



**Figure 2-7. Accident Scene – Looking Southeast**



**Figure 2-8. Accident Scene – Looking Northwest**



**Figure 2-9. Accident Scene – Looking Northwest**

### **3. SUMMARY OF ACCIDENT COMBINATION MAINTENANCE RECORDS**

Table 3-1 contains a summary of the supplied MDB Trucking work orders and maintenance and inspection records for tractor unit number 5694 and trailer unit numbers 6773, 6774 and 6675. The summary is presented in chronological order starting with September 9, 2012 through July 29, 2015.

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**Table 3-1. Summary of Work Order and Inspection Records – Accident Combination**

**NOTES:**

1. Work Orders for the trailer that malfunctioned (6775) are highlighted with yellow.
2. Blue text indicates work that was completed on a trailer dump control system.
3. Red text indicates activities that were associated with an unintended dumping of a load.

Date (mm/dd/yy)	Equip. No.	Description
09/09/12	5694	DOT annual inspection
10/11/12	5694	No violations found
11/08/12	5694	No violations found
01/19/13	5694	Add oil and antifreeze
02/01/13	5694	R&R steering gear parts
02/02/13	5694	Checked wheel bearing torques, change axle oil
02/05/13	5694	R&R oil cooler, R&R coolant, add engine oil
02/07/13	5694	R&R mud flaps
02/08/13	5694	R&R torque rod bushings
02/08/13	5694	Adjust clutch brake
02/08/13	5694	Re-seal fan hub studs, replace fuel tank cap seals
02/09/13	5694	R&R motor mounts
02/13/13	5694	Re-seal P/S reservoir, R&R transmission oil
02/13/13	5694	R&R shift tower
02/15/13	5694	R&R engine oil and filters
03/06/13	5694	R&R headlight
03/06/13	5694	R&R fan clutch
03/08/13	5694	Inspect, lube
03/09/13	5694	Lube
03/09/13	5694	Add coolant
03/15/13	5694	Inspect, lube, reroute air and electrical lines
03/16/13	5694	R&R windshield
03/22/13	5694	R&R starter
03/22/13	5694	Inspect
03/23/13	5694	R&R starter
03/26/13	5694	R&R rear fender bracket
03/26/13	5694	R&R lamp, service
04/03/13	5694	R&R ECM
04/05/13	5694	Service
04/05/13	6774	DOT inspection
04/06/13	6773	DOT trailer inspection VIN 1R9BSA2077L008042
04/06/13	6773	DOT inspection
04/06/13	6774	DOT inspection
04/06/13	6775	DOT inspection, annual

Table 3-1. Summary of Work Order and Inspection Records – Tractor Number 5694  
(cont'd)

Date (mm/dd/yy)	Equip. No.	Description
04/10/13	6773	R&R all wheel studs
04/10/13	6774	Repaired air leak at oiler, inspect, lube
04/11/13	5694	R&R fuel control valve
04/13/13	5694	No power at gate dump 4-way plug – rewired switches from light circuit to accessory circuit – wired ground to cab ground – added 3 <sup>rd</sup> wire for triples
04/30/13	5694	LOF
04/30/13	5694	Adjust clutch brake
05/03/13	6773	Remove auto tire inflation system, R&R wheel hub cover
05/03/13	6773	R&R wheel hub cover, remove auto tire inflation
05/03/13	6773	R&R hub cover, remove auto tire inflation
05/07/13	5694	Fix oil leak and fan hub studs
05/19/13	5694 + trailers	Grease and inspect
05/19/13	5694 + trailers	Inspect, grease
05/19/13	5694 + trailers	Grease, inspect
05/19/13	5694+ trailers	3 trailers, grease, inspect
06/02/13	6774	Inspect, grease, adjust oiler flow
06/03/13	5694	Fix coolant loss
06/05/13	5694	Replace missing oil fill stopper, adjust belts
06/21/13	5694	PM-1
06/21/13	6773	B&L
06/21/13	6775	Inspect, grease, B&L, adjust oiler flow
06/25/13	5694	No violations found
06/25/13	5694	No violations found
06/25/13	5694 6773	No violations found
07/11/13	5694	P and L, adjust clutch
07/11/13	6773	B&L
07/11/13	6774	B&L
07/11/13	6775	R&R cracked air tank
07/11/13	6775	Inspect, grease, B&L

Table 3-1. Summary of Work Order and Inspection Records – Tractor Number 5694 (cont'd)

Date (mm/dd/yy)	Equip. No.	Description
07/16/13	5694	Accessory fabrication
07/18/13	6775	Rebuilt gate control valve
07/23/13	5694	B&L, tighten shock mount, add oil
07/23/13	6773	B&L
07/23/13	6774	B&L, inspect grease
07/23/13	6775	Inspect, grease, B&L
07/26/13	5694	Rewire gate switches
07/29/13	5694	R&R torque bushings
07/31/13	6774	Rewire dump valve air out to isolate from trailer
08/01/13	6775	Investigate unintentional gate opening, replace versa valve and rewired dump valve circuit from valve to truck. Isolate dump coil circuit – remove coil case ground from circuit.
08/03/13	5694	R&R backup alarm
08/06/13	6773	R&R oiler sight glass
08/10/13	5694	LOF, replace horn fuse, R&R turn lamp, fix temperature gages, R&R fuel filters
08/11/13	6773	R&R 7-way – front and rear
08/19/13	5694	Tighten loose hydraulic fitting
08/19/13	5694	Trailer light flashing poor ground, R&R 7-way plate
08/24/13	5694	Inspect, grease, install decals, R&R LR air bag bushing, fit plate light
08/24/13	6773	Inspect, grease, service, oiler
09/12/13	5694	T/S charging systems
09/14/13	5694	R&R 7-way plug, R&R pigtailed on all rear lights, R&R plate light, removed outside temperature gauge
09/15/13	6773+	Inspect, grease, tie up anti-lock brake wires, lamp repair
09/15/13	6774+	Inspect, grease, lamp repair, tie up anti-lock brake wires
09/15/13	6775+	Inspect, grease, lamp repair, tie up antilock brake wires 6775
09/21/13	5694	R&R radiator hose
09/21/13	5694	R&R water filter valves
09/21/13	5694	R&R after cooler mount bushings
09/21/13	5694	R&R hose
09/21/13	5694	R&R air dryer cartridge and purge valve
09/21/13	6773	R&R spring brake valve
09/25/13	5694	Reseal coolant fitting
09/26/13	6774	R&R spring
09/27/13	5694	#3 battery replaced
09/27/13	5694	R&R air fitting

Table 3-1. Summary of Work Order and Inspection Records – Tractor Number 5694  
(cont'd)

Date (mm/dd/yy)	Equip. No.	Description
09/27/13	5694	R&R air system check valves
09/28/13	5694	R&R fender mount
09/30/13	5694	DOT annual inspection
10/01/13	5694	PM
10/01/13	6773	B&L
10/01/13	6774	B&L, inspect, lube
10/01/13	6775	Inspect, grease, B&L
10/05/13	6774	R&R hub cover
10/12/13	5694	Lube, inspect
10/12/13	6773+	Inspect, grease, R&R plate light
10/12/13	6774+	Inspect, grease, R&R plate light
10/12/13	6775+	Inspect, grease, replace plate light 6774
10/20/13	5694	R&R alternator mount
10/20/13	5694	R&R engine brake switch, replace master switch for trailer dump valves
10/21/13	5694	R&R air-to-air cooler
10/23/13	5694	R&R all three batteries
11/02/13	5694	R&R belts
11/08/13	5694	R&R air governor
11/08/13	5694	B&L
11/08/13	6773	B&L
11/08/13	6774	Inspect, grease, B&L
11/08/13	6775	Inspect, grease, B&L
11/12/13	5694	PM-1, R&R 4-way on tractor
12/31/13	5694	R&R fuel splitter and primer pump
01/02/14	5694	Tighten shifter knob nut
01/03/14	5694	B&L
01/03/14	6773	B&L
01/03/14	6774	Inspect, grease, B&L
01/03/14	6775	Inspect, grease, B&L
01/12/14	6773	R&R right ICC light
02/06/14	5694	R&R power steering lines, cab power relay and clutch brake, B&L
02/13/14	6774	R&R 7-way plug
02/15/14	5694	R&R fuel filters, grease, inspect, LOF
02/15/14	6774	R&R 4-way plug
02/15/14	6775	R&R 4-way plug
02/25/14	5694	No violations found

