of $413.00 which it claims to have incurred following the service of the combined $7,000.00 Offers of Judgment on May 4, 2017. Motion at 13:18-21. Notwithstanding the unreasonable claim for costs already rebutted in Cross-Claimant MDB Trucking LLC's Motion to Retax and Settle Cross-Defendant Versa Products Company Inc.'s Verified Memorandum of Costs, incorporated herein by reference, Versa's purported attorneys' fees are also unreasonable and not justified.

A cursory review of the Timekeeper Diary provided by Versa in support of its Motion reveals the vast majority of the claimed legal work was applicable to all of the associated cases, and not specific to the instant matter. *See* Exhibit 3 to the Motion. For example, the first entry dated May 4, 2017 lists a description which states: "Initial receipt, review and legal analysis of the notice of association of counsel for Dragon." *See id.* The Notice of Association of Counsel ("Notice") for Dragon ESP, Ltd. was also filed in the *Bible* and *Fitzsimmons* matters. And, pursuant to the Timekeeper Diary submitted as an exhibit to Versa's Motion in all three cases, the instant matter, *Bible* and *Fitzsimmons*, Versa billed for the review of the same Notice in each case. *See* Exhibits A-1 and A-2. It is wholly unreasonable for Versa to seek fees for the review of the same notice three times. And, that is but one example. Accordingly, the fourth *Beattie* factor also weighs in MDB's favor and against any award of attorneys' fees and costs to Versa pursuant to Rule 68.

///

III.

CONCLUSION

Based upon the above analysis, MDB respectfully requests that the Court deny Versa's Motion and deny costs based upon its separate request to retax costs.

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 1st day of March, 2018.

CLARK HILL PLLC

By: Colleen E. McCarty

NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
JEREMY J. THOMPSON
Nevada Bar No. 12503
COLLEEN E. MCCARTY
Nevada Bar No. 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Telephone: (702) 862-8300
Attorneys for Cross-Claimant
MDB Trucking, LLC

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Clark Hill PLLC, and that on this 1st day of March, 2018, I served a true and correct copy of **CROSS-CLAIMANT MDB TRUCKING LLC'S OPPOSITION TO CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S MOTION FOR ATTORNEYS' FEES AND COSTS PURSUANT TO NRCP 37 AND NRCP 68** 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

INDEX OF EXHIBITS

Exhibit A: Declaration of Colleen E. McCarty

Exhibit A-1: pertinent part of Exhibit 3 to Cross-Defendant Versa Products Company, Inc.'s Motion for Attorneys' Fees and Costs Pursuant to NRCP 37 and NRCP 68 ("Motion") filed in James Bible v. MDB Trucking LLC et al., Case No. CV16-01914

Exhibit A-2: Pertinent part of Exhibit 3 to Versa's Motion filed in Fitzsimmons v. MDB Trucking LLC et al., Case No. CV15-02349

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EXHIBIT A

EXHIBIT A

DECLARATION OF COLLEEN E. MCCARTY, ESQ.

I, Colleen E. McCarty , depose and declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am an associate in the law firm of Clark Hill PLLC, attorneys for Defendant/Cross-Claimant MDB Trucking, LLC

2. I am competent to testify to the matters asserted herein, of which I have personal knowledge, except as to those matters stated upon information and belief. As to those matters stated upon information and belief, I believe them to be true.

3. I make this Declaration in support of Cross-Claimant MDB Trucking LLC's Opposition to Cross-Defendant Versa Products Company, Inc.'s Motion for Attorneys' Fees and Costs Pursuant to NRCP 37 and NRCP 68 ("Opposition").

4. Attached hereto as **Exhibit A-1** is a true and correct copy of the pertinent part of Exhibit 3 to Cross-Defendant Versa Products Company, Inc.'s Motion for Attorneys' Fees and Costs Pursuant to NRCP 37 and NRCP 68 ("Motion") filed in *James Bible v. MDB Trucking LLC et al.*, Case No. CV16-01914.

5. Attached hereto as **Exhibit A-2** is a true and correct copy of the pertinent part of Exhibit 3 to Versa's Motion filed in *Fitzsimmons v. MDB Trucking LLC et al.*, Case No. CV15-02349.

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I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045)[1], that the foregoing is true and correct.

Executed this 1st day of March, 2018.

COLLEEN E. MCCARTY

[1]NRS 53.045 Use of unsworn declaration in lieu of affidavit or other sworn declaration. Any matter whose existence or truth may be established by an affidavit or other sworn declaration may be established with the same effect by an unsworn declaration of its existence or truth signed by the declarant under penalty of perjury.

