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 17 OF 18

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

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DISTRICT COURT

WASHOE COUNTY, NEVADA

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

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

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

DATED this 8th day of March, 2018.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Josh Cole Aicklen

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

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

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

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

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

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

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

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

FURTHER AFFIANT SAYETH NAUGHT.

PAIGE S. SHREVE, ESQ.

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

NOTARY PUBLIC
In and for said County and State

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

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

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

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

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

II. LEGAL ARGUMENT

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

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

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

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

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

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

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

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

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

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

See, NRS 18.020 (emphasis added).

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

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

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

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

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

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

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

III. CONCLUSION

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

AFFIRMATION

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

DATED this 8th of March, 2018.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/Josh Cole Aicklen

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LIST OF EXHIBITS

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

CERTIFICATE OF SERVICE

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

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EXHIBIT 1

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DISTRICT COURT

WASHOE COUNTY, NEVADA

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

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

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

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

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

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

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

LEGAL COSTS: $1,274.74

AFFIRMATION

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

DATED this 9th day of February, 2018.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/ Josh Cole Aicklen

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

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

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)

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

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

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

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

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

By _____
JOSH COLE AICKLEN, ESQ.

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

_____
NOTARY PUBLIC in and for said COUNTY and STATE

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

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

LIST OF EXHIBITS

Exhibit 1	Disbursement Diary and Supporting Documentation for Costs

CERTIFICATE OF SERVICE

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

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

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

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

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

EXHIBIT 1

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

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

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

Disbursements by Type:

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

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

Lewis Brisbois Bisgaard & Smith LLP

Cost Advance Ticket
Check Request

 # LV-05022

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

****Finance Committee approval required**

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

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

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

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

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

Return to:
Floor:

Remember to have Attorney Sign and Attach all Supporting Backup

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

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

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

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

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

Adoptions	When filing a new Adoption proceeding NRS 19.013 (844), 19.020 (53), 19.031 (525), 19.03135 (510), 19.0302 (899), CC 4.090.080 (520)	$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 (844), 19.031 (525), 19.03135 (510), 19.0302 (899), CC 4.090.080 (520)	$198.00
	For each additional defendant named in a civil answer or first appearance NRS 19.0336 (530)	$30.00
	When a defendant answers an action for constructional defect or any other action defined as complex NRS 19.013 (844), 19.031 (525), 19.03135 (510), 19.0302 (849), CC 4.090.080 (520)	$448.00
	Divorce, Annulment, Separate Maintenance answer or first appearance NRS 19.013 (844), 19.031 (514), 19.03135 (510), 19.0302 (899), CC 4.090.080 (520)	$187.00
	Child Custody answer or first appearance NRS 19.013 (844), 19.031 (514), 19.03135 (510), 19.0302 (899), CC 4.090.080 (520)	$187.00
Appeal from a Justice or Municipal Court	When filing an appeal from a Justice Court or Municipal Court NRS 19.013 (542), 19.020 (55), 19.030 (532), 19.031 (525), 19.03135 (510.00), CC 4.090.080 (520)	$134.00
Appeal/Supreme Court	When filing a Notice of Appeal NRS 19.013 (524)	$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 (899), 19.020 (53), 19.030 (532), 19.031 (514), 19.03135 (510), 19.030 (520), 440.080 (510), 19.0302 (899), CC 4.090.080 (520)	$274.00
Child Custody	When filing a Complaint for Child Custody NRS 19.013 (844), 19.020 (53), 19.030 (532), 19.031 (514), 19.03135 (510), 19.0302 (899), CC 4.090.080 (520)	$234.00
Civil	When filing a new Civil action or proceeding NRS 19.013 (844), 19.020 (53), 19.030 (532), 19.031 (525), 19.03135 (510), 19.0302 (899), CC 4.090.080 (520)	$245.00
	For each additional plaintiff named in a civil complaint or amended civil complaint NRS 19.0336 (530)	$30.00
	When filing an action for constructional defect or other action defined as complex NRS 19.013 (844), 19.020 (53), 19.030 (532), 19.031 (525), 19.03135 (510), 19.0302 (849), CC 4.090.080 (520)	$495.00
	When filing a third party complaint 19.0302 (9136)	$135.00
Divorce	When filing for a Divorce NRS 19.013 (899), 19.020 (53), 19.030 (532), 19.031 (514), 19.03135 (510), 19.030 (520), 440.080 (510), 19.0302 (899), CC 4.090.080 (520)	$274.00
Domestic Not Specified Above	When filing a domestic case not specified above NRS 19.013 (844), 19.020 (53), 19.030 (532), 19.031 (525), 19.03135 (510), 19.0302 (899), CC 4.090.080 (520)	$245.00
Confession of Judgment	For filing a Confession of Judgment NRS 17.110 (520)	$26.00
Contest/Objection (Probate/Guardianship)	When filing a petition to contest any will or codicil, or on the filing of an objection or cross-petition to the appointment of an executor, administrator or guardian or an objection to the settlement of account or any answer in an estate or guardianship matter NRS 19.013 (844), 19.031 (525), 19.03135 (510), 19.0302 (899), CC 4.090.080 (520)	$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), 19.030 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($60), CC 4.090.080 ($20)	$246.00
Foreign Support Order or Decrees (UIFSA)	Filing Foreign Support Orders or Decrees NRS 130.601	NO FEE
Guardian Ad Litem	Petition for appointment of Guardian Ad Litem (Civil fee paid upon filing of complaint)	NO FEE
Guardianship/Probate	Where value of Estate is $2,500 or less NRS 19.013	NO FEE
	Where value of Estate is $100,000 or less or Unknown NRS 19.013 ($72), 19.020 ($1.50), 19.030 ($32), 19.031 ($25), 19.03135 ($10), CC 4.090.080 ($20)	$160.50
	Where value of Estate is between $100,000 and $200,000 NRS 19.013 ($72), 19.020 ($1.50), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.090.080 ($20)	$259.50
	Where value of Estate is more than $200,000 NRS 19.013 ($72), 19.020 ($1.50), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($352), CC 4.090.080 ($20)	$512.50
Liens, Frivolous or Excessive	When filing an application regarding frivolous or excessive liens NRS 19.030 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 108.2275 ($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 ..... SB386 - New Section to NRS 19	$87.00
Name Change	Filing a petition for a name change..... NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.060.060 ($20)	$245.00
Packets of Forms	Initiating Case Packets	$10.00
	All other Multi document packets	$5.00
	Waiver of Fees and Costs	No Fee
Peremptory Challenge	Peremptory challenge of a Judge (payable to the Clerk of the Supreme Court).....	$450.00
Petition to Seal Records	When filing a new Petition to Seal Records ..... NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.060.060 ($20)	$245.00
Power of Attorney	For filing a certified copy of a Bondsman's Appointment by Power of Attorney..... NRS 697.270 - 19.013 ($16)	$15.00
Searches	For performing a search of the records per year, per name; unless such fee is waived by Clerk of Court NRS 19.013 ($.50)	$0.50
Termination of Parental Rights	Petition for Termination of Parental Rights..... NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.060.060 ($20)	$245.00
Transfer from another District Court or County	To transfer an action or proceeding from another District Court or County..... NRS 19.013 ($56), 19.020 ($3), 19.030 ($32), 19.031 ($25), 19.03135 ($10), 19.0302 ($99), CC 4.060.060 ($20)	$245.00
Transfer from a Justice or Municipal Court	When transferring a case from a Justice Court or Municipal Court..... NRS 19.013 ($42), 19.030 ($3), 19.030 ($32), 19.0302 ($99), 19.031 ($25), 19.03135 ($10), CC 4.060.060 ($20)	$231.00
Will	When filing an original Will (no petition included)..... NRS 19.013 ($5), 19.03135 ($10)	$15.00
Writs	For the issuance of any writ of attachment, writ of garnishment, writ of execution or any other writ designed to enforce any judgment of the court..... 19.0302 ($10)	$10.00
Writ of Habeas Corpus	Filing a petition for Writ of Habeas Corpus..... NRS 19.013(5)	NO FEE

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

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

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

Lewis Brisbois Bisgaard & Smith LLP

Cost Advance Ticket
Check Request

 # LV-05023

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

****Finance Committee approval required**

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

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

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

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

Auth. by: [signature] 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

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

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

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

AFFIRMATION

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

DATED this ___ day of July, 2016

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By _____

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

LEWIS BRISBOIS BISGAARD & SMITH LLP ATTORNEYS AT LAW

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

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

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

4826-6278-7381.1

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 | Manage Center

Back

Tracking ID Details

Tracking ID Summary

Hide Hide

Billing Information

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

View Invoice History
View signature proof of delivery

Messages

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

Transaction Details

Hide Hide

Sender Information

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

Shipment Details

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

Original Reference

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

Proof of Delivery

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

View signature proof of delivery

Recipient Information

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

Charges

Transportation Charge	47.46
Fuel Surcharge	9.43
Weekday Delivery	0.00
Discount	-35.10
Earned Discount	-2.37
DAS Comm	2.46
Total charges	$21.87

Error source code

Updated Reference Edit

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

Cost Allocation Reference Edit

Cost allocation
Shipment Notes

Approve/notify user | Dispute | Pay

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United States - English

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

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

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Billing Information

Tracking ID no 1 Prev 777173407850 Next 2
Invoice no. 5-547-89453
Account no. 1732-0829-8
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 packing Read More..
Distance Based Pricing, Zone 4
The Earned Discount for this ship date has been ea Read More..
Fuel Surcharge - FedEx has applied a fuel surcharg Read More..
The package weight exceeds the maximum for the pac Read More..

Transaction Details Hide Hide

Sender Information

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

Shipment Details

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

Original Reference

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

Proof of Delivery

Delivery date 09/08/2016 16:06 PM
Service area code
Signed by J BERMINGHAM
View signature proof of delivery

Recipient Information

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

Charges

Transportation Charge	47.46
Fuel Surcharge	0.43
Weekday Delivery	0.00
Discount	-36.10
Earned Discount	-2.37
DAS Comm	2.45
Total charges	$21.87

Enter reason code

Updated Reference Edit

Customer reference no
Department no
Reference #2
Reference #3

Cost Allocation Reference Edit

Cost allocation
Shipment Notes

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United States - English

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

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

COMPEX Legal Services, Inc.

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

TERMS : NET 30 DAYS
TAX ID: 95-4443964

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

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

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

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

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

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

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

RECEIVED
MAY 16 2017
ACCOUNTS PAYABLE-LA

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

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

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

COMPEX Legal Services, Inc.

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

TERMS : NET 30 DAYS
TAX ID: 95-4443964

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

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

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

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

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

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

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

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ACCOUNTS PAYABLE-LA

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

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

COMPEX
Legal Services, Inc.

TERMS : NET 30 DAYS
TAX ID: 95-4443964

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

CLIENT/INSURED: MDB TUCKING
DATE OF LOSS:

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

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

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

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: 2129630 Distribution 5053738 Distribution Level
Doc ID: 0001SFNE Page 1

COMPEX Legal Services, Inc.

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

TERMS : NET 30 DAYS
TAX ID: 95-4443964

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

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

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

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

PLEASE REMIT TO:
P.O. BOX 2738
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TEL 800.788.8831 FAX 310.781.9720

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

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

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ACCOUNTS PAYABLE-LA

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

COMPEX
Legal Services, Inc.

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

TERMS : NET 30 DAYS
TAX ID: 95-4443964

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

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

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

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

PLEASE REMIT TO:
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TORRANCE, CA 90509-2738
TEL 800.788.8831 FAX 310.781.9720

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

H86584- A	RAIVS TEAM CLAUSE: SPECIAL (OTHER) NOTES: CLOSED: CASE SETTLED	Basic Charge - Auth	1	30.00	30.00
		Phone Call/Status	1	3.50	3.50
		Authorization Prep	1	.00	.00
		Authorization Service	1	.00	.00
		Out of Area	1	20.00	20.00
		Custodial Fee	1	200.00	200.00
		Shipping and Handling	1	8.00	8.00
		SUB TOTAL			261.50
		TOTAL DUE			261.50

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ACCOUNTS PAYABLE-LA

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

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

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

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

COMPEX Legal Services, Inc.

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

TERMS : NET 30 DAYS
TAX ID: 95-4443964

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

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

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

ORDERED BY:
LEWIS BRISBOIS BISGAARD & SMITH
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

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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MAY 16 2017
ACCOUNTS PAYABLE-LA

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

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

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

COMPEX
Legal Services, Inc.

TERMS : NET 30 DAYS
TAX ID: 95-4443964

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

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

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

ORDERED BY:
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702-893-3383

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

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

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ACCOUNTS PAYABLE-LA

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

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

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

COMPEX
Legal Services, Inc.