**Table 3-1. Summary of Work Order and Inspection Records – Tractor Number 5694 (cont'd)**

Date (mm/dd/yy)	Equip. No.	Description
02/26/14	6775	Lamp repair
02/28/14	5694	Inspect, grease
03/01/14	6774	Repair cracked frame
03/21/14	5694	R&R center gate switch cover, re-secure deck plates
03/22/14	5694	B&L, R&R mud flap hanger, R&R plate lamp
03/22/14	5694	R&R coolant filter valves
03/22/14	6773	B&L, removed ICC bar
03/22/14	6774	B&L, fixed air leak, grease, inspect
03/22/14	6775	Inspect, grease, B&L, R&R reflector, repair air leak at oiler
04/01/14	6773	DOT inspection
04/01/14	6774	DOT inspection
04/01/14	6775	DOT annual inspection
04/05/14	6773	DOT trailer inspection
04/05/14	6775	DOT annual inspection
04/10/14	5694	Tighten yoke, R&R U-joint
04/24/14	6773	Inspect, grease
04/24/14	6774	Inspect, grease
04/24/14	6775	Inspect, grease
05/06/14	5694	PM-1, B&L
05/09/14	5694	Fix PTO leak, R&R hydraulic pump
05/10/14	6773	Inspect, grease
05/10/14	6774	Inspect, grease
05/10/14	6775	Inspect, grease
05/14/14	5694	R&R yoke and pinion seal
05/27/14	6773	Inspect, grease
05/27/14	6774	Inspect, grease
05/27/14	6775	Inspect, grease
06/01/14	5694	Fix flat tire
06/01/14	6774	Tire work
06/04/14	6775	Repair ABS wire
06/07/14	6775	Tire repair
06/16/14	5694	Fix broken frame belt
06/21/14	5694	Remove asphalt from axles
06/24/14	6774	Tire work
06/25/14	5694	R&R turn signal fuse
06/29/14	6775	Tire repair
06/30/14	6775	Reattach Versa valve

Table 3-1. Summary of Work Order and Inspection Records – Tractor Number 5694  
(cont'd)

Date (mm/dd/yy)	Equip. No.	Description
07/01/14	5694	PM-1, B&L, adjust belts
07/01/14	5694	R&R PTO
07/02/14	6773	Inspect, grease, B&L
07/02/14	6774	Inspect, grease, B&L
07/02/14	6775	Inspect, grease, B&L, replace bolt air tank mount
07/02/14	6775	Replaced ABS wires
07/02/14	6775	R&R hub cover
07/07/14	6773	Inspect, fabricate lockout for versa – valve
07/07/14	6774	Fabricate lock out for Versa valve
07/07/14	6775+	Lost load on highway
07/07/14	6775	Fabricate and install lockout on Versa valve
07/07/14	6775+	DOI Gate opened on highway – 6775 – install positive gate valve locks
07/08/14	6774	Tire work
07/08/14	6775	ABS circuit fault
07/09/14	5694	Tire work
07/10/14	5694	Fix air leak
07/26/14	5694	Tire work
08/03/14	5694	R&R supply and service lines
08/05/14	6773	R&R 4-way connector inspect, grease
08/05/14	6773	R&R wheel seal
08/05/14	6774	Fixed repair intermittent ABS light
08/11/14	6773	R&R mud flaps
08/12/14	5694	PM-1 & PM-2 and B&L
08/12/14	6773	B&L
08/12/14	6774	Inspect, grease, B&L
08/12/14	6775	Inspect, grease, B&L
08/17/14	5694	Tire work
08/19/14	5694	B&L
08/19/14	5694	Fix radiator leak
08/19/14	6773	Inspect, grease, B&L, tighten hub covers screws
08/19/14	6774	Inspect, grease, B&L
08/19/14	6775	Inspect, grease, B&L
08/26/14	5694	Fix radiator leak
09/01/14	5694	DOT inspection
09/16/14	6773	Repaired gate cylinder valves, inspect, grease

Table 3-1. Summary of Work Order and Inspection Records – Tractor Number 5694  
(cont'd)

Date (mm/dd/yy)	Equip. No.	Description
09/16/14	6775	Repair gate cylinder, inspect, grease
09/17/14	5694	DOT annual inspection
09/17/14	5694	Fix engine oil leak
09/17/14	5694	Adjust clutch
09/26/14	5694	PM-1, B&L
09/26/14	6773	Inspect, grease, B&L
09/26/14	6774	Inspect, grease, B&L
09/26/14	6775	Inspect, grease, B&L
09/29/14	5694	R&R motor mounts
10/15/14	5694	Inspect, lube, B&L
10/15/14	6773	Inspect, grease, B&L
10/15/14	6774	Inspect, grease, B&L
10/15/14	6775	Inspect, grease, B&L
10/26/14	5694	B&L
10/27/14	5694	Replace radiator tank, air-to-air bushings, hood restraint cable
11/06/14	5694	R&R drive axle brakes
11/06/14	5694	R&R steer axle shocks, inspect
11/07/14	5694	R&R exhaust manifold, turbo, waste gate solenoid, line, replace broken studs and bolts
11/12/14	6774	R&R brake can diaphragm
11/17/14	5694	LOF, inspect
11/17/14	6773	Inspect, grease
11/17/14	6774	Inspect, grease
11/17/14	6774	Repair front gate cylinder
11/17/14	6775	Inspect, grease
11/17/14	6775	Repair air leak rear gate cylinder
12/02/14	5694	Lamp repairs
12/09/14	6774	Tire work
12/11/14	5694	Inspect, grease
12/11/14	6773	Inspect, grease
12/11/14	6774	Inspect, grease
12/11/14	6775	Inspect, grease
12/18/14	5694	Tighten 4-way plug
12/18/14	6773	R&R 4-way connector
12/23/14	6774	Tire work
01/04/15	5694	Inspect, grease
01/04/15	6773	Inspect, grease

**Table 3-1. Summary of Work Order and Inspection Records – Tractor Number 5694 (cont'd)**

Date (mm/dd/yy)	Equip. No.	Description
01/04/15	6774	Inspect, grease
01/04/15	6775	Inspect, grease
07/29/15	6774	Spring work

#### 4. SUMMARY OF 2<sup>ND</sup> COMBINATION MAINTENANCE RECORDS

Table 4-1 contains a summary of the supplied MDB Trucking work order and maintenance and inspection records for tractor unit number 5693 and trailer numbers 6776, 6777 and 6678. The summary is presented in chronological order starting with November 30, 2013 to June 17, 2015.

**Table 4-1. Summary of Work Order and Inspection Records – Trailer Number 6778**

##### NOTES:

1. Work Orders for the trailer that malfunctioned (6778) are highlighted with yellow.
2. Blue text indicates work that was completed on a trailer dump control system.
3. Red text indicates activities that were associated with an unintended dumping of a load.

