

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.
Electronically Filed
Jan 18 2019 08:46 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

[District Court Case Nos.:
CV15-02349, CV16-00976 and
CV16-01914]

JOINT APPENDIX VOLUME 11 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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MDB Trucking, LLC

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8 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9
10 IN AND FOR THE COUNTY OF WASHOE
11
12 HONORABLE ELLIOTT A. SATTler, DISTRICT JUDGE

13 ERNEST BRUCE FITZSIMMONS and
14 CAROL FITZSIMMONS, Husband and
15 wife,

16 Plaintiffs,

17 vs.

Case No. CV15-02349

Dept. No. 10

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

20 Defendants.

21
22 AND ALL RELATED CASES

23
24 TRANSCRIPT OF PROCEEDINGS

EVIDENTIARY HEARING

Friday, October 13, 2017

Reno, Nevada

Reported by:

LORI URMSTON, CCR #51

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23 Reno, Nevada

24 Reported by:

LORI URMSTON, CCR #51

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1 RENO, NEVADA; FRIDAY, OCTOBER 13, 2017; 9:03 A.M.

2 --oOo--

3 THE COURT: This is CV15-02349, Fitzsimmons versus
4 MDB Trucking and the associated cases. Ms. McCarty and
5 Mr. Wieczorek are here on behalf of MDB Trucking.

6 Good morning to both of you.

7 MS. McCARTY: Good morning.

8 MR. WIECZOREK: Good morning, Your Honor.

9 THE COURT: Mr. Aicklen and Mr. Bick are here on
10 behalf of Versa.

11 Good morning to both of you as well, gentlemen.

12 MR. BICK: Good morning.

13 MR. AICKLEN: Good morning.

14 THE COURT: We are here to resolve one motion that
15 has been filed by Versa.

16 MR. AICKLEN: Your Honor, before we start
17 substantively could I raise a procedural issue?

18 THE COURT: Sure.

19 MR. AICKLEN: We have three percipient witnesses in
20 the audience and I would move under 50.155 if we could
21 excuse them from the proceedings until they're called.

22 THE COURT: Okay. The rule of exclusion has been
23 invoked. If anyone is anticipated to testify as a
24 witness in these proceedings, they are instructed to

1 wait outside of the courtroom. Further, you are not
2 allowed to discuss your testimony with each other. You
3 can talk to the respective counsel, but you cannot talk
4 to each other about what your testimony is.

5 So with that, if anyone is going to testify, they
6 are excused from the courtroom at this time.

7 Do we have expert witnesses who are going to be
8 testifying?

9 MR. AICKLEN: We do, but I'm not asking you to
10 invoke it for experts.

11 THE COURT: Well, the experts are a different
12 standard all together.

13 MR. AICKLEN: Understood.

14 THE COURT: So if the experts are present in the
15 courtroom, they can stay.

16 MR. AICKLEN: Thank you, Your Honor.

17 THE COURT: I think the only caveat to that would
18 be -- Mr. Wieczorek and Ms. McCarty, was Mr. Koski one
19 of the people?

20 MS. McCARTY: No, Your Honor. We didn't call
21 Mr. Koski today.

22 THE COURT: Mr. Koski is a named party, so he would
23 be allowed to remain in the courtroom, but I just
24 wasn't sure who the people were who just left the

1 courtroom.

2 So the Court has received and reviewed again the
3 May 15th, 2017, file-stamped Defendant/Cross-Claimant/
4 Cross-Defendant Versa Products Company, Incorporated's
5 Motion to Strike Defendant/Cross-Claimant/
6 Cross-Defendant MDB Trucking, LLC's Cross-Claim
7 Pursuant to NRCP 35; or in the alternative, for an
8 Adverse Jury Instruction. The Court would note that
9 there were couple of erratas filed to that pleading,
10 but that is the primary pleading.

11 The Court has also received and reviewed the
12 June 2nd, 2017, file-stamped MDB's Opposition to Versa
13 Products Company, Incorporated's Motion to Strike
14 and/or Spoliation Instructions.

15 Further, the Court has received and reviewed the
16 June 12th, 2017, file-stamped Defendant/Cross-Claimant/
17 Cross-Defendant Versa Products Company, Incorporated's
18 Reply to MDB's Opposition to Versa Products Company,
19 Incorporated's Motion to Strike MDB Trucking, LLC's
20 Cross-Claim pursuant to NRCP 37; or in the alternative,
21 for an Adverse Jury Instruction.

22 The motion was submitted to the Court for
23 consideration on June 12th of 2017. The Court heard
24 oral argument on the motion itself and took it under

1 advisement. Subsequently the Court entered an order on
2 September 22nd of 2017 directing the parties to
3 schedule an evidentiary hearing.

4 As the Court pointed out, the Nevada Supreme Court
5 has addressed the need for an evidentiary hearing in
6 the case of Nevada Power versus Fluor, F-l-u-o-r,
7 Illinois, 108 Nevada 638, 837 P.2d 1354, a 1992 case.
8 And the Nevada Supreme Court has held that it's an
9 abuse of discretion for a court to grant
10 case-concluding sanctions without first giving the
11 parties an opportunity to present evidence in an
12 evidentiary hearing.

13 The Court hasn't decided whether or not it will
14 grant case-concluding sanctions. However, after
15 considering the oral argument on the motion and
16 reviewing all of the pleadings associated with the
17 motion, including the exhibits, the Court felt that
18 case-concluding sanctions certainly were an option that
19 it would consider and, therefore, the Court directed
20 the parties to schedule the evidentiary hearing for
21 today.

22 The last procedural issue I would like to cover is
23 I do have an exhibit list.

24 Ms. Clerk, is it Exhibits 1 through 10 that have

1 been marked?

2 THE CLERK: Exhibit 11.

3 THE COURT: Oh, that's right. You told me you gave
4 me a newer witness list -- or, excuse me -- evidence
5 list. There it is.

6 Do the parties stipulate to the admissibility of
7 Exhibits 1 through 11? It was my understanding that
8 there were some duplicate exhibits that were produced
9 by both MDB and Versa, and so we've consolidated a bit.
10 I'm not suggesting that you have to stipulate. I'm
11 just curious if there is a stipulation.

12 MR. WIECZOREK: MDB doesn't have an objection to
13 the admission of those.

14 MR. AICKLEN: Versa has no objection to all the
15 documents except Exhibit 7.

16 THE COURT: Which is the diagram?

17 MR. AICKLEN: Yes, sir. That has never been
18 produced in the litigation. My understanding, it was
19 made last night. My expert has never seen it before
20 today. I had no chance to review it. I had no chance
21 to cross either Mr. Bosch or Anderson who I understand
22 are the authors of that document at their depositions
23 on it. And I had no chance to test the foundation of
24 it. I think it violates trial by ambush.

1 THE COURT: Well, Exhibits 1 through 6 and 9
2 through 11 are admitted. And we will address Exhibit 7
3 if and when it is proffered by MDB during the course of
4 the evidentiary hearing. Nobody needs to respond to
5 Mr. Aicklen's argument at this point. We'll just bring
6 that up once we get there.

7 (Exhibit 1 through 6 and 9 through 11 were admitted.)

8 MR. AICKLEN: I think there's one more procedural
9 issue in the briefing perhaps, Your Honor.

10 THE COURT: What is that?

11 MR. AICKLEN: Last night counsel for MDB filed a
12 so-called supplemental briefing. I don't even know if
13 it made it to you, but I did want to put on the
14 record -- did you see it?

15 THE COURT: I have not seen it.

16 MR. AICKLEN: Okay.

17 MS. McCARTY: Your Honor, if I may. It was filed
18 first thing yesterday morning and my assistant made
19 contact with your office to ensure that it was getting
20 your way.

21 THE COURT: I don't know who she spoke to. All I
22 know is that the pleadings that I have referred to are
23 the pleadings that I have considered in anticipation of
24 today's hearing.

1 What was the supplemental brief, Ms. McCarty?

2 MS. McCARTY: The supplemental brief lays out the
3 case law that we believe is applicable here. And it
4 does differentiate to some degree from the pleadings
5 that you have in front of you. I'm prepared to argue
6 it today and to detail it for you, but I had prepared
7 the supplement in hopes that there would be a primer
8 for everyone on the front end.

9 THE COURT: Well, I appreciate the thought of
10 providing additional information to the Court. The
11 concern that I have are two-fold. The first one is
12 that the Local Rules of Practice -- and I believe it's
13 Washoe District Court Rule 13 -- contemplates a total
14 of only four pleadings that bring a motion to the
15 Court's consideration; that is, a motion, an
16 opposition, a reply and then a motion to submit.
17 That's all.

18 The Court didn't seek additional briefing.
19 Certainly MDB could have requested to file a
20 supplemental brief, but the Court would need to
21 consider whether or not it was necessary under the
22 circumstances of the case.

23 Further, the Court entered its order on
24 September 22nd of 2017 scheduling or directing the

1 parties to schedule oral argument. So between
2 September 22nd and today, ballparking it, approximately
3 20 days, no request was made to supplement the
4 pleadings. I don't know if you discussed it at all
5 with counsel for Versa, but to just simply file
6 something on the eve of a hearing with the hope that
7 people would get the opportunity to look at it is
8 improper. And so the Court has not seen nor will the
9 Court consider the supplemental brief, because there
10 was no request nor leave granted by the Court to file
11 it.

12 So I've told you -- and it's not that you can't
13 argue the facts or you can't argue the case law. The
14 parties are responsible to know the case law regarding
15 the pleadings. So if there's some additional case that
16 you think is applicable, you can certainly reference
17 it. I don't know how much weight I'll give it. If
18 it's the law in the state of Nevada, obviously I would
19 have to go back and consider it. But as I sit here
20 today, I just don't think it's appropriate to file
21 something at the last minute and not give opposing
22 counsel the opportunity to see it and review it and go
23 forward from there.

24 It looks like you want to say something else,

1 Ms. McCarty. Go ahead.

2 MS. McCARTY: No. I appreciate your comments.
3 And, again, it was entirely in hopes of aiding and
4 assisting the Court. And given the briefing schedule
5 that we've all been dealing with, I got to it as very
6 quickly as I possibly could. So my apologies for the
7 delay, but it certainly wasn't intended to be improper
8 in any way.

9 THE COURT: I would note that the Court is well
10 aware that the parties have been engaged in a torrent
11 of last minute briefings on other issues, so I'm not
12 oblivious to the fact that there are other things going
13 on in this case.

14 With that, Mr. Aicklen, you may call your first
15 witness.

16 MR. AICKLEN: Thank you, Your Honor. Versa would
17 call Scott Allen Palmer.

18 MS. McCARTY: Your Honor, I apologize for the
19 interruption. I had hoped to have the opportunity to
20 make a few brief remarks prior to starting today if
21 that's a potential option.

22 THE COURT: We'll have argument at the conclusion
23 of the presentation of the evidence. I would rather
24 just do the evidentiary hearing first and then we'll

1 start talking about the merits of the motion. So it --
2 and you'll have the opportunity to call your witnesses
3 as well.

4 (The oath was administered.)

5 THE WITNESS: Yes, I do.

6 THE CLERK: Have a seat.

7 THE COURT: Sir, could you please state and spell
8 your first full for me.

9 THE WITNESS: Scott Palmer, S-c-o-t-t, P-a-l-m-e-r.

10 THE COURT: Thank you for being here today,
11 Mr. Palmer.

12 Go ahead, Mr. Aicklen.

13 MR. AICKLEN: Thank you, Your Honor.

14 SCOTT PALMER,
15 having been first duly sworn, was examined
16 and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. AICKLEN:

18 Q Good morning, Mr. Palmer.

19 A Good morning.

20 Q Mr. Palmer, you were designated as the person
21 most knowledgeable for MDB policies and procedures
22 regarding maintenance on their vehicles; is that true?

23 A Yes.

24 Q Do you recall giving your deposition in three

1 separate sessions?

2 A Yes.

3 Q And you recall that when you gave your
4 deposition you took that same oath that you just took
5 right now to tell the truth?

6 A Yes.

7 Q And I believe in all categories that you were
8 queried -- I believe there were 27 of them -- you
9 indicated that you personally were the person most
10 knowledgeable for MDB; is that true?

11 A Yes.

12 Q Who is your current employer, sir?

13 A MDB Trucking.

14 Q And how long have you been in that -- with that
15 employer?

16 A A little over four years.

17 Q And what is your position there?

18 A Currently, manager.

19 Q What are the duties of a manager?

20 A Just -- I was doing dispatch, working in the
21 shop.

22 Q What else?

23 A In charge of maintenance.

24 Q And when you say "in charge," what do you mean

1 by "in charge of maintenance"?

2 A Directing the maintenance procedures and
3 policies for MDB Trucking.

4 Q Do you also do on occasion some of the
5 maintenance yourself?

6 A Yes, I do.

7 Q You're a mechanic as well?

8 A Yes.

9 Q And you also do inspections for the company?

10 A Yes.

11 Q Sir, do you have employees that report to you
12 at MDB?

13 A Yes.

14 Q How many employees do you supervise?

15 A Twelve maybe.

16 Q As far as the maintenance employees, are you
17 the person that ultimately is their direct report,
18 you're the one who calls the shots on maintenance?

19 A Yes, and our lead mechanic, Mr. Pat Bigby,
20 he -- we work together on --

21 THE COURT: Did you say his name was Bigbig?

22 THE WITNESS: Bigby.

23 THE COURT: Oh, Bigby.

24 MR. AICKLEN: Bigby, sir, B-i-g-b-y.

1 BY MR. AICKLEN:

2 Q So the drivers and the maintenance employees
3 report to you here in Reno; is that correct?

4 A Yes.

5 Q And, sir, your company MDB has
6 tractor-trailers, they also have -- or tractors --
7 right? -- 18-wheel tractors?

8 A Well, we have some that are tractors that pull
9 trailers, yes.

10 Q And then you have different types of trailers?

11 A Yes, that's correct.

12 Q And some of those are bellied-up trailers?

13 A Yes.

14 Q And I just -- just to be clear when we're
15 talking here, because there are a number of equipment
16 numbers within the thousands of documents in the case,
17 I just want to review some of the equipment numbers
18 with you if we could.

19 A Okay.

20 Q 5694 is MDB's tractor; is that correct?

21 A That is correct.

22 Q And that was the tractor that was involved in
23 the subject incident of July 7, 2014?

24 A That is correct.

1 Q And then there are three trailers attached to
2 that tractor; is that correct?

3 A At that time, yes.

4 Q And so if we're looking at equipment numbers,
5 the first trailer would be 6773; is that true?

6 A Yes.

7 Q And then the second or middle trailer would be
8 6774; is that correct?

9 A Yes.

10 Q Then the last or what I'm going to call the
11 dumping trailer is 6775; is that true?

12 A Yes.

13 Q Very good.

14 So, sir, you did confirm that you are the person
15 most knowledgeable for MDB regarding the maintenance
16 and equipment of the subject vehicles; is that true?

17 A Yes.

18 Q Are you familiar with the facts of the July 7,
19 2014, incident?

20 A Yes.

21 Q Can you tell the Court your understanding of
22 what occurred?

23 A The whole story?

24 Q No, just a summary. You were asked this

1 question. One of your drivers was carrying a load?

2 Could you explain that?

3 A Yeah. The truck went out to the pit and picked
4 up a load of rock and headed back in to Reno on the
5 highway and the back trailer opened, dumping --
6 spilling his load of rock onto the roadway which caused
7 the cars to spin out and created the accident, yes.

8 Q It actually created more than accident;
9 correct?

10 A Well, I mean, I'm not -- more than one vehicle
11 was involved, yes.

12 Q Multiple vehicles involved?

13 A Yes.

14 Q And you were also aware that there were
15 multiple injuries on that day; correct?

16 A Yes.

17 Q And that was as of July 7, 2014, you knew that
18 there had been multiple vehicles, multiple impacts and
19 multiple injuries?

20 A At the date of the incident I knew that? I
21 didn't really know it. It was kind of vague at first,
22 but, yes, within a couple of days I knew the full
23 impact of what happened, yes.

24 Q Did you perform any testing on the electrical

1 systems on the truck, the subject truck?

2 A Ever?

3 Q No. After the incident did you?

4 A No.

5 Q And is it true that you and Mr. Bigby performed
6 maintenance on the subject truck and trailers?

7 A Yes.

8 Q And that was maintenance that was done both
9 before and after this incident; correct?

10 A Yes.

11 Q And it was just you and Mr. Bigby that
12 performed that maintenance; is that correct?

13 A I believe so, yes.

14 Q I want to ask you to look at some -- we're
15 going to take a look at some maintenance records that
16 have been identified to the Court as exhibits.

17 MR. AICKLEN: Can I approach the witness with the
18 exhibit book?

19 THE COURT: You may.

20 MR. AICKLEN: Here you go, sir.

21 BY MR. AICKLEN:

22 Q The first exhibit I would ask you to take a
23 look at is the exhibit marked No. 4, MDB 4, on the tab.

24 A Okay.

1 Q And that should be -- if you could take a look
2 at it and confirm, that should be one of the MDB work
3 orders. Is that correct?