TERMS : NET 30 DAYS
TAX ID: 95-4443964

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

CLIENT/INSURED: MDB TRUCKING
DATE OF LOSS:

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

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

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TEL 800.788.8831 FAX 310.781.9720

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

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

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MAY 16 2017
ACCOUNTS PAYABLE-LA

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

27350-1553

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

Court Fees CourtFilingFee
Submission ID 6082232

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

Signature Motion for Summary Judgment

47

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

Amount: 200.00

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

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

F I L E D
Electronically
CV16-01914
2018-03-08 01:13:00 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6567742 : yviloria

EXHIBIT 2

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

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

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

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

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

CHECK NO. **11783**

11-24/1210

DATE **07/29/2016**

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

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

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

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

⑈011783⑈ ⑆121000248⑆ 4595243189⑈

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

F I L E D
Electronically
CV16-01914
2018-03-08 01:13:00 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6567742 : yviloria

EXHIBIT 3

CV16-01914 DC-0990008065 6-045
JAMES BIBLE VS MDB TRUCKING, 7 Pages
District Court 09/20/2016 04:07 PM
Washoe County 1500
DMCFLIFI1

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

FILED
2016 SEP 20 PM 4:07
JACQUELINE BRYANT
CLERK OF THE COURT
BY _____ DEPUTY

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

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CHURCHILL

JAMES BIBLE,

Plaintiff,

vs.

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

Defendants.

MDB TRUCKING, LLC, a Nevada limited liability company,

Cross-Claimant,

vs.

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

Cross-Defendants.

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

CV16 01914
D1

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

///

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

FIRST CLAIM FOR RELIEF

(General Allegations)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Implied Indemnification as to RMC LAMAR)

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

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

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

SECOND CLAIM FOR RELIEF

(Contribution as to RMC LAMAR)

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

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

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

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THIRD CLAIM FOR RELIEF

(Implied Indemnification as to VERSA)

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

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

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

FOURTH CLAIM FOR RELIEF

(Contribution as to VERSA)

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

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

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

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

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

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(775) 786-2882

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

DATED this 12th day of August, 2016.

THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

By: _____

Katherine F. Parks, Esq., State Bar No. 6227
Brian M. Brown, Esq., State Bar No. 5233
Thierry V. Barkley, Esq., State Bar No. 724
6590 S. McCarran Blvd., Suite B
Reno, Nevada 89509
Attorneys for Defendant/Cross-Claimant
MDB TRUCKING, LLC

CERTIFICATE OF SERVICE

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

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

_____ hand delivery

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

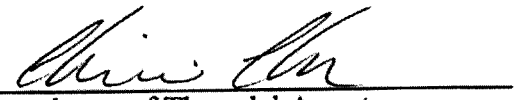
_____ Federal Express/UPS or other overnight delivery fully addressed as follows:

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

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

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

DATED this 15 day of August, 2016.



An employee of Thorndal Armstrong
Delk Balkenbush & Eisinger

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Jacqueline Bryant
Clerk of the Court
Transaction # 6567742 : yviloria

EXHIBIT 4

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

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BY Kellie Hooten DEPUTY

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CHURCHILL

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

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

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

RESPONSES TO GENERAL ALLEGATIONS

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

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

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

RESPONSES TO FIRST CAUSE OF ACTION
(Negligence)

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

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

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

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

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

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

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

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

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

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

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

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

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

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

SECOND AFFIRMATIVE DEFENSE

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

THIRD AFFIRMATIVE DEFENSE

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

cause of action upon which relief can be granted.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages.

FIFTH AFFIRMATIVE DEFENSE

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

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

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

EIGHTH AFFIRMATIVE DEFENSE

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

NINTH AFFIRMATIVE DEFENSE

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

TENTH AFFIRMATIVE DEFENSE

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

ELEVENTH AFFIRMATIVE DEFENSE

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

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

TWELFTH AFFIRMATIVE DEFENSE

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

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

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

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

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

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

TWENTY-SIXTH AFFIRMATIVE DEFENSE

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

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

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

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

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

TWENTY-NINTH AFFIRMATIVE DEFENSE

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

THIRTIETH AFFIRMATIVE DEFENSE

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

THIRTY-FIRST AFFIRMATIVE DEFENSE

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

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

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

FIRST CROSS-CLAIM

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

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

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

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

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

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

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

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

PRAYER FOR RELIEF

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

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

///

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

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

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

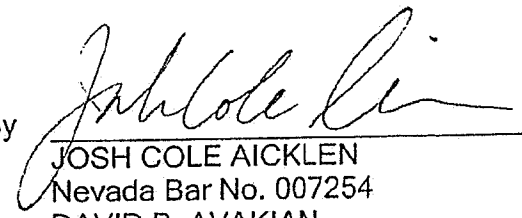
AFFIRMATION

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

DATED this 28th day of July, 2016

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By 

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

CERTIFICATE OF SERVICE

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

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

An Employee of
LEWIS BRISBOIS BISGAARD & SMITH LLP

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Clerk of the Court
Transaction # 6568327 : yviloria

$2515
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CLARK HILL PLLC
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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

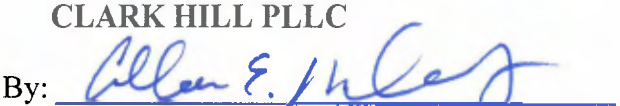
GENEVA M. REMMERDE Plaintiff, vs. MDB TRUCKING, LLC, et al Defendants. AND ALL RELATED CASES.	Case No.: CV16-00976 Dept. No.: 10 **NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that 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 appeals to the Supreme Court of Nevada from the Order granting 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, entered in this action on the 2nd day of February, 2018.

DATED this 8th day of March, 2018

CLARK HILL PLLC

By: 

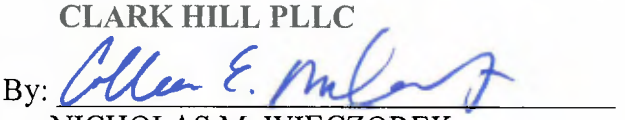
NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
JEREMY J. THOMPSON
Nevada Bar No. 12503
COLLEEN E. MCCARTY
Nevada Bar No. 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Attorneys for Defendant/Cross-Claimant MDB Trucking, LLC

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 March, 2018.

CLARK HILL PLLC

By: 

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COLLEEN E. MCCARTY
Nevada Bar No. 13186
3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Attorneys for Defendant/Cross-Claimant MDB Trucking, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of CLARK HILL PLLC, and on this 8th day of March 2018, a true and correct copy of the foregoing **NOTICE OF APPEAL** was served via electronic service upon the following:

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 CO., INC.

An employee of Clark Hill PLLC

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Clerk of the Court
Transaction # 6568356 : yviloria

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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 NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that 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 appeals to the Supreme Court of Nevada from the Order granting 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, entered in this action on the 8th day of February, 2018.

DATED this 8th 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
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3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Attorneys for Defendant/Cross-Claimant MDB Trucking, LLC

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 March, 2018.

CLARK HILL PLLC

By: Colleen E. McCarty

NICHOLAS M. WIECZOREK
Nevada Bar No. 6170
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Las Vegas, Nevada 89169
Attorneys for Defendant/Cross-Claimant MDB Trucking, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of CLARK HILL PLLC, and on this 8th day of March 2018, a true and correct copy of the foregoing **NOTICE OF APPEAL** was served via electronic service upon the following:

JOSH COLE AICKLEN, ESQ.
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PRODUCTS COMPANY, INC.

DISTRICT COURT

WASHOE COUNTY, NEVADA

JAMES BIBLE, Plaintiff, vs. MDB TRUCKING, LLC, et. al. Defendants. AND ALL RELATED CASES.	Case No. CV16-01914 Dept. 10 **DEFENDANT/CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S REPLY TO MDB'S OPPOSITION TO ITS MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRCP 37 AND NRCP 68**

COMES NOW, Defendant/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 hereby files the instant Reply to MDB's Opposition to its Motion For Attorney's Fees and Costs Pursuant to NRCP 37 and NRCP 68.

This Reply is made and based upon the attached Memorandum of Points and Authorities, the Exhibits, NRCP 37, NRCP 68, NRS 18.010, NRS 18.110, NRS 18.020, NRS 18.005, the pleadings and papers on file in this matter, and upon such oral argument as the Court may entertain at the hearing on this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

A. Awarding VERSA Attorney's Fees and Costs Pursuant to NRCP 37 is Not Unjust

First, MDB's Opposition ignores the Court's order in which it defined the term "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 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 an 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.

See, December 8, 2017, Order granting VERSA's Motion to Strike MDB's Cross-Claim at P. 7:20-27.

As such, and contrary to MDB's Opposition, the Court did find that MDB willfully spoliated critical evidence. Further, as addressed by the Court, willfulness does not require that MDB actually had any intent to harm VERSA; therefore any such argument is irrelevant. Additionally, the Court held that MDB's actions "halted the adversarial process." See, December 8, 2017 Order granting VERSA's Motion to Strike MDB's Cross-Claim at P. 10:8-9.

Second, MDB fails to provide any statutory authority to support it's argument that awarding attorney's fees and costs for its willful spoliation of evidence is unjust. Just because MDB alone settled the Plaintiffs' cases (after refusing all of VERSA's numerous settlement overtures) it does not provide any factual or legal support that granting VERSA attorney's fees and costs is unjust. Conversely, it would be unjust for the Court not to award VERSA attorney's fees and costs, because MDB knew prior to filing its cross-claim that it destroyed crucial evidence VERSA would need in order to defend its case. In light of the willful destruction of evidence, MDB sued VERSA requiring them to spend

numerous hours and money in order to defend the case to the best of its ability.

The plain text of NRCP 37 does not require that MDB act with a malicious purpose in order to award attorney's fees and costs. It simply requires the Court to award attorney's fees and costs in addition to sanctions such as striking a party's complaint, the exact sanction in this litigation. See, NRCP 37. As such, the Court should award VERSA all of its attorney's fees and costs pursuant to NRCP 37 due to the Court Striking MDB's Cross-Claim.

B. VERSA is Also Entitled to an Award of Attorney's Fees and Costs Pursuant to NRCP 68

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

The intent of VERSA's underlying Motion is not to argue the "what if" scenario that could have occurred if MDB had not spoliated critical evidence. Although MDB wishes it could go back in time and change the spoliation, they cannot. As such, this factor is simple - MDB knew prior to adding VERSA as a party in the action that it had destroyed crucial evidence that VERSA needed to prove its defense to the cross-claims (as well as evidence MDB needed to prove its own claims). Knowing that it had "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 filed a suit against VERSA. See, December 8, 2017, Order granting VERSA's Motion to Strike MDB's Cross-Claim at P. 10:9-10. There is ample evidence that MDB's cross-claims were not brought and maintained in good faith. As such, this factor weighs heavily toward awarding VERSA's attorneys" fees and costs incurred after May 4, 2017, for rejecting VERSA's good faith offers of judgment.

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

VERSA served it's Offer of Judgment on MDB prior to MDB settling the Plaintiff's claims and after MDB's PMK's testified that it had destroyed critical evidence that VERSA would need to defend MDB's claims. At the time of the offers of judgment, VERSA was aware that MDB and VERSA's expert found no mechanical or design defect with the

subject valve and that MDB's actions prohibited VERSA's ability to adequately defend itself in the subject litigation. As such, VERSA believed (and still believes) that it should not need to offer MDB any money, nonetheless the large amount it offered. However, VERSA wanted to "buy its peace" to avoid costly litigation and negative publicity. MDB clearly had a different agenda.

Lastly, contrary to MDB's Opposition, VERSA did meaningfully participate in mediation. In fact, two business days after mediation, VERSA and RMC LAMAR were actually able to offer the settlement authority in which MDB demanded from them during mediation. However, MDB reneged and refused to even discuss settlement. That was grossly unreasonable.

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

MDB again attempts to bring up the strengths and weakness of the underlying case in support of it's reasoning for rejecting the offers of judgment. However, MDB's arguments are completely irrelevant, because all of the arguments are based on a "what if" case. It is easy to argue the strengths of any given case in hindsight, when your client spoliated highly relevant evidence. The Court already ruled that MDB's actions prohibited a jury from being able to evaluate VERSA's case because it could not test the actual components on the subject truck and trailer at the time of the subject incident giving MDB an unfair advantage in the litigation. As such, MDB's rejection was grossly unreasonable because it was aware prior to filing suit against VERSA that its actions would have consequences, including the Court striking it's cross-claim. Consequently, this factor strongly favors awarding VERSA all of its requested attorney's fees and costs.

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

VERSA is perplexed that MDB argues that $724.50 in attorney's fees is unreasonable. MDB cites to one example as to why the $724.50 in attorneys fees is unreasonable. The example cited is for the attorney to review a document that was filed

in this matter. As MDB is aware, this case has not been consolidated with the other related matters and different documents are filed in different cases. As the attorney on a case, it is his or her job to look at the documents which are filed. MDB's argument is either suggesting that the attorney not read and review documents filed in a case or suggest that the attorney should do the work but just do it for free. Either way MDB's argument is nonsensical. Further, the attorney only billed a .1 for review of the document which is the lowest billing unit available.

The amount of VERSA's attorney's fees and costs are reasonable given MDB's untenable legal position and destruction of critical evidence. VERSA is entitled to an award of its attorney's fees and costs after May 4, 2017 through the present (and costs from the case inception to the present as the prevailing party). Consequently, Defendant seeks an award of **$724.50** in attorney's fees and **$1,275.74** in costs, totaling **$2,000.24**.