Date (mm/dd/yy)	Equip. No.	Description
11/30/13	6777	Rewire trailer to meet MDB standards, replace lights with LEDs
12/03/13	5693	DOT annual inspection
12/04/13	5693	DOT annual inspection
01/03/14	6776	Inspect and lube
01/03/14	6777	Inspect and lube
01/03/14	6778	Inspect and lube
01/05/14	5693	Inspect and lube
01/08/14	5693	R&R turbo waste gate hose
01/17/14	6777	Replace missing slack adjuster bushing
02/05/14	5693	R&R U-bolt
02/13/14	5693	R&R windshield wipers
02/20/14	6777	Repair leaking gate cylinder air leak
03/02/14	5693	Inspect and lube
03/14/14	5693	Inspect and PM-1

Table 4-1. Summary of Work Order and Inspection Records – Tractor Number 5693  
(cont'd)

Date (mm/dd/yy)	Equip. No.	Description
03/21/14	5693	R&R steering shaft, steering shaft u-joint, steering gear box and fuel sending unit
04/01/14	6776	Inspect and lube
04/01/14	6777	Inspect and lube
04/01/14	6778	R&R LR reflector
04/06/14	6778	DOT annual inspection
04/06/14	6776	DOT annual inspection
04/06/14	6777	DOT annual inspection
04/09/14	6778	R&R leaking brake line
04/14/14	5693	R&R a/c system
04/16/14	5693	R&R charge air cooler (CAC) hoses
04/16/14	6777	R&R air accumulator on Versa valve
04/16/14	6778	R&R hose hangers on tongue
05/04/14	5693	R&R steer tires
05/08/14	5693	R&R torque arm bushing, un-loader valve and intake valve actuator (IVA) sensor
05/20/14	5693	R&R air compressor return line
05/21/14	5693	R&R relief valve
05/21/14	5693	Inspect, lube and PM-1 and PM-2
05/30/14	5693	Inspect, lube, R&R 4-way plug wiring and hang mud flap
06/10/14	5693	R&R squirrel cage fan, shorten air lines
06/17/14	6777	Adjust air gap on ABS sensor
06/20/14	5693	R&R CB radio
07/07/14	6778	Lost load on highway
07/07/14	6776	Fabricate and install lockout on Versa valve
07/07/14	6777	Fabricate and install lockout on Versa valve
07/07/14	6778	Fabricate and install lockout on Versa valve
07/10/14	6778	R&R LR and RR stop/turn/tail lights
07/23/14	5693	Inspect, lube and PM-1
07/27/14	5693	R&R steer tires
08/05/14	6776	Intermittent 1 <sup>st</sup> trailer gate function, R&R connector
08/09/14	5693	R&R cab air blow gun, tighten coolant filter
08/18/14	5693	R&R input shaft seal on blower
09/25/14	5693	R&R exhaust gaskets
09/26/14	5693	Inspect, lube and PM-1
09/26/14	6776	Inspect and lube
09/26/14	6777	Inspect and lube

Table 4-1. Summary of Work Order and Inspection Records – Tractor Number 5693 (cont'd)

Date (mm/dd/yy)	Equip. No.	Description
09/26/14	6778	Inspect and lube
09/30/14	5693	R&R cruise control switch
10/01/14	5693	Replace missing clutch pedal pad
10/09/14	5693	Inspect and lube
10/15/14	5693	R&R turbo oil line
11/22/14	6776	Inspect, lube and drain tanks
11/23/14	6777	Inspect and lube
11/23/14	6778	Inspect and lube
12/01/14	6777	Gate not closing with switch. Accumulator not working. R&R Versa valve
12/01/14	6778	Reattached safety pin to Versa valve lock
12/02/14	6777	R&R ABS wheel speed sensor
12/02/14	6777	Welded cracks in tab
12/03/14	5693	DOT annual inspection
12/12/14	5693	Inspect and lube
12/12/14	6776	Inspect and lube
12/12/14	6777	Inspect and lube
12/12/14	6778	Inspect and lube
01/03/15	5693	Repair turbo heat shield
01/13/15	5693	Repair head light wiring, install external CB speaker
01/14/15	5693	R&R windshields
01/27/15	5693	R&R right headlight
01/28/15	5693	R&R fan clutch
04/06/15	6776	DOT annual inspection
04/06/15	6777	DOT annual inspection
04/06/15	6778	DOT annual inspection
06/17/15	6776	Adjust air gap on ABS sensor

##### 5. ACCIDENT TRACTOR TRIPLE-BOTTOM-DUMP-TRAILER COMBINATION INITIAL INSPECTION, JUNE 9, 2015

An initial inspection of the accident tractor triple-bottom-dump-trailer combination was completed by FEI on June 9, 2015, at MDB's headquarters in Sparks, Nevada. Table 5-1 summarizes the photographic documentation acquired during the inspection.

The following notes were written during FEI's inspection of the accident tractor triple-bottom-dump-trailer combination and later adapted for this report.

Attendees: Thierry Barkley, counsel for MDB Trucking  
David Bosch, Forensic Engineering, expert for MDB Trucking  
Tracy Shane, MDB Trucking dispatcher  
Scott Palmer, MDB Trucking driver/mechanic  
Pat Bigby, MDB Trucking mechanic

Location: MDB Trucking, Inc. Headquarters  
905 East Mustang Road  
Sparks, Nevada

- 5.1 Aerial views of the MDB Trucking Headquarters are shown in Figures 5-1 and 5-2.
- 5.2 Interview of MDB team members
  - 5.2.1 Mr. Dan Koski was driving the truck at the time of the unintended [2014] dump.
  - 5.2.2 Load King and Trail King trailers use a completely different control system.
  - 5.2.3 USDOT approval is not required for the dump control system.
  - 5.2.4 The tractor mounted dump control system [switches] for the triple-trailer combination is shown in Figure 5-3.
  - 5.2.5 The third (rearmost or last) trailer in the combination was the trailer that dumped.
  - 5.2.6 The first time there was an unintended dumping of a load [July 2013], MDB added a master switch, changed voltage source from a light circuit directly to the batteries and removed the dump valve solenoid shield ground for the dump control system.
  - 5.2.7 The voltage source (+) and ground (-) were both moved directly to the battery.
  - 5.2.8 After the 2014 accident, MDB designed and installed a mechanical lock on all of its trailers in order to eliminate unintended dumping. The lock is shown in Figures 5-4 through 5-6.
  - 5.2.9 Each trailer marker/signal/tail lamp has a ground as part of the 7 wire bundle.
  - 5.2.10 The ABS wires are part of the 6 wire harnesses that are connected to the 7 pin connectors.
  - 5.2.11 The master and slave dump control toggle switches are all guarded.