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EXHIBIT A-1

EXHIBIT A-1

Timekeeper: DBA1 David Avakian

Date	Description	Hours	Amount	Invoice #
5/04/17	**27350-1553 Hartford Insurance Company Bible, James v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of association of counsel for Dragon	.10	21.50 B	1909232
	Day Total:	**.10**	**21.50 B**	
5/11/17	**27350-1553 Hartford Insurance Company Bible, James v Versa Products Company, Inc** Discovery Motions: Draft/Revise: Finalize motion for protective order	.50	107.50 B	1909232
	Day Total:	**.50**	**107.50 B**	
5/15/17	**27350-1553 Hartford Insurance Company Bible, James v Versa Products Company, Inc** Dispositive Motions: Draft/Revise: Finalize Motion for spoliation sanctions against MDB	.50	107.50 B	1909232
	Day Total:	**.50**	**107.50 B**	
	MONTH TOTAL:	**1.10**	**236.50 B**	
		.00	**.00 N**	
		1.10	**236.50 T**	
6/06/17	**27350-1553 Hartford Insurance Company Bible, James v Versa Products Company, Inc** Fact Investigation/Development: Draft/Revise: Prepare request for submission re motion for summary judgment	.20	43.00 B	1909232
	Day Total:	**.20**	**43.00 B**	
6/22/17	**27350-1553 Hartford Insurance Company Bible, James v Versa Products Company, Inc** Written Motions and Submissions: Review/Analyze: Detailed legal analysis of Plaintiff's motion for determination of good faith settlement	.30	64.50 B	1909232
	27350-1553 Hartford Insurance Company Bible, James v Versa Products Company, Inc Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of non-opposition to motion for good faith settlement	.10	21.50 B	1909232
	Day Total:	**.40**	**86.00 B**	
6/28/17	**27350-1553 Hartford Insurance Company Bible, James v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the order granting MDB's request for a continuance to brief Opposition to Versa's motion for summary judgment	.10	21.50 B	1909232
	Day Total:	**.10**	**21.50 B**	
	MONTH TOTAL:	**.70**	**150.50 B**	
		.00	**.00 N**	
		.70	**150.50 T**	
7/07/17	**27350-1553 Hartford Insurance Company Bible, James v Versa Products Company, Inc** Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of association of counsel	.10	21.50 B	1964174

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EXHIBIT A-2

EXHIBIT A-2

Timekeeper: **DBA1 David Avakian**

Date	Description	Hours	Amount	Invoice #
C: 27350	**Hartford Insurance Company**			
M: 1536	**Fitzsimmons, Ernest & Carol v Versa Products, Co**			
5/04/17	Fact Investigation/Development: Appear For/Attend: Attend conference call with adjuster K. Decker re	.30	64.50 B	1909228
5/04/17	Fact Investigation/Development: Plan & Prepare For: Continued detailed legal analysis of all in preparation to attend conference call with adjuster K. Decker re	.50	107.50 B	1909228
5/04/17	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of the redacted schematic materials from Versa (58 pages)	.50	107.50 B	1909228
5/04/17	Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of the notice of association of counsel for Dragon	.10	21.50 B	1909228
5/05/17	Fact Investigation/Development: Review/Analyze: Initial receipt, review and legal analysis of correspondence from B. Brown, Esq. re status of extending date for opposition to motion for summary judgment	.10	21.50 B	1909228
5/08/17	Fact Investigation/Development: Draft/Revise: Finalize correspondence to adjuster K. Decker re	.40	86.00 B	1909228
5/08/17	Written Discovery: Draft/Revise: Finalize Versa's amended responses to MDB's frist set of requests for production of documents	.30	64.50 B	1909228
5/09/17	Written Motions and Submissions: Review/Analyze: Detailed legal analysis of MDB's motion for continuance of the hearing on motion for summary judgment with attached exhibits and declarations	.60	129.00 B	1909228
5/09/17	Fact Investigation/Development: Review/Analyze: Initial receipt, review and response to correspondence to and from adjuster K. Decker re	.20	43.00 B	1909228
5/09/17	Depositions: Review/Analyze: Initial receipt, review and legal analysis of the PMK deposition notice for RMC Lamar	.10	21.50 B	1909228
5/09/17	Fact Investigation/Development: Review/Analyze: Detailed legal analysis of the deposition of T. Shane and P. Bigby in order to analyze additional spoliation of evidence grounds motions against MDB	1.60	344.00 B	1909228
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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

GENEVA M. REMMERDE, Plaintiff, vs. MDB TRUCKING, LLC, et. al. Defendants. AND ALL RELATED CASES.	Case No. CV16-00976 Dept. 10 **THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S OPPOSITION TO THIRD-PARTY PLAINTIFF MDB TRUCKING LLC'S MOTION TO RETAX AND SETTLE COSTS**

COMES NOW, Third-Party 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 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 THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S OPPOSITION TO THIRD-PARTY PLAINTIFF 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 CV16-00976.