II. CONCLUSION

For the foregoing reasons, VERSA requests an award of its reasonable attorney's fees and costs totaling **$2,000.24** ($724.50 in attorney's fees and $1275.74 in costs) pursuant to NRCP 37 and NRCP 68. Furthermore, VERSA requests that this Court award the attorney's fees and costs incurred in bringing the instant Motion. VERSA will supplement the briefing 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 12th of March, 2018.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/Josh Cole Aicklen

JOSH COLE AICKLEN
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DAVID B. AVAKIAN
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Las Vegas, Nevada 89118
Attorneys for Cross-Defendant VERSA PRODUCTS COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th of March, 2018, a true and correct copy of **DEFENDANT/CROSS-DEFENDANT VERSA PRODUCTS COMPANY, INC.'S REPLY TO MDB'S OPPOSITION TO ITS MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRCP 37 AND NRCP 68** was served electronically via the Court's e-filing system addressed as follows:

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LEWIS BRISBOIS BISGAARD & SMITH LLP

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DISTRICT COURT

WASHOE COUNTY, NEVADA

GENEVA M. REMMERDE, Plaintiff, vs. MDB TRUCKING, LLC, et. al. Defendants.	Case No. CV16-00976 Dept. 10 **THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S REPLY TO MDB'S OPPOSITION TO ITS MOTION FOR ATTORNEY'S 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 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 files the instant Reply to MDB's Opposition to its Motion For Attorney's Fees and Costs Pursuant to NRCP 37 and NRCP 68.

This Reply is made and based upon the attached Memorandum of Points and Authorities, the Exhibits, NRCP 37, NRCP 68, NRS 18.010, NRS 18.110, NRS 18.020, NRS 18.005, the pleadings and papers on file in this matter, and upon such oral argument as the Court may entertain at the hearing on this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL ARGUMENT

A. Awarding VERSA Attorney's Fees and Costs Pursuant to NRCP 37 is Not Unjust

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> 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 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 an 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.

See, December 8, 2017, Order granting VERSA's Motion to Strike MDB's Cross-Claim at P. 7:20-27.

As such, and contrary to MDB's Opposition, the Court did find that MDB willfully spoliated critical evidence. Further, as addressed by the Court, willfulness does not require that MDB actually had any intent to harm VERSA; therefore any such argument is irrelevant. Additionally, the Court held that MDB's actions "halted the adversarial process." See, December 8, 2017 Order granting VERSA's Motion to Strike MDB's Cross-Claim at P. 10:8-9.

Second, MDB fails to provide any statutory authority to support it's argument that awarding attorney's fees and costs for its willful spoliation of evidence is unjust. Just because MDB alone settled the Plaintiffs' cases (after refusing all of VERSA's numerous settlement overtures) does not provide any factual or legal support that granting VERSA attorney's fees and costs is unjust. Conversely, it would be unjust for the Court not to award VERSA attorney's fees and costs, because MDB knew prior to filing its Third-Party Complaint that it destroyed crucial evidence VERSA would need in order to defend its case. In light of the willful destruction of evidence, MDB sued VERSA requiring them to

spend numerous hours and money in order to defend the case to the best of its ability.

The plain text of NRCP 37 does not require that MDB act with a malicious purpose in order to award attorney's fees and costs. It simply requires the Court to award attorney's fees and costs in addition to sanctions such as striking a party's complaint, the exact sanction in this litigation. See, NRCP 37. As such, the Court should award VERSA all of its attorney's fees and costs pursuant to NRCP 37 due to the Court Striking MDB's Cross-Claim.

B. VERSA is Also Entitled to an Award of Attorney's Fees and Costs Pursuant to NRCP 68

1. MDB Should Pay VERSA's Attorney's Fees and Costs Because its Third-Party Complaint Was Not Brought and/or Maintained in Good Faith

The intent of VERSA's underlying Motion is not to argue the "what if" scenario that could have occurred if MDB had not spoliated critical evidence. Although MDB wishes it could go back in time and change the spoliation, they cannot. As such, this factor is simple - MDB knew prior to adding VERSA as a party in the action that it had destroyed crucial evidence that VERSA needed to prove its defense to the cross-claims (as well as evidence MDB needed to prove its own claims). Knowing that it had "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 filed a suit against VERSA. See, December 8, 2017, Order granting VERSA's Motion to Strike MDB's Cross-Claim at P. 10:9-10. As such, there is ample evidence that MDB's Third-Party Complaint was not brought and maintained in good faith. As such, this factor weighs heavily toward awarding VERSA's attorneys" fees and costs incurred after May 4, 2017, for rejecting VERSA's good faith offers of judgment.

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

VERSA served its offers of judgment on MDB prior to MDB settling the Plaintiff's claims and after MDB's PMK's testified that it had destroyed critical evidence that VERSA would need to defend MDB's claims. At the time of the offer of judgment, VERSA was

aware that MDB and VERSA's expert found no mechanical or design defect with the subject valve and that MDB's actions prohibited VERSA's ability to adequately defend itself in the subject litigation. As such, VERSA believed (and still believes) that it should not need to offer MDB any money nonetheless the large amount it offered. However, VERSA wanted to "buy its peace" to avoid costly litigation and negative publicity. MDB clearly had a different agenda.

Lastly, contrary to MDB's Opposition, VERSA did meaningfully participate in mediation. In fact, two business days after mediation, VERSA and RMC LAMAR were actually able to offer the settlement authority in which MDB demanded from them during mediation. However, MDB reneged and refused to even discuss settlement. That was grossly unreasonable.

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

MDB again attempts to bring up the strengths and weakness of the underlying case in support of it's reasoning for rejecting the offer of judgment. However, MDB's arguments are completely irrelevant, because all of the arguments are based on a "what if" case. It is easy to argue the strengths of any given case in hindsight, when your client spoliated highly relevant evidence. The Court already ruled that MDB's actions prohibited a jury from being able to evaluate VERSA's case because it could not test the actual components on the subject truck and trailer at the time of the subject incident giving MDB an unfair advantage in the litigation. As such, MDB's rejection was grossly unreasonable because it was aware prior to filing suit against VERSA that its actions would have consequences, including the Court striking it's Third-Party Complaint. Consequently, this factor strongly favors awarding VERSA all of its requested attorney's fees and costs.

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

VERSA is perplexed that MDB argues that $731.00 in attorney's fees is unreasonable. MDB cites to one example as to why the $731.00 in attorneys fees is

unreasonable. The example cited is for the attorney to review a document that was filed in this matter. As MDB is aware, this case has not been consolidated with the other related matters and different documents are filed in different cases. As the attorney on a case, it is his or her job to look at the documents which are filed. MDB's argument is either suggesting that the attorney not read and review documents filed in a case or suggest that the attorney should do the work but just do it for free. Either way MDB's argument is nonsensical. Further, the attorney only billed a .1 for review of the document which is the lowest billing unit available.

The amount of VERSA's attorney's fees and costs are reasonable given MDB's untenable legal position and destruction of critical evidence. VERSA is entitled to an award of its attorney's fees and costs after May 4, 2017 through the present (and costs from the case inception to the present as the prevailing party). Consequently, Defendant seeks an award of **$731.00** in attorney's fees and **$413.00** in costs, totaling **$1,144.00**.

II. CONCLUSION

For the foregoing reasons, VERSA requests an award of its reasonable attorney's fees and costs totaling **$1,144.00** ($731.00 in attorney's fees and $413.00 in costs) pursuant to NRCP 37 and NRCP 68. Furthermore, VERSA requests that this Court award the attorney's fees and costs incurred in bringing the instant Motion. VERSA will supplement the briefing 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 12th of March, 2018.

Respectfully Submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

By /s/Josh Cole Aicklen

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Attorneys for Cross-Defendant VERSA PRODUCTS COMPANY, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th of March, 2018, a true and correct copy of **THIRD-PARTY DEFENDANT VERSA PRODUCTS COMPANY, INC.'S REPLY TO MDB'S OPPOSITION TO ITS MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRCP 37 AND NRCP 68** was served electronically via the Court's e-filing system addressed as follows:

Matthew C. Addison, Esq.
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/s/ Susan Kingsbury
An Employee of
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MDB Trucking, LLC

SECOND JUDICIAL 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. No.: 10 **REPLY TO OPPOSITION TO MOTION TO RETAX COSTS**

Third-Party Plaintiff 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 Third- Party Defendant Versa Products Company, Inc.'s Opposition to Third-Party Plaintiff MDB trucking LLC's Motion to Retax and Settle Costs ("Opposition" and "Motion," 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.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

ARGUMENT

A. 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 "[t]his 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 1:25-26. 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 4:13-14.

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 5:18-20. 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's Motion to Retax Costs, and make yet another new argument, 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 as the entirety of the requested costs predated the Offer of Judgment.

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.

DATED this 19th day of March, 2018.

CLARK HILL PLLC

By: Colleen E. McCarty

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3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Attorneys for Defendant/Cross-Claimant MDB Trucking, LLC

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 19th day of March, 2018.

CLARK HILL PLLC

By: Colleen E. McCarty

NICHOLAS M. WIECZOREK
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COLLEEN E. MCCARTY
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3800 Howard Hughes Parkway, Suite 500
Las Vegas, Nevada 89169
Attorneys for Defendant/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 19th day of March, 2018, I served a true and correct copy of the foregoing **REPLY TO OPPOSITION TO MOTION TO RETAX 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.
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VERSA PRODUCTS COMPANY, INC.

An employee of Clark Hill PLLC

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SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

JAMES BIBLE Plaintiff, vs. MDB TRUCKING, LLC, et al Defendants. AND ALL RELATED CASES.	Case No.: CV16-01914 Dept. No.: 10 **REPLY TO OPPOSITION TO MOTION TO RETAX 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," 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.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

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 5:8-10.

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).

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 $198.00 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 5:27-28 and 6:1-2. 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, costs to authorize, expedite and ship the medical records, medical bills and tax information of plaintiff James Bible 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 would in no way impact whether the

Versa valve was defective and would subject Versa to MDB's cross-claim for Contribution. Further, the costs for services to authorize, rush and ship records are not taxable costs pursuant to NRS 18.005.

Accordingly, MDB's Motion to Retax Costs should be granted as to the additional amount of $1,053.87, where such costs were not taxable and were wholly unrelated to MDB's cross-claim for Contribution, the only claim upon which Versa prevailed.[1]

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 "[t]his 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 1:25-26. 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 4:13-14.

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 7:17-18. 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,

[1] 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 $21.87, which costs predated the Offer of Judgment.

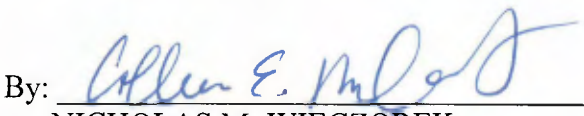
III.

CONCLUSION

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

DATED this 19th day of March, 2018.

CLARK HILL PLLC

By: 

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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 19th day of March, 2018

CLARK HILL PLLC

By:

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Clark Hill PLLC, and that on this 19th day of March, 2018, I served a true and correct copy of the foregoing **REPLY TO OPPOSITION TO MOTION TO RETAX 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:

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An employee of Clark Hill PLLC

Litigation SERVICES

CERTIFIED COPY

In the Matter Of:

Fitzsimmons vs. MDB Trucking, et al.

TRANSCRIPT OF PROCEEDINGS

April 06, 2018

Job Number: 461993

1 Code: 4185
MARIAN S. BROWN PAVA, CCR #169
2 Sunshine Litigation Services
151 Country Estates Circle
3 Reno, Nevada 89511
(775) 323-3411
4 Court Reporter

5 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 THE HONORABLE ELLIOTT A. SATTLER, DISTRICT JUDGE
--oOo--
8

9 CONS: E & C FITZSIMMONS, Case No. CV15-02349
et al.,
10 Plaintiffs, Dept. No. 10
vs.
11
MDB TRUCKING, LLC, et al.,
12 Defendants.
_____/
13 GENEVA M. REMMERDE, Case No. CV16-00976
Plaintiff,
14 vs. Dept. No. 10

15 MDB TRUCKING, LLC, et al.,
Defendants.
16 _____/
JAMES BIBLE, Case No. CV16-01914
17 Plaintiff,
vs. Dept. No. 10
18
MDB TRUCKING, LLC, et al.,
19 Defendants.