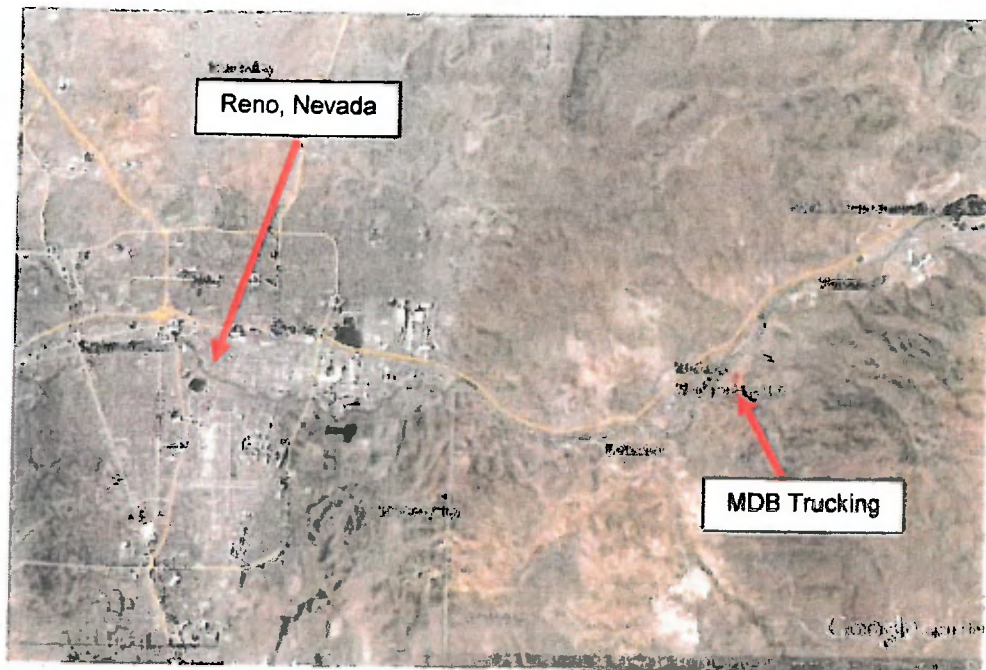
- 5.2.12 When ABS was first implemented, the signal voltage for the dump valve was supplied using the formally "extra" wire (blue) in the 7 conductor bundle.
- 5.2.13 The ABS sensor power supply wire is always energized when the tractor is running.
- 5.2.14 The accumulator valve is opened using the palm button to release the air pressure within the accumulator to allow the gate aperture size to be modulated.
- 5.2.15 The dump valve must be reset by using the cab switch.
- 5.2.16 The drivers are trained to use the cab switch to close the dump aperture rather than the manual valve because if they forget to close (reset) from cab, the dump aperture can open when the trailer is reloaded.
- 5.3 General views of the accident tractor triple-bottom-dump-trailer combination are shown in Figures 5-7 through 5-13.
- 5.4 Tractor Information
  - 5.4.1 VIN: 1XP5DB9X73D807486
  - 5.4.2 2003 Peterbilt Conventional 379, Eaton Fuller 18 speed transmission, Peterbilt Air Track
  - 5.4.3 Unit #: 5694
  - 5.4.4 Plate #: 50261A
- 5.5 1<sup>st</sup> Trailer Information
  - 5.5.1 VIN: 1R9DBSA2077L008042
  - 5.5.2 Ranco Trailer
  - 5.5.3 Unit #: 6773
  - 5.5.4 Manufactured: 10/06
  - 5.5.5 GVWR: 70,000 lb
  - 5.5.6 Plate # TF6506
- 5.6 2<sup>nd</sup> Trailer Information
  - 5.6.1 VIN: 1R9BP450631008610
  - 5.6.2 Ranco Trailer

- 5.6.3 Unit number: 6774
- 5.6.4 Manufactured: 10/03
- 5.6.5 GVWR: 40,000 lb
- 5.6.6 Plate #: 4EP2080
- 5.7 3<sup>rd</sup> Trailer Information
  - 5.7.1 VIN: 1R9BP45082L008431
  - 5.7.2 Ranco Trailer
  - 5.7.3 Unit #: 6775
  - 5.7.4 Manufactured: 09/02
  - 5.7.5 GVWR: 40,000 lb
  - 5.7.6 Plate #: TE3528
- 5.8 Dump Valve Information
  - 5.8.1 Manufacturer: Versa Valve
  - 5.8.2 Model No.: VGK – 4523 – 200 – DO
  - 5.8.3 Air pressure rating: 40 – 175 PSIG max.
  - 5.8.4 Voltage: 2 VDC
  - 5.8.5 Voltage: 12 VDC
- 5.9 Figure 5-14 shows the unit #6775 dump control valve.
- 5.10 The wire bundle that contained the dump valve solenoid activation wires that ran from the tractor to each of the three trailers was examined.
- 5.11 Each of the relevant intra-vehicle electrical connectors was examined.
- 5.12 No electrical issues were identified.
- 5.13 No mechanical issues were identified.
- 5.14 The dump controls were tested remotely (toggle switches) and manually (levers at dump control valves).
- 5.15 The trailer dump control system was determined to operate as designed.
- 5.16 No destructive examination or testing was attempted or completed.

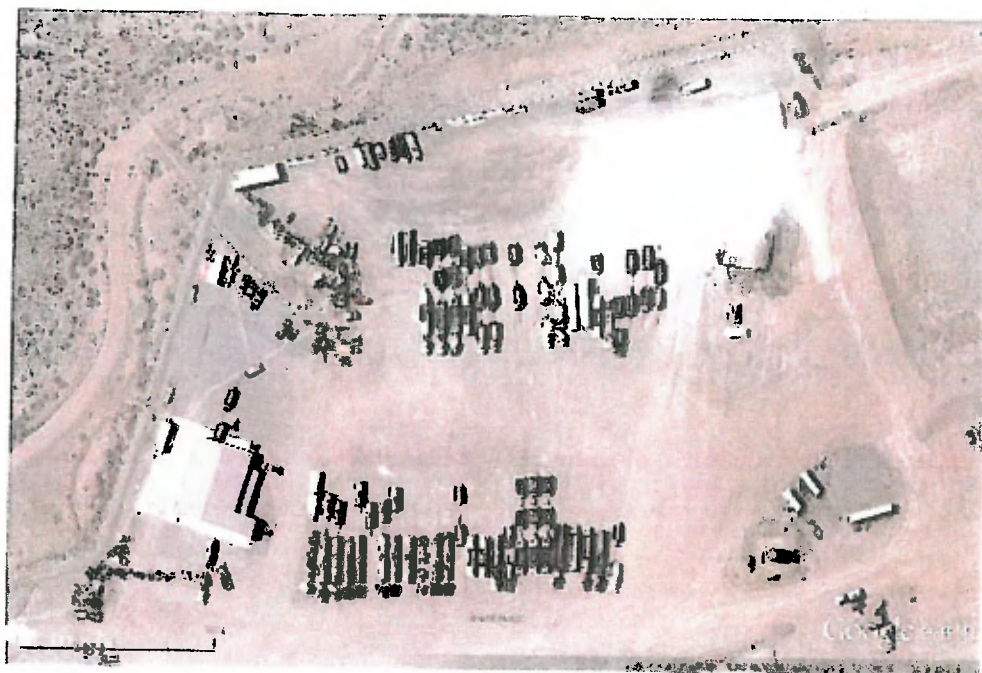
Table 5-1. Description of FEI Photographs – June 9, 2015

Photo #	Description
001-015	General views of the tractor triple-bottom-dump-trailer combination
016-022	Close views of tractor – unit #5694
023-027	Close views of 1 <sup>st</sup> trailer – unit #6773
028-032	Close views of 2 <sup>nd</sup> trailer – unit #6774
033-037	Close views of 3 <sup>rd</sup> trailer – unit #6775
038-102 109-129	Inter- and intra-vehicle wires and routing
103-108 130-143 152-178 193-196	Versa Valve connections and identification
144-151	Versa Valve manual control lever lock by MDB
179-187	Trailer bottom dump actuation mechanism
188-192	Close views of dump control switches