4 A Yes.

5 Q Okay. These are documents that are -- the form
6 was created by MDB; is that true?

7 A That is correct.

8 Q And then this particular form was filled out by
9 you; is that true?

10 A Are we talking about MDB-145?

11 Q Yes, sir.

12 A Yes.

13 Q Exhibit No. 4 is MDB-145; correct?

14 A Yes.

15 Q All right. So what is the procedure for a work
16 order? Who determines what work will be performed?

17 A Either myself or Mr. Bigby, depending on what
18 the scenario may be. If the driver comes in and says,
19 "I have a taillight out," Mr. Bigby would go out and
20 perform the work and fill out the work order.

21 Q Are work orders always filled out for the work
22 repaired?

23 A I would say that 95 percent of the time it
24 would be, yes.

1 Q Okay. So this work order, which is Exhibit 4,
2 is for equipment No. 5694; is that true?

3 A Yes.

4 Q So that is the subject tractor?

5 A Yes.

6 Q All right. And if you could tell the Court
7 what this work order depicts. What is the date of the
8 work order?

9 A December 18th, 2014.

10 Q What was the date of the dumping incident?

11 A July 2014.

12 Q July 7th, 2014?

13 A I believe so.

14 Q So this is five -- this work was performed five
15 months post dumping incident; correct?

16 A Yes.

17 Q All right. Would you tell the Court what work
18 was performed based upon this work order.

19 A According to the work done, it says tighten
20 screws on the four-way plug and test.

21 Q Now, the four-way plug, I believe counsel
22 actually brought examples of it.

23 MR. AICKLEN: If I could approach the witness, Your
24 Honor.

1 THE COURT: You can.

2 BY MR. AICKLEN:

3 Q It's a Phillips brand connector; is that true?

4 A That's correct.

5 Q Is that the same type of item that you

6 tightened the screws on?

7 A Yes.

8 Q By the way, did you provide these demonstrative

9 exhibits to counsel?

10 A Yes.

11 Q Okay. So we know that this is the exact same

12 type model, everything, manufacturer?

13 A I believe so, yes.

14 Q Okay. Thank you, sir.

15 MR. AICKLEN: Judge, do you want to look?

16 BY MR. AICKLEN:

17 Q So now after you tightened the screws on

18 December 18, 2014, were those screws of the same

19 tightness on that four-way connector as they had been

20 on July 7, 2014?

21 A After I tightened them?

22 Q Yes, sir.

23 A I'm not sure.

24 Q You don't know, do you? You changed the

1 tightness; correct?

2 MR. WIECZOREK: Objection. Lacks foundation.
3 Misstates testimony.

4 BY MR. AICKLEN:

5 Q You tightened --

6 THE COURT: Hold on a second. I need to rule on
7 the objection before you ask your next question.

8 I'm going to overrule the objection, but I think
9 it's just common sense that when you tighten something,
10 you've changed it in some way. So it's not -- you
11 tightened the screws, therefore, it's different than
12 the instant before you tightened the screws.

13 THE WITNESS: Yes.

14 THE COURT: Right. So theoretically then it's also
15 different than it was back on July 7th.

16 THE WITNESS: Yes.

17 THE COURT: Next question.

18 MR. AICKLEN: Thank you, Your Honor.

19 BY MR. AICKLEN:

20 Q And the four-way connector, that's the
21 connector for the wiring that controls the Versa valve
22 belly dumps; is that correct?

23 A Yes.

24 Q So those four wires that you tightened the

1 connectors down on are the control wires for the
2 subject Versa valve?

3 A Yes.

4 Q Okay. If you could, sir, take a look at --

5 MR. AICKLEN: Sorry, Your Honor.

6 THE COURT: Take your time.

7 BY MR. AICKLEN:

8 Q -- Exhibit 5. Do you see that?

9 A Yes, I do.

10 Q And would you -- that is a work order. It
11 should be marked MDB-318 down in the bottom.

12 A Yes.

13 Q And that is a work order dated February 5th,
14 2015?

15 A That is correct.

16 Q Okay. And that is for equipment No. 5694?

17 A Yes.

18 Q That is the subject tractor?

19 A Yes.

20 Q And can you explain to the Court what work was
21 performed on this work order?

22 A Mr. Bigby indicated -- this was filled out by
23 Mr. Bigby.

24 Q All right. Let's stop right there. Who is Pat

1 Bigby?

2 A He's our lead mechanic.

3 Q And he works for MDB?

4 A Yes, he does.

5 Q So his actions, he's working for the company,
6 working on the company's equipment?

7 A Yes.

8 Q Very good.

9 So would you explain to the Court what he did on
10 February 5th, 2015.

11 A He replaced the driver's seat and he replaced
12 the seven-way and four-way cords and replaced the
13 leaking axle flange gasket.

14 Q Okay. That has nothing to do with the Versa
15 valve control; correct?

16 A The axle flange gasket --

17 Q Correct.

18 A -- or the seat? Yeah.

19 Q So what we're looking at -- the subject is the
20 seven-way cord, the four-way cord; correct?

21 A That is correct.

22 Q You brought some examples of that; is that
23 correct?

24 A Yes.

1 Q All right.

2 MR. AICKLEN: Your Honor, may I approach the
3 witness?

4 THE COURT: You can approach the witness. And I
5 appreciate the courtesy, but you don't have to ask any
6 more, Mr. Aicklen.

7 MR. AICKLEN: Thank you. I got taught not to walk
8 in the --

9 THE COURT: You know, generally speaking I think
10 that's appropriate, but we don't have a jury present,
11 and so I'm not that concerned about it.

12 So go ahead.

13 MR. AICKLEN: Thank you, sir.

14 BY MR. AICKLEN:

15 Q Four-way cord, I'm going to show you this. Is
16 that the subject four-way cord?

17 A Yes.

18 Q Or an exemplary of it?

19 A Yes. It probably is like exactly the same
20 brand.

21 Q And that's what attaches into the four-way
22 plug?

23 A Yes.

24 Q Okay. And then this is a seven-way cord?

1 A That is correct.

2 Q What do those wires control?

3 A These control the lights on the trailer, the
4 turn signals, brake lights, marker lights, clearance
5 lights.

6 Q And the ABS?

7 A ABS, yes. ABS if the trailer is equipped with
8 ADS, yes.

9 THE COURT: The record should reflect that
10 Mr. Palmer is discussing the seven-way cord as far as
11 the controlling of all the lights.

12 Go ahead.

13 MR. AICKLEN: Thank you, sir.

14 BY MR. AICKLEN:

15 Q Let's go back to the four-way cord. I'm going
16 to give you that back. That has a hot on it and then
17 three circuit wires -- correct? -- the four-way cord?

18 A It has a ground. One would be a ground and
19 three would be the control wires that would be hot --

20 Q Right.

21 A -- at any given time when you were dumping that
22 particular trailer.

23 Q So the four-way cord controls trailer one's
24 belly dump, trailer two, and the subject's belly dump

1 trailer three?

2 A That is correct.

3 Q Okay. Thank you.

4 MR. AICKLEN: Your Honor, do you want to look at
5 these?

6 THE COURT: Sure.

7 Mr. Palmer, if you could just clarify one final
8 thing for me. On the four-way cord I assume that at
9 the end of each cord then there's something that's
10 attached to it so it fits into the socket you were
11 describing before. Is that correct?

12 THE WITNESS: Yes.

13 MR. AICKLEN: That's what I showed you sir.

14 THE COURT: No, I understand that, but you don't
15 just -- let me have that.

16 THE WITNESS: You have to disassemble that and it
17 goes into the back of the plug.

18 THE COURT: Gotcha. Okay.

19 So does it go in through the spring like this?

20 THE WITNESS: Yes. Um-hum.

21 THE COURT: Okay. I got it. Thanks.

22 MR. AICKLEN: Thank you, Your Honor.

23 BY MR. AICKLEN:

24 Q All right. So looking at MDB 5, which is

1 marked MDB-318, this says, "Replaced damaged four-way
2 cord"; correct?

3 A Yes, it does.

4 Q "Replaced damaged seven-way cord"?

5 A Yes.

6 Q So that four-way cord was the same four-way
7 cord that had been on the tractor on July 7, 2014;
8 correct?

9 A I'm assuming it would be. It hadn't been --

10 Q Go ahead.

11 A I mean, as long as -- I can only assume it was,
12 yes.

13 Q There's no other records that show any changes
14 to those cords between July 7, 2014, and February 5th,
15 2015; correct?

16 A Correct. So I would assume that it would be
17 the original cord, yes.

18 Q Okay. So then Mr. Bigby took the original cord
19 off and put in a replacement cord?

20 A As a result of damage done by the driver, yes.

21 Q What type of damage was there to the four-way
22 cord?

23 A Well, when the tractor is hooked to the
24 trailer --

1 Q No, sir. What type of damage was there
2 specifically to that piece of four-way cord on that
3 date?

4 A I do not know, but I'm assuming that it was
5 just abrasion. It was probably rubbed against
6 something and got a tear into the outer jacket.

7 Q Okay. So you don't know what the actual damage
8 was -- correct? -- but you think that it could have
9 been abrasion?

10 A It could have been anything. It could have
11 been cut by the driver.

12 Q All right. And so the abrasion -- have you
13 ever observed where the cord will be abraded and it
14 will abrade away the insulation such that two wires can
15 cross?

16 A Have I ever seen that?

17 Q Yes, sir.

18 A I don't -- I would suppose so, yes. If it's
19 cut in half, yeah, it could, yeah.

20 Q That original piece of four-wire cord that was
21 on July 7, 2014, that Mr. Bigby replaced when it was
22 damaged, where is it now?

23 A In the landfill.

24 Q You threw it away?

1 A Yes. Yeah, I would assume that we would throw
2 it away. That's what we would normally do.

3 Q You can't produce it here today?

4 A No.

5 Q Can you tell me what type of damage there was
6 to it?

7 A I cannot, no. I mean, I don't remember.

8 Q Did you ever observe it?

9 A I probably did, but the seven-way and the
10 four-way and the air line was replaced, so it could
11 have been -- obviously it was multiple amounts of
12 damage, so the driver probably got it caught under
13 something and --

14 Q But you can't testify under oath what the
15 damage was?

16 A Today, no, I cannot.

17 Q So you can't tell -- I couldn't call you as a
18 witness and put you in front of the jury and ask you if
19 those -- if the insulation was abraded such that two
20 wires crossed and created a circuit, could I?

21 A It would be irrelevant to me, because we just
22 replaced it. That was our job was to --

23 THE COURT: Listen to the question, Mr. Palmer.

24 THE WITNESS: I'm sorry.

1 THE COURT: The question was would you be able to
2 offer testimony regarding that occurring? You don't
3 know, or do you know?

4 THE WITNESS: I do not remember. No, I do not
5 know.

6 BY MR. AICKLEN:

7 Q And that evidence of what damage there was to
8 that original four-way cord that controls the belly
9 dumper is gone, it was thrown away by your company; is
10 that true?

11 A That is correct.

12 Q Okay. Let's take a look at --

13 MR. AICKLEN: I'm sorry, Your Honor. I had
14 different numbering and then your clerk was kind enough
15 to put them all into one book which really messed me up
16 because it's organized.

17 BY MR. AICKLEN:

18 Q Let's look at Exhibit 6, please. That should
19 be marked MDB-276 in the bottom right corner. Do you
20 see that, sir?

21 A Yes, I do.

22 Q Okay. Would you explain to the Court what this
23 work order reflects.

24 A It's indicated by Mr. Bigby that he replaced

1 pulled out four-way plug on equipment No. 5694.

2 Q All right. That's the Phillips four-way plug;
3 correct?

4 A That is correct.

5 Q This is an exemplar of what he replaced?

6 A Yes.

7 Q What's the date of that work order?

8 A December 2nd, 2015.

9 Q How long is that after the accident of July
10 '14?

11 A Approximately a year and a half.

12 Q It's a year and a half after. The plug that
13 was replaced, that Phillips plug, four-way plug, was
14 that the original plug that had been on the date of the
15 subject accident based upon the maintenance records?

16 A Based on the maintenance records in front of
17 me, I would have to say yes.

18 Q So that's the original plug that was on on the
19 date of the subject dumping on July 7, 2014?

20 A I'm assuming it would be if there's no work
21 orders missing, yes.

22 Q Where is that plug now?

23 A I'm not sure. It's possible that it's on the
24 side of the road somewhere. I don't know how the --

1 Q It's thrown away?

2 A No. It could have been -- I mean, if it gets
3 pulled off while the guy is driving down the road, it
4 could be laying on the road.

5 Q I believe when you were asked -- do you
6 remember in your deposition you were asked the question
7 of what happened to these materials? What did you say?

8 A I don't remember.

9 Q Do you recall saying that they were thrown
10 away?

11 A If it was still attached to the vehicle, I
12 mean, if the wire just got pulled out, then it would
13 have been thrown away, yes.

14 Q Okay. So the original four-wire plug that was
15 on July 7, 2014, we don't have it anymore, do we?

16 A No. That is true.

17 Q Can you tell me what the damage to it was that
18 required it to be replaced?

19 A No, I cannot.

20 Q Can you tell me if the Bakelite insulator
21 inside that plug had busted such that two wires could
22 touch and create a circuit? You can't tell me that;
23 right? You don't know? It's gone.

24 A Are you talking about at the date of the

1 incident or are you talking about the date of this
2 incident?

3 Q I'm talking about December 2nd, 2015, the
4 reason why Mr. Bigby took that off and threw it away.
5 Is it because the Bakelite was broken and two contacts
6 were touching such that they could create a circuit?

7 A I seriously doubt it, no.

8 Q You don't know, do you?

9 A No, I do not know.

10 Q I can't take that original four-wire plug that
11 controlled the subject belly dump and show it to the
12 jury and show what was wrong with it, can I?

13 A After -- on December 2nd?

14 Q No. Right now when the jury -- when we come in
15 on October 30th, I can't show them that plug and show
16 what damage there was to it; true or false?

17 A That's -- I imagine that's true, but it wasn't
18 damaged at the date of the accident. It was damaged on
19 December 2nd.

20 Q How do you know, sir? You did not inspect the
21 electrical system on the date of the accident.

22 A I mean, I know that's why it would be replaced
23 on December 2nd, because it got damaged that day and
24 then we replaced it.

1 Q But I can't -- you can't prove that to a jury
2 and I can't either because you threw it away; correct?

3 A Mr. Bigby -- somebody threw it away, yes.

4 Q Someone at MDB, the defendant?

5 A Yeah. That's correct, yes.

6 Q Okay. When was the first lawsuit filed in this
7 case?

8 A I do not know.

9 MR. AICKLEN: I believe it was Olivia John versus
10 Versa. I'd ask the Court -- or MDB. I would ask the
11 Court to take judicial notice.

12 THE COURT: That's fine. There's no way Mr. Palmer
13 I can think of would know that.

14 BY MR. AICKLEN:

15 Q How about service, sir? You're at the yard;
16 correct?

17 A Yes.

18 Q Do you recall being served with a number of
19 complaints from these lawsuits?

20 A No.

21 Q Were you personally served?

22 A No, I don't think so.

23 Q Did they drop copies of the complaints at the
24 yard?

1 A I don't think so.

2 Q Okay. Do you know that the first complaint in
3 this case was served on September 16, 2015?

4 A No. That would have probably been served at
5 the office, not at the yard. I really don't --

6 Q Did anyone at the office ever reach out to you
7 and say, "Mr. Palmer, we have been sued as of
8 September 16, 2015. You need to retain the evidence of
9 what happened on truck No. 5694"?

10 A No, nobody instructed me of that.

11 MR. AICKLEN: Again, request the Court to take
12 judicial notice of the service date of September 16,
13 2015.

14 THE COURT: So noted.

15 BY MR. AICKLEN:

16 Q The work order for MDB-273 where you replaced
17 the original four-way plug, that occurred on
18 December 2nd, 2015; correct?

19 A Yes.

20 Q So that would be two and one half months post
21 service according to the court records.

22 A Yes.

23 Q Did you ever ask anyone at MDB, anyone above
24 you, whether you should retain evidence related to

1 tractor 5694 or trailer 6773, 6774, 6775?

2 A No. I never gave it a thought.

3 Q Did anyone ever tell you to retain that
4 evidence from MDB?

5 A No.

6 Q In fact, the subject Versa valve remained in
7 use for two and a half years on tractor 6775, didn't
8 it?

9 A Yes, that is correct.

10 Q So we were talking about four-way plugs;
11 correct?

12 A Yes.

13 Q Can you go to -- excuse me -- Exhibit 3,
14 please. Would you take a look at that.

15 A Okay.

16 Q I'm going to show you this. You brought this
17 exemplar as well; is that true?

18 A Yes.

19 Q Is that a Phillips four-way socket?

20 A Yes, it is.

21 Q So that's what the connector plugs into?

22 A The plug, yes.

23 Q Yeah, the plug or connector. The Phillips
24 four-way --

1 A Yes.

2 Q -- plugs into that?

3 A Yes.

4 Q And then the four-way cord is connected to
5 that?

6 A Um-hum. Yes.

7 Q Okay. Exhibit 3, tell the Court what that's
8 for, what type of work that is.

9 A I believe that it would have been under the
10 course of normal routine maintenance, it looks like,
11 because it says, "Inspect and lube and replace the
12 socket." So Mr. Bigby would have during the course of
13 normal inspection in looping the trailers noticed that
14 the socket on the front of -- he doesn't actually
15 designate if it's the socket on the front or the rear
16 of the trailer, but one of the four-way sockets -- it
17 has two -- possibly the door or something was missing
18 off of it, the little flapper door, and he replaced it.