20

21 TRANSCRIPT OF PROCEEDINGS
HEARING ON MOTION FOR ATTORNEY FEES AND COSTS
22 AND MOTION TO RETAX

23 Friday, April 6, 2018

24 Reno, Nevada

1 APPEARANCES:

2 FOR VERSA VALVE — JOSH COLE AICKLEN, ESQ.
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RENO, NEVADA, FRIDAY, APRIL 6, 2018, 10:07 A.M.
2 -oOo-
3
4 THE COURT: Good morning, everyone. Please be seated.
5 MR. AICKLEN: Good morning, Your Honor.
6 THE COURT: This is CV15-02349. I'm just going to
7 refer to them all as MDB versus Versa Valve. Even though
8 that's not the exact way that the parties are situated, that
9 is -- those are the parties that we're here about.
10 The original case is Fitzsimmons versus MDB Trucking.
11 So we're here on CV15-02349. Additionally, we are here on
12 Remmerde versus MDB Trucking, CV16-00976. And we are here on
13 Bible versus MDB Trucking, CV16-01914. Ms. McCarty is here on
14 behalf of MDB Trucking.
15 Good morning to you, Ms. McCarty.
16 MS. McCARTY: Good morning, Your Honor.
17 THE COURT: And Mr. Aicklen is here on behalf of Versa
18 Valve.
19 Good morning again to you, Mr. Aicklen.
20 MR. AICKLEN: Good morning, sir.
21 THE COURT: I surprised Mr. Aicklen by bumping into
22 him at the local Starbucks this morning, so I said good morning
23 to him already. I think I caught him off guard because I don't
24 wear the robe out in public, so --

1 MR. AICKLEN: You know, it's like seeing your teacher
2 at the grocery store. You don't expect to see them there.
3 THE COURT: It took him a split second when I said
4 good morning, that he went like, "Who the heck are you?"
5 MR. AICKLEN: Oh, it's the guy I came to see today.
6 THE COURT: It's that guy. So anyway, I did see
7 Mr. Aicklen this morning before today -- before we came in here
8 today.
9 We are here on separate motions in each case. They're
10 basically identical motions, if not very similar. They are
11 both Motions For Attorney's Fees and Costs, and Motions to
12 Retax Costs.
13 The Court has, in CV15-02349, received and reviewed
14 the January 5, 2018, file-stamped Defendant/Cross-Defendant
15 Versa Products Company, Incorporated's Motion For Attorney's
16 Fees and Costs Pursuant to NRCP 37 and NRCP 68, with the
17 associated exhibits attached thereto. There was an errata to
18 that document filed on January 10th of 2018. The Court has
19 received and reviewed that, as well.
20 Additionally, the Court has received and reviewed the
21 January 25, 2018, file-stamped Cross-Claimant MDB Trucking,
22 LLC's opposition to cross-defendant Versa Products Company,
23 Incorporated's Motion For Attorney's Fees and Costs Pursuant to
24 NRCP 37 and NRCP 68.

1 And the Court has received and reviewed the
2 February 5, 2018, file-stamped Defendant/Cross-Defendant Versa
3 Products Company, Incorporated's Reply to MDB's Opposition to
4 Its Motion For Attorney's Fees and Costs Pursuant to NRCP 37
5 and NRCP 68. That matter was submitted for the Court's
6 consideration on February 5th of 2018.
7 In the same case the Court has received and reviewed
8 the January 5, 2018, file-stamped Defendant/Cross-Defendant
9 Versa Products Company, Incorporated's Verified Memorandums of
10 Costs, and the associated exhibits attached thereto.
11 The Court has received and reviewed the January 16,
12 2018, file-stamped Cross-Claimant MDB Trucking, LLC's Motion to
13 Retax and Settle Cross-Defendant Versa Products Company,
14 Incorporated's Verified Memorandum of Costs.
15 The Court has also received and reviewed the
16 February 2, 2018, file-stamped Defendant/Cross-Defendant Versa
17 Products Company, Incorporated's Opposition to Cross-Claimant
18 MDB Trucking, LLC's Motion to Retax Costs, with all of the
19 exhibits.
20 The Court has also received and reviewed the
21 February 12, 2018, file-stamped Cross-Claimant MDB Trucking,
22 LLC's Reply in Support of Motion to Retax and Settle
23 Cross-Defendant Versa Products Company, Incorporated's Verified
24 Memorandum of Costs.

1 That issue was submitted for the Court's consideration
2 on February 12th of 2018.
3 In the nonconsolidated cases, the Remmerde and the
4 Bible cases -- starting with the Remmerde case, the Motion For
5 Attorney's Fees and Costs is file-stamped February 9th of 2018.
6 The Opposition to the Motion For Attorney's Fees and Costs is
7 file-stamped March 1st of 2018. The reply is file-stamped
8 March 12th of 2018, and it was submitted contemporaneously for
9 the Court's consideration.
10 Regarding the Motion For Costs and to Retax Costs in
11 the Remmerde case, the Verified Memorandum of Costs is
12 file-stamped February 9th of 2018. The Request to Retax is
13 file-stamped February 20th of 2018. The Opposition to the
14 Request For Retax is file-stamped March 8th of 2018, and the
15 Reply to the Motion to Retax Costs is file-stamped March 19th
16 of 2018, and was contemporaneously submitted to the Court for
17 consideration.
18 I'm running out of breath, but here we go.
19 Regarding the Bible case, I believe that the filing in
20 the Bible case mirrors the filing in the Remmerde case, the
21 dates of the filings; is that correct?
22 MR. AICKLEN: Yes, sir, it is.
23 THE COURT: And, Ms. McCarty, is that correct from
24 your perspective, as well?

1 MS. McCARTY: I believe it is.

2 THE COURT: Okay. Then I am not going to waste any

3 more breath going through everything that has been filed. The

4 parties and the Court are very familiar with the facts and the

5 circumstances relative to the case.

6 Given the significant amount of attorney's fees and

7 costs, and the issues that can be argued about expert fees and

8 whether or not somebody should have been or can be determined

9 to be an expert, and how much that expert should be provided

10 for, assuming the costs are granted, caused the Court to set

11 these three cases for oral argument.

12 What we will do is -- Mr. Aicklen, I think that you

13 are the primary moving party, so you can just make an omnibus

14 argument regarding the motions themselves.

15 Ms. McCarty, you're the opposing party, because you

16 filed the oppositions to the motions and you're requesting the

17 re-taxing of those costs, so then I'll give you the opportunity

18 to respond to all of Mr. Aicklen's argument. And then

19 Mr. Aicklen will get the opportunity to make the final

20 argument. And I will probably take the issue under advisement

21 at that point and issue a written order in each case.

22 But I'll give you the opportunity just to kind of make

23 an overall argument. I think that would be more efficient than

24 starting with the Fitzsimmons case and then we'll go to the

1 Remmerde case, and then we'll go to the Bible case.
2 One thing that jumped out at me, Mr. Aicklen, as I was
3 reviewing the motion practice, it -- I don't want to say it
4 made me scratch my head, but I just wasn't quite sure what --
5 what to make of it. So I'll give you just something that you
6 might want to talk about during your argument regarding your
7 request for attorney's fees and costs. And I will only refer
8 to the Fitzsimmons motion practice as I go through this, unless
9 there is some specific reason that you think I need to look at
10 one of the other motions.
11 MR. AICKLEN: I think the issues are similar. I think
12 you can pretty much take them all together.
13 THE COURT: I think so. But I'm just looking
14 specifically at the Fitzsimmons motion. What I'm talking about
15 is on page 7 of your Motion For Attorney's Fees and Costs.
16 In a general sense you indicate in the Procedural
17 History portion of the motion, beginning at page 6 and then
18 continuing into page 7, that Versa, your client, offered to pay
19 a thousand dollars per plaintiff as your amount of contribution
20 for the injuries that were suffered by the plaintiffs. So
21 $7,000 in total. And that that offer of judgment was made on
22 May 4th of 2017.
23 Then you say: "On May 5th the parties attended a
24 mediation in an attempt to resolve the matter." Going on to

1 page 7, you say, beginning at line 1, quote:
2 "Unfortunately, MDB and Versa were unable to resolve
3 the cases. In an attempt to resolve the matters, two business
4 days later Versa offered the amount MDB requested at mediation,
5 but MDB refused to even discuss settlement. On May 15th of
6 2017 Versa filed its motion to strike MDB's cross-claim
7 pursuant to NRCP 37. And then on May 22, 2017, Versa" --
8 "Versa's seven offers of judgment to MDB lapsed," close quote.
9 So was it a separate offer, written offer of judgment?
10 Was it just a conversation that you were having? And by "it,"
11 I mean, it sounds like you make the offer for $7,000. They're
12 not interested. Mediation occurs. And as I read that, it
13 leads me to the conclusion that MDB suggested some amount that
14 Versa should proffer as contribution to resolve the cases. And
15 the way that paragraph is written, it sounds like after that
16 you come in and say, "We'll give you that." And they say "No"
17 to that, as well.
18 MR. AICKLEN: Yes, sir. That is correct.
19 THE COURT: What was that amount?
20 MR. AICKLEN: So the amount actually changed. At
21 mediation -- and I was going to raise this issue, too. I'm
22 glad you brought it up. I was going to raise it, as well.
23 Because in the opposition to my motion, it appears as though
24 the only money that was ever offered was the 7,000. That is

1 not correct. Those were offered in individual offers of
2 judgment for strategic reasons.
3 But there was an omnibus mediation, meaning all of the
4 cases, with Bob Enzenberger. And at that mediation between
5 the -- what I'll call the product-liability defendants, which
6 at the time was my client, Versa Valve Company and also Ramco,
7 the trucking -- or you recall, they made the trailers?
8 THE COURT: Right.
9 MR. AICKLEN: -- there was a demand from MDB of
10 $175,000, which was approximately 10 percent of the settlement
11 monies that were paid in the omnibus plaintiffs mediation.
12 THE COURT: All of the plaintiffs.
13 MR. AICKLEN: Right, exactly. And so I offered
14 $100,000. Ramco offered $50,000. And they said, "No. 175- or
15 nothing." And so it broke down.
16 THE COURT: But that offer was not in the form of a
17 written offer of judgment similar to that which you made for
18 the thousand dollars for each of the plaintiffs in the
19 preceding -- or prior to the mediation?
20 MR. AICKLEN: That is correct.
21 THE COURT: Okay.
22 MR. AICKLEN: It was made during the course of
23 mediation. And normally it wouldn't even be discussed because
24 obviously you don't talk about settlement when you are talking

1 about liability. But you do talk about settlement when you
2 talk about whether it's unreasonable to -- to accept or reject
3 offers of judgment.
4 So then two days later, two business days -- I believe
5 that mediation was held on a Friday. On a Monday my partner --
6 I told my partner, "You know what?" -- I won't say where I got
7 the extra money, because, you know, it doesn't really matter.
8 I'm not waiving the privilege -- "Call up Mr. Wieczorek and
9 tell him that we'll do the 175-," which he did. And then there
10 was never a response. And thereafter, when the OOJ's lapsed, I
11 said, "All right. Get the motion on file, and let's go." And
12 the "motion" being the motion to strike.
13 THE COURT: By "OOJ's" you mean "offers of judgment"?
14 MR. AICKLEN: Yes, sir.
15 THE COURT: Sometimes when we use acronyms, we throw
16 them out quickly, and it's not clear what they are. So I
17 always like to just make sure what we're talking about.
18 MR. AICKLEN: Does that answer your inquiry, sir?
19 THE COURT: Well, it does. I'll wait to hear from
20 Ms. McCarty about what happened with that, as well.
21 It's not an official offer of judgment in a written
22 format, like we have for the $1,000 per plaintiff. It is
23 somewhat of a head scratcher if -- if you wanted 175- and
24 two days later you offered 175- and didn't get it, and then the

1 case continues on. But I guess we'll consider that at some
2 point in the future.
3 What argument would you like to make about both the
4 motion for attorneys' fees and costs and the motion to retax
5 the costs?
6 MR. AICKLEN: Well, the first thing I would like to
7 do, Your Honor, is make sure that we are all using the same
8 standards. Because if you look at the -- my motion and the
9 opposition to it, there are different standards being
10 proffered. And I as the moving party contend that the standard
11 here for you to award me my fees and costs is, it would be --
12 it's within your sound discretion, and, therefore, to overturn
13 it would be an abuse of discretion by the -- found, you know,
14 by the Supreme Court filed by the trial court. So we're
15 talking about an abuse of discretion standard.
16 And the second thing is that, the opposition states --
17 talks about intentional and the desire to harm and all those
18 things. Those things don't matter. And what matters is, is it
19 a willful discovery abuse? And granted, it is sub silentio
20 within your order, but you found a willful discovery abuse.
21 You talked about in the order that "willful" doesn't
22 mean the intent to harm, "willful" means the intent to act.
23 And, in fact, you cited to Childers v. State, 100 Nev. 280:
24 "The Nevada Supreme Court found the term willful "implies

1 simply a purpose or willingness to commit the act, or to make
2 the omission in question."
3 And then you continue later, citing Havas, that
4 thereafter, the Nevada Supreme Court has not opined that it is
5 necessary to establish wrongful intent to establish
6 willfulness.
7 So I just want to make it clear that we are not
8 talking about the standard which plaintiff is arguing in her
9 opposition of an intent to harm. That is not what the standard
10 is. It's the willfulness to act. And there's no question we
11 have willful action here, because we heard the witnesses on the
12 stand say, "Yeah, I threw away the evidence." So the -- I
13 don't -- nobody contended that they threw away the evidence in
14 order to harm my client, but that's not what we have to prove
15 here. What we have to prove is a willful violation, and that's
16 what you found when you granted the motion.
17 Now, if you look at -- I think the most instructive
18 case, and the closest to what we have here, I think is Johnny
19 Ribeiro. Now, granted, in Johnny Ribeiro they found an intent
20 to harm, but they didn't say that it was necessary. It was
21 just a willful violation during discovery.
22 And in Johnny Ribeiro they look at the issue of 37,
23 NRCP 37(b)(2)(D) and the award of attorney's fees. And it is
24 almost a given in the Johnny Ribeiro case that attorney's fees

1 are going to be awarded.