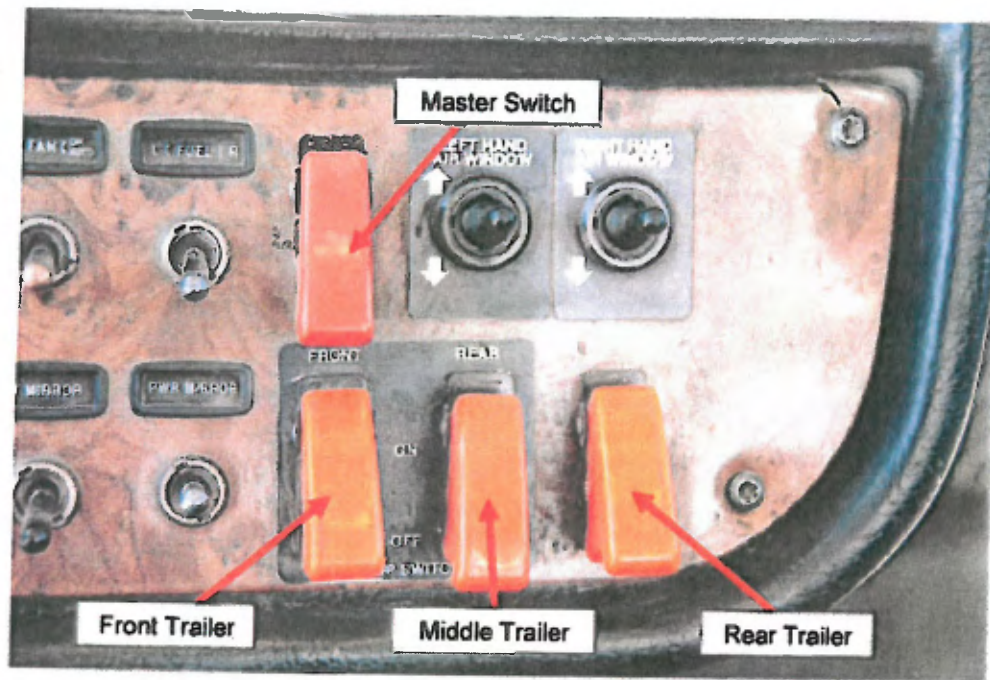
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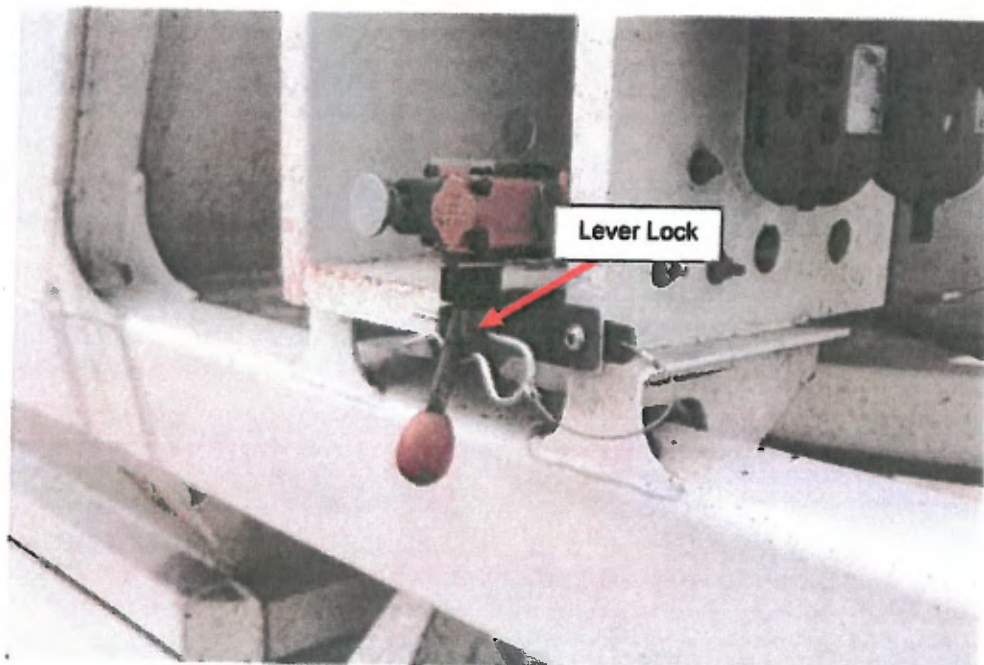
**Figure 5-1. Aerial View of MDB Trucking Headquarters Location**



**Figure 5-2. Close Aerial View of MDB Trucking Headquarters Location**



**Figure 5-3. Control Switch Configuration**



**Figure 5-4. Manual Dump Control Lever Lock**

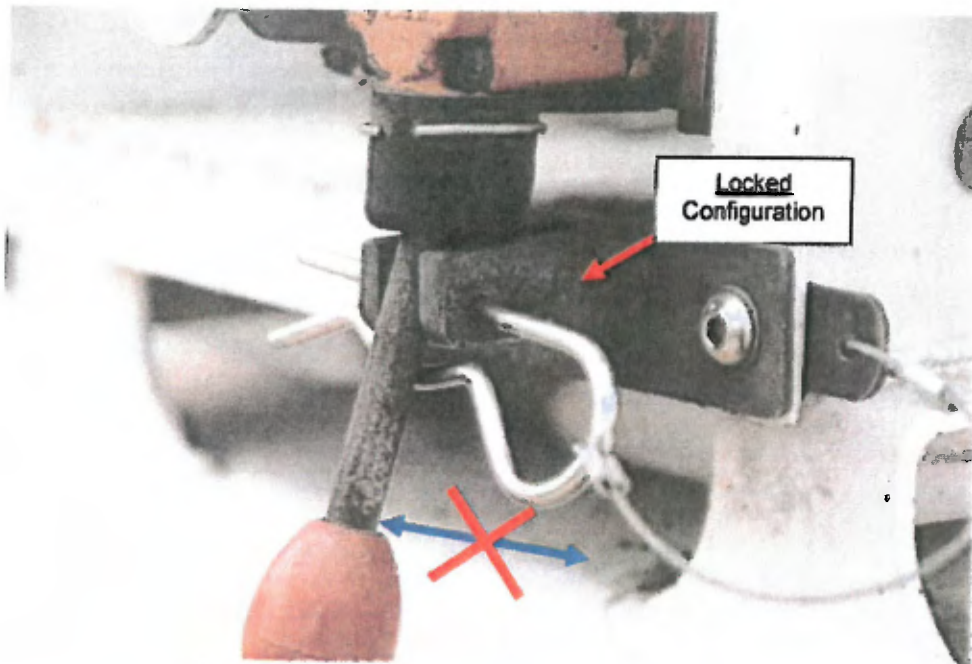


Figure 5-5. Manual Dump Control Lever Lock - Locked

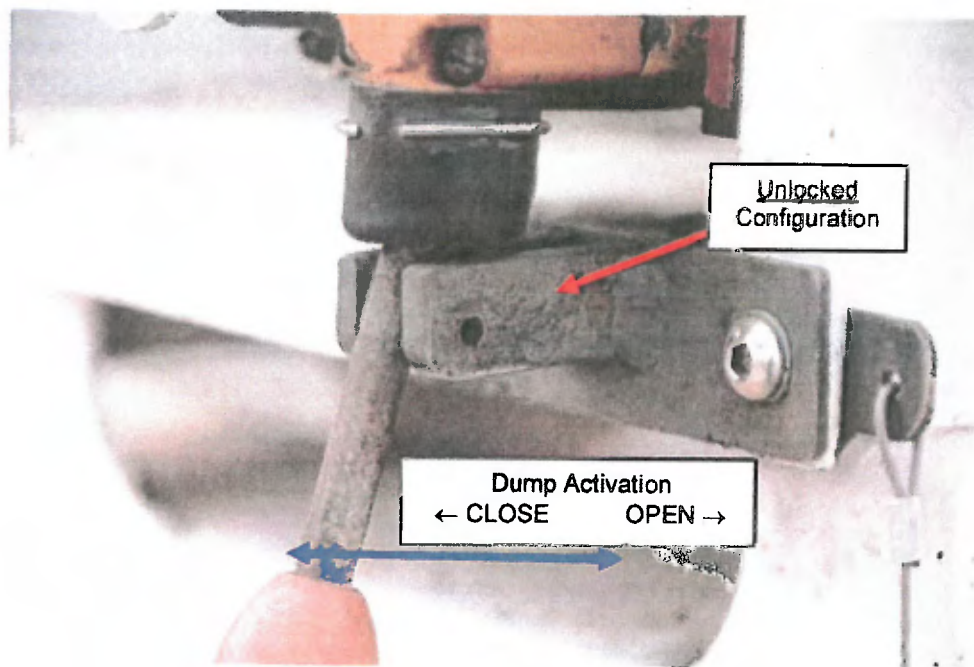


Figure 5-6. Manual Dump Control Lever Lock - Unlocked



**Figure 5-7. Accident Tractor Triple-Bottom-Dump-Trailer Combination**



**Figure 5-8. Accident Tractor Triple-Bottom-Dump-Trailer Combination**



**Figure 5-9. Accident Tractor Triple-Bottom-Dump-Trailer Combination**



**Figure 5-10. Accident Tractor Triple-Bottom-Dump-Trailer Combination**



**Figure 5-11. Accident Tractor (Unit #5694) and 1<sup>st</sup> Bottom-Dump Trailer (Unit #6773)**



**Figure 5-12. 2<sup>nd</sup> Accident Bottom-Dump Trailer (Unit #6774)**



**Figure 5-13. 3<sup>rd</sup> Accident Bottom-Dump Trailer (Unit #6775)**



**Figure 5-14. Dump Control Valve – Unit #6775**

**6. ACCIDENT TRACTOR TRIPLE-BOTTOM-DUMP-TRAILER COMBINATION INSPECTION  
AND DUMP SITES INSPECTIONS, APRIL 28 & 29, 2016**