19 Q That's the first trailer; correct?

20 A Yes.

21 Q Okay. So the cable that comes off the truck
22 has the connector on it. It comes off the tractor?

23 A Yes.

24 Q It has the four-way cord -- or the four-wire

1 cord?

2 A Um-hum. Yes.

3 Q And it plugs into a socket on the first
4 trailer?

5 A Yes.

6 Q And then wiring goes down to the back of that
7 trailer and then it connects to the second trailer?

8 A Yes. So that was another one of those
9 receptacles on the back of the first trailer, and then
10 another plug there to continue to the second trailer,
11 yes.

12 Q And then that wiring goes down the second
13 trailer and there's another plug-in cord that goes into
14 a socket on the third trailer?

15 A Yes.

16 Q And then ultimately the wiring goes all the way
17 back to the subject Versa valve; correct?

18 A Yes.

19 Q So this socket on 6773, the first trailer,
20 that's part of the circuit that controls the subject
21 belly dump; correct?

22 A Yes.

23 Q Where is that socket, sir?

24 A The original socket that he removed?

1 Q Yes, sir.

2 A He would have thrown it away.

3 Q What was wrong with it?

4 A I cannot say.

5 Q I can't show it to a jury. This is the
6 original socket that was on the front trailer; correct?

7 A Yes.

8 Q It was there on July 7, 2014; correct?

9 A I believe so, yes.

10 Q Based upon the maintenance records.

11 A Yes.

12 Q Okay. I can't show it to a jury and show them
13 what, if anything, was wrong with it, can I?

14 A No.

15 Q Because your company threw it away; correct?

16 A Yes.

17 Q Okay. If you could please go to -- again, I
18 had them marked differently -- MDB-186 which is marked
19 No. 10. MDB-186, Exhibit 10, please.

20 A Okay.

21 Q Would you tell the Court what this evidence is.

22 A This is a work order for work performed on
23 December 18th, 2014. The work was actually performed
24 by myself. And I replaced the four-way socket on

1 trailer 6773.

2 Q That's the first trailer in the subject truck
3 and trailers?

4 A Correct.

5 Q Okay. And when you say you replaced, that
6 means you took out the original one and put a new one
7 in; correct? Socket?

8 A I took out the one that was currently installed
9 in it, yes.

10 Q Which would be the one that was there on
11 July 7, 2014?

12 A Are we talking about the same socket as the
13 last one?

14 Q No. Remember, that was Pat. Pat did that
15 work, and that was in '15. This is work you did in
16 '14.

17 A So then the one that Pat did was not the
18 original one that -- this would have been.

19 Q Aren't there sockets on front and back?

20 A Yes.

21 Q Okay. That's my next question to you, sir.
22 Which socket did you replace on December 18, 2014, the
23 front or the back?

24 A The front.

1 Q Okay. Which one did Pat replace in '15?

2 A I do not know. I would imagine it's the front
3 one.

4 Q But you don't know, do you?

5 A I mean, if I had to bet my life on it, I would
6 say, yes, it was the front, but I do not know. I can't
7 say for sure right now.

8 Q You cannot say under oath? You're guessing?

9 A No.

10 Q So my point here is you can't tell me whether
11 the original socket that was on there on July 7, '14,
12 on the front and on the back have both been replaced;
13 is that true?

14 A Actually I probably could if I went and looked
15 at the trailer, but right now I could not tell you.

16 Q Okay. And I don't have access to either of
17 those because the one that was replaced on December 18,
18 2014, what happened to that?

19 A The one that I replaced?

20 Q No, the one that -- oh, yeah, actually you did
21 this one.

22 A Yeah, I would have thrown it away.

23 Q All right. So on that first trailer which
24 we've already established is part of the circuit that

1 ultimately controls trailer number three belly dump --
2 correct?

3 A Yes.

4 Q -- we know that two sockets have been changed
5 out; correct?

6 A Yes.

7 Q We don't know if it was both front and back or
8 front twice or back twice; correct?

9 A Yes.

10 Q But we do know that the system that was on
11 there when it was inspected by the experts was not the
12 same as what was on there July 7, 2014; correct?

13 A Now I'm not sure.

14 Q The components were not the same?

15 A That the experts --

16 Q Yes.

17 A I'm not sure what the timeline is of when they
18 actually inspected. I don't remember. Maybe I
19 misunderstood the question.

20 Q The first inspections were done in 2016.

21 A Okay. Then you're right. That is correct,
22 they would not be the original ones.

23 THE COURT: I want to make sure that my notes are
24 correct, Mr. Aicklen. The tractor itself is 5694;

1 correct?

2 MR. AICKLEN: Yes, sir.

3 THE COURT: The first trailer is 6773?

4 MR. AICKLEN: Correct.

5 THE COURT: Now, what's the second trailer?

6 MR. AICKLEN: 6774.

7 THE COURT: And then the dumping trailer is --

8 MR. AICKLEN: 6775.

9 THE COURT: Okay. I just want to make sure. I
10 drew a little diagram, so I just want to make sure I
11 get this stuff right.

12 Go ahead.

13 MR. AICKLEN: Thank you.

14 BY MR. AICKLEN:

15 Q The only other question, sir, that I was going
16 to ask you was a question that was asked of you in
17 Volume 2 of your deposition, and that was did you save
18 the plugs and the components that were replaced off the
19 subject tractors and trailers after the maintenance was
20 done or did you throw them away?

21 A They would have been thrown away.

22 Q All of it; right? Everything that was taken
23 off was thrown off, cords, sockets, connectors, all
24 thrown away?

1 A That would be standard procedure, yes.

2 MR. AICKLEN: No further witnesses -- or no further
3 questions for this witness.

4 THE COURT: Mr. Wieczorek, cross-examination.

5 MR. WIECZOREK: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. WIECZOREK:

8 Q Mr. Palmer, before we get into the maintenance,
9 can you explain to the Court how this socket, plug,
10 electrical system operates from that tractor so if the
11 driver is interested in opening that belly dump gate on
12 that third trailer, like happened in this case, how
13 does he do it?

14 A If he wants to open the gate on the rear
15 trailer from inside the cab, he would have to energize
16 the -- it has a master electrical switch that he would
17 have to lift up a safety cover on and then activate the
18 switch. And then there's a row of three switches below
19 that that each control the first trailer, second
20 trailer and third trailer. He would then have to lift
21 up the safety cover on that third switch and then
22 activate that switch. And that would dump the rear
23 trailer. If all the electrical components were working
24 correctly, it would --

1 Q So the driver, Mr. Koski, in this case perhaps,
2 with his trailer would have had to reach over and, as
3 you said, there's a master switch that he has to lift
4 up first?

5 A Lift the safety cover up first and then lift
6 the switch up.

7 Q And then flip the switch specific to the third
8 trailer?

9 A Yes.

10 Q Before he flips those switches is there any
11 electricity or energy at all in this wiring?

12 A No.

13 Q You were asked questions by Mr. Aicklen about
14 perhaps one of these cords could have abraded and two
15 wires crossed and create a circuit. Do you recall
16 testifying about that?

17 A Yes.

18 Q Has that ever actually happened in your
19 experience?

20 A Never. Well, are you talking about the wires
21 being abraded?

22 Q Yeah.

23 A I've seen it where if the cord is completely
24 ripped off, I guess the wires could be touching, but

1 the cords aren't connected any longer.

2 Q What would happen to those wires if they were
3 abraded and they were touching together? Anything?

4 MR. AICKLEN: Object. Foundation. Vague.

5 THE COURT: Well, it's not a vague question, but I
6 don't know that there's any foundation laid for this
7 witness to answer that question. If he knows. I mean,
8 so far he hasn't -- with no disrespect to Mr. Palmer,
9 there hasn't been any foundation laid that he can offer
10 that kind of electrical engineering type of testimony.
11 Maybe somebody else can.

12 MR. WIECZOREK: Well, let me rephrase, Your Honor.

13 THE COURT: I'll sustain the objection. You can
14 rephrase the question.

15 BY MR. WIECZOREK:

16 Q Mr. Palmer, explain to us a little bit -- how
17 long have you been working around these types of
18 trailers and -- trailers and wiring devices like was on
19 Mr. Koski's trailer?

20 A Almost 40 years.

21 Q Forty?

22 A Yeah. Almost, yes.

23 Q And have you personally physically changed
24 wiring, changed plugs, reconnected sockets, rewired

1 electrical systems?

2 A Yes, extensively.

3 Q So you have a familiarity with how the cables
4 work and how the energy is transmitted through them and
5 how you get a belly dump to open; right?

6 A Yes.

7 Q So in that respect, with respect to your
8 experience, if there's a cable that's cut or severed or
9 frayed and the wires are actually touching, what's
10 going to happen to that trailer?

11 A Well, nothing would happen until somebody
12 activated the switch inside the cab to dump. Somebody
13 would have to do something, yes.

14 Q So let's say -- well, not say, but have you
15 ever had an experience where you flipped the switch to
16 activate the trailer dump and two wires are touching or
17 there's some kind of a short circuit?

18 A I have never seen that. I've never had that
19 happen to me, no.

20 Q Do you know what would happen if energy was
21 introduced through a cable that had two wires touching
22 or there was some other type of short circuit?

23 A In this particular case it would -- it could
24 either blow the fuse or circuit breaker on the unit if

1 it was touching the ground or it could activate the
2 incorrect trailer.

3 Q Okay. But one thing we know is there's
4 absolutely no energy in that line until those two
5 switches are in the on position?

6 A That is correct.

7 MR. AICKLEN: Object. Foundation.

8 THE COURT: Overruled. It's basically restating
9 the previous testimony that you need to lift the two
10 safety covers and then activate the two of them to
11 cause the back trailer to dump in the normal course of
12 operation it's my understanding of the witness's
13 testimony.

14 BY MR. WIECZOREK:

15 Q Did Mr. Koski tell you that he had flipped
16 those switches immediately prior to the dump on
17 Interstate 80?

18 A No. No. He said he absolutely did not do
19 that.

20 Q When that accident was reported to you did you
21 and Mr. Bigby actually try to come up with a cause of
22 what happened?

23 A After the December '14 incident?

24 Q After the July --

1 A I mean July '14. No, we did not.

2 Q You did try to come up with some kind of a
3 remedy, though; is that correct?

4 A Yes, we did. We just put a mechanical lockout
5 device on the first valve itself so even if it was
6 energized electrically it wouldn't open.

7 Q Can you explain to the Court what kind of a
8 lockout that was?

9 A It was just a fabricated piece of steel that
10 attaches to the trailer where the valve is that keeps
11 the -- and then a pin goes behind the handle so the
12 handle cannot move. It just -- it basically restricts
13 the handle that operates the valve from moving.

14 THE COURT: So are you saying that then you
15 wouldn't be able to dump the trailer from inside the
16 truck based on the remedial action that you took, you
17 would actually have to go out and do something
18 physically at the trailer itself?

19 THE WITNESS: Yes. The valve itself has a handle
20 that you can push manually to open it.

21 THE COURT: Right.

22 THE WITNESS: And so you would have to get out of
23 the truck, go back there, pull the pin out and get back
24 in the truck and hit the switch electrically.

1 THE COURT: So based on your subsequent action to
2 prevent this happening again, even if somebody did at
3 that point flip the two safety covers and try and dump
4 the belly or do the belly dump from inside the truck,
5 it wouldn't work, you have to physically get out and do
6 it outside regardless of what you do with the
7 electrical connection?

8 THE WITNESS: That is correct.

9 THE COURT: I apologize for asking those questions,
10 Mr. Wieczorek. I just wanted to make sure I
11 understood.

12 MR. WIECZOREK: That's fine, Your Honor. I
13 appreciate it.

14 BY MS. McCARTY:

15 Q Are you aware of other let's call it an
16 inadvertent activation of the valve and a dump?

17 MR. AICKLEN: Object to relevance in a --

18 THE COURT: I haven't even heard the end of the
19 question yet. Let him finish the question.

20 BY MR. WIECZOREK:

21 Q Other incidents where a Versa valve has
22 inadvertently activated as reported to you through no
23 intervention of the driver flipping those switches, has
24 that ever occurred to you in your experience?

1 MR. AICKLEN: Object to evidence in a spoliation
2 evidentiary hearing.

3 THE COURT: What's the relevance of that question?

4 MR. WIECZOREK: Well, the relevance, Your Honor, is
5 the witness is testifying about his experience with
6 these devices and this truck, and to the extent he can
7 opine or he can testify as to how -- other events which
8 have happened which did not result from some type of
9 driver error or electrical problem in another vehicle,
10 it's relevant to this inquiry about whether the
11 electrical problem identified by Mr. Aicklen is even --
12 is even of moment in this case.

13 THE COURT: I'm going to sustain the objection, but
14 not for the reasons stated by Mr. Aicklen. The
15 question is far too broad. It's not focused in any way
16 and it calls for certainly hearsay. So you said have
17 you ever heard basically under any circumstances. I
18 would need to hear a lot more narrow analysis by
19 Mr. Palmer if he knows. And then once you rephrase the
20 question, if Mr. Aicklen would like to posit the
21 objection again, he can do so, but I'm going to sustain
22 it just because it's too broad a question.

23 MR. WIECZOREK: Thank you. Let me try again.

24 /////

1 BY MR. WIECZOREK:

2 Q Mr. Palmer, is it correct that on the same day
3 as Mr. Koski's incident you were driving a
4 tractor-trailer rig and your third trailer dumped its
5 load on the highway?

6 MR. AICKLEN: Object to relevance in this
7 spoliation evidentiary hearing.

8 THE COURT: I'll overrule the objection. I'll give
9 the answer the weight that I believe is appropriate at
10 the conclusion of the hearing.

11 Did that happen to you that same day, Mr. Palmer?

12 THE WITNESS: Yes, it did.

13 THE COURT: Next question.

14 BY MR. WIECZOREK:

15 Q And where did it happen?

16 A It happened at Wadsworth on Interstate 80.

17 Q Do you know generally how far away from where
18 Mr. Koski's incident occurred your incident occurred?

19 A I would say a mile.

20 Q And do you know in time when your incident
21 occurred and when his incident occurred?

22 A It was within 20 minutes of each other, I
23 believe.

24 Q And is it correct that before your dump

1 occurred you did not flip the switches to activate the
2 line?

3 A No, I did not.

4 Q And it's correct obviously that you were
5 driving a different rig with different wiring and
6 different plugs and connectors; is that true?

7 A That is correct.

8 Q Did you investigate the cause of your dump when
9 you got your rig back to the yard?

10 A No, I did not. We put the same lockout devices
11 on every trailer we had in the fleet after Mr. Koski's
12 incident.

13 Q Had you ever tried to investigate the cause of
14 an inadvertent activation of the Versa valves on prior
15 events?

16 MR. AICKLEN: Object. It's beyond the scope of the
17 inquiry in this evidentiary hearing about spoliation.

18 THE COURT: Mr. Wieczorek.

19 MR. WIECZOREK: Their decision to create this
20 lockout pin is the result of there being no other
21 identifiable factor they could have identified through
22 inspection of these trucks. And Mr. Bigby can testify
23 to this and I think Mr. Palmer can too.

24 THE COURT: I think that we've heard enough. I

1 certainly understand the nature of the line of
2 questioning that you're asking and the remedial actions
3 that were taken, but I'll sustain the objection,
4 because I do tend to agree with Mr. Aicklen at this
5 point. It's beyond the scope of the spoliation issue.
6 We're just here today really to focus on was the
7 evidence destroyed or lost and what the remedy should
8 be for that and whether or not Versa is able to
9 accurately represent its own interests during the
10 course of the trial. So I'm not -- I'm going to
11 sustain the objection.

12 MR. AICKLEN: Thank you, Your Honor.

13 THE COURT: Go ahead.

14 BY MR. WIECZOREK:

15 Q Mr. Palmer, how many of the -- is it correct
16 that a decision was made after Mr. Koski's incident to
17 keep your fleet, your trucks in service?

18 A Yes. After we put the lockout devices on,
19 correct.

20 Q And why didn't -- you said you never even
21 thought about taking the trucks out of service. Why
22 not?

23 A Are you talking about Mr. Koski's vehicle?

24 Q Yeah.

1 A Are you talking about with regards to a
2 potential lawsuit or are you talking about in regards
3 to safety?

4 Q Well, I guess a potential lawsuit since you've
5 been asked questions about keeping evidence safe. How
6 come you decided not to just pull this rig over and
7 park it and leave it for some period of time?

8 A I just never -- we just never gave it any
9 thought. We needed the truck to perform the duties
10 necessary for our company. And after putting the
11 lockout devices on it, we considered it was rendered
12 safe, so we continued using it.

13 Q How many of these trailers rig setups do you
14 have similar to Mr. Koski's?

15 A Well, we have two that are identical, pretty
16 much identical, and then we have two or three other
17 sets that are similar.

18 Q So if you took Mr. Koski's rig out of service,
19 about 20 percent of your fleet would be grounded; is
20 that fair?