2 THE COURT: I have never read that case in that way.

3 But "it's almost a given." I don't know what "almost a given"

4 is. I don't know --

5 MR. AICKLEN: I am going to cite it to you.

6 THE COURT: -- what percentage --

7 MR. AICKLEN: The Court is talking about, we -- it

8 says at page 9, which is -- or strike that. That's headnote 9.

9 So 106 Nev. 93. It says: "Having stated the pertinent abuse

10 of discretion standard of review, we must now apply it."

11 And this is why I say it's almost a given. The

12 Court's money sanction was patently proper.

13 "Based on the rules just stated we further hold that

14 the district court did not abuse its discretion in imposing the

15 more severe sanctions of dismissal and entry of default."

16 That was the entirety of the analysis. And the reason

17 it was so clear to the Court in Johnny Ribeiro is, because if

18 you look at the language of the statute it says -- NRCP

19 37(B)(2)(D) provides that: Where a court strikes a party's

20 pleading, in lieu of any of the foregoing orders or in addition

21 thereto, the court shall require the party to pay the

22 reasonable expenses, including attorney's fees, unless the

23 court finds that the failure was substantially justified or

24 that the circumstances make an award of expenses unjust.

1 THE COURT: Right. And so -- it's almost like you're
2 trying to parse that last section out, "or if the Court would
3 find it to be unjust."
4 As you know, MDB is arguing: Listen -- to
5 paraphrase -- you've already thrown our entire case out. We
6 get nothing. We ate the entire sandwich, so to speak.
7 I don't even know if that's a saying. I just made
8 that up, but anyway --
9 We ate the whole thing. We took the whole
10 responsibility. We settled it. We thought that we were going
11 to go to trial and at least -- they, I think, had a very
12 good-faith belief that they were going to prevail at trial --
13 and we didn't for the reasons that we all know about. That's
14 enough. That is a sanction, a great-enough sanction.
15 And also, theoretically, if the case were to have gone
16 to trial and MDB would have prevailed -- theoretically, would
17 have prevailed -- none of us would guess that the amount that
18 Versa would be paying would be less than or equal to $7,000.
19 It's either -- it would be zero, and then your offers of
20 judgment you do, making the same argument, but it would be a
21 much greater amount of attorney's fees because you would have
22 gone all the way through trial. But the argument would be the
23 same: We offered 7,000, they didn't meet or exceed it, and,
24 therefore, we are entitled to our attorney's fees.

1 Or alternatively, if -- if MDB would have prevailed, I
2 think it is very reasonable to assume it would have been in
3 some amount greater than $7,000, just based on the facts of the
4 case. It would have either been zero or it would have been a
5 pretty good chunk.
6 Because if memory serves me correctly from Ms. McCarty
7 and Mr. Wieczorek's pleading, the amount of $7,000 is like
8 .05 percent of what the settlement was. So I seriously doubt,
9 knowing juries as I do, that they would have come back with
10 point -- that Versa is responsible for .05 percent of the
11 damages. It would have been something had they prevailed. And
12 so you wouldn't be making this argument at all, because you
13 would not have met or exceeded your offer. They would have
14 exceeded the $7,000.
15 So they're basically saying: Look, you won. You
16 know, why shouldn't I exercise some discretion which I'm
17 totally allowed to do pursuant to that last portion of the --
18 of Nevada Rule of Civil Procedure 37 that you've cited? Why
19 should I just disregard that part?
20 MR. AICKLEN: Well, I don't think you would be
21 disregarding it. I think what you would be doing is looking at
22 the facts and saying: Was their rejection of those $1,000
23 offers -- which you're right, they were not, you know, the
24 $175,000 that had been made at the mediation, or 150- at

1 mediation, 175- later on, jointly by the defendants. They were
2 not that amount.
3 But what they were, were a very clear line that, if
4 you do not recover, if you don't take this thousand dollars and
5 you do not recover, then I am going to go back after my
6 attorney's fees and costs. My client is going to go back after
7 my attorney's fees and costs.
8 And the question becomes: Was it unreasonable for
9 them at that time to reject that, to not accept it? And the
10 answer is, yes, I believe. And the reason that your award of
11 attorney's fees and costs would not be unjust is because they
12 knew at that time -- even before I filed that motion -- they
13 knew at that time that they had thrown away that evidence.
14 They threw away the evidence that was needed -- was the crucial
15 part of the product liability claim.
16 So I would make it akin to this: If I get an offer of
17 judgment from a plaintiff, and I'm thinking, "Oh, no, I'm not
18 going to take that offer of judgment because, you know, I can
19 get a defense of them at trial." But if my client or I, or a
20 combination of the two, have thrown away my crucial evidence,
21 then I need to look at that offer of judgment and say, "Okay.
22 It's not much money, but I know I can't prove my case; and,
23 therefore, I know that the" -- "if they do prevail they are
24 going to come back after me for my attorney's fees and costs."

1 So the crucial, key element here, why it is not unjust
2 and why it is within your discretion, is that they knew that
3 they had thrown away that evidence when I sent those offers
4 over.
5 THE COURT: That's true. But if I remember the
6 chronology of the case correctly, you make the offer of
7 judgment for $1,000 per plaintiff, either the next day or a day
8 or two thereafter is the mediation, then you, as you said,
9 subsequently -- there's at least some proffer of the full
10 amount that they're requesting.
11 But you file -- you filed the motion for the
12 case-concluding sanctions after the mediation. Then it was
13 fully briefed. Mr. Wieczorek and Ms. McCarty zealously
14 advocated for their clients and fought a solid, good fight
15 about whether or not case-concluding sanctions were
16 appropriate.
17 I don't see that their rejection at the time was
18 unreasonable simply because you had filed the motion that it
19 took an extended period of time to resolve. The motion had to
20 be completely briefed, then it had to be submitted, then the
21 Court had to set oral argument, and then I had to write the
22 order regarding the motion itself.
23 So I'm not so sure that just because you make the
24 offer of judgment in the amount of $1,000 per plaintiff, they

1 don't accept it, and eventually it lapsed, and then immediately
2 thereafter -- or after the mediation, you file -- you file a
3 motion that hasn't even been responded to, that I should just
4 assume, as you're suggesting, that they should have known that
5 this was going to happen because they threw away the evidence.
6 It appears clear to me they thought -- and, again,
7 zealously argued -- that the Court should not even grant the
8 motion for case-concluding sanctions.
9 MR. AICKLEN: But is that --
10 THE COURT: Whether they were surprised or not that I
11 did, but --
12 MR. AICKLEN: But is that a reasonable -- it's got to
13 be unreasonable; right? Is that a reasonable position to take
14 when you know that the crucial evidence in the case has been
15 thrown away? And I think --
16 THE COURT: I think one of the things possibly that
17 you're missing, Mr. Aicklen, in your analysis is, I don't know
18 whether or not Mr. Wieczorek knew that one of the witnesses
19 from MDB or one of the employees from MDB was going to testify
20 that what you alleged occurred, actually had happened in the
21 past. That was something that, based on the order that I
22 wrote, I strongly considered. I forget what the person's name
23 was. But there was this question of fraying, and the witness
24 actually said, "Yeah, that has happened," or he had seen that.

1 MR. AICKLEN: Yes.

2 THE COURT: I don't know if Mr. Wieczorek was

3 anticipating that testimony. You can certainly argue that he

4 should have, or he should have talked to his witness ahead of

5 time. But I'm still not to the point where it's unreasonable,

6 simply because they had thrown the -- they knew the evidence

7 was gone. There's no question about that. I'm not disagreeing

8 with you at all. Mr. Wieczorek, Ms. McCarty, and MDB knew that

9 their employees had disposed of the cabling --

10 MR. AICKLEN: Sockets and the plugs.

11 THE COURT: Right. But I don't know that just because

12 they knew that, that it had been thrown away, they should just

13 say, "Well, we should take whatever Versa throws at us."

14 That's basically what you're suggesting. Because they knew it

15 was gone, we should take the thousand dollars. Or

16 alternatively, maybe you should have just offered, to use your

17 analysis: Why don't you just dismiss us and we'll waive our

18 attorney's fees and costs?

19 Because the --

20 MR. AICKLEN: Which --

21 THE COURT: -- thousand dollars for the plaintiff is

22 basically the same thing: Why don't you just go away? I mean,

23 you're -- it's -- no disrespect to you, Mr. Aicklen. It's

24 below nuisance value based on the nature of the case, based on

1 the totality of the case. A thousand dollars per person, at
2 best, could be considered nuisance value, or I think as you put
3 it, purchasing your peace.
4 MR. AICKLEN: Right. And it was strategic, because --
5 I believe there's actually -- I can't remember the name, but I
6 think an offer of judgment that offers for waiver of fees and
7 costs is found to be invalid. I think that's the case. So
8 you're right. It was -- it was a minimal amount.
9 THE COURT: A thousand dollars could have been $1 per
10 plaintiff, some ultimately nominal amount.
11 MR. AICKLEN: Well, it wasn't a dollar. I mean, it
12 was a thousand times a dollar, but --
13 THE COURT: I would suggest to you, Mr. Aicklen, that
14 the thousand dollars or a dollar is about the same thing in
15 this case. If it was -- if the facts were significantly
16 different, I can appreciate the argument, a thousand dollars is
17 different than a dollar. If the total amount of damages is,
18 you know, $10,000, the old statutory cap --
19 MR. AICKLEN: Then -- then let's not analyze it under
20 NRCP 68, then. Let's analyze it under NRCP 37. And I again go
21 back to, they knew that the evidence had been destroyed.
22 Because my client was forced to incur $250,000 over the course
23 of the year in experts -- or $270,000 in attorney's fees and
24 expert's fees. And the only Complaint that I really see about

1 the amount of the award or the fees that they allege is that,
2 well, they billed about 60 percent of it.
3 But you must admit, I was on the offensive during that
4 time. I -- and I believe that the fees and costs that were
5 billed during that time were reasonable. We had a lot of
6 people working on it. It was a lot of cases, and there were a
7 lot of moving parts to it.
8 But I did go on the offensive once I saw that there
9 was a good chance that I could get their case dismissed. So at
10 the time that I filed that motion, they knew -- right? -- they
11 knew -- or strike that -- even before that.
12 At the time I filed those offers of judgment and
13 throughout the course of the rest of litigating of that, they
14 knew that they had thrown away that evidence. And yet my
15 client had to incur well over a quarter of a million dollars to
16 defend the case.
17 So why would it be unjust? Why would it be unjust to
18 make them pay that, when they knew that they were making my
19 client incur fees on a case that ultimately they couldn't prove
20 because they had thrown away the crucial evidence?
21 Move away from a thousand dollars on NRCP 68. Let's
22 look at NRCP 37 and the dismissal, "They shall pay attorney's
23 fees and costs unless it is unjust."
24 Where is it more just that that cost, that $280,000,

1 be placed? I was -- my client was sued by them. We did not
2 sue them. We counterclaimed after they sued us. But they
3 initiated this, and they pressed it, and they forced my client
4 to incur $280,000, knowing that they had thrown away the
5 evidence. So where does justice lie in that balance? I did
6 not sue them.
7 Now, when I knew that I could win their case, I went
8 on the offensive. And that's why I billed, according to them,
9 more than they did. But ultimately, the outcome of it under
10 Brunzell, I think is going to be justified.
11 So if we look at -- if we balance the equities of the
12 parties and say: Who is it unjust to bear the costs? It's not
13 unjust to MDB. They did it to themselves. It's unjust to bill
14 my client $280,000 for a case that ultimately got dismissed
15 because of what the plaintiff did. So that's why I say,
16 "unless it is unjust."
17 And you asked me about an award of expenses and fees
18 being unjust. Balance the equities in that equation. Who
19 started the case? Who kept it going, even though they knew
20 ultimately they had thrown away the evidence? And between
21 those two parties, I did not sue them. They sued me.
22 THE COURT: Would you agree with me, Mr. Aicklen, that
23 pursuant to the Nevada Rules of Civil Procedure and the Supreme
24 Court analysis regarding attorney's fees and costs, it's never

1 an all or nothing? It's not that I have to give you everything
2 or zero. I also have the discretion to order something in the
3 middle.
4 I might acknowledge -- or I have the authority to
5 acknowledge you have incurred -- just to round it off -- the
6 total number of approximately $300,000 in attorney's fees and
7 costs. They have all been occurred -- or incurred. But then
8 when I use that "reasonable" analysis, I can also say:
9 However, based on the equities, you should get 150- or you can
10 get 50-, or I can give 295-.
11 It's up to me decide, really, not only what has been
12 demonstrated -- that is, what has actually been incurred -- but
13 also, then, also look at the equities of an offset a little
14 bit. Or as some attorneys like to say, "What's my haircut
15 going to be."
16 MR. AICKLEN: What's my haircut? Mr. Greed, is he
17 going to show? Yes, sir, absolutely correct. It is within
18 your sound discretion.
19 I have pending within the Supreme Court the exact same
20 thing. I got a defense verdict, had made an offer of judgment,
21 it was rejected, I received an award of attorney's fees, and I
22 got a haircut on it. And I've actually got a couple of those
23 pending.
24 So, yes, sir, it is within your sound discretion. And

1 I have seen in the past -- and it's completely up to you --
2 judges that have awarded fees from the time that it -- that it
3 should have become apparent that they were going to have that
4 Complaint stricken. And so they calculated a date, perhaps, at
5 the end of -- or at the filing of a motion or by the time an
6 opposition was filed and say: Okay. Once you knew that that
7 was going to be the result, you're going to pay for it because
8 you made them keep going.
9 THE COURT: Right. Generally those cases actually go
10 through trial. And so you should have known you were either
11 not going to prevail based on a motion for summary judgment,
12 the analysis the Court went through, the motion for summary
13 judgment is denied, but at the same time you should have been
14 aware that --
15 MR. AICKLEN: You weren't going to prevail at trial.
16 THE COURT: -- you've got a dog. And so from that
17 point forward you're not going to win.
18 MR. AICKLEN: Yes, sir. And that's actually the case
19 that I was just talking about, was the judge awarded I and my
20 partner, who tried the case, all of the trial costs on an offer
21 of judgment.
22 THE COURT: But not from the offer of judgment, just
23 from when the motion -- when it became clear that the opposing
24 party could not prevail at trial?

