

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. 75321, 76395, 76396, 76397, 76398, 76399, 76400, 76401, 76402, 76403, 76404, 76405, 76406, 76407, 76408, 76409, 76410, 76411, 76412, 76413, 76414, 76415, 76416, 76417, 76418, 76419, 76420, 76421, 76422, 76423, 76424, 76425, 76426, 76427, 76428, 76429, 76430, 76431, 76432, 76433, 76434, 76435, 76436, 76437, 76438, 76439, 76440, 76441, 76442, 76443, 76444, 76445, 76446, 76447, 76448, 76449, 76450, 76451, 76452, 76453, 76454, 76455, 76456, 76457, 76458, 76459, 76460, 76461, 76462, 76463, 76464, 76465, 76466, 76467, 76468, 76469, 76470, 76471, 76472, 76473, 76474, 76475, 76476, 76477, 76478, 76479, 76480, 76481, 76482, 76483, 76484, 76485, 76486, 76487, 76488, 76489, 76490, 76491, 76492, 76493, 76494, 76495, 76496, 76497, 76498, 76499, 76500, 76501, 76502, 76503, 76504, 76505, 76506, 76507, 76508, 76509, 76510, 76511, 76512, 76513, 76514, 76515, 76516, 76517, 76518, 76519, 76520, 76521, 76522, 76523, 76524, 76525, 76526, 76527, 76528, 76529, 76530, 76531, 76532, 76533, 76534, 76535, 76536, 76537, 76538, 76539, 76540, 76541, 76542, 76543, 76544, 76545, 76546, 76547, 76548, 76549, 76550, 76551, 76552, 76553, 76554, 76555, 76556, 76557, 76558, 76559, 76560, 76561, 76562, 76563, 76564, 76565, 76566, 76567, 76568, 76569, 76570, 76571, 76572, 76573, 76574, 76575, 76576, 76577, 76578, 76579, 76580, 76581, 76582, 76583, 76584, 76585, 76586, 76587, 76588, 76589, 76590, 76591, 76592, 76593, 76594, 76595, 76596, 76597, 76598, 76599, 76600, 76601, 76602, 76603, 76604, 76605, 76606, 76607, 76608, 76609, 76610, 76611, 76612, 76613, 76614, 76615, 76616, 76617, 76618, 76619, 76620, 76621, 76622, 76623, 76624, 76625, 76626, 76627, 76628, 76629, 76630, 76631, 76632, 76633, 76634, 76635, 76636, 76637, 76638, 76639, 76640, 76641, 76642, 76643, 76644, 76645, 76646, 76647, 76648, 76649, 76650, 76651, 76652, 76653, 76654, 76655, 76656, 76657, 76658, 76659, 76660, 76661, 76662, 76663, 76664, 76665, 76666, 76667, 76668, 76669, 76670, 76671, 76672, 76673, 76674, 76675, 76676, 76677, 76678, 76679, 76680, 76681, 76682, 76683, 76684, 76685, 76686, 76687, 76688, 76689, 76690, 76691, 76692, 76693, 76694, 76695, 76696, 76697, 76698, 76699, 76700, 76701, 76702, 76703, 76704, 76705, 76706, 76707, 76708, 76709, 76710, 76711, 76712, 76713, 76714, 76715, 76716, 76717, 76718, 76719, 76720, 76721, 76722, 76723, 76724, 76725, 76726, 76727, 76728, 76729, 76730, 76731, 76732, 76733, 76734, 76735, 76736, 76737, 76738, 76739, 76740, 76741, 76742, 76743, 76744, 76745, 76746, 76747, 76748, 76749, 76750, 76751, 76752, 76753, 76754, 76755, 76756, 76757, 76758, 76759, 76760, 76761, 76762, 76763, 76764, 76765, 76766, 76767, 76768, 76769, 76770, 76771, 76772, 76773, 76774, 76775, 76776, 76777, 76778, 76779, 76780, 76781, 76782, 76783, 76784, 76785, 76786, 76787, 76788, 76789, 76790, 76791, 76792, 76793, 76794, 76795, 76796, 76797, 76798, 76799, 76800, 76801, 76802, 76803, 76804, 76805, 76806, 76807, 76808, 76809, 76810, 76811, 76812, 76813, 76814, 76815, 76816, 76817, 76818, 76819, 76820, 76821, 76822, 76823, 76824, 76825, 76826, 76827, 76828, 76829, 76830, 76831, 76832, 76833, 76834, 76835, 76836, 76837, 76838, 76839, 76840, 76841, 76842, 76843, 76844, 76845, 76846, 76847, 76848, 76849, 76850, 76851, 76852, 76853, 76854, 76855, 76856, 76857, 76858, 76859, 76860, 76861, 76862, 76863, 76864, 76865, 76866, 76867, 76868, 76869, 76870, 76871, 76872, 76873, 76874, 76875, 76876, 76877, 76878, 76879, 76880, 76881, 76882, 76883, 76884, 76885, 76886, 76887, 76888, 76889, 76890, 76891, 76892, 76893, 76894, 76895, 76896, 76897, 76898, 76899, 76900, 76901, 76902, 76903, 76904, 76905, 76906, 76907, 76908, 76909, 76910, 76911, 76912, 76913, 76914, 76915, 76916, 76917, 76918, 76919, 76920, 76921, 76922, 76923, 76924, 76925, 76926, 76927, 76928, 76929, 76930, 76931, 76932, 76933, 76934, 76935, 76936, 76937, 76938, 76939, 76940, 76941, 76942, 76943, 76944, 76945, 76946, 76947, 76948, 76949, 76950, 76951, 76952, 76953, 76954, 76955, 76956, 76957, 76958, 76959, 76960, 76961, 76962, 76963, 76964, 76965, 76966, 76967, 76968, 76969, 76970, 76971, 76972, 76973, 76974, 76975, 76976, 76977