21 A That would be -- that would be correct,
22 20 percent of our fleet, yes.

23 Q Would that have an economic impact on MDB?

24 A Yes, it would.

1 Q Would you be able to keep in business?

2 A We would probably stay in business, but it
3 would impact severely.

4 Q You were asked some questions earlier about the
5 seven-way cord and the four-way cord. Do you recall
6 that?

7 A Yes.

8 Q Is that how those trailers came from Ranko?
9 Did they come with both seven- and four-way cords
10 attached?

11 A Well, at the front of the vehicles and the rear
12 of the vehicles, between the vehicles they had seven
13 and four ways, but the actually trailers themselves
14 have a different kind of wiring internally.

15 Q But the four-way cord is the only one that
16 influences the Versa valve; is that correct?

17 A That is correct, yes.

18 Q I'm going to go through some of these work
19 orders with you, but other than these work orders that
20 Mr. Aicklen went through with you, if we were to go out
21 to your yard today, is Mr. Koski's truck still in the
22 identical condition it was on the date of his incident
23 in terms of parts and wiring?

24 MR. AICKLEN: Object. Vague and ambiguous.

1 THE COURT: Well, Mr. Wieczorek, I don't know how
2 to quite say this, but the obvious answer to that
3 question is no. I just don't know how the answer could
4 be anything but no, because the witness has already
5 testified that there have been changes to the
6 electrical system. So it's needlessly cumulative.

7 MR. WIECZOREK: My question was imprecise. I said
8 other than these changes as evidenced in these has
9 anything else been changed.

10 THE COURT: Okay. Then I misunderstood your
11 question, because I thought he testified repeatedly
12 that this stuff is gone and it's been thrown away, so
13 the answer obviously had to be no under my analysis of
14 your question. So you can rephrase the question and
15 ask it again.

16 Go ahead.

17 BY MR. WIECZOREK:

18 Q Mr. Palmer, let me just ask a different
19 question. Did MDB ever go in and change all the wiring
20 out on these electrical relays and plugs?

21 A After the July '14 incident, no.

22 Q As far as you know, if people wanted to go out
23 to Mr. Koski's rig and look at the wiring that was in
24 place on the day of the incident, other than what has

1 been reflected in these work orders, that's still
2 there; is that true?

3 A That is correct. On the trailers themselves,
4 yes. The truck and the trailer configuration is pretty
5 much identical other than the certain parts that have
6 been replaced due to failure, damages, damage.

7 Q And in the three years since this incident, as
8 far as you know as the manager, has Mr. Koski's tractor
9 and trailer rig performed properly? It hasn't been
10 dumping loads anywhere else as far as you know; is that
11 true?

12 A No.

13 Q Let me ask you just a couple of questions about
14 some of the exhibits you were shown previously. First,
15 Exhibit 3, you -- this is from August 2014. And
16 Mr. Bigby, you testified, identified this as he
17 replaced the socket; correct?

18 A Yes.

19 Q In MDB's practice are sockets changed or plugs
20 replaced or is wiring replaced at any time other than
21 if there's a problem with it identified through
22 inspection?

23 A No.

24 Q So if -- I can ask Mr. Bigby this, but as you

1 understand it as the manager out there, if he replaced
2 something on August 5th, 2014, that means it was
3 working properly on August 4th? Is that how you
4 understand your policies?

5 A That's how I would understand it, yes.

6 Q Then let's look again at Exhibit No. 4. That's
7 the tighten screws on the four-way plug you testified
8 about.

9 A Yes.

10 Q You were asked whether by tightening the screws
11 it was in the same condition as it was in July 2014,
12 some five months earlier. And I think you said, "I
13 don't know."

14 Do those screws tighten to a point where they stop
15 such that they're secure or can you tighten them to
16 whatever level you want?

17 A Yeah, you tighten them -- you get a feel for it
18 and you tighten to a particular torque that you feel
19 comfortable with.

20 Q Do loose screws have a potential to cause a
21 problem with the rig?

22 A The only potential problem is that the wire is
23 not making contact if the screws aren't tight.

24 Q So if there was going to be a problem here, it

1 would be Mr. Koski would flip the switches and nothing
2 would happen; is that fair?

3 A That is fair.

4 MR. AICKLEN: Object. Foundation. Speculation.

5 THE COURT: Mr. Wieczorek.

6 MR. WIECZOREK: He's testifying from personal
7 knowledge as to what effect loose screws have on the
8 way his company and his truck operate.

9 THE COURT: Overruled. I'll consider the answer
10 that he's given.

11 Go ahead.

12 BY MR. WIECZOREK:

13 Q Exhibit 5, this will be the last example,
14 because I don't want to be repetitive. So this work
15 order was done February 2015, so we're some seven
16 months after Mr. Koski's incident. Would it be a fair
17 assumption based on your practice at MDB that these
18 repairs or this damaged four-way cord and damaged
19 service line were damaged on or around February 5th and
20 they were working good days before?

21 A That is correct, yes.

22 Q And by "working good" I mean Mr. Koski or your
23 drivers can flip a switch and activate the dump doors
24 through the Versa valve.

1 A That is correct, yes.

2 THE COURT: Wait a minute. Let's clarify that
3 answer.

4 Didn't you just tell me a moment ago that
5 immediately after the incident in July of 2014 you went
6 and put in this remedial measure so you had to get out
7 and manually operate the dump doors? Is that true or
8 not true?

9 THE WITNESS: You have to manually get out of the
10 vehicle to remove the pin.

11 THE COURT: Right. You have to physically do
12 something. So then Mr. Wieczorek's question that he
13 just asked and you just said "yes," the question in
14 essence was you can just flip the switches and the dump
15 doors would work on February 5th of 2015. That's not
16 accurate. You would have to do something other than
17 just flipping the two covers and then you flip the main
18 switch and then you flip the switch for number three.
19 You have to do something else; correct?

20 THE WITNESS: Well, yes. The way he asked the
21 question the answer was yes. I'm assuming that --

22 THE COURT: I'm not trying to confuse you.

23 THE WITNESS: No. The truck would come into the
24 plant, and then the driver can get out, remove all

1 three of the lockout device pins and then continue up
2 into the plant and when he gets over the Grizzly reach
3 over and dump the switches. So it's two separate
4 processes.

5 THE COURT: But it wasn't operating in the normal
6 or original configuration on February 5th of 2015,
7 because you had done something to prevent just the
8 flipping of the switches to activate the dump; correct?

9 THE WITNESS: I would say that on that particular
10 date the driver would have went up to the plant, after
11 he pulled the pins out, switched the flip and it didn't
12 work.

13 THE COURT: Now you've lost me. Say that again.

14 THE WITNESS: Okay. Maybe I'm getting off --

15 THE COURT: I think you and I are probably just
16 missing each other but we understand what each other
17 are saying, but I just want to make sure that I'm
18 clear.

19 And, Mr. Wieczorek, you'll certainly be allowed to
20 ask further questions on this issue to clarify it if
21 you want to.

22 But Mr. Wieczorek's question in essence was that
23 the system was operating in the normal fashion on
24 February 5th of 2015 -- or February 4th based on

1 Exhibit No. 5, that you would flip the switches and the
2 dump would occur. That's not completely accurate,
3 because you've already testified you did something to
4 impede that from happening. So the truck driver would
5 have to get out and pull those pins that you've
6 described --

7 THE WITNESS: Correct.

8 THE COURT: -- then get back in, flip the switches
9 and presumably the belly dumps would work.

10 THE WITNESS: Correct. But after --

11 THE COURT: Go ahead.

12 THE WITNESS: But after that, on this particular
13 date, he wouldn't be able to do that. He would have to
14 get out -- because the cord is damaged, so he would
15 have to get out, pull the pins out and then the
16 switches wouldn't work.

17 THE COURT: But you fixed it.

18 THE WITNESS: So then we fixed it. So I would say
19 that everything was working according to design, our
20 design, on the day before. You could dump the trailers
21 electrically inside the cab after you've gotten out and
22 removed the pin.

23 THE COURT: Right. But you just think that
24 sometime probably like on the 5th that didn't work, so

1 you had to fix it?

2 THE WITNESS: Right. Absolutely, yes.

3 THE COURT: Go ahead, Mr. Wieczorek.

4 MR. WIECZOREK: Thank you, Your Honor.

5 BY MR. WIECZOREK:

6 Q And just to be clear, this lockout pin setup
7 doesn't affect the electrical system in the truck at
8 all; is that true?

9 A That is correct.

10 Q You were asked questions about whether the
11 trailer and rig setup that was inspected by the experts
12 was the same as it was on the day of Mr. Koski's
13 incident, and I think you said things had been changed,
14 as we've seen through these work orders, but, once
15 again, just to be clear, other than what's shown in
16 these five or six work orders you were shown,
17 everything else on that truck is the same electrically?

18 A Extensively. I mean -- yes. Other than the
19 replacement parts, yes. Nothing was modified.

20 Q Mr. Palmer, thank you.

21 THE COURT: Redirect based on the
22 cross-examination, Mr. Aicklen.

23 MR. AICKLEN: Yes, sir. Thank you.

24 /////

REDIRECT EXAMINATION

BY MR. AICKLEN:

Q Mr. Palmer, Mr. Wieczorek asked you about the process of flipping the switches and then dumping the loads; correct?

A Yes.

Q Your answer was -- importantly you said, quote, "If all the electrical components were working correctly," close quote, then that would happen; correct?

A Are you saying if you purposely dump -- I mean if you --

Q No. When you went to go dump it -- he described the procedure pre lock out.

A Yes.

Q And you said, quote, "If all the electrical components were working correctly," close quote, then that would occur?

A Correct.

Q Yeah. But they didn't always work correctly, did they? The electrical components on your trucks, they didn't always work correctly?

A I'm not sure I understand that, the question.

Q They broke down, they didn't work, you had to

1 change them, things like that; right? They didn't
2 always work correctly? There would be times where you
3 would go to dump, flip the switch and nothing would
4 happen?

5 A Yes, that's correct.

6 Q Okay. He also asked you about the wiring of
7 the four-wire -- the four conductor wire. He asked you
8 if those wires were abraded. You can't tell us if
9 those wires were abraded -- correct? -- because they
10 were thrown away from the subject truck; is that true?

11 A Yeah, that's true. I didn't perform the work,
12 so I wouldn't be able to -- even if I did perform the
13 work, I probably wouldn't remember.

14 Q So you can't -- you can't tell me what the
15 damage was to the truck's four-way connectors either;
16 right?

17 A No. I can only speculate.

18 Q Or the sockets?

19 A No.

20 Q Okay. Counsel also asked you about wires
21 abrading. You answered, quote, "It could activate
22 another belly dump," close quote. Do you remember
23 saying that?

24 A Yes.

1 Q So, in fact, that four-way cord, if it gets
2 damaged or abraded, it can activate; true?

3 A Not without the driver doing something.

4 Q Let's talk about the driver. Mr. Koski had
5 three inadvertent dumps, didn't he?

6 A I believe so, yes.

7 Q Did you ever have three?

8 A Have I ever had three?

9 Q Yeah.

10 A In my life?

11 Q Yeah.

12 A No. Just one.

13 Q Just the one time?

14 A Yes.

15 Q Mr. Koski -- did you ever see where drivers
16 have hit the wrong switch in their truck?

17 A I have never seen it, no company I've ever
18 worked for has had that happen, but I have heard of it,
19 yes.

20 Q You've heard of it. But what about just
21 hitting the wrong button, hitting the wrong switch?
22 People do that; right?

23 A Well, you got to remember this has like a
24 safety cover on it. I mean, you have to -- you would

1 have to -- in order to hit the wrong switch, you would
2 have to consciously do it.

3 Q How did Mr. Koski dump three times?

4 A Wait a minute.

5 Q He had three inadvertent dumps; right?

6 A Yeah, but he didn't have -- the question was he
7 dumped?

8 Q Mr. Koski had three inadvertent dumps?

9 A Yes, with the same trailer.

10 Q You never had three inadvertent dumps?

11 A That's correct.

12 Q No other truck driver for your company ever had
13 three inadvertent dumps?

14 A That's correct.

15 Q But it was Koski?

16 A Yes.

17 Q Were you in the cab at the time of this
18 inadvertent dump?

19 A No.

20 Q Do you know if that master switch was
21 energized?

22 A I couldn't tell you, no.

23 Q So you're just assuming Koski did things right?

24 A Yes.

1 Q But this is a guy that had three of them;
2 right?

3 A Yes, but it was the same trailer.

4 Q But it wasn't you that dumped three, it
5 wasn't --

6 A That's correct.

7 Q -- Pat, it wasn't somebody else, it was him?

8 A Yes.

9 Q Would you think that -- well, you know the
10 policies and procedures for your company. If the same
11 driver makes the same three mistakes that cause
12 multiple accidents and injuries, is that driver going
13 to be disciplined?

14 MR. WIECZOREK: Your Honor, objection. This is far
15 afield of the purpose of this hearing today I would
16 say.

17 MR. AICKLEN: Scope of cross.

18 THE COURT: Well, I'll overrule that. However, it
19 also assumes facts not in evidence at this point,
20 because Mr. Palmer has not testified what the
21 consequences of the other two inadvertent dumps were,
22 Mr. Aicklen. So I'm assuming that the third
23 inadvertent dump was the one on the freeway.

24 MR. AICKLEN: Correct.

1 THE COURT: I don't know anything about the other
2 two, because he hasn't testified to them. I don't know
3 if it was in the yard or if it was on a side street, if
4 there were accidents, if anyone else was injured. So
5 it was a pretty broad question. So you can ask those
6 questions and narrow the focus a little bit.

7 MR. AICKLEN: This is more about policies and
8 procedures.

9 THE COURT: Okay.

10 BY MR. AICKLEN:

11 Q You're in charge of the drivers; correct?

12 A I was not at that time.

13 Q You are now?

14 A Yes.

15 Q If your driver does the wrong thing three times
16 the same way and causes accidents and injuries, are you
17 going to discipline the driver?

18 A Well, absolutely, but Mr. Koski didn't do
19 anything.

20 Q You don't know that, sir. You weren't in
21 there.

22 A But you can't assume that he did either. And
23 I've been --

24 Q I'm not going to argue with you. We'll just

1 let it go at that. Okay?

2 A Yes.

3 Q All right. Now, counsel asked you about
4 parking that truck, parking that rig. That's not the
5 only thing you could have done to preserve evidence, is
6 it?

7 A No. In hindsight had I known that we were --
8 we should have preserved evidence, we would have
9 preserved the evidence. That would have been easy to
10 do.

11 Q It would have been. You could have kept the
12 parts that were replaced?

13 A Sure. Yeah.

14 Q You could have taken all the parts in that
15 system off, replaced them and retained those parts?

16 A Yes. We could have, yes. That would have been
17 easy to do.

18 Q You could have as you replaced stuff just not
19 thrown it out?

20 A Yes. Had we known, yes, absolutely.

21 Q And if you had done that, I would be able to
22 look at those parts; right?

23 A Yes.

24 Q And my expert would be able to inspect them;

1 true?

2 A Yes.

3 Q And I would be able to show them to the jury?

4 A Yes.

5 Q But I can't do that now, can I?

6 A No.

7 Q And you can't testify what damage there was to

8 the discarded components. Mr. Wieczorek asked you

9 questions like, "Well, if you fixed it on the 15th,

10 then it worked on the 14th?" Do you remember those

11 questions?

12 A Yes.

13 Q You can't tell me if those things were broken

14 on the 14th, because they're not there anymore?

15 A Sure I can. I mean --

16 Q You can tell me the failure date of every

17 single component that was replaced on that truck? You

18 can't do it, can you?

19 A Well, I mean, if a driver comes to me and says,

20 "My turn signals aren't working," I'm assuming they

21 were working that morning or the day before. That's

22 all I can do. But I can't say for sure that they were

23 working -- I can't testify to that, no.

24 Q Right. Exactly. You can't testify to that.

1 A But the driver would come to you and say,
2 "Look, I tore my seven-way out and my four-way out.
3 When I turned the corner it got caught on the side of
4 the deck plate and it tore it off. Can you fix it for
5 me?" So I can only assume it was working correctly
6 before that.

7 Q Exactly. You assume. You can't testify under
8 oath that it's a fact?

9 A No.

10 Q Okay. I don't have any further questions.
11 Thank you.

12 THE COURT: Mr. Wieczorek, I know I ask you this
13 every single time I see you. Am I pronouncing your
14 name correctly?

15 MR. WIECZOREK: You are. Thank you.

16 THE COURT: Mr. Aicklen pronounces it differently,
17 and so I just want to make sure that I'm --

18 MR. WIECZOREK: Wa-zor-ik, yes, is the preferred
19 way.

20 MR. AICKLEN: That's what I call you, don't I? I
21 don't mispronounce it?

22 THE COURT: Not really.

23 MR. WIECZOREK: Occasionally you get a Y-zor-ik in
24 there.

1 MR. AICKLEN: I apologize. I think of it as
2 Wa-zor-ik in my mind. So I apologize. If I did, I
3 don't mean to. I have somebody who does that to me all
4 the time in court, and it bugs me.