Inspections of the accident tractor triple-bottom-dump-trailer combination and unintended dump sites were completed by FEI and Anderson Engineering, Inc. (AEI) on April 28 and 29, 2016. Table 6-1 summarizes the photographic documentation acquired during the inspection.

The following notes were written during FEI's inspection of the accident tractor triple-bottom-dump-trailer combination and later adapted for this report.

Attendees: Thierry Barkley, counsel for MDB Trucking  
Brian Brown, counsel for MDB Trucking  
David Bosch, Forensic Engineering, expert for MDB Trucking  
Erik Anderson, expert for MDB Trucking  
Pat Bigby, MDB Trucking mechanic  
Scott Palmer, MDB Trucking driver/mechanic

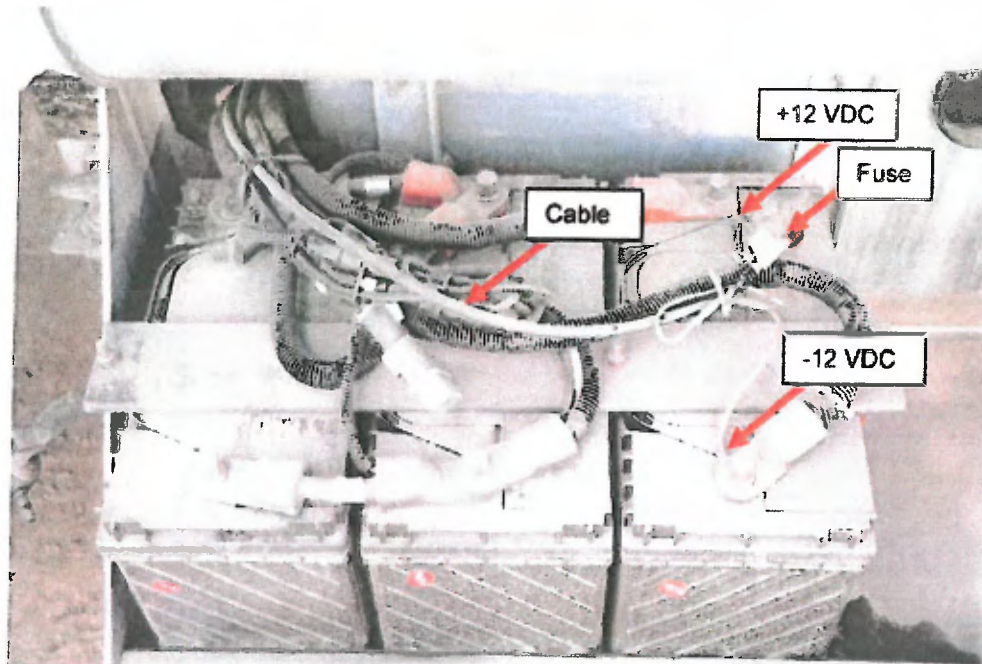
Location: MDB Trucking, Inc. Headquarters  
905 East Mustang Road  
Sparks, Nevada  
Unintended dump sites and travel route

- 6.1 The dump valve control wiring was confirmed to be completely isolated from all other electric power and ground sources. The battery connections are shown in Figure 6-1.
- 6.2 No electrical issues were identified.
- 6.3 No mechanical issues were identified.
- 6.4 Field strength measurements were completed at various locations along the travel route used by the MDB trucks at the time of the unintended dumps.
- 6.5 Figure 6-2 contains a schematic of the switch wiring that is used to control the dump control valves.
- 6.6 No destructive examination or testing was attempted or completed.
- 6.7 Additional discussion regarding the field strength measurements is contained in the AEI report.

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**Table 6-1. Description of FEI Photographs – April 28 & 29, 2016**

Photo #	Description
212-290 314-343	Field strength measurements
291-297	Dimensions of combination
298-309	Tracing valve control power supply wires tractor unit 5694
310-313	Valve control switches in tractor unit 5693



**Figure 6-1. Tractor Unit 5694 Trailer Valve Control Power Connections**

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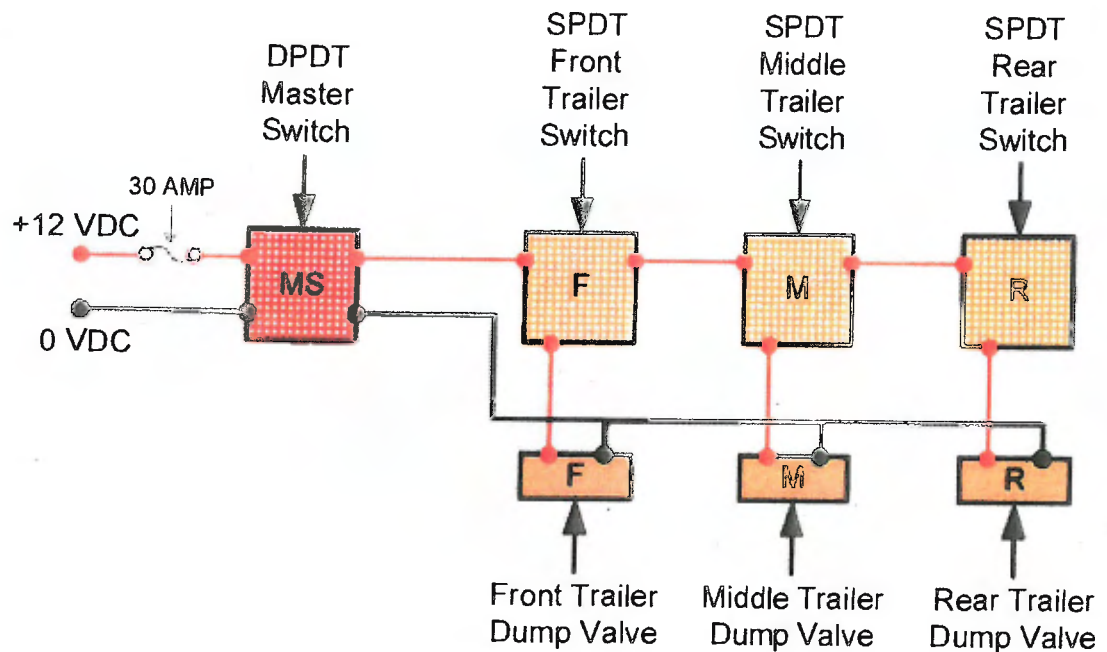


Figure 6-2. Valve Control Switch Schematic

## 7. ACCIDENT TRACTOR TRIPLE-BOTTOM-DUMP-TRAILER COMBINATION INSPECTION AND REMOVAL OF TRAILER UNIT 6775 DUMP CONTROL VALVE, OCTOBER 13, 2016

Forensic Engineering and Anderson Engineering hosted the first inspection of the accident tractor triple-bottom-dump-trailer combination where the other relevant parties were in attendance on October 13, 2016, at MDB's headquarters in Sparks, Nevada. Table 7-1 summarizes the photographic documentation acquired during the inspection.