1 MR. AICKLEN: Yes, sir. Yes, sir. That was
2 essentially the preparation and trial of the case. It was
3 $158,000.
4 THE COURT: Okay.
5 MR. AICKLEN: On the motion to retax, are there any --
6 did you have any questions on those? I thought the opposition
7 was pretty straightforward.
8 THE COURT: I think it is pretty straightforward. I
9 am not quite sure, as I sit here, about the analysis that you
10 don't have to provide all of the information, including all of
11 the documents and the explanation for those documents when the
12 memorandum of costs is filed, and somehow suggesting
13 inferentially that once the non-prevailing party raises the
14 issue in a motion to retax costs, then you give all of the
15 explaining documentation.
16 I think it's the Cadle, C-a-d-l-e, Company case, that
17 may stand for the proposition you've got to provide that with
18 the motion for costs.
19 MR. AICKLEN: We did attach the attorney's
20 disbursement diary, and that's what I generally do, with the
21 affidavit. 18.10 says -- .110 says you have to give the
22 affidavit. We always attach the attorney's disbursement diary.
23 If there is a controversy, a motion to retax, then we'll dig up
24 all the receipts and attach them on a reply, which is what

1 we -- or on an opposition, which is what we did, and they were
2 attached and authenticated.
3 THE COURT: And while that may be your common
4 practice, I'm not sure after the Cadle Company case that that
5 is the status of the law. That might be what you used to do.
6 But my recollection of that case -- and I don't have it right
7 in front of me. I haven't read it recently such that I can
8 just quote from it. But it certainly is my recollection that
9 something more needs to be done initially. You can't make the
10 general allegation in your Memorandum of Costs, and then follow
11 it up if the non-prevailing party has a complaint. It's,
12 you've got to give it all to us first.
13 MR. AICKLEN: We did. We did attach -- from our
14 accounting, from our firm's accounting --
15 THE COURT: Right. I got it.
16 MR. AICKLEN: -- we attached the disbursement diary,
17 which is, what is the expense, the date it's incurred, what the
18 amount incurred, and so forth. So there was documentation
19 attached, Your Honor. But I've never had a judge say to me,
20 "Hey, you have to attach all the bills and all the
21 underlying" -- you know, a copy of the bill from the court
22 reporter, and so forth. That's not my understanding of the
23 law.
24 THE COURT: Well, the Cadle Company case is 131, I

1 think --

2 MR. AICKLEN: It says you just can't rely on nothing,

3 you have to have some documentary evidence, I believe.

4 THE COURT: Right. And you can't just come in and

5 say: I did it, and here's a general ledger that we have, you

6 know. Legal research, $10,000. Court reporter fees, $8,000.

7 It's got to be more detailed.

8 MR. AICKLEN: Right. Mine breaks it down, though.

9 Ours breaks it down.

10 THE COURT: No. I've got it.

11 MR. AICKLEN: If you look at the disbursement diary,

12 it does say the date, the vendor, the amount, and what it's

13 for.

14 THE COURT: Anything else, Mr. Aicklen?

15 MR. AICKLEN: No, sir. Unless you had any specific

16 questions for me.

17 THE COURT: I do not. Thank you.

18 MR. AICKLEN: Thank you.

19 THE COURT: One moment.

20 Here it is. And by "here it is," I mean, I have found

21 the citation to the Cadle Company case. It's in Ms. McCarty's

22 motion to retax the costs. It's C-a-d-l-e Company v. Woods &

23 Erickson LLP,. 131 Nev. Adv. Op. 15, 345 P.3d 1049, a 2015

24 case. So that's the citation of the case itself.

1 Ms. McCarty, what would you like to say regarding the
2 issues I was discussing with Mr. Aicklen, or any other issues
3 regarding the motions for attorney's fees and costs and to
4 retax those costs?
5 MS. McCARTY: Good morning, Your Honor.
6 THE COURT: Good morning again.
7 MS. McCARTY: As a threshold matter, if specifics
8 about the settlement offer are important to your analysis, I
9 would request a brief recess to discuss that with
10 Mr. Wieczorek. I am aware that he disagrees with Mr. Aicklen's
11 version of what occurred and what the amounts were, but I don't
12 have the specifics in my head, because I was not there. So if
13 there --
14 THE COURT: Well, I can't tell you as I sit here,
15 Ms. McCarty, how important it will be in my final analysis, but
16 it may play some role in my analysis. As I was discussing with
17 Mr. Aicklen, I can either go all the way, I can go zero, or I
18 can exercise my discretion and think, well -- as we were
19 discussing with -- when I was discussing it with Mr. Aicklen,
20 where would I draw the line and say, "The meter starts to run
21 from here"?
22 Theoretically, it could be the offer of judgment.
23 Theoretically, it could be when the mediation occurred.
24 Theoretically, it could be when somebody offered MDB everything

1 that it was seeking at the mediation, and they were told, "No."
2 Was that reasonable, and should the fees start to occur at that
3 point? Should it be after I -- or after the motion for summary
4 judgment was filed? Or fully briefed? Or submitted?
5 I mean, there's all different kinds of mile markers in
6 the longitudinal history of the case that I may look at and go,
7 "Well, maybe it starts here." It might be right from the
8 Complaint, it might be nothing at all, or it might be at one of
9 those mile markers.
10 So if you would like a minute to call Mr. Wieczorek
11 and get some clarification from him, I would certainly give you
12 that opportunity. The difficulty with that is, is that if
13 Mr. Aicklen says, "Yes, my" -- I think you said your partner
14 made the offer to Mr. Wieczorek?
15 MR. AICKLEN: Yes, sir. Mr. Avakian.
16 THE COURT: Yeah. So --
17 MR. AICKLEN: And you'll note, I didn't -- I didn't
18 put it in as substantive evidence, into the record.
19 THE COURT: No. I understand. But obviously it was
20 something that triggered me as I was reading the motion. It's
21 something that struck me as odd, that within a day or so, or
22 two days after you -- as I understand it as I sit here right
23 now -- you said, "We need 175-."
24 They said, "We'll give you 175-" -- and nothing

1 substantively had occurred. There was just a weekend in
2 between. On Friday you're saying, "I need 175-." Clearly
3 the -- Versa says, "No. We'll give you 7,000," or whatever
4 number -- no. It was more than 7,000.
5 MR. AICKLEN: It was 100-, plus 50 from Ramco, Your
6 Honor.
7 THE COURT: But you're saying, "No. We're firm on
8 175-, and that 25- matters to us" -- the difference between
9 your 175- and their 150- total. And then somehow they come up
10 with your 175-, and you say, "Pound sand," because you didn't
11 do it, and we've had Saturday and Sunday in the interim. It
12 may be something that I consider. So I will give you a couple
13 minutes to call Mr. Wieczorek.
14 Why don't we stand in recess until 11:00 o'clock.
15 MS. McCARTY: Thank you, Your Honor.
16 (Recess taken.)
17 THE COURT: We will go back on the record in MDB
18 Trucking versus Versa.
19 Ms. McCarty, are you ready to go?
20 MS. McCARTY: I am. Thank you for the courtesy of the
21 brief recess.
22 THE COURT: Sure.
23 MS. McCARTY: I did speak with Mr. Wieczorek. And he
24 advises me that it is his recollection -- and he didn't have

1 the exact figures in front of him because he's actually out of
2 the jurisdiction, as well, today -- but that Versa did make an
3 offer subsequent to mediation. However, it was not the total
4 amount that we had requested.
5 THE COURT: Okay. But he doesn't remember what it
6 was?
7 MS. McCARTY: He didn't recall what the numbers were
8 specifically, no.
9 THE COURT: And did he recall if it was at the
10 approximate time that Mr. Aicklen is suggesting, that the
11 settlement conference was on a Friday and the telephonic
12 contact was on a Monday?
13 MS. McCARTY: He didn't recall whether or not it was a
14 Friday and a Monday, but he says it was indeed in close
15 proximity. And in his opinion and the client's opinion, they
16 had already provided an offer that they thought was far less,
17 really, than what was warranted, but they were willing to take
18 it to resolve the matter early. And when they came back with
19 less than that, they were not willing to go any lower.
20 THE COURT: Okay.
21 MS. McCARTY: I want to focus on the Rule 37 argument
22 first.
23 Mr. Aicklen argues that there was willfulness here.
24 And what I would like to do is -- is to quote from the Court's

1 own order. The Court found the last time we were here, and
2 said when it wrote its order subsequent to our evidentiary
3 hearing, quote:
4 "The Court does not find MDB intentionally disposed of
5 the components in order to harm Versa, nor were MDB'S employees
6 acting with any malevolence. However, the Court does find MDB
7 is complicit of benign neglect and indifference to the needs of
8 Versa regarding discovery in this action."
9 The case law applying Rule 37 simply does not provide
10 for attorney's fees when there isn't intentional, harmful
11 conduct. If you look at -- and I would argue that the case
12 that is applicable here is GNLV Corporation v. Service Control
13 Corporation, 111 Nev. 866. This case involved the loss of a
14 bath mat that was central evidence to the case. The bath mat
15 was lost as a result of negligence. It was not an intentional
16 act geared towards harming the case.
17 THE COURT: Is that the case where they put it like in
18 a closet somewhere, and it just disappeared somehow --
19 MS. McCARTY: Right.
20 THE COURT: -- at the Golden Nugget down in Las Vegas?
21 MS. McCARTY: Right. At the Golden Nugget down in
22 Las Vegas. Exactly. It just disappeared. It wasn't
23 intentional. Nobody did it in some strategic tactic to harm
24 the case, it just happened. It was negligence.

1 It was negligence like we had in this particular case,
2 where the mechanics were repairing parts here and there, and
3 got rid of some of the parts during the course of routine
4 maintenance.
5 THE COURT: But in the GNLV case weren't the facts
6 somewhat different, in at least there was someone who was able
7 to testify either about the condition of the bath mat or what
8 it looked like, or was it photographed in some way?
9 And I might be completing conflating all of the
10 Rule 37 cases in my head. But for some reason my recollection
11 was that the evidence itself was gone, the bath mat itself was
12 gone, but somebody else either would have said, "I saw it," or
13 "Yes, it was" -- you know, "the sticky part of the bottom
14 wasn't there anymore, it had worn off over time." There was
15 something there.
16 MS. McCARTY: That is correct. There was some
17 testimony to that effect. I think the difference here is --
18 and we can agree to disagree about the Court's finding.
19 But in this particular case our experts testified that
20 there was no electrical path that could have conducted the
21 electricity through it. So whether or not those particular
22 items were central to the case or not -- certainly it's our
23 opinion and has been throughout the case, which I think is
24 important for the Court to consider, that those things simply

1 were not the relevant piece of evidence that opposing counsel
2 thinks they were.
3 But if you also look at Ribeiro, it's the same thing.
4 All of the case law is the same. They do not apply attorney's
5 fees when you don't have intentional malfeasance and misconduct
6 with respect to the loss of evidence. It just isn't there.
7 Whether you look at GNLV Corp., whether you look at Ribeiro,
8 it's not there.
9 THE COURT: Well, even though it might not be in any
10 of the reported decisions form the Nevada Supreme Court, that
11 doesn't mean that it cannot or does not happen at the District
12 Court level, just as I was discussing with Mr. Aicklen the fact
13 that I have the discretion to go all or nothing or somewhere in
14 between.
15 I think I do have the authority to do it, even though
16 you may point out that the case law that we get from the Nevada
17 Supreme Court, and now from the Nevada Court of Appeals, there
18 are no cases you can point to directly that say, "And in this
19 case it occurred." It doesn't mean it can't occur. I don't
20 have the authority to do it, I don't think.
21 MS. McCARTY: Well, I think that takes us back to the
22 rule itself, and the phrase, "or other circumstances make an
23 award of expenses unjust."
24 Let's talk about unjust. Versa was a defendant in the