5 THE COURT: It just comes out a little bit
6 differently. I just want to make sure I'm not doing it
7 wrong.

8 Do you have any additional questions of the witness
9 based on the cross-examination?

10 MR. WIECZOREK: I do not, Your Honor.

11 THE COURT: I have just one or two very brief
12 questions for you, Mr. Palmer.

13 EXAMINATION

14 BY THE COURT:

15 Q Based on your knowledge and experience with
16 MDB, are there any rules or regulations in place that
17 tell you what to do if there is an accident, you know,
18 any policies or procedures that say if one of our
19 trucks is involved in an accident or one of the
20 trailers, this is what we do under those circumstances?

21 A Yes.

22 Q Okay. And what are those?

23 A Well, we investigate and take statements and
24 come to a conclusion of what it is that happened.

1 Q All right. And do any of those policies and
2 procedures tell you what to do if you find some
3 mechanical mistake or some mechanical error, something
4 is broken?

5 A Well, I don't know if it specifically says
6 anything about mechanical failures, but we --

7 Q Or electrical. I mean just something wrong
8 with the rig.

9 A We would repair it, yes.

10 Q And do the policies and procedures tell you
11 what to do with the stuff that you take off that's not
12 working correctly?

13 A No.

14 Q And to your knowledge did anyone who was a
15 superior of yours, any of the management at MDB,
16 contact you or anybody else in the repair department or
17 the maintenance department and say, "Hey, this truck
18 was involved in a significant event out on the freeway.
19 Whatever we do, let's maintain the things that we fix"?

20 A No. I don't think anybody thought about it.

21 Q That's when you first made the initial changes.
22 And then at any time after that did anyone come and
23 tell you at any time after July of 2014, "Hey, if we do
24 anything with these trucks, let's make sure we preserve

1 that stuff"?

2 A No.

3 Q No lawyers came and told you that or nobody in
4 the management of the business came and said, "If we do
5 anything with these trucks, we've got to put that stuff
6 aside"?

7 A No. Not that I know of, no.

8 THE COURT: Okay. Mr. Aicklen, any questions based
9 on my questions?

10 MR. AICKLEN: No, sir.

11 THE COURT: Mr. Wieczorek, any questions based on
12 my questions?

13 MR. WIECZOREK: No. Thank you, Judge.

14 THE COURT: Okay. Thank you, Mr. Palmer, for being
15 here today. You may step down.

16 THE WITNESS: Thank you.

17 THE COURT: Mr. Aicklen, you may call your next
18 witness.

19 MR. AICKLEN: Do you mind if we take a break, Your
20 Honor?

21 THE COURT: We'll take about a 10-minute recess.
22 We'll break for lunch at noon. We'll break from noon
23 until approximately 1:15 at which point we'll come back
24 and we'll continue with the hearing. So that's just

1 going to be the schedule.

2 MR. WIECZOREK: Your Honor, there is one scheduling
3 issue. And I apologize for this, but Ms. McCarty and I
4 are involved in a case down in Las Vegas and our Judge,
5 Elizabeth Gonzalez, has asked us or more or less
6 directed us to have a brief telephone conference with
7 her at either 11:30 or 1:30 this afternoon. And I did
8 advise her JEA that we're in front of you on an
9 evidentiary hearing, and the JEA strongly said, "See if
10 you can make that happen."

11 So I don't necessarily want to disrupt your
12 courtroom, but if we could either work a little later
13 and then resume a little later or break a little
14 earlier and --

15 THE COURT: How long is the telephone conference?

16 MR. WIECZOREK: I expect it will be 10 minutes or
17 less.

18 MR. AICKLEN: Mr. Wieczorek actually raised this to
19 me and I said if it's okay with you all I'll go
20 straight through -- I don't see us going past 1:30 --
21 if it's okay with the Court.

22 THE COURT: It's not okay with the Court, because
23 I'm not going to do that to my staff.

24 MR. AICKLEN: Okay.

1 THE COURT: But I will have absolutely no problem
2 with accommodating my colleague down in the
3 Eighth Judicial District, so we'll make sure that we
4 make it happen. It might be that we go a little bit
5 later. If we're in the middle of a witness and we come
6 on the noon hour, we'll just keep going, and then we'll
7 take our lunch recess. So you'll be able to call Judge
8 Gonzalez. And if you need our help in -- if you want a
9 landline that you can use, then we'll certainly make
10 one available for you, Mr. Wieczorek.

11 So we will be in recess for approximately 10
12 minutes.

13 MR. WIECZOREK: Thank you.

14 (A recess was taken.)

15 THE COURT: Counsel, that break was a little bit
16 longer than I anticipated. I apologize for the delay.
17 I think we'll have enough time based on what you've
18 told me today to resolve these issues.

19 Mr. Aicklen, you may call your next witness.

20 MR. AICKLEN: Thank you, sir. I had actually
21 spoken with Mr. Wieczorek and let him know that I will
22 not be calling any more MDB fact witnesses. I believe
23 that Mr. Palmer was able to testify to those factual
24 things that I need.

1 THE COURT: Okay.

2 MR. AICKLEN: I will call Mr. Garrick Mitchell,
3 please.

4 THE COURT: Mr. Mitchell, if you would step forward
5 and be sworn, please.

6 (The oath was administered.)

7 THE WITNESS: I do.

8 THE CLERK: Okay. Just have a seat.

9 THE COURT: Good morning, sir. Can you please
10 state and spell your full name for me.

11 THE WITNESS: Certainly. My first name is Garrick.
12 That's G-a-r-r-i-c-k. Last name, Mitchell,
13 M-i-t-c-h-e-l-l.

14 THE COURT: Thank you.

15 Go ahead, Mr. Aicklen.

16 MR. AICKLEN: Thank you, Your Honor.

17 GARRICK MITCHELL,
18 having been first duly sworn, was examined
19 and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. AICKLEN:

21 Q Mr. Mitchell, will you tell the Court who your
22 employer is, please.

23 A I'm a full-time employee of Rimkus Consulting
24 Group. That's R-i-m-k-u-s.

1 Q What is your occupation?

2 A My job title is Western Region Forensic
3 Division Manager, but I am a mechanical engineer doing
4 forensic consulting work.

5 Q And you were retained by my firm in this matter
6 to represent my client?

7 A Yes.

8 Q Can you tell the Court your undergraduate
9 education, please.

10 A I received a Bachelor of Science in mechanical
11 engineering from Rice University in Houston in 1993.

12 Q And as part of your mechanical engineering
13 education did you receive any education on electrical
14 circuits?

15 A Yes.

16 Q What type of education?

17 A I took a course -- actually the title of the
18 course was AC Circuits, but just through the course of
19 the mechanical engineering curriculum we're routinely
20 exposed to electrical devices. In my senior design
21 project work we actually built a dune buggy, but it has
22 electrical systems on it we have to hook up. So just
23 as part of the general engineering curriculum we get to
24 know electrical parts.

1 Q And did you do any graduate education?

2 A Yes. I received a Master of Science degree
3 also in mechanical engineering from Rice in '95.

4 Q And as part of your education for your master's
5 degree did you also learn electrical and electrical
6 circuits?

7 A During my master's work my thesis involved
8 experiments in acoustic levitation of liquid droplets,
9 kind of esoteric stuff, but --

10 THE COURT: That's why I was a political science
11 major. The thought of what you just described made my
12 head hurt. But go ahead.

13 THE WITNESS: I'm not making it up, I promise. But
14 it's a -- I had an experimental apparatus. Basically I
15 used sound waves to float liquid droplets and then take
16 measurements on them. And to construct and maintain my
17 experimental apparatus, it ran on electricity. I used
18 amplifiers and transducers and components like that.
19 So, yeah, I got to work with more electrical parts on
20 the bench.

21 BY MR. AICKLEN:

22 Q And then you worked at Exxon. Tell the Court
23 about your work at Exxon.

24 A My first five years out of grad school I worked

1 for Exxon Production Research Company in Houston. And
2 as part of that work my group was developing a new
3 class of oil field chemicals. We did lab experiments
4 and field tests. We had to construct experimental
5 apparatus involving sensors, temperature, pressure,
6 flow rate sensors which were connected to an electrical
7 system. We had electrically-driven pumps driven by
8 motors both in a laboratory environment and also out in
9 the oil fields. So I've had to design, specify,
10 connect and troubleshoot electrical components in my
11 work at Exxon.

12 Q And then you have been working for Rimkus for
13 how long?

14 A I joined them in 2000, so 17 years.

15 Q And during the course of those 17 years,
16 approximately how many forensic investigations have you
17 performed?

18 A I don't keep count, but it's in the thousands,
19 at least a couple thousand.

20 Q And do these investigations oftentimes involve
21 electrical issues?

22 A They frequently involve electrical components.
23 If I'm looking at a consumer appliance, for example, be
24 it a dishwasher, a toaster, these are electromechanical

1 devices, so, yeah, they run on electricity, they use
2 switches, motors. So a good fraction. I would say
3 about -- well, when I'm looking at a vehicle, there are
4 electrical components on vehicles. So probably
5 60 percent of my work involves at least tangentially
6 some electrical components.

7 Q And your -- you said 60 percent of your work
8 involves forensic work on motor vehicles. Those would
9 be DC circuits like the circuits at issue in this case;
10 is that correct?

11 A On a vehicle, yes, that's a DC system.

12 Q Okay. Now, in this case did you look at
13 electrical issues as a possible cause of the unintended
14 dump?

15 A As part of my field work, as part of my
16 inspection of the tractors and trailers that we
17 examined, yes.

18 Q And which of the components did you look at?

19 A Well, the components of the -- the electrical
20 components of the truck that control the dump. That's
21 going from the battery on the tractor through the
22 wiring and switches and connectors back to the
23 trailers. I could sketch that out if it would help the
24 Court.

1 MR. AICKLEN: Would it help you to sketch it out or
2 do you understand --

3 THE COURT: Not yet. I'm not confused yet.

4 MR. AICKLEN: Okay. Very good.

5 THE WITNESS: It's not my goal to confuse the
6 Court.

7 BY MR. AICKLEN:

8 Q Did you find any electrical cause to this
9 unintended dump?

10 A At no time during our inspections of the
11 subject truck or an exemplar did we create an
12 electrical malfunction that caused the dump doors to
13 open on the trailers, so no.

14 Q Did you ever observe a malfunction with the
15 subject Versa valve?

16 A No.

17 Q And you were there when Misters Bosch and
18 Anderson tested the valve?

19 A I believe they got to see it before I did, but
20 we did also have inspections jointly. I, myself, and
21 others actuated the valve -- I'm talking on 6775 --
22 both mechanically with the lever and also electrically
23 with the switches in the tractor cab. It worked every
24 time.

1 Q So you never found a defect either in the
2 electrical or mechanical; correct?

3 A That's correct.

4 Q Okay. Now, were you able to inspect the
5 original electrical components that made up the circuit
6 of the July 7, 2014, event?

7 A Not all of them, no.

8 Q Why is that?

9 A Well, since the July 7th, 2014, accident there
10 were components of the electrical system that were
11 replaced, both on the tractor and on -- at least on
12 6773 which is the front trailer. But since the wiring
13 goes back to 6775, the dump trailer passes through the
14 tractor and then the front two trailers, that included
15 components of the rear trailer dump. So there were
16 parts that had been removed and discarded, so, no, I
17 wasn't able to see those parts.

18 Q And I was going to ask you, do you know what
19 happened to those components? You also heard it here
20 in the courtroom today.

21 A It's my understanding that those parts were
22 thrown away.

23 Q You read Mr. Anderson's testimony, his
24 deposition, regarding no need to inspect original

1 components, did you not?

2 A Yes.

3 Q Did you agree with that?

4 A No.

5 Q Why not? Explain to the Court.

6 A I can't quote him verbatim without a
7 transcript, but his testimony was in essence since
8 components were replaced like for like, we're looking
9 at the same system. And I disagree. We have
10 components that have been replaced. Those are not the
11 physical components that were in place at the time of
12 the accident. So I disagree with that testimony.

13 Q Why is it important to look at the components
14 that were actually physically on the truck on the day
15 of the incident?

16 A Well, simply, we need to understand the
17 condition of those components. We need to understand
18 was there damage. We need to not only visually inspect
19 them, ideally document them in situ, in place, but also
20 test them, check them for electrical continuity, for
21 example, are the connections sound. There's a variety
22 of observations and tests that could be performed only
23 with the parts in place. Once they're removed we lose
24 that chance.

1 Q And you don't even have any chance to inspect
2 if they're discarded?

3 A That's correct.

4 Q So you do not agree that looking at an exemplar
5 is the same in a forensic investigation as looking at
6 the actual components?

7 A Don't get me wrong. Exemplars are useful for
8 understanding how something is put together, but if
9 you're trying to determine why a particular part on a
10 particular vehicle failed, you've got to look at the
11 real thing. An exemplar doesn't tell you what happened
12 to that part on that truck.

13 Q On that date?

14 A Correct.

15 Q Now, you inspected the vehicles; correct?

16 A Correct. We looked at the subject tractor and
17 three trailers, the one driven by Mr. Koski and also
18 one driven by Mr. Palmer that same day.

19 Q And so the things that you got to inspect, I
20 believe that was in -- that was in October?

21 A My first inspection was June 15th, 2016.

22 Q June 15th, 2016. All right. But the
23 components that you were able to inspect were not the
24 components that were actually on the truck on the date;

1 correct?

2 A Some were, but some were not.

3 Q Did you make a list of what had been replaced?

4 A Yes.

5 Q Can you tell the Court what it was?

6 A Based on the work orders that we have -- and I
7 think these are all in the exhibit book -- we had -- on
8 August 5th of 2014, about a month after the accident,
9 one of the sockets on 6773, the front trailer, was
10 replaced. And that would be --

11 I apologize, Your Honor. I didn't note which
12 exhibit had each of the work orders in it.

13 Q I think we've already got it in the record.

14 A Okay. So, again, that was August 5th. And one
15 of the sockets, which would be this device here,
16 similar to it -- there's one on the front and one on
17 the back of the trailer -- one of those sockets on the
18 front trailer was replaced.

19 Q Why is it important for you as a forensic
20 expert to examine the actual socket as opposed to the
21 replacement socket?

22 A Well, first, it was part of the circuit that
23 controlled that dump -- the dump doors on the subject
24 trailer on the day of the accident. It's part of the

1 circuit. If we want to test the circuit, we need to
2 test the components that were in place on that day.

3 Secondly, I can't rule in or out whether there was
4 some issue with the component that was removed. I
5 can't look and see if there's damage to the pins on the
6 inside of the connector, whether the insulator that
7 separates those pins was damaged somehow, if there's
8 something else that could have created an alternate
9 path for voltage, for electrical energy, to get into
10 the pin that ultimately controls the dump valve on
11 6775. My chance to do that is gone.

12 Q They also replaced connectors; true?

13 A Yes. That would be the plug that goes into the
14 socket.

15 Q Here, let me show you this.

16 So what you inspected on the date of your June
17 inspection was a connector like that but not the
18 connector that was there on July 7, 2014; correct?

19 A That's correct.

20 Q All right. How does that affect your
21 investigation?

22 A In the same way. If I want to test the circuit
23 that controlled those dump valves on the day of the
24 accident, I need for all the parts to be available to

1 me. To replace something like for like, I have no idea
2 if there's a problem with this socket, this connector,
3 that cord that affected the operation of the dump
4 doors. There's no way for me to know.

5 All I can say is right now on the day of my
6 inspection, it functions. We can test voltages, test
7 resistances. They check out fine. But how does that
8 relate to that truck on the day of the accident? I
9 have no idea.

10 Q Now, the last thing would be the four-way cord.
11 The cord was actually connected to the circuit that
12 opened the dump doors; correct?

13 A Well, basically when we say "the cord," it's
14 the wiring that goes from the tractor back to the dump
15 valves on the trailers and then provides a return path
16 for the electricity to flow. So this would be the
17 cord. They're four individual wires or conductors
18 within a larger sheath.

19 Q Why is it important that you have the
20 opportunity to inspect the actual cord as opposed to a
21 replacement cord?

22 A The actual cords that were in place on the time
23 of the accident, there may have been -- and Mr. Palmer
24 alluded to this -- there may have been abrasions, they

1 could have been torn, crushed. There's any number of
2 conditions on the actual cord that once that cord is
3 removed and replaced, I simply don't know the condition
4 of that. I can't rule in or out that there was
5 something wrong with this cord that resulted in voltage
6 going to the dump doors on 6775 causing this accident.

7 Q And, again, that was because all of the
8 original components that were removed were thrown away;
9 correct?

10 A That is my understanding, yes.

11 Q Okay. So now can you go to a jury and swear
12 under oath and look at them and tell them that the
13 electrical circuit that controlled trailer number three
14 belly dump doors did not have a defect or a problem or
15 a torn cord or a broken socket or a broken connector on
16 July 7, 2014?

17 A No. The best I can do is to say on the day
18 that I inspected the truck, these are my observations,
19 these are my measurements, but that's as far back as I
20 can go.

21 Q How did this prejudice the investigation into
22 the actual cause of the inadvertent dump?

23 A It leaves me unable to rule certain hypotheses
24 in or out. When I do a forensic investigation I'm

1 applying the scientific method. Okay. We get the
2 facts, we learn from people, okay, what has happened,
3 and then we think, "Okay. Well, how could this have
4 occurred?"