Attendees: Thierry Barkley, counsel for MDB Trucking  
 Brian Brown, counsel for MDB Trucking  
 David Bosch, Forensic Engineering, expert for MDB Trucking  
 Erik Anderson, expert for MDB Trucking  
 Pat Bigby, MDB Trucking mechanic  
 Scott Palmer, MDB Trucking driver/mechanic  
 Counsel and experts for additional parties

Location: MDB Trucking, Inc. Headquarters  
 905 East Mustang Road  
 Sparks, Nevada

- 7.1 The parties that had not previously viewed the accident combination completed their general inspections.
- 7.2 The function of each trailer dump control system was tested and confirmed to operate as designed.
- 7.3 The valve control system electrical component integrity was tested using a megger. The testing revealed that the system integrity was not compromised. Additional discussion regarding the testing is contained within AEI's report.
- 7.4 No electrical issues were identified.
- 7.5 No mechanical issues were identified.
- 7.6 The Versa bottom dump gate control valve was removed from trailer unit 6775 to facilitate laboratory testing, disassembly and examination.
- 7.7 The removed valve is shown in Figure 7-1.

**Table 7-1. Description of FEI Photographs -- October 13, 2016**

Photo #	Description
350-365	General views of exemplar combination
366-402	Tested electric components
403- 419	Valve removal

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**Figure 7-1. Versa Valve Removed from Trailer Unit 6775**

**8. TRACTOR UNIT 5693 TRIPLE-BOTTOM-DUMP-TRAILER COMBINATION INSPECTION,  
AND TRAILER UNIT 6778 VALVE REMOVAL, NOVEMBER 2, 2016**

Forensic Engineering and Anderson Engineering hosted the first inspection of the tractor triple-bottom-dump-trailer combination power by tractor unit 5693 when the other relevant parties were in attendance on November 2, 2016, at MDB's headquarters in Sparks, Nevada.

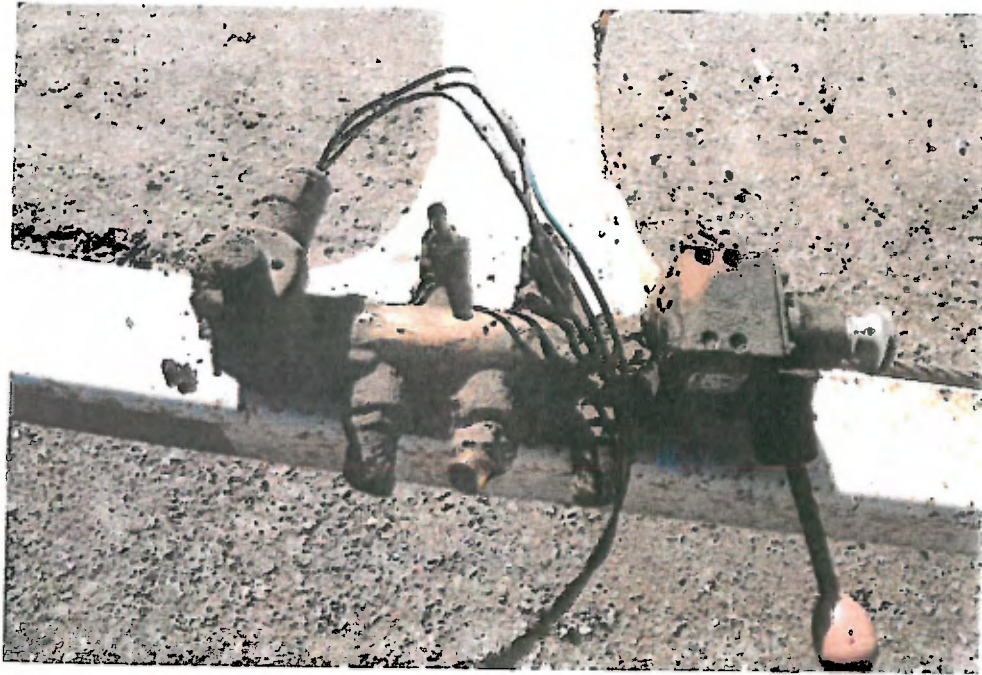
**Attendees:** Thierry Barkley, counsel for MDB Trucking  
David Bosch, Forensic Engineering, expert for MDB Trucking  
Erik Anderson, expert for MDB Trucking  
Pat Bigby, MDB Trucking mechanic  
Scott Palmer, MDB Trucking driver/mechanic  
Counsel and experts for additional parties

**Location:** MDB Trucking, Inc. Headquarters  
905 East Mustang Road  
Sparks, Nevada

- 8.1 The parties that had not previously viewed the tractor unit 5693 powered combination completed their general inspections.
- 8.2 The function of each trailer dump control system was tested and confirmed to operate as designed.
- 8.3 The bottom dump control wiring was traced and examined.
- 8.4 No electrical issues were identified.
- 8.5 No mechanical issues were identified.
- 8.6 The Versa bottom dump gate control valve was removed from trailer unit 6778 to facilitate laboratory testing, disassembly and examination.
- 8.7 The removed valve is shown in Figure 8-1.

**Table 8-1. Description of FEI Photographs – November 2, 2016**

Photo #	Description
448-463	General views of combination
464-471	Close views of trailer unit 6776
472-481	Close views of trailer unit 6777
482-492	Close views of trailer unit 6778
493-530	Trailer unit 6776 wire harness routing and condition
531-589	Trailer unit 6777 wire harness routing and condition
590-635	Trailer unit 6778 wire harness routing and condition
636-648	Close views of cab features including air pressure used for functionality testing
656-659	
649-655	Testing valve function trailer unit 6778
660-675	Under dashboard valve control components
700-703	
676-699	Trailer wire continuity and resistance testing
704-713	Examination of terminal boxes
714-738	Removal of valve from trailer unit 6778
739-742	Alternative valve



**Figure 8-1. Versa Valve Removed from Trailer Unit 6778**

**9. REMOVED VALVE TESTING, DISASSEMBLY AND EXAMINATION, NOVEMBER 30, 2016**

Forensic Engineering and Anderson Engineering hosted the testing, disassembly and examination of the Versa valves that were removed from trailer unit 6775 and trailer unit 6778. The work was completed on November 2, 2016, at Forensic Engineering's laboratory with all relevant parties in attendance. Table 9-1 summarizes the photographic documentation acquired during the inspection.

The following notes were written during the testing, disassembly and examination of the aforementioned Versa valves and later adapted for this report.

Location: Forensic Engineering, Inc.  
4665 South Ash Avenue  
Suite G4  
Tempe, Arizona

Attendees: Brian Brown, counsel for MDB Trucking  
David Bosch, Forensic Engineering, expert for MDB Trucking  
Erik Anderson, expert for MDB Trucking

David Rondinone  
John Kleppe  
Garrick Mitchell  
Barham Nazmi  
Paige Shreve  
Jeremy Thompson

9.1 Valve Removed from Trailer Unit 6775

- 9.1.1 Discussion regarding the solenoid activation voltage and current are contained within AEI's report.
- 9.1.2 The electromechanical testing of the valve revealed that the valve functioned as designed.
- 9.1.3 After the electrical and electromechanical testing was completed, debris was removed from the valve.
- 9.1.4 The valve was then disassembled as shown in Figure 9-1.
- 9.1.5 Disassembly of the valve did not reveal an electrical or mechanical issue or an issue that could cause unintentional activation.