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

ERRATA TO JOINT APPENDIX VOLUME 1 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

TO: Clerk of the Court and All Interested Parties

Appellant/Cross-Respondent MDB Trucking, LLC (“MDB”) by and through its counsel of record, hereby files this Errata to its Joint Appendix Volume 1 of 18 (“Appendix Vol. 1”) filed January 18, 2019. MDB Trucking, LLC’s Cross-Claim Against RMC Lamar Holdings, Inc. (fka Ranch Manufacturing Company) and Versa Products Company, Inc. (“Cross-Claim”) was inadvertently omitted from Appendix Vol. 1, Tab 1. Instead, the Errata to Defendant/Cross-Claimant/Cross-Defendant Versa Products Company, Inc.’s Motion to Strike Defendant/Cross-Claimant/Cross-Defendant MDB Trucking, LLC’s Cross-Claim Pursuant to NRCP 37; or in the Alternative, for an Adverse Jury Instruction, Bates stamped AA001119 – AA001121 was incorrectly included in its place.

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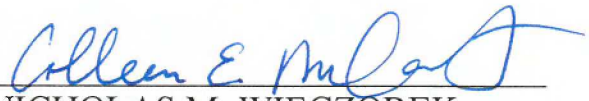
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To correct the inadvertent error, MDB requests that documents Bates stamped AA001119 – AA001121 be removed from Appendix Vol. 1, Tab 1, and be replaced with the Cross-Claim, Bates stamped AA000001-AA000008, attached hereto as Exhibit 1.

Dated this 5th day of March, 2019.

CLARK HILL PLLC

By: 
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MDB Trucking, LLC

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this 5th day of March, 2019, I caused to be served a true and correct copy of the foregoing **ERRATA TO JOINT APPENDIX VOLUME 1 OF 18** by the method indicated to the counsel stated below:

- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.
- ☐ **BY PERSONAL DELIVERY:** by causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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MDB TRUCKING, LLC

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE

9 ERNEST BRUCE FITZSIMMONS and
10 CAROL FITZSIMMONS, Husband and
Wife,

Case No. CV15-02349

Dept. No. 15

11 Plaintiffs,

12 vs.