5 You make a hypothesis -- in the scientific method
6 you make a hypothesis, you do experiments, take
7 measurements, and then test your hypothesis using
8 those. You're actually trying to prove yourself wrong.
9 Okay. I think it was electrical. Well, how can we
10 prove ourselves wrong? We would need to look at the
11 components in place, the electrical components in
12 place, on that truck on that day and say, "Well, do we
13 have an abrasion? Do we have a short? Is there
14 something -- anything that tells us no, it was not
15 electrical in nature?"

16 All I can say is on the day that I inspected the
17 truck, it worked, but I can't say -- I can't disprove
18 my hypothesis that it was something electrical. I
19 can't do a process of elimination and say, "Oh, well,
20 it wasn't electrical, therefore, it's something else."
21 I can't rule that out.

22 Q You read Mr. Anderson's deposition in which he
23 said that he performed a process of elimination and
24 came up with his EMF theory; correct?

1 A Correct. Electromagnetic fields being the
2 cause of the incident, yes.

3 Q Do you agree that he could perform an accurate
4 process of elimination without the original components?

5 A Certainly not rigorously, no.

6 Q Why not?

7 A Because in order to eliminate a possibility you
8 need to test that hypothesis, that possibility. All we
9 could test is the truck with replaced components on it,
10 including the cord, actually both the seven-way and the
11 four-way cords from the trailer to the first trailer,
12 the socket on the front trailer, the connector on the
13 front trailer.

14 THE COURT: I just want to clarify something if you
15 could for me, Mr. Mitchell. The discussion about the
16 seven-way cord is completely irrelevant to what we're
17 talking about here, because as I understand it, the
18 seven-way cord has nothing to do with the activation of
19 the belly dump. The seven-way cord is dealing with all
20 of the lights and the other things on the truck. So I
21 appreciate the fact that it's gone, but it's no more
22 consequential to my analysis than the fact that they
23 replaced the seat in the truck as well, unless I'm
24 wrong. Tell me about that.

1 THE WITNESS: To a forensic inspection actually it
2 is important.

3 THE COURT: Okay. Why?

4 THE WITNESS: The reason is that the seven-way -- I
5 believe Mr. Palmer explained -- the seven-way cord
6 powers the lights on the trailers as well as the ABS
7 modules if you have ABS. Okay. Each of the wires in
8 the seven-way, except for the ground coming back, is a
9 potential source of voltage. Okay. And actually may I
10 reference an exhibit or do you need to --

11 MR. AICKLEN: Oh, not at all. You want to look at
12 a photograph?

13 THE WITNESS: Yes. In Exhibit 11, one of the
14 photos -- and it should be the first one. At least it
15 is in my book.

16 THE COURT: Yeah, I've got that.

17 THE WITNESS: Okay. This is a side view. I'm
18 standing next to the driver's side of the tractor 5694.
19 And on the right side of the photograph you see the
20 front end of the front trailer. On the left side of
21 the photo coming up from the floor, if you will, are
22 the four-way and the seven-way cables, cords, as well
23 as the air hoses, the air lines going back to the
24 trailers. The air lines both supply power for the

1 brakes and also the air to actuate the dump doors.

2 But what this photograph shows us is the seven-way
3 and the four-way cords are actually tightly bundled
4 together. They actually come up and go up what's
5 called a pogo stick. It's a spring-loaded stick, if
6 you will, that provides some suspension for these
7 hoses.

8 THE COURT: A harness of some sort; is that right?
9 I just can tell they're holding them all in place up
10 here. Obviously you don't want them hanging down here
11 to get --

12 THE WITNESS: Right. And there are plastic Zip
13 ties that are used here to connect all those lines
14 together. You can actually see a bungee cord is being
15 used to hook onto one of those Zip ties to hold
16 those -- hold those items up off of the metal grate
17 down below there.

18 The point is that both -- what I photographed here
19 are in amongst this bundle are both the seven-way cord
20 and the four-way cord that were replaced post accident.
21 This is on February 5th, 2015. Okay. As Mr. Palmer
22 discussed, he doesn't know what the damage was.

23 Irrespective of what specific damage precipitated
24 the replacement of those cords, what I would have

1 wanted to do in a forensic exam is take all the Zip
2 ties off those, examine those cords from end to end.
3 They're gone. I don't have that opportunity.

4 But the reason even the seven-way is important is
5 that there is -- there's one conductor in there that's
6 constantly energized with 12 volts. That's the
7 auxillary pin that goes to the ABS modules on the
8 trailer. And whenever the lights are turned on, you
9 have voltage going to those other wires as well in the
10 seven-way.

11 So we have Zip ties, we have a bungee cord, we have
12 numerous places where those lines are in contact with
13 one another as the truck vibrates down the road.
14 They're hanging just above the expanded metal grate,
15 which is good for traction, but it's also good for
16 causing abrasions. There are myriad potential issues
17 with those parts that could have directly led to an
18 inadvertent dump.

19 THE COURT: Is Exhibit 11 the Koski truck or is it
20 the Palmer truck? I know when you took it, but which
21 truck is it?

22 THE WITNESS: All four photos in Exhibit 11 are the
23 Koski truck, yes.

24 THE COURT: And do we know or do you know at the

1 time of the dump on July 7th of 2014 whether or not the
2 configuration of this was exactly the same? And by
3 that I mean do you know whether or not the bungee cord
4 that you've referenced into the Zip ties was in place
5 or, alternatively, could have the seven-way cord and
6 the four-way cord, plus the air cords, been maybe
7 laying down on the textured metal -- I don't know what
8 you just called it.

9 THE WITNESS: Expanded metal, the grating.

10 THE COURT: The grating there. Do you know that or
11 do you not know that based on your information in the
12 case? Not on your personal observation on the day you
13 took this photo but what you know about the case.

14 THE WITNESS: I've never seen -- I'm not aware of
15 any photographs taken of the truck prior to my first
16 look at the truck, so I have no idea.

17 THE COURT: Go ahead, Mr. Aicklen.

18 MR. AICKLEN: Thank you, Your Honor.

19 BY MR. AICKLEN:

20 Q Anything that you want to complete or were you
21 done, Mr. Mitchell?

22 A I think I was done with the first -- with that
23 first photo, yes.

24 Q Thank you.

1 Now, was there continued use of the subject system
2 after July 7, 2014?

3 A Yes. As Mr. Palmer -- or as came out in
4 Mr. Palmer's testimony, the truck was kept in service
5 between the maintenance records and my own observations
6 of the truck, between the date of the accidents and
7 when the Versa valve, the subject valve, was removed
8 from the truck on October 13th of 2016. The truck had
9 been driven about 185,000 miles.

10 Q With the same components within it or --

11 A That's just total mileage. Components were
12 replaced along the way. And I don't know the mileage
13 for each of those, but the truck as a whole was driven
14 185 miles. The Versa valve -- if we assume it was
15 cycled four times each workday, five days a week --
16 that's 20 times a week -- 50 weeks a year, that's about
17 a thousand cycles per year, give or take.

18 THE COURT: Say that again. I was just making a
19 note to myself. 185,000 miles between the event on
20 July 7th and when you observed the truck?

21 THE WITNESS: Actually my second visit to the
22 truck, but that's the day we removed the subject Versa
23 value from the truck.

24 /////

1 BY MR. AICKLEN:

2 Q And it had been in continued use during that
3 time?

4 A Yes. And during that time it had been cycled
5 over 2,000 times. Again, to make the math easy, let's
6 assume four cycles of the valve per day, five days a
7 week, 50 weeks in a year, give or take, that's a
8 thousand times a year. So between July of '14 and
9 October of '16, that would be over 2,000 times that the
10 valve has been -- that the dump doors have been opened
11 and closed using the subject Versa valve.

12 THE COURT: What day in October did you take it
13 out?

14 THE WITNESS: The 13th. A year ago today. Who
15 knew?

16 THE COURT: You knew.

17 THE WITNESS: I just realized, because it's Friday
18 the 13th.

19 And during that time, as we've mentioned -- you
20 know, August 5th of 2014 we replaced the socket on
21 6773. That's relevant because the wiring to 6775's
22 dump controller go through the socket. December 18th
23 of 2014 the screws were tightened on either -- I
24 believe it was the plug, the connector, of the tractor,

1 5694, and again replaced a socket on 6773.

2 February 5th of 2015 the seven-way and the four-way
3 cords on 5694 were replaced which Mr. Palmer testified
4 he couldn't testify as to what the damage was. And
5 then December 2nd of 2015 the plug on the tractor was
6 replaced, and there was reference to pulled out wires,
7 presumably meaning the cord had started -- part or
8 completely pulled out of the plug.

9 There were also repairs to the pneumatic system, to
10 the air system. Remember, the compressed air from the
11 tractor supplies the trailer and actually gives the
12 force to open and close the doors. There were repairs
13 to the pneumatic system during that time. There was
14 ongoing preventative maintenance. Mr. Palmer alluded
15 to some times during just a normal maintenance stop if
16 something was found it would get replaced. Hopefully
17 it would get noted on a work order as well.

18 So that's what has occurred to that truck between
19 the time of the accident and the time we actually
20 removed the subject Versa valve from the truck.

21 BY MR. AICKLEN:

22 Q So my question ultimately to you, sir, is based
23 upon the loss and actually the destruction of this
24 evidence, can do you an objective scientific process of

1 elimination to determine the cause of that inadvertent
2 dump?

3 A No. We can test things that we have on the day
4 of the inspection, we can look at certain scenarios,
5 but there will always be parts of the puzzle missing.

6 THE COURT: The question I've got for you about
7 that is this, Mr. Mitchell. I appreciate the fact that
8 in the scientific method you would like to know exactly
9 what it looked like at the time that the incident
10 occurred, but what I'm curious about as I sit here is
11 what could it have been that you're looking for? Does
12 that make sense? There has to be -- it's not just "We
13 don't have." It's "We don't have it and it could have
14 been X that caused this to occur."

15 If you can't explain to me what that X is, then it
16 makes it difficult for me to consider your testimony.
17 So theoretically what could it have been? And we heard
18 testimony earlier -- I know you were present in the
19 courtroom -- that this -- the four-way doesn't have any
20 energy in it unless you're flipping the switch and
21 sending the energy through it. So I think what I was
22 supposed to take from that was that it doesn't really
23 matter because no one is putting energy back there to
24 make it work.

1 So what could it have been that you would have
2 said, "Aha, here's the explanation if I had the
3 sockets, if I had the cord, if I had the connector or
4 the pins"?

5 THE WITNESS: Sure. Remember we talked about both
6 the four-way and the seven-way cords getting replaced.
7 Okay. Based on how those were reinstalled -- and you
8 asked did I know what those cords looked like, how they
9 were routed prior to that. I don't. But one can
10 presume that it was a similar routing. Okay. It came
11 up out of the truck, went up the pogo stick and then
12 draped back to the front of the trailer.

13 I cannot rule out that there was damage both to the
14 four-way and the seven-way that resulted in their
15 rubbing together that perhaps even just intermittently
16 resulted in contact between a wire carrying 12 volts
17 and the wires going back to the dump valves and then a
18 path back to ground. I can't rule that out. I can't.

19 With the information I have, okay, well, maybe an
20 electrical cause isn't likely. In the end I say,
21 "Look, the Versa valve, it does what does it and that's
22 really all it can do. It can just sit there and
23 respond to external signals." But I cannot rule out
24 that there was voltage from a wire that's illuminating

1 a light or powering the ABS module, getting in the
2 four-way and causing the four-way to conduct that
3 voltage back to the Versa valve. And what's the Versa
4 valve going to do except say, "I've got voltage.
5 trigger. Open doors." I can't rule it out.

6 THE COURT: And these cords that you're talking
7 about, the four-way and the seven-way, as well as the
8 connectors and the sockets that you've got there,
9 they're all exposed to various stresses; is that fair?
10 It's a work truck. It's outside. It's exposed to the
11 elements during the course of every single day. So we
12 just don't know what effect it would have on all of
13 those things.

14 I think Mr. Palmer even testified sometimes they
15 get yanked out because you hook something or something
16 is hanging in the wrong spot. So we just don't know
17 what the conditions were at that time.

18 THE WITNESS: And in a case like that we might
19 have, say, police photographs of the vehicle. This
20 case was unusual in that Mr. Koski ended up miles down
21 the road before he gets the call and there were never
22 photos taken of his vehicle. That's unfortunate. That
23 would have been useful. Would it have given us those
24 answers? Maybe; maybe not.

1 But the totality of the parts that were replaced,
2 the problem is if we're saying, okay, I want to -- I
3 want to disprove that there was an electrical problem,
4 I'm looking at a circuit which consists of multiple
5 components. These are simply the components --
6 examples of the components that were replaced.

7 I can't take the totality of those components
8 hooked together, put a tester on them, put a
9 voltameter, check voltages, check resistances and say,
10 okay, the totality of these parts as they were on the
11 truck that day work. All I can say is this truck right
12 now works.

13 THE COURT: And, importantly, there is no visual
14 depiction of what Mr. Koski's truck was like on the
15 date of the event. That's what you're telling me;
16 correct? So it's not like you can look at pictures
17 that have been provided to you and say, "Okay. Well,
18 looking at it, it looks fine." And it would -- at
19 least it would make it more difficult to argue it could
20 have been the electrical circuit if you look at it and
21 you don't see any abrasions, you don't see anything
22 unusual about the sockets or anything else, even though
23 you're not looking at the physical item itself, if
24 you've got some depiction of it that you can look at

1 and say, "Well, I can't say definitively, but it looks
2 like."

3 THE WITNESS: And it's not at all unusual for us to
4 rely on photographs. You know, "Well, we don't have
5 the vehicle. We have photos. Hey, we'll do the best
6 we can with what we have."

7 And that's what we've done in this case. But to
8 say that I've ruled out every other cause and we're
9 left with the valve, you can't get there from here.

10 MR. AICKLEN: May I do a follow-up?

11 THE COURT: Pardon?

12 MR. AICKLEN: May I do a follow-up to that?

13 THE COURT: I apologize. I kind of jumped in and
14 you sat down.

15 MR. AICKLEN: Not at all. I sat down and was
16 listening.

17 BY MR. AICKLEN:

18 Q I believe you mentioned that Mr. Palmer had
19 testified to it. I'm going to approach and show you
20 Volume 1, page 92, of Mr. Palmer's deposition. I ask
21 you to read first to yourself and then into the record
22 from line 22 to page 93, line 9. Beginning right here.

23 A Okay. So reading from the transcript starting
24 at page 92, line 22: "QUESTION: What sort of thing

1 could occur for something to happen to it, I guess?

2 You said something could snag it?"

3 And we're referring to the cords behind the
4 tractor.

5 "ANSWER: Yeah, something could snag it, they could
6 drag on the ground, they could come unplugged and get
7 caught in something, but that's generally not what
8 happens. Generally what happens is they get old, they
9 get cracked. And if something snags on something, they
10 don't have it tied up correctly, I mean, the truck
11 driver, it's pretty easy to do.

12 "QUESTION: So does that happen frequently?

13 "ANSWER: Well, I wouldn't say frequently, but we
14 just sort of have a pet peeve of ours to make sure that
15 none of these things -- that these get fixed right
16 away."

17 MR. AICKLEN: That's what you were addressing,
18 Judge.

19 THE COURT: Thank you. Go ahead.

20 BY MR. AICKLEN:

21 Q So just by way of conclusion, has the loss of
22 this evidence precluded you from stating under oath
23 that there was not a cause within these components that
24 caused that unintended dump?

1 A Within those -- within those components, yes.
2 I still was able to examine and test and even
3 disassembled the Versa valve, and I found no fault with
4 that, but I can't tell you why the dump doors opened on
5 this day. I can't.

6 MR. AICKLEN: No further questions.

7 THE COURT: Cross-examination, Ms. McCarty.

8 MS. McCARTY: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. McCARTY:

11 Q Good morning, Mr. Mitchell.

12 A Good morning.

13 Q You are a mechanical engineer; correct?

14 A Yes, licensed in 15 states, including Nevada.

15 Q You are not an electrical engineer; correct?

16 A That's correct.

17 Q When Rimkus needs someone for an electrical
18 investigation, they don't call you; correct?

19 A We do have electrical engineers in the company.
20 And if that's the discipline that's required for a
21 particular inspection, that's what is called out.

22 Q You submitted a curriculum vita in this matter;
23 is that correct?

24 A Yes.

1 Q And there is nothing on your curriculum vitae
2 that indicates you have expertise in electronics or
3 electricity in any way, is there?

4 A If that's not said on my CV, then you're
5 correct.

6 Q You didn't complete any graduate work in
7 electrical engineering?

8 A No, I did not.

9 Q You are not qualified and never have been
10 qualified to testify as an electrical expert, have you?

11 A I have not in the past in court.

12 Q That's what I'm asking about.

13 A Well, you -- okay.

14 MR. AICKLEN: Object. Compound.

15 THE COURT: No, it wasn't a compound question.
16 Overruled.

17 You've never testified as an electrical expert in a
18 court setting, is that what you're trying to tell me?

19 THE WITNESS: Typically it's as a vehicle accident
20 reconstructionist and mechanical engineer. So, no, I
21 don't recall specifically qualifying as, quote,
22 unquote, an electrical expert. I'm certainly not an
23 electrical engineer.

24 /////

1 BY MS. MCCARTY:

2 Q And indeed you have had your testimony limited
3 previously in a court of law, haven't you?

4 A I have, yes.

5 Q So your expertise with respect to electricity
6 and electrical issues, as I understand it today, is you
7 took one class more than 20 years ago on single AC
8 circuits; correct?