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

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 $413.00 of VERSA's costs because they were incurred after the Offer of Judgement. However, MDB's arguments are wholly unsupported as VERSA is entitled to all costs as the prevailing party pursuant to NRS 18.020 and NRS 18.005 as well as NRCP 37.

As such, 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, granting Defendant its costs in the amount of **$413.00**.

II. LEGAL ARGUMENT

A. 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 $413.00 in costs because the documentation clearly demonstrates the costs were incurred prior to 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[1]. 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.

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

See, NRS 18.020 (emphasis added).

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's alleges it suffered damages in excess of $10,000.00. Thus, the underlying motion fails pursuant NRS 18.020(3). 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 its 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 is served. VERSA's costs are itemized (with supporting documentation) in the Verified Memorandum of Costs. See, **Exhibit1**. 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 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
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.

LIST OF EXHIBITS

Exhibit 1	VERSA timely filed its Verified Memorandum of Costs and Disbursements.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th of March, 2018, a true and correct copy of **THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S OPPOSITION TO THIRD-PARTY PLAINTIFF 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

F I L E D
Electronically
CV16-00976
2018-03-08 01:14:04 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6567745 : yviloria

EXHIBIT 1

FILED
Electronically
CV16-00976
2018-02-09 09:40:37 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6524406 : swilliam

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 Third-Party Defendant VERSA PRODUCTS COMPANY, INC.

DISTRICT COURT

WASHOE COUNTY, NEVADA

GENEVA M. REMMERDE, Plaintiff, vs. DANIEL ANTHONY KOSKI; MDB TRUCKING, LLC; DOES I-X and ROE I-V, Defendants.	Case No. CV16-00976 Dept. 10 **THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S VERIFIED MEMORANDUM OF COSTS**
AND ALL RELATED CASES.	

COMES NOW, Third-Party 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 Third-Party Plaintiff 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 Defendant in the defense of this matter:

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

1.	Court Filing Fees	$ 413.00
	LEGAL COSTS:	$413.00

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 Third-Party Defendant VERSA PRODUCTS COMPANY, INC.

AFFIDAVIT OF JOSH COLE AICKLEN IN SUPPORT OF THIRD-PARTY 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 Third-Party 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 CV16-00976.

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

3. The total costs in the case were $413.00.

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 **THIRD-PARTY 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
CV16-00976
2018-02-09 09:40:37 AM
Jacqueline Bryant
Clerk of the Court
Transaction # 6524406 : swilliam

EXHIBIT 1

27350 Hartford Insurance Company
1555 Remmerde, Geneva v Versa Products Company, Inc

Selections: Client-Matter: 27350-1555 to 27350-1555 *Include Write-Offs*

Date	DsbCd	Description	Check No.	Units	Rate	Amount	Stat/Source	Invoice No.
8/08/16	5	Court filing fee: Wells Fargo Commercial Card Services Inv#:073116STMT-SBOWERS Trans Date: 07/19/2016 Washoe Co 2nd Dist Genera, Filing fee of IAFD first appeal with motion to dismiss				213.00	P A/P-P	1740980
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	1909234

Disbursements by Type:

5	Court filing fee	413.00
	Matter Total	**413.00**

27350-1555
Hartford Insurance Company
Remmerde, Geneva v Versa Products Company, Inc
Date: 8/08/16
WIP Seq#: 513,682,140
Amount: 213.00

Date / Time 7/19/2016 8:26:33 AM

Cashier WashoeAPI

Transaction ID 30992413

$213.00 Amount

Court Fees CourtFilingFee
Submission ID 5614156

27350-1555

Payment Summary : Visa payment for $213.00.
Payment Acct Last4 : ********6392
Billing Name : Stacy Bowers
Billing Address : 6385 South Rainbow Boulevard
Las Vegas, NV 89118
Phone Number : 7028933383
Email Address : stacy.bowers@lewisbrisbois.com

IAFD/
1st Appeal
M/Dismiss

Signature

Description: Filing fee o/l/or

Vendor: 82739 Wells Fargo Commercial Card Services
Voucher: 2035444 Distribution 4789353 Distribution Level
Doc ID: 0001NGCW Page 259

27350-1555

Date / Time	5/3/2017 1:30:30 PM	Cashier	WashoeAPI
Transaction ID	47998777	$200.00	Amount

Court Fees CourtFilingFee
Submission ID 6082213

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

40

27350-1555
Hartford Insurance Company
Remmerde, Geneva v Versa Products Company, Inc
Date: 6/14/17
WIP Seq#: 546,027,920

Amount: 200.00

Vendor: 94005 Comerica Commercial Card Services
Voucher: 2146974 Distribution 5098731 Distribution Level
Doc ID: 0001TUFN Page 184

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