13 MDB TRUCKING, LLC; RMC LAMAR
14 HOLDINGS, INC.; VERSA PRODUCTS
COMPANY, INC.; DANIEL ANTHONY
15 KOSKI; ABC Corporations I-X, Black and
White Companies, and DOES I-XX,
16 inclusive,

17 Defendants.

18 AND RELATED CROSS-CLAIM AND
19 THIRD PARTY COMPLAINT.

20
21 **MDB TRUCKING, LLC'S CROSS-CLAIM AGAINST RMC**
22 **LAMAR HOLDINGS, INC. (fka RANCH MANUFACTURING COMPANY)**
AND VERSA PRODUCTS COMPANY, INC.

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

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1 **FIRST CLAIM FOR RELIEF**

2 **(General Allegations)**

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

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

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

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

17 5. A First Amended Complaint was filed on May 19, 2016 in the Second Judicial
18 District Court, Case No. CV15-02349, Department 15 in which the Plaintiffs Ernest Bruce
19 Fitzsimmons and Carol Fitzsimmons prayed for damages against Defendant MDB Trucking,
20 LLC alleging negligence with regard to an accident which occurred on July 7, 2014 where a
21 Ranco trailer owned by MDB Trucking, LLC spilled a load of gravel causing an accident and
22 injury which are claims presented by Plaintiffs.

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

1 7. Cross-Defendant RMC Lamar Holdings, Inc. manufactured the subject Ranco
2 trailer in 2002 under the vehicle brand Ranco with vehicle identification number
3 1R9BP45082L008431 Idaho Plate #TE3528.

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

6 9. On or about July 7, 2014, the Ranco trailer that left Cross-Defendant's control as
7 designed, assembled and manufactured by the Cross-Defendant was unreasonably dangerous and
8 defective in one or more of the following respects:

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

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

15 c. That Versa Valve manufactured an alternate safer design available in 2002
16 including a manual lock system.

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

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

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

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1 11. That to the extent Plaintiffs were injured as a proximate result of the unreasonably
2 dangerous conditions and defects at the time of manufacturing or negligent design, such is a
3 direct and proximate result of the negligence of the Cross-Defendants; and, any negligence that
4 exists as alleged by Plaintiffs is expressly denied. Cross-Defendants were actively negligent and
5 Cross-Claimant was passively negligent.

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

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

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

14 **FIRST CLAIM FOR RELIEF**

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

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

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

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

23 **SECOND CLAIM FOR RELIEF**

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

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

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

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

6 **THIRD CLAIM FOR RELIEF**

7 **(Implied Indemnification as to VERSA)**

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

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

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

15 **FOURTH CLAIM FOR RELIEF**

16 **(Contribution as to VERSA)**

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

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

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

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

25 1. For implied indemnification with respect to all negligence claims brought against
26 Cross-Claimant in this matter;

27 2. For contribution with respect to all negligence claims brought against Cross-
28 Claimant in this matter;

- 1 3. For attorneys' fees and costs expended in this matter; and
2 4. For such other and further relief as this Court deems just and proper in the
3 premises.

4 DATED this 15th day of June, 2016.

5 THORNDAL ARMSTRONG
6 DELK BALKENBUSH & EISINGER

7 By: 

8 Katherine F. Parks, Esq., State Bar No. 6227

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14 MDB TRUCKING, LLC

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1 CERTIFICATE OF SERVICE

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

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

9 ☒ Second Judicial District Court Eflex ECF (Electronic Case Filing)

10 _____ hand delivery

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

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

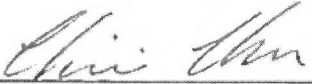
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25 DATED this 15 day of June, 2016.

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