9 A Single AC circuits, that wasn't the title of
10 the class.

11 Q Sorry. AC circuits.

12 A That is the course I have taken in school, yes.

13 Q Thank you.

14 You indicated that you inspected -- sorry. One
15 more follow-up.

16 I conducted your deposition on August 18th of 2017;
17 is that correct?

18 A I don't recall the exact date, but, yes, you
19 came to Denver.

20 Q And at that time you indicated to me that you
21 did not -- you were not an electrical expert; is that
22 correct?

23 A Was that in the transcript or was that our
24 discussion off the record?

1 Q It was in the transcript.

2 A Can you read it back to me? I don't have it
3 with you.

4 Q "I am a mechanical engineer by training and
5 licensure. I know enough, just enough, about
6 electrical devices to have a sense of how they
7 function." Was that your testimony?

8 A Yes.

9 Q Thank you.

10 You had the opportunity to inspect both Mr. Koski's
11 and Mr. Palmer's vehicles; correct?

12 A Correct, that they were driving on July 7th,
13 '14, yes.

14 Q And you observed at that time that the wiring
15 systems of these two vehicles were very different;
16 correct?

17 A Different from the date of the accident or
18 different one to the other?

19 Q Different one to the other.

20 A There were differences, yes.

21 Q And the differences were that Mr. Koski's
22 vehicle had a four-way pin system for the truck and
23 trailers -- is that correct? -- for the control of the
24 trailers and the Versa valves?

1 A That is how Mr. Koski's truck was configured,
2 yes.

3 Q And Mr. Palmer's truck was not configured that
4 way, was it?

5 A Sitting here now, I don't recall.

6 Q You don't recall that these trucks had vastly
7 different electrical systems?

8 A I'm not sure I would agree that they were
9 vastly different. I would have to refer to my file and
10 the photographs to refresh my memory.

11 Q It didn't stick out to you, because you're not
12 an electrical expert; correct?

13 A I can see differences between them. I do know
14 that Mr. Palmer's truck, for instance, used junction
15 boxes attached to the front rear bulkheads of the
16 trailers to clean up the connections. Now, is that a
17 vast difference? Functionally it may not be. But I'll
18 represent to you that in preparation for testimony
19 today, I was focused on Mr. Koski's truck. The fact of
20 the matter is for Mr. Palmer's truck we have the same
21 model of Versa valve which was treated as an exemplar.
22 But the differences between Mr. Koski's and
23 Mr. Palmer's trucks, I didn't use those in preparation
24 for today.

1 Q So you don't know that Mr. Koski's truck had a
2 separate wiring system for the truck and trailers that
3 Mr. Palmer's did not have?

4 A Again, what I remember right now is that there
5 were junction boxes that also included the seven-way
6 wiring.

7 Q Do you recall that Mr. Koski's truck received
8 power for the switches in his truck from an alternate
9 source than that of Mr. Palmer's truck?

10 A I do recall that Mr. Koski's truck they had
11 rewired the tractor at some point to separate the
12 wiring for the dump control from the power supply to
13 the trailer.

14 Q Indeed, Mr. Koski's truck had the wiring for
15 the truck -- or for the trailers entirely separated
16 from all of the other systems on the truck; correct?

17 A Mr. Koski's truck?

18 Q Yes.

19 A Okay. Yeah, I believe we could characterize it
20 that way, a separate takeoff from the battery going to
21 the switches going to the wires.

22 Q And indeed the four-pin wiring system on
23 Mr. Koski's truck and the seven-pin wiring system that
24 controlled everything else did not connect in any way?

1 A There were no intentional electrical
2 connections between them. Those four-way and seven-way
3 cords do run together, both behind the tractor to the
4 first trailer and then some of the lighting wires go
5 parallel with the four-way within the frame of the
6 trailers. So while there aren't intended connections
7 between those two, the wires run together, the wires
8 are routed the same way.

9 MS. McCARTY: Your Honor, may I approach the
10 witness, please?

11 THE COURT: Sure.

12 MS. McCARTY: Thank you.

13 BY MS. McCARTY:

14 Q Would you agree with me this is the seven-way
15 cord?

16 A Yes.

17 Q And would you agree with me this is the
18 four-way cord?

19 A These would be exemplars, yes.

20 Q Exemplars, yes. Thank you.

21 And the only way they run together is they touch in
22 this way?

23 A In areas where they're tied together, yes. If
24 a Zip tie breaks, they now have freedom to move

1 relative to one another.

2 Q And for the record, I am placing the seven-pin
3 cord and the four-pin cord next to each other. And
4 between the two there is a plastic cord and additional
5 insulation on each of the wiring?

6 A Yes.

7 Q So as I tap them together, this is what you
8 mean by running together?

9 A They run in parallel with one another, yes.

10 Q Would you agree that each of these wires is
11 insulated internally?

12 A Yes.

13 Q Would you agree that each of these wires is
14 insulated internally?

15 A I'm just checking to see if -- the ground may
16 not have an additional sheath on it. I'm at that age
17 where I can't quite see it. Otherwise the wires do
18 have different colors of insulation on the individual
19 wires.

20 Q And you would agree that each of these cords
21 has plastic coating in addition to the coating on each
22 of the wires?

23 A Yes. There's a sheath that surrounds all the
24 wires within that cord, yes.

1 Q And you would agree with me that the four-way
2 pin cord that controls the trailers is not at all
3 included in the seven-way pin, they're completely
4 separate?

5 A Thee each have their own sheathing that
6 combines the conductors within that cord.

7 Q But there's no point where these wires meet
8 each other in the system?

9 A Certainly not intentionally, no.

10 Q Thank you.

11 You indicated earlier that you did not have the
12 opportunity to view the cords as they existed in July
13 of 2014; is that correct?

14 A Yes.

15 Q And that is because it took more than two years
16 for you to go to MDB and inspect the truck and
17 trailers; is that correct?

18 A A little less. June 15th of 2016 was the first
19 time I saw them.

20 Q Two weeks shy?

21 A Well, you said over, so --

22 Q You heard Mr. Palmer's testimony today that
23 when they had a repair to be made, it would be recorded
24 on a work order; correct?

1 A Ninety-five percent of the time was his
2 testimony that would occur.

3 Q And you also just read into the record
4 testimony about how it was his pet peeve to have any of
5 these coatings coming loose, abrading, wearing out for
6 the cords?

7 A As I recall, he talked about cracking and that
8 sort of thing. Okay, yeah, I'll agree.

9 Q Okay. I'm going to show you what's been marked
10 as Exhibit 2. Could you please tell the Court the date
11 on each of those work orders.

12 A And I've been handed four pieces of paper.
13 They're all dated July 7th, 2014, the day of the
14 accident.

15 Q And can you indicate what this first work order
16 is for?

17 A This is page MDB-175 and it pertains to
18 equipment No. 6773 which is the front trailer of
19 Mr. Koski's vehicle.

20 Q And what did they do there?

21 A Listed under work done is, quote, "Fabricate
22 and install lockout device for Versa valve." And this
23 would be a metal bracket that was ultimately used to
24 insert a pin to prevent the lever on the Versa valve

1 from moving.

2 Q Is there any reference there to cracking in
3 cords or wires?

4 A Not on this work order, no.

5 Q What about on the next work order for equipment
6 No. 6774, can you tell us what the repair on that date
7 was?

8 A This is actually -- my impression just from
9 comparing the two documents is they're actually the
10 same document with a different equipment number on
11 them. It may well be a photocopy. So it is identical
12 to page MDB-175 except that it has equipment No. 6774.
13 And that's MDB-215.

14 Q And equipment No. 6774 is the second trailer;
15 correct?

16 A Correct.

17 Q And is there -- there's nothing on this work
18 order for equipment No. 6774 that references wires or
19 cords or cracks or abrasions; is that correct?

20 A It is identical to the paper 6773, so, yes,
21 you're correct.

22 Q Would you please look at the work order for
23 trailer No. 6775 from July 7th of 2014, the date of the
24 incident.

1 A And that is page MDB-260, yes.

2 Q And would you that agree that it also appears
3 to be identical to the previous two that you've looked
4 at?

5 A I believe it's a photocopy with a different
6 equipment number written in.

7 Q And would you agree there's no reference to
8 wires or cords there or plugs or sockets that were in
9 any way damaged, abraded, not functioning?

10 A I agree.

11 Q And would you please take a look at the final
12 work order, MDB-261, which includes all three trailers.
13 Is that correct?

14 A Yes.

15 Q Can you tell us what that one was for, please?

16 A Under work done it says, "Fabricate and install
17 positive locks on Versa valves on each trailer." So in
18 essence it's one combined work order for all three
19 trailers in addition to the previous three pages which
20 are work orders for each individual trailer.

21 Q And, again, just for the record, there is no
22 reference there to a plug, a socket, an abrasion, a
23 wire, any sort of issue involving the electrical
24 system; is that correct?

1 A Correct. It has only to do with the addition
2 of a retention mechanism for the lever on the Versa
3 valves.

4 Q It's correct that you have reviewed each of the
5 maintenance records that were provided in this case; is
6 that correct?

7 A There were numerous records, but I did make an
8 effort to look at all of them, yes.

9 Q And it's correct that these are the only
10 maintenance records from the day of the incident, isn't
11 it?

12 A There were multiple -- well, as we just saw,
13 there were kind of duplicate work orders, I think, but
14 that's all I recall from that date.

15 Q You have not seen a work order from that date
16 that indicates there was any sort of issue with a
17 cable, a cord, a plug, a socket, anything of that
18 nature; correct?

19 A Correct. And I heard testimony that there was
20 no inspection of the electrical system that day, so I
21 wouldn't expect a work order to be generated for that.

22 Q But you just testified that Mr. Palmer said
23 that they reviewed -- the drivers inspected every day
24 and they brought their work orders to them when there

1 were things to be repaired; correct?

2 A Well, just in the general course of business if
3 a driver noticed an issue, yes, I believe that's
4 correct.

5 Q Getting back to the electrical system on
6 Mr. Koski's truck, it has no current moving through it
7 unless the master switch and the trailer switch are
8 both flipped; is that correct?

9 A I'm going to assume by "it" you mean the
10 four-way wiring going back to the Versa valves on the
11 trailers.

12 Q Yes. Thank you.

13 A I agree.

14 Q So as Mr. Koski is driving down the road, there
15 is no current unless somebody flips both of those
16 switches; correct?

17 MR. AICKLEN: Foundation. Speculation. That's the
18 whole issue here.

19 THE COURT: I think he can answer that. It's also
20 something you touched on in your direct examination,
21 maybe not directly, but at least it was raised or the
22 inference of it was raised. So he can answer the
23 question if he is able to.

24 THE WITNESS: Could you repeat the question? I'm

1 sorry.

2 BY MS. McCARTY:

3 Q As Mr. Koski is driving down the road, there is
4 no current flowing through the four pin that controls
5 any of the three trailers that he is hauling unless he
6 flips the two switches; correct?

7 A Or unless there is a problem in the wiring that
8 results in voltage from another system such as the
9 seven-way energizing conductors in the four-way. The
10 valve can't tell the difference. But you're right,
11 there's not going to be current from the wire to the --
12 the wiring from the battery to the switches in the
13 four-way. Nothing is getting in unless -- you know,
14 via the four-way unless you flip the master switch and
15 then the switch to the individual trailer.

16 Q So you're suggesting a hypothetical wherein the
17 seven pin abrades to the point where it has an exposed
18 wire and the four pin also abrades to the point where
19 it has an exposed wire?

20 A Yes.

21 Q Okay. What would happen if that were the case?

22 A When those wires came in contact, when it made
23 a conducting path for voltage to get from a source to
24 ground, then current would flow. If you completed a

1 circuit, as the truck hits a bump and you make
2 momentary contact, current flows.

3 Q How would you complete that circuit?

4 A By physical contact between conductors. You
5 make a conducting path from the battery to ground.

6 Q Isn't it correct there is no path in the four
7 pin on Mr. Koski's vehicle for the current to go to?

8 A I don't know, because we're missing the cord.

9 Q You don't know because you're not an electrical
10 expert; isn't that correct?

11 MR. AICKLEN: Objection. Argumentative.

12 THE COURT: No, it's not argumentative.

13 You can answer the question. Overruled.

14 THE WITNESS: You don't need to be an electrical
15 engineer to measure resistance, to measure whether
16 there's a short, to measure whether there's some
17 alternate path for electricity to flow.

18 THE COURT: Go ahead.

19 THE WITNESS: And when a 10-foot section of --
20 well, approximately. When a 10-foot section of the
21 four-way and the seven-way have been removed and thrown
22 away, I can't test it.

23 BY MS. McCARTY:

24 Q So just so I'm clear, it is your understanding

1 that if all of the coating came off on the seven pin
2 and exposed the wire and all of the coating came off on
3 the four pin and exposed the wire, if they were to
4 touch, it is possible that that would open one of the
5 trailers? Is that your testimony?

6 A If you created a path from --

7 Q It's a yes-or-no question.

8 A Well, crud. I'm going to have to have you
9 repeat it -- I'm sorry -- because I didn't view it as a
10 simple yes or no. But please.

11 Q If all of the coating exposed the wiring on the
12 seven pin and all of the coating exposed the wiring on
13 the four pin, and the four pin, which has no current in
14 it, was touched by the seven pin, it is your testimony
15 that that would open the trailers?

16 A When you're taking all the coating off, what
17 you end up with is a bunch of bare cooper wires.
18 That's why I'm having trouble answering your question
19 as a yes or no. What happens is -- I'm going to say
20 yes, if you take all of the coating off of these wires,
21 you're probably going to have a dead short, you're
22 going to blow some fuses. But we're not talking about
23 stripping all these wires bare. We're not. We're
24 talking about establishing a conducting path from a

1 wire going to one of the -- from the battery to -- one
2 of the wires going to one of the three Versa valves and
3 then back to ground. That can be an intermittent
4 thing. Okay. Under those circumstances it will
5 energize the Versa valve, it will cause the doors to
6 open.

7 Q It's actually more likely and actually the case
8 that what would happen is it would blow a fuse; isn't
9 that correct?

10 A I mean, it depends on what the short is. There
11 is a fuse in the -- the answer is it depends, so let me
12 finish, please. These are rated for continuous duty.
13 You could leave the switches on for the trailers all
14 the time. The Versa valve solenoids stay energized.
15 So in the case where you simply have a conducting path,
16 yeah, you could blow a fuse, but it's not guaranteed to
17 happen.

18 Q But I'm correct, again, that there is no
19 current flowing through to the Versa valves unless the
20 switch is flipped; is that correct?

21 A The best explanation for that is, okay, here's
22 our cord, here's the tractor, here's the trailers.
23 There is no current getting into here unless you flip
24 the switches. But all the Versa valve knows is is

1 there current from here that then comes back and finds
2 a path to ground. I agree, you have to flip the
3 switches to get voltage in here, but a lot can happen
4 in between here and there.

5 Q As long as --

6 A I don't know, because those parts got thrown
7 away.

8 Q Those parts don't have anything to do with
9 anything, do they?

10 A They're part of the electrical system of the
11 truck. They have everything to do with this. It's
12 not --

13 Q There's no electricity in that path --

14 MR. AICKLEN: Please allow him to finish his
15 answer.

16 THE COURT: You're both talking over the top of
17 each other. So I'll sustain the objection.

18 Ms. McCarty, please let him finish his answer.
19 And, Mr. Mitchell, please let her finish her question
20 before you start responding to it.

21 So with that, Ms. McCarty, why don't you ask your
22 next question or rephrase the last question.

23 MS. McCARTY: Thank you, Your Honor.

24 /////

1 BY MS. McCARTY:

2 Q There's no electricity in the four-pin cord
3 unless the switches are flipped; correct?

4 MR. AICKLEN: Objection. Asked and answered
5 multiple times.

6 THE WITNESS: But to clarify --

7 THE COURT: No. I get to make a ruling.

8 THE WITNESS: I'm sorry, Your Honor.

9 THE COURT: Ms. McCarty, what would you like to
10 say? Do you have a response to the needlessly
11 cumulative --

12 MS. McCARTY: Your Honor, I think as Mr. Mitchell's
13 testimony is evolving I am asking the question again so
14 that I am clear as to where we are with respect to the
15 question.

16 THE COURT: I understand Mr. Mitchell's answer and
17 I also understand your question. The beauty of oral
18 argument and an evidentiary hearing is I get to tell
19 you at least what I think you're both trying to say.
20 And if I'm wrong, you can clarify.

21 In a general sense, Ms. McCarty, you're saying
22 unless the switches are flipped in the truck there's no
23 electricity going back to the valve; right?

24 MS. McCARTY: Correct.

1 THE COURT: And he's saying, "Yes, I agree in a
2 general sense. Unless the switches are flipped, as
3 we're driving down the road there is no electricity."

4 However, Mr. Mitchell is trying to make the
5 distinction that the switches cannot be flipped, but if
6 there is some way that the cords are touching each
7 other it is sending electricity into the cord. That's
8 my understanding of the back and forth between the two
9 of you. I think you both made it abundantly clear.