1 plaintiffs' cases. In order to resolve all of the plaintiffs'
2 cases, MDB came in and they paid and they paid a lot.
3 THE COURT: Let me interrupt you. I apologize,
4 Ms. McCarty.
5 When you say Versa was a defendant in the plaintiffs'
6 cases, were they a defendant in the plaintiffs' cases because
7 you brought them in, or because they were sued by the
8 plaintiffs?
9 It might not be a huge distinction, but the way you're
10 phrasing it, it sounds like Mr. Bradley and all the other
11 people who were involved, suing on behalf of their clients,
12 sued Versa. My recollection -- and it might be completely
13 faulty -- was that you brought Versa in as a cross-defendant or
14 a -- go ahead.
15 MS. McCARTY: No, Your Honor. I don't have every case
16 in front of me, but there were several cases where they were a
17 named defendant by the plaintiff, not by us.
18 THE COURT: Okay.
19 MS. McCARTY: So to that point, we came in. We did a
20 global settlement so that the plaintiffs could move forward
21 with their lives, knowing that we would then come back and deal
22 with Versa after the fact.
23 Versa got out of these cases for nothing -- not our
24 case, but cases they were sued on by the plaintiffs. And then

1 they come before this Court and say that offers of judgment for
2 one -- one-half of one percent of the value of a settlement is
3 somehow reasonable to resolve the cases.
4 It's not. It's not even close. Not only did they get
5 out of having to deal with the litigation involving the
6 plaintiffs on the back end, they also bear no responsibility
7 now as a result of the evidentiary hearing that we had, and the
8 case-concluding sanctions that were issued. And now they want
9 to come back and say, "Oh, poor us. We have all these
10 attorney's fees now."
11 Well, MDB has paid the plaintiffs and also has
12 incurred attorney's fees, and has -- other than the appeal at
13 this point -- no remedy. It would be patently unjust to MDB to
14 further compound that by adding another $300,000 of costs and
15 fees that they should somehow now pay.
16 Rule 37, whether you look at the rule itself or
17 whether you look at the existing case law, simply doesn't
18 warrant it for what occurred here. You had a couple of
19 mechanics who were doing their job and threw away a couple of
20 parts that in our opinion and our expert's opinion simply had
21 nothing to do with why that valve activated that day.
22 Moving to Rule 68 --
23 THE COURT: Before you move to Rule 68 --
24 MS. McCARTY: Sure.

1 THE COURT: -- Ms. McCarty, I do want to just make
2 sure that my recollection of what happened at the evidentiary
3 hearing is correct as I sit here today, many months later.
4 There was that testimony from one of the employees of
5 MDB about his seeing fraying in the past -- not on this
6 vehicle. I don't want you to think I was suggesting he said
7 fraying at the time, but he had seen that before, and that was
8 one of the things that I put in the order.
9 As I said that, I glanced at you and it looked like
10 you were either disagreeing with me or maybe not recalling
11 that. So I don't want to have a bad record, but that was my
12 recollection of what had happened. I think it's actually
13 reflected in the order, and I cited to that person's testimony
14 in the order.
15 So it wasn't just a -- a "theoretical, this might have
16 happened." It was that, "theoretical, this might have
17 happened" plus the fact that there was testimony from MDB that
18 it had happened before. Not on this specific incident, but it
19 had happened in that witness's experience with this type of
20 cabling and the hoist or whatever it is that holds them up.
21 MS. McCARTY: Your Honor, my recollection is that
22 there was some testimony that, indeed, at times some of the
23 coating can fray, but that it had never caused a valve to
24 activate. And in the particular case of the truck at issue,

1 could not have caused the valve to activate because there was
2 no electrical path for any current to go through.
3 THE COURT: And I want you to understand something, as
4 well, Ms. McCarty. I'm not asking you to say anything that
5 would affect your rights on appeal. So I'll just leave it
6 where that was, but that was just kind of my recollection. And
7 I understand that -- or at least I believe that my order is the
8 subject of an appeal to the Nevada Supreme Court. So I won't
9 put you in a difficult position to discuss that any further.
10 Let's just leave it at that.
11 MS. McCARTY: I appreciate that, Your Honor.
12 Just closing out the Rule 37 argument. What we had
13 here, as you indicated, was benign neglect and indifference.
14 It was not an attempt to harm the case. It was not an attempt
15 at misconduct.
16 When you look at the Rule 68 argument -- you know,
17 offers of judgment are not meant to force plaintiffs to forego
18 legitimate claims. The Nevada Supreme Court has stated that
19 time and time again. And to suggest that somehow we should
20 have accepted one-half of one percent of the value of this case
21 because we could somehow be on the hook for attorney's fees
22 much later and before the case -- the motion was even fully
23 briefed, frankly, just doesn't hold any water. The offers of
24 judgment were not reasonable. They do not comport with any of

1 the Beatty factors. Our claim was brought in good faith.
2 The Court found in its order, again:
3 "The Court's decision regarding the issue presented in
4 the motion is not predicated on who has the stronger case or
5 the better expert at the evidentiary hearing. If this were the
6 analysis, the Court would agree with MDB. Dr. Bosch is a very
7 credible witness, and it's likely MDB has the more compelling
8 argument to present to the jury."
9 There is no question that throughout the entirety of
10 this litigation we believed we had a meritorious case. I think
11 you've already hit on it. The amounts are simply unreasonable,
12 also, unreasonable in timing.
13 These offers of judgment were issued on the eve of
14 mediation. They were a strategic tactic, letting everybody
15 know as they were walking in the door that they weren't going
16 to participate here. That's what those were. They weren't
17 meaningful. They were a tactic.
18 There was nothing unreasonable about us rejecting
19 those offers, particularly -- and just to remind the Court --
20 what we had here were two inadvertent activations in two
21 different vehicles on the same day a few minutes and a few
22 miles apart. And their expert had no explanation for that, and
23 didn't even offer a theory. So we believed that our case was
24 meritorious and that a jury would find in our favor, and that

1 all of the money we laid out upfront to allow the plaintiffs to
2 go on with their lives, that at some point Versa would be
3 contributing to that. It didn't happen. But certainly at the
4 time these offers were rejected that was the frame of mind and
5 that was the belief.
6 Finally, the fees here are unreasonable and not
7 justified. I appreciate that Mr. Aicklen was very aggressive
8 in this case. But we were just as aggressive in defending him.
9 And his bills are significantly higher than ours for virtually
10 the same rates. We think there's overbilling here, but --
11 THE COURT: You know, I addressed that issue in a
12 completely unrelated case yesterday or the day before. It was
13 a case -- the facts are completely irrelevant to the both of
14 you. But it was a dispute where the actual total amount in
15 value was $31,000. There were two separate defendants. The
16 plaintiff is suing both of the defendants.
17 The defendants prevail on a motion for summary
18 judgment. They seek attorneys' fees and costs pursuant to
19 their contractual terms with the plaintiff. And the total
20 costs and attorneys' fees for the two separate defendants was
21 $90,000, or something like that -- over a $31,000 case where
22 the defendants were getting sued by the plaintiff.
23 And the plaintiff's attorney, in opposing the motion
24 for attorneys' fees, pointed out something -- or argued

1 something very similar to what you are arguing here. He was a
2 solo practitioner and charges a rate that was not the industry
3 standard, shall we say. A very experienced attorney. I
4 actually have known him personally for many, many years, and he
5 just feels like attorneys charge too much money. He's one of
6 those guys. It's novel and refreshing. He just thinks that
7 attorneys charge too much money.
8 So he charges, as a solo practitioner, a completely
9 different rate than the insurance defense attorneys that he was
10 going against. His total -- his total bill for his client was
11 like $14,000. One was 30-, and one was like 58-. So we had
12 almost 90,000 on the other side. And his argument was
13 basically, "Look, I only charged 14-, and I was doing all the
14 lifting. These guys were feeding off of each other, were
15 working together. At the most it should be what I charged,
16 which was 15-." That was not successful -- it was not a
17 successful argument. I don't know that you look at what the
18 other side charges.
19 And I would tell both of you, all of the attorneys in
20 this case that I have seen are extremely qualified, very, very
21 competent, if not exceptionally competent. So you guys all do
22 good work. But I don't know that I would look at what
23 Mr. Aicklen charges and say, "You should only charge what
24 Ms. McCarty and Mr. Wieczorek charged." I don't do the

1 apples-to-apples kind of comparison.

2 MS. McCARTY: I think my point, Your Honor, is that we

3 charge the same rates. This isn't --

4 THE COURT: It's just, he did a lot more work,

5 basically?

6 MS. McCARTY: He billed a lot more work.

7 THE COURT: I appreciate the distinction. Go ahead.

8 MS. McCARTY: And much of what they're requesting here

9 is legal work that in no way relates to the cross-claim. They

10 are looking for work they did related to the plaintiffs' cases.

11 And they are simply not the prevailing party on the plaintiffs'

12 cases -- and we would argue, you know, whether they're

13 prevailing parties at all, given that they did not succeed on

14 the merits here.

15 But be that as it may, they are most certainly --

16 THE COURT: That's a novel argument. I mean, I have

17 to stop you there. That's a very novel argument, Ms. McCarty,

18 that they're not the prevailing party because they didn't even

19 have to get to the merits. I'm not quite sure I've ever seen

20 the -- the Nevada Supreme Court or the Nevada Court of Appeals

21 find that because you got the case dismissed without even

22 having to go to trial that you're not the prevailing party. I

23 think that's generally considered to be a better outcome than

24 going through all the expense of trial.

1 MS. McCARTY: Yes, Your Honor. I think my point is
2 that they are most certainly not the prevailing party when it
3 comes to the plaintiffs' cases. They got a pass on the
4 plaintiffs' cases, and they should not now be allowed to come
5 back and try and recover attorneys' fees and costs for their
6 defense efforts in the plaintiffs' cases prior to settlement.
7 Moving on to the cost issue. I agree with you that
8 the Cadle case makes clear that you must provide more than just
9 your in-house self-serving diary. Cadle states that justifying
10 documentation must mean something more, quote, "than a
11 memorandum of costs."
12 They were required -- and, frankly, while Cadle is
13 relatively new, you know, Berosini makes this clear. Village
14 Builders makes this clear. You have to do more than -- the
15 obligation here is significant. You've got to not just say
16 date, time, cost. You have to indicate and provide
17 documentation for what the cost was and why it was necessary.
18 And they didn't do that for a significant amount of the costs
19 here.
20 I have itemized them all in the briefs. I'm not going
21 to bore you with the details now. You have it all. But
22 there -- in each of the cases, that is definitely a problem
23 here.
24 I can't find it, of course.

1 And additionally, as I've already stated, they're
2 looking for costs that are in no way related to the
3 cross-claim. They also are asking for costs that were incurred
4 prior to the offer of judgment, when their own motion and
5 Mr. Aicklen's own affidavit states that they are only seeking
6 fees and costs after the offer of judgment. And they are also
7 seeking costs that are -- that are not --
8 THE COURT: You'll have -- hold on a second.
9 MS. McCARTY: -- permitted.
10 THE COURT: Mr. Aicklen, you will have an opportunity
11 to --
12 MR. AICKLEN: Yes, sir.
13 THE COURT: -- reply.
14 MR. AICKLEN: That's why I shut my mouth.
15 THE COURT: Go ahead, Ms. McCarty.
16 MS. McCARTY: They are also seeking costs that are not
17 permitted pursuant to statute. In particular, I want to spend
18 some time on Mr. Mitchell. They are seeking some $13,000 for
19 Mr. Mitchell's fees, when the statute provides for $1500 for
20 experts, unless there is a good reason to otherwise award more.
21 When you look at the Frazier factors, which set forth
22 what the Court should consider as to whether or not it should
23 award more, we believe they all weigh in our favor.
24 When we look at the importance to the case,

1 Mr. Mitchell provided no explanation, no opinion regarding what
2 occurred here.
3 When you look at whether or not he was an aide to the
4 trier of fact or repetitive of the other experts, we do not
5 believe he provided any new information. He simply parroted
6 what Dr. Bosch found with respect to the testing of the Versa
7 valve, that the Versa valve did work.
8 The issues in the cross-claim were not whether or not
9 the Versa valve worked. It was whether or not the Versa valve
10 was subject to interference from electromagnetic fields.
11 Mr. Mitchell did no independent testing. He
12 participated as an observer during the testing that everyone
13 participated in, but he did nothing on his own to add to the
14 record here, and he simply didn't have the requisite experience
15 that was necessary. He didn't have the knowledge of electrical
16 engineering or electricity to be of any value with respect to
17 the question of whether or not the Versa valve was subject to
18 interference from electromagnetic fields.
19 And for those reasons we do not believe that anything
20 above the $1500 threshold is applicable here.
21 Finally, they're seeking other costs for things that
22 are not in the statute. The Nevada Supreme Court says the
23 statute must be strictly construed. They are seeking delivery
24 fees, compact disc fees, e-Discovery fees, and legal services

1 fees, none of which are provided for in the statute and simply
2 should not be awarded.
3 We are not arguing that they're not entitled to
4 anything. We have set forth, if the Court is inclined to give
5 them something, what that figure should be. We think based on
6 the equities that it shouldn't be anything, that each side
7 should bear its own fees and costs given the circumstances
8 here. But if you are inclined to grant costs, we would ask
9 that you do so based on the apportionment the we have provided
10 in our briefs.
11 THE COURT: Thank you, Ms. McCarty.
12 Mr. Aicklen, it appears you wanted to say something,
13 so a reply argument.
14 MR. AICKLEN: Yes, sir.
15 No. I'm not asking for costs after the offer that, as
16 a prevailing party, we get costs from day one. So that -- I
17 think I already said that, and I cited 18.110 in the memorandum
18 of costs.
19 I'm not aware of any case that says I have to attach
20 every single bill to the memorandum of cost. I do have to
21 swear under oath that they were incurred and that -- or have
22 actually been informed, or to the best of my knowledge and
23 belief they were necessary for the case. And then we did
24 attach documentation to support them.