10 You're talking about in a general sense the cord is
11 dead, so to speak. He's talking about the fact that
12 it's possible that something has happened to energize
13 that cord at some point in it so there's an electrical
14 current going back to the Versa valve causing it dump
15 the gravel in the road and subsequently the accidents
16 that occur. That's my understanding of his testimony
17 and of your questions.

18 You can ask your next question.

19 MS. McCARTY: Thank you, Your Honor. Given the
20 Court's understanding --

21 THE COURT: If you want to clarify that -- I mean,
22 that's just how I get it. If I'm wrong or if you think
23 you guys want to ask additional questions or provide
24 additional answers, please feel free to do so. I'm not

1 trying to limit your questions. I'm just trying to say
2 I think I understand what you're both trying to say.

3 Go ahead.

4 BY MS. McCARTY:

5 Q So if there were to be some sort of electrical
6 interference with the four-way pin, it's your testimony
7 that it would be directed to the valves; correct?

8 A Interference to me is a very specific thing
9 that's been proposed by others, that some --

10 Q I'm not talking about AMAP (phonetic). I'm
11 asking about if the seven pin somehow provides power to
12 the four pin, your testimony is that it would reach the
13 Versa valves; correct?

14 A If there were a conducting path -- the valve
15 doesn't know where the power is coming from. It just
16 knows is there voltage. If there is, the solenoid
17 activates and away you go.

18 Q Is there a conducting path?

19 A I don't know, because I couldn't look at the
20 cords because they were thrown away.

21 Q You were present with Mr. Anderson and
22 Dr. Bosch at the initial inspection of the trucks and
23 trailers at MDB; is that correct?

24 A My first inspection was -- I apologize. There

1 have been so many inspections I don't recall who was at
2 which one offhand. I have been at the yard outside of
3 Sparks with them present, yes.

4 Q And do you recall that the seven pin, the
5 original seven pin, that at one time contained the
6 cords for the trailers, but which no longer does,
7 remained inside of the vehicle?

8 A No, I wasn't aware of that.

9 Q You don't recall agreeing that there was no
10 need to pull out that wiring to inspect it?

11 A The seven pin that was installed on the truck
12 at the time of the accident?

13 Q Yes.

14 A I don't recall that at all.

15 Q Okay.

16 A I mean, there were numerous folks there.
17 That's news to me.

18 MS. McCARTY: I don't have anything further, Your
19 Honor. Thank you.

20 THE COURT: Thank you, Ms. McCarty.
21 Redirect based on the cross-examination,
22 Mr. Aicklen.

23 MR. AICKLEN: Thank you, sir.

24 /////

1 REDIRECT EXAMINATION

2 BY MR. AICKLEN:

3 Q Counsel asked you about your ability to give
4 opinions. You work with motor vehicle electrical
5 systems all the time, do you not?

6 A Yes.

7 Q And you do testify on motor vehicle electrical
8 issues; correct?

9 A Absolutely. I have to troubleshoot engine
10 failures, I have to determine whether lights were
11 illuminated at the time of an accident. Sure.

12 Q You don't have to have a BS or MS in electrical
13 engineering to understand a simple DC circuit on a
14 motor vehicle, do you?

15 A No.

16 Q Counsel showed you maintenance records with no
17 records of cord damage on July 7, '14; correct?

18 A We reviewed the documents from that day and,
19 yes, there was no mention of cord damage, correct.

20 Q But you heard from Mr. Palmer they did not
21 inspect the electrical on that day; correct?

22 A That's my recollection of his testimony, yes.

23 Q Okay. You also heard him testify that if they
24 saw a problem, they would fix it; correct?

1 A Yes.

2 Q Okay. She showed you those records, but she
3 did not show you the missing components; correct?
4 Counsel didn't show you those missing components?

5 A No.

6 Q All right. I have one question left for you.
7 You're talking about abrading wiring going short to
8 ground and triggering a catastrophe. Flight 800. What
9 is Flight 800?

10 A If I remember correctly, that was the TWA 747
11 that exploded in midair over Long Island.

12 Q Do you recall --

13 MS. McCARTY: Objection. Relevance.

14 THE COURT: Well, two things. Number one, you
15 said, "I have one question," and that was one question.

16 MR. AICKLEN: Flight 800. I have a follow-up.

17 THE COURT: I'm not quite sure what the relevance
18 of Flight 800 is, the TWA flight that you're referring
19 to.

20 MR. AICKLEN: I was going to ask that.

21 THE COURT: I think it was back in 1996 if I
22 remember correctly. Maybe. No. Are you talking about
23 a different flight? It doesn't matter. I'm not quite
24 sure what the relevance is. I'm not quite sure if this

1 witness is able to testify to what occurred during that
2 flight beyond what he may have read somewhere.

3 MR. AICKLEN: That's exactly what I was going to
4 ask him.

5 BY MR. AICKLEN:

6 Q Did you read what they ultimately determined
7 was the cause?

8 MS. McCARTY: Excuse me. Did you rule, Your Honor?
9 I'm sorry.

10 THE COURT: I'll reserve ruling on the objection.
11 I'm not quite sure what the relevance is, but I'll wait
12 to hear what the answer is and then I'll let you know
13 if I'm going to consider it or disregard it,
14 Ms. McCarty. I'm not quite sure as I sit here what the
15 relevance will be or what weight I'll give the answer.

16 Go ahead.

17 THE WITNESS: Well, that was before my time as a
18 forensic engineer. I'm an aviation buff. But, yes, I
19 read up on that accident and I'm familiar with the
20 investigation on it.

21 BY MR. AICKLEN:

22 Q What did they determine?

23 A That there was a fuel sensor or fuel probe in
24 one of the fuel tanks that basically managed to ignite

1 the fuel air mixture in one of the tanks. There was a
2 short in the wire.

3 MS. McCARTY: Objection. I'm going to renew my
4 objection.

5 THE COURT: Sustained. I have no idea what that --
6 what relevance that has to anything we're talking about
7 today, Mr. Aicklen.

8 BY MR. AICKLEN:

9 Q It was a wire that went through a grommet that
10 cut the insulation and went short to ground. Is that
11 your --

12 MS. McCARTY: Objection.

13 THE COURT: And now you're testifying.

14 MR. AICKLEN: No. I'm asking him a question, Your
15 Honor.

16 THE COURT: I'm going to sustain the objection and
17 ask that you move on to something else.

18 MR. AICKLEN: I don't have any further questions,
19 Your Honor.

20 THE COURT: Thank you.

21 Ms. McCarty, recross based on the redirect.

22 MS. McCARTY: Thank you, Your Honor.

23 /////

24 /////

RECROSS EXAMINATION

BY MS. McCARTY:

Q Mr. Mitchell, did you look at all of the wiring to look for abrasions all along the electrical system to the valve at the time of your inspection?

A No.

Q And did you pull all the wires to see if there were any abrasions anywhere?

A There was wiring going through the steel frame of the trailers. No, that was not pulled out by anybody to my knowledge.

Q And no one prevented from you doing that; correct?

A That's correct.

MS. McCARTY: That's all I have, Your Honor.

THE COURT: Thank you.

THE WITNESS: Sorry.

THE COURT: No. She said that's all she has. So you may step down, Mr. Mitchell. Thank you.

THE WITNESS: Thank you, Your Honor.

MR. AICKLEN: Could I ask one more question?

MS. McCARTY: Objection, Your Honor.

THE COURT: Well, I don't know what the objection is going to be. If the question is "What were you

1 going to say" --

2 MR. AICKLEN: Yes, sir.

3 THE COURT: No, that you cannot ask. The Court
4 under I think it's NRS 51.115 does have the authority
5 to conduct the mode and order of the interrogation of
6 the witnesses. Generally speaking, I think that means
7 direct and a cross, a redirect and a recross, and
8 that's it, because, if not, lawyers would go on
9 forever. So that's pretty much we are finished.

10 Mr. Mitchell, you may step down.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Do you have another witness you would
13 like to call, Mr. Aicklen?

14 MR. AICKLEN: No, sir. I would just like to argue
15 at the end, but I don't want to call another witness.

16 THE COURT: Okay. Does the defense -- or, excuse
17 me -- does MDB, I should say, wish to call a witness or
18 witnesses in these proceedings?

19 MR. WIECZOREK: We have two witnesses, Your Honor,
20 yes, we will be calling.

21 THE COURT: It's noon. I don't like to push my
22 staff unreasonably. How long are your witnesses going
23 to take?

24 MR. WIECZOREK: Mr. Bigby may take about 30 to 45

1 minutes depending on cross-examination. The other may
2 take an hour perhaps.

3 THE COURT: All right. We'll take our recess for
4 lunch, because I don't want to just start Mr. Bigby's
5 testimony and then break it in the middle. And we do
6 know that you've got to call Judge Gonzalez down in
7 Las Vegas at 1:30. So we'll take our lunch recess and
8 then we will reconvene as quickly as possible after
9 you've had your conversation with Judge Gonzalez.

10 Ms. Clerk, if we can let them use the bat phone.
11 So we'll clear out the courtroom so you have some
12 privacy. You'll be able to talk to Judge Gonzalez.
13 You can just hook up here if you want to.

14 MS. McCARTY: Your Honor, we very much appreciate
15 the accommodation, but Ms. -- excuse me -- Judge
16 Gonzalez had an emergency and, unfortunately, our call
17 has now been vacated until next week. So thank you.

18 THE COURT: Then we will reconvene at 1:15 for
19 further proceedings.

20 Court is in recess.

21 (The lunch recess was taken at 12:00 p.m.)

22 --o0o--
23
24

1 RENO, NEVADA; FRIDAY, OCTOBER 13, 2017; 1:16 P.M.

2 --o0o--

3 THE COURT: We will go back on the record in
4 Fitzsimmons versus MDB, CV15-02349. Ms. McCarty and
5 Mr. Wieczorek are here on behalf of MDB. Mr. Aicklen
6 and Mr. Bick are here on behalf of Versa.

7 When we broke the defendants had finished
8 presenting their witnesses and I was informed that the
9 plaintiffs have two witnesses to call. So the
10 plaintiff may call their first witness.

11 MR. WIECZOREK: And, Your Honor, I'm going to call
12 Patrick Bigby. While he's coming in, I know I told
13 Your Honor two witnesses before the noon hour. We
14 actually may have a third, Mr. Anderson, but his
15 testimony will be quite brief, I believe, just for your
16 own planning purposes.

17 THE COURT: That's fine. I appreciate that,
18 Mr. Wieczorek. We've got the whole afternoon
19 scheduled, so I don't think we're going to run out of
20 time.

21 (The oath was administered.)

22 THE WITNESS: I do.

23 THE CLERK: Okay. Just have a seat.

24 MR. WIECZOREK: May I put the exhibit book in front

1 of him?

2 THE COURT: Have a seat, sir. Make yourself
3 comfortable.

4 While Mr. Wieczorek is getting organized, could you
5 please state your name and spell your full name for me.

6 THE WITNESS: My name is Patrick Dean Bigby.
7 That's P-a-t-r-i-c-k, middle name Dean, D-e-a-n, last
8 name Bigby, B-i-g-b-y.

9 THE COURT: Thank you, Mr. Bigby. Welcome to
10 Department 10.

11 Go ahead, Mr. Wieczorek.

12 PATRICK BIGBY,
13 having been first duly sworn, was examined
14 and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WIECZOREK:

17 Q Good afternoon, Mr. Bigby. With whom are you
18 currently employed?

19 A MDB Trucking.

20 Q And when did you join MDB?

21 A I don't remember exactly. Around 2012, I
22 believe.

23 Q Okay. And what's your job at MDB?

24 A I am a mechanic.

Q And I don't know if it needs explanation, but

1 can you briefly explain at MDB what you as a mechanic
2 do? What's your daily job?

3 A My main function as a mechanic at MDB is to
4 repair and maintain the class A vehicles and trailers
5 and tractors and trucks and such.

6 Q And how many years have you been doing truck
7 mechanical work?

8 A Oh, I would say at least around 30 years or so.

9 Q Is it correct that you're familiar with the
10 systems of the trucks and rigs that MDB owns such as
11 their electrical systems, their cooling systems, their
12 engines, their air systems? Are you familiar with all
13 those types of systems?

14 A That is correct.

15 Q At MDB before a driver goes out on a run on a
16 given morning, when he picks up the truck does he or
17 she have to inspect the truck in any way or does the
18 company inspect the trucks before they're put on the
19 road?

20 A Yes. The driver is required by the DOT to do
21 what we call a pre-trip inspection no matter who the
22 driver is. That means you inspect your vehicle and
23 trailers, you know, make sure your lights are
24 functioning, make sure that everything is secured, you

1 have plenty of oil and coolant and fan belts and such.
2 That is an inspection requirement.

3 Q And if the driver sees something that doesn't
4 look quite right, he comes and tells you and you look
5 into it?

6 A That is correct. At MDB he would either tell
7 me or Scott, and we would --

8 Q You're familiar that one of your drivers,
9 Mr. Koski, has been involved in several I'll call them
10 inadvertent dumps of loads using MDB's trucks? Are you
11 familiar with that?

12 A Correct, I am.

13 Q Do you recall when you first became aware that
14 Mr. Koski had been involved in an inadvertent dumping
15 incident?

16 A The exact date?

17 Q Or the year.

18 A Yeah, I believe it was like 2000 -- I can't say
19 exactly -- 2013, '12, '13.

20 Q The incident that this case is involved with
21 was July 2014. So was there a dumping event involving
22 Mr. Koski before that?

23 A Yes, there were.

24 Q And can you explain to the Court what -- when

1 you were advised that he had dumped his load, what did
2 you do as the mechanic at MDB to try to either
3 investigate the cause or prepare a fix for the cause?

4 A The first one?

5 Q The first one.

6 A Yes. Once it was back to the yard and
7 inspected by the NHP, then I did my own inspections and
8 tried to have the event duplicated. So I wanted to
9 see -- you know, have it -- see if I could make it open
10 uncommanded so that we could try to, you know, narrow
11 down what was wrong and make a proper repair.

12 Q Were you able to do that?

13 A I was never able to duplicate it.

14 Q In the event -- since you were not able to
15 duplicate it, did you come up with some kind of a
16 modification of the truck to try to address potential
17 future --

18 A Yes. Yes, we did.

19 Q And tell the Court what that was.

20 A What we tried to do -- or what we did do is to
21 isolate the circuits that activate the dump solenoids
22 on the trailers in which case we took independent wire
23 rather than running it in a loom and ran it
24 independently down the trailers to each valve, each

1 spool. And we also put in what we call a master
2 switch -- or what I call a master switch that broke the
3 circuit from the main dump switches to this master
4 switch. And then from the master switch, instead of
5 wiring to a positive ground inside the cab, we ran
6 independent wires outside of the cab to the batteries,
7 directly to the batteries, so that we wouldn't have any
8 influence electrically in the cab. If there was some
9 sort of short or something, it wouldn't influence the
10 powering of that switch.

11 Q So we've heard testimony about this, but just
12 so you can verify this. When you installed the master
13 switch, is it correct that unless that switch is
14 flipped or activated, there is no energy going down the
15 line you installed to the various valves controlling
16 the dumps?

17 A That is correct. There is no energy nor
18 ground.

19 Q If you look in the exhibit book that's in front
20 of you, there's tabs on it, and I'm looking at Exhibit
21 No. 1. We've seen various work orders in this case.
22 Can you identify this work order as something you
23 prepared?

24 A Yes, I did prepare this.

1 Q Okay. And I believe it's dated August 1st,
2 2013. Is that the date that you recall modifying
3 the -- Mr. Koski's vehicle to separate the electrical
4 system?

5 A I believe so, yes.

6 Q When you added the -- we've called this the
7 four-plug system or the four-prong system. That's the
8 one you added to the truck?

9 A The four-wire?

10 Q The four-wire, correct.

11 A Added may not be the correct term. The
12 four-wire plug and wire existed from the tractor to the
13 trailers. That's how they were factory wired. What we
14 did was from that plug is where we ran independent --
15 on the trailers themselves where we ran independent
16 wire from that plug down the trailers.

17 Q Okay. And you separated or basically cut off
18 the function from the seven-prong wire; is that
19 correct?

20 A Well, from the wires that were attached to the
21 four-prong receptacle, yes, those were cut and no
22 longer used.

23 THE COURT: Mr. Bigby, just tell me this. On
24 Exhibit No. 1 is that August 2nd or August 7th of 2013?

1 Can you tell?

2 THE WITNESS: I'm going to say the 2nd.

3 Unfortunately, I didn't bring my reading glasses and my
4 writing at that time was very small.

5 THE COURT: Okay. Thank you. Go ahead.

6 BY MR. WIECZOREK:

7 Q So after you made this modification in 2013 did
8 you experience any other inadvertent dumps with
9 Mr. Koski's rig?

10 A To my knowledge, I don't recall, but I think
11 there was another, but I'm not positive. I don't
12 remember it.

13 Q Again, we're interested in the event involving
14 him in July 2014.

15 A Yes.

16 Q Do you recall that event?

17 A Oh, yes, I do.

18 Q Now, after that event did you have discussion
19 with your management or internally at MDB about, "Okay.
20 We tried this fix. It didn't work. Now what are we
21 going to do to try to stop these dumps?"

22 A Yes.

23 Q What did you come up with?

24 A Well, Scott Palmer especially, or notably, he