1 As far as the individual expenses, I think we did a
2 really good job in the opposition of pointing out that they
3 maybe read things wrong. For example, they say, "Well, page
4 Eskridge Travel to New York was double billed." No. One was
5 for a hotel and one was for an airline ticket.
6 So I think the opposition basically does a good job of
7 laying out what the actual costs were, and that they were not
8 duplicated.
9 THE COURT: What about the argument that some of the
10 costs that are incurred were unnecessary, because your
11 responsibility in representing Versa really had nothing to do
12 with the injuries that the plaintiffs themselves suffered?
13 It's kind of this analysis, which is, you really only
14 need to worry about the valve, and did the valve function
15 properly or was it the cause of the dump? It really has
16 nothing to do with any of the plaintiffs' injuries or any of
17 the work that MDB had to go through in analyzing the
18 plaintiffs' cases, as opposed to the third-party actions with
19 the two parties before me today.
20 MR. AICKLEN: I think that's patently incorrect, Your
21 Honor. If you look at the nature of an indemnity and
22 contribution claim -- or, actually, I got the indemnity
23 stricken -- the contribution claim, they were looking for me to
24 pay everything they paid to the plaintiffs. So theoretically,

1 do I not have to discover and defend every plaintiffs' case to
2 try and lower those damages?
3 If my client is exposed to paying everything MDB pays
4 in the cases where MDB is sued, and they're going to try and
5 pass that on to me as a judgment, do I just not show up at the
6 plaintiffs' depos or ask them -- well, you -- questions about:
7 Hey, had you ever hurt your back before? Had you ever -- had
8 the doctor ever told you you were going to need a surgery
9 before this accident occurred?
10 You see, I have to defend everything that MDB may have
11 to pay. And I was a defendant in --
12 THE COURT: Under the theory that you may be
13 responsible up to 100 percent of that should the jury decide
14 that all of those costs should be transferred from MDB to
15 Versa.
16 MR. AICKLEN: Right. So I have to try and knock those
17 down the best that I can. I can't just sit back and go, "Oh,
18 well, let MDB try," and don't worry about it. I -- if that's
19 going to be passed on to my client I have to defend those cases
20 and knock them down as well as I can.
21 And that's actually, if you look in their -- in
22 their -- the motion to -- to tax, I quote -- or my opposition
23 to their motion to tax, I quoted their cross-claim, and their
24 cross-claim says, we want -- give me one second --

1 Oh. MDB's cross-claim sought contribution for, quote,
2 "With respect to any settlement judgment awards or any other
3 type of resolution of claims brought forward by the plaintiffs
4 in their first Amended Complaint," close quote.
5 So they wanted to pass on to my client everything that
6 the plaintiffs hit them for. So I must defend. Those are --
7 those are integral. Those costs are not -- you can't say that
8 a cost for a plaintiff's deposition is in no way related to the
9 cross-claim, because I've got to be there and defend and try
10 and keep those costs down.
11 Do you --
12 THE COURT: No. I --
13 MR. AICKLEN: Does that answer your question?
14 THE COURT: Yep.
15 MR. AICKLEN: Okay. Very good.
16 Just a couple other things, Your Honor. There is no
17 requirement that you find willfulness in order to award
18 attorney's fees. I heard Ms. McCarty say that. I'm sorry.
19 Intent. There is no requirement that you find that they had to
20 intend to harm in order to award attorney's fees.
21 And in fact, if you look at the Skeen case, which we
22 cited, Skeen said, "Since the amendment of NRCP 37" -- and this
23 was an amendment a long time ago -- "sanctions are permissible
24 without consideration of whether the unexcused failure to make

1 discovery was willful." Even willful. All right?

2 You do not, as Ms. McCarty says, have to find that

3 they intended to harm in order to award me my attorney's fees.

4 By the way she says, also --

5 THE COURT: And just for the court reporter, can you

6 spell the Skeen case and the citation?

7 MR. AICKLEN: Yes, sir. It's Skeen, S-k-e-e-n, versus

8 Valley Bank of Nevada. Its Nevada Supreme Court. The citation

9 is 89 Nev. 301. And the page that I cited was 303.

10 THE COURT: Thank you.

11 MR. AICKLEN: Yes, sir.

12 So there is no requirement that there be an intent to

13 harm. You did find willfulness. Remember, I read that portion

14 of the -- of the order to you.

15 Now, let's talk a little bit -- unless you have any

16 other questions -- you know, this is interesting. You asked --

17 thinking about justice and injustice and so forth. I'm sitting

18 here listening to the arguments. There may be a public policy

19 reason for this, as well. And I know that that comes in to

20 deter other's conduct, within Johnny Ribeiro. They still do

21 not know what they did wrong. They still don't see a problem

22 with it. And one of the factors of John Ribeiro in awarding

23 attorneys' fees and costs is to deter other conduct by the

24 litigants.

1 THE COURT: Well, I don't know that I would reach that
2 conclusion either from MDB's perspective or Ms. McCarty or
3 Mr. Wieczorek. I would hazard a guess that if you were to ask
4 the principles of MDB Trucking or Mr. Wieczorek or Ms. McCarty
5 today, "Would you have done something differently?" they
6 certainly would say, "Yes, we would."
7 Because the only reason that the Court entered its
8 order on December 8th of 2017, granting case-concluding
9 sanctions is, these things aren't there. So to say that they
10 haven't gotten the point or the public policy point, I think is
11 a stretch, Mr. Aicklen.
12 I am going to guess that certainly the principles of
13 MDB Trucking wished they would have done something differently.
14 And confronted with the same circumstances today, I would have
15 to hope they would say, "Yes, we will handle things
16 differently. We will make sure that there's either a policy in
17 place, or we tell our employees to behave in a different
18 fashion."
19 I certainly hope nothing of consequence occurred
20 towards the two employees that did what they did in this case.
21 I mean, it just is one of those things that has occurred. It
22 is what it is, as they say. But to suggest somehow that they
23 haven't gotten the message --
24 MS. McCARTY: Its's insulting.

1 THE COURT: -- I doubt it. I seriously doubt it,
2 Mr. Aicklen. Go ahead.
3 MR. AICKLEN: Garrick Mitchell. I noticed, by the
4 way, Your Honor, there's a typo in the order. You swapped out
5 the fact witness for Mr. Mitchell as the expert witness.
6 THE COURT: Oh, I apologize.
7 MR. AICKLEN: The names. You might just want to swap
8 them back.
9 THE COURT: Sometimes when I'm typing I get things
10 mixed up.
11 MR. AICKLEN: I think it was Palmer and Mitchell that
12 you might have swapped out. You had Mitchell being the fact
13 witness and Palmer being the other one.
14 THE COURT: Well, I'm sure if that becomes an issue
15 for the Supreme Court, they'll clarify it for me, but I think
16 it's pretty clear based on the record itself --
17 MS. McCARTY: It is.
18 THE COURT: -- who was who.
19 MR. AICKLEN: It is. It was a typo.
20 Mr. Mitchell does --
21 THE COURT: I actually type my own orders, just so you
22 know. If it's a mistake, it's my mistake. I typed it myself.
23 MR. AICKLEN: Mr. Mitchell does warrant an award of
24 all of his costs, Your Honor. They're saying that he does not,

1 because he never found what the defect was.

2 Well, actually, what he found was that there was no

3 defect. If I were to not pay an expert because they didn't

4 find something wrong with something, that is ridiculous. In

5 fact, from my perspective it was good that none of the experts

6 found a defect; right? Because their claim was, "Your product

7 is defective."

8 And they say: Well, he -- he shouldn't be paid this

9 money because he didn't ultimately find that it was

10 radiofrequency interference that had caused the trigger. The

11 experts did not testify beyond -- to a reasonable degree of

12 scientific probability that it was radio-frequence

13 interference.

14 Their own expert says, "I don't know what caused it.

15 I thought about radiofrequency interference."

16 And I asked him at his deposition, I said: "Well,

17 what would be the source of that.?"

18 And he said, "Oh, the power lines."

19 I said, "Well, are the power lines AC or DC?"

20 He says, "AC."

21 I said, "Well, is the solenoid AC or DC?"

22 He goes, "It's DC."

23 And I said, "Well how would that trigger it?"

24 And he goes, "Well, I really don't think it did."

1 And I said, "All right. Well, what was the source
2 then?"
3 He goes, "I don't know."
4 So they never found any defect. So to say that, to
5 not pay my expert because he never found a defect in my
6 product -- I mean, isn't that a good thing? Isn't it good that
7 my client is putting items out on the highway that are not
8 defective?
9 Mr. Mitchell was -- was -- he was a mechanical
10 engineer. I didn't hire two experts. They hired a mechanical
11 engineer and an electrical engineer. So then they -- they
12 attacked Mr. Mitchell for saying -- by saying he's not an
13 electrical engineer. Well, I didn't need an electrical
14 engineer, because the valve is electromechanical, and he had
15 the credentials in order to evaluate. And by the way, neither
16 their electrical nor their mechanical expert found a defect
17 with the valve.
18 So to parse my expert, Garrick Mitchell, because he
19 wasn't both an electrical and a mechanical engineer, it doesn't
20 make any sense. Ultimately, he didn't testify in front of --
21 in front of a fact finder. But his testimony, at least from my
22 case perspective, would have been excellent: "Yes. I tested
23 all these things, and none of these things were found to be
24 defective."

1 Now, they say, "Well, he didn't actually perform the
2 testing." Do you know the only -- the only one test that their
3 electrical engineer ever carried out to try and trigger that
4 solenoid, do you know what it was? It was, he walked up to it
5 with a red ferrous magnet -- the kind that we used to have when
6 we were kids, and you play in the sand box and you pick up iron
7 filings out of the sand. He walked up to it with a red ferrous
8 magnet and held it against the side, and got it to trigger.
9 And I said, "Well, that experiment, was that the only
10 experiment that you conducted?"
11 And he said, "Yes."
12 I said, "Did that" -- "Is that how you determined that
13 it was electromechanical interference?"
14 And he said, "Yes."
15 Then I asked him, "Well, assuming somebody wasn't
16 running down the freeway alongside my truck with that
17 electro-ferrous magnet, how did it trigger?"
18 He says, "I don't know."
19 So to take Mr. Mitchell apart and say he shouldn't be
20 paid the full amount because he didn't conduct any
21 experiments -- they only did one and it was with a red magnet.
22 I think what's happening is, they're trying to pick
23 apart things down to details because in the big picture of
24 things, it's pretty clear that as the prevailing party we're

1 entitled to the costs.

2 THE COURT: But why shouldn't Ms. McCarty, on behalf

3 of her clients, do exactly what you are suggesting, which is

4 pick apart things down to the last detail?

5 MR. AICKLEN: Oh.

6 THE COURT: I mean, you would do the exact same thing

7 if you were on the other side.

8 MR. AICKLEN: I don't say that she's wrong to do it.

9 I'm just saying that it's -- remember, when you can't attack

10 the facts, you attack the law. When you can't attack the law,

11 you attack the person, and I think that's what they're doing

12 with Mr. Mitchell.

13 Did you have any other questions, Your Honor? If not,

14 I am going to sit down and be quiet.

15 THE COURT: I do not. Thank you, Counsel.

16 MR. AICKLEN: Thank you, sir.

17 THE COURT: I will take all three motions under

18 advisement and enter a written order regarding all of the

19 motion practice that we have discussed today. I don't think it

20 would be a good idea just to rule from the bench, especially

21 given the nature of the motion to retax costs and the analysis

22 that the Court has to go through in deciding if some, none, or

23 all of the costs should be awarded. And so I will take the

24 opportunity to take it under advisement and issue a written

1 order regarding all of the motion practice.
2 Court is in recess.
3 Safe travels, Counsel.
4 MR. AICKLEN: Thank you, sir.
5 MS. McCARTY: Thank you.
6 (Proceedings concluded.)
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1 STATE OF NEVADA)
) ss.
2 COUNTY OF WASHOE)
3
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5 and for the State of Nevada, do hereby certify:
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10 true, and correct transcription of the proceedings to the best
11 of my knowledge, skill, and ability.
12 I further certify that I am not a relative nor an
13 employee of any attorney or any of the parties, nor am I
14 financially or otherwise interested in this action.
15 I declare under penalty of perjury under the laws of
16 the State of Nevada that the foregoing statements are true and
17 correct.
18 Dated this 22nd day of May 2018.
19
/s/ Marian S. Brown Pava
20
Marian S. Brown Pava, CCR #169
21
22
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24

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