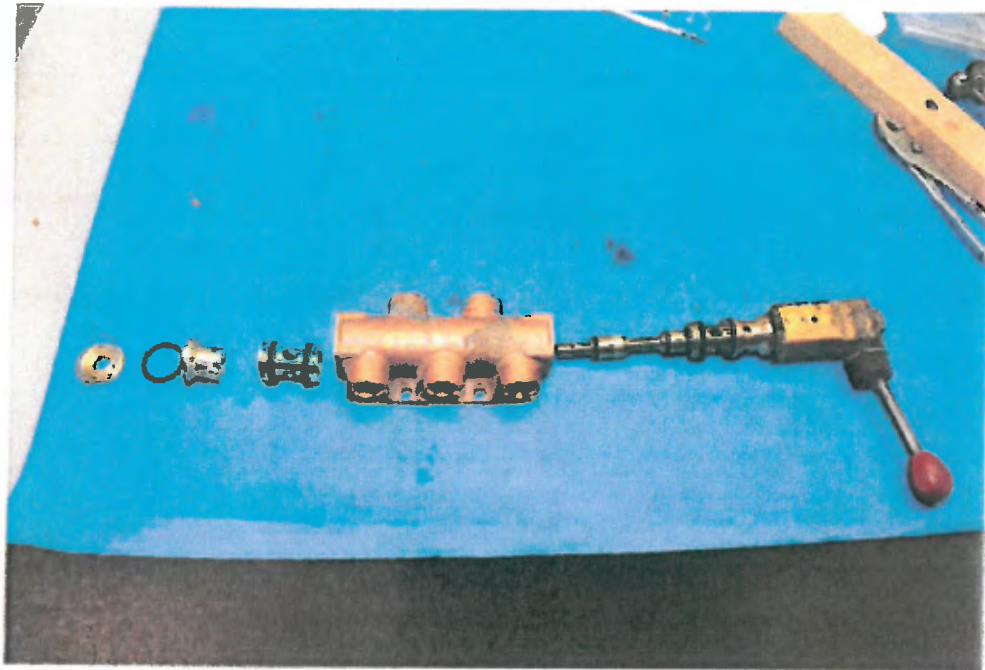
9.2 Valve Removed from Trailer Unit 6778

- 9.2.1 Discussion regarding the solenoid activation voltage and current are contained within AEI's report.
- 9.2.2 The electromechanical testing of the valve revealed that the valve functioned as designed.
- 9.2.3 After the electrical and electromechanical testing was completed, debris was removed from the valve.
- 9.2.4 The valve was then disassembled as shown in Figure 9-2.
- 9.2.5 Disassembly of the valve did not reveal an electrical or mechanical issue, or an issue that could cause unintentional activation.

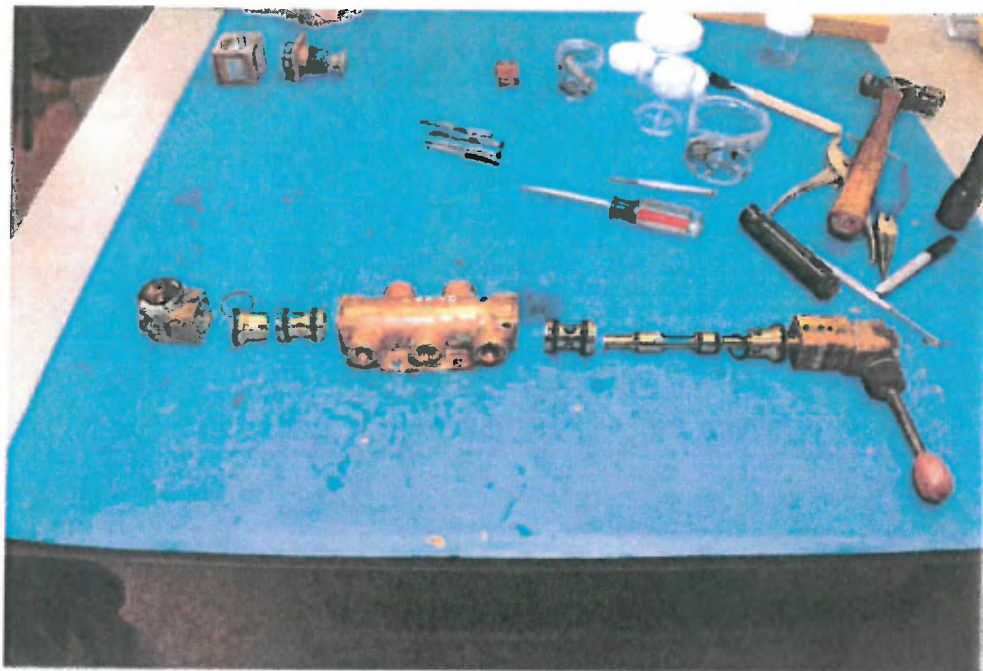
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**Table 9-1. Description of FEI Photographs – November 30, 2016**

<b>Photo #</b>	<b>Description</b>
<b>Valve Removed from Trailer Unit 6775</b>	
749-753	Packaging and labeling of valve
754-759	General views of valve
760-763	Splice in wires
764-768	Solenoid resistance measurements with splice in place
769 & 770	Sectioned splice
771-797	Solenoid electrical measurements without air pressure
798-806	Removal of original fittings and installation of fittings for pressure tests
807-813	Solenoid electrical measurements with air pressure
814-818	Preparation of valve for debris removal
847-849	Debris removal
856-867	Removal and disassembly of the pilot chamber assembly
868-885	Removal and disassembly of the solenoid cap assembly
886-897	Removal and disassembly of the lever cap assembly, pilot cap assembly and body assembly
<b>Valve Removed from Trailer Unit 6778</b>	
819-822	Packaging and labeling of valve
823-829, 898	General views of valve
830-832	Solenoid electrical measurements without air pressure
833-840	Removal of original fittings and installation of fittings for pressure tests
841-846	Solenoid electrical measurements with air pressure
847-853	Preparation of valve for debris removal
854 & 855	Debris removal
899-907	Removal and disassembly of the pilot chamber assembly
908-923	Removal and disassembly of the solenoid cap assembly
924-935	Removal and disassembly of the lever cap assembly, pilot cap assembly and body assembly
936-939	Repackaging valves



**Figure 9-1. Disassembled Valve Removed from Trailer Unit 6775**



**Figure 9-2. Disassembled Valve Removed from Trailer Unit 6778**

## 10. DRIVER INTERVIEWS, NOVEMBER 2 & 3, 2016

Forensic Engineering and Anderson Engineering interviewed Mr. Dan Koski and Mr. Scott Palmer on November 2 & 3, 2016. The following notes were written by FEI during the interviews and later adapted for this report.

### 10.1 Mr. Scott Palmer

- 10.1.1 It takes approximately 3-4 seconds for a trailer to dump the load.
- 10.1.2 He was traveling toward Reno on I-80 west.
- 10.1.3 After the unintended dump, the valve was still in open position.
- 10.1.4 The trailer dumped just before the rest area.
- 10.1.5 Both he and Dan were hauling from the Paiute pit in Fernley
- 10.1.6 He was hauling concrete sand.
- 10.1.7 Dan was hauling ¾" #67 gravel.
- 10.1.8 When he found the valve in the open position, he flipped the switch on ==> off and the gates then closed.
- 10.1.9 He was at Vista Boulevard before he knew that the gates were open.
- 10.1.10 He was hauling his third load of the day.
- 10.1.11 He had left the Paiute pit at 8:40 a.m.
- 10.1.12 The trailer dumped at 8:50 a.m. or before.
- 10.1.13 An unintended dump had never happened before with this truck/trailer.
- 10.1.14 It was very cloudy, cool, and (relatively) overcast.
- 10.1.15 He did not think lights were on.
- 10.1.16 The unintended dump was not a unique event.
- 10.1.17 He was in San Jose to look at job and saw 30-40 trailers with locks.

### 10.2 Mr. Dan Koski

- 10.2.1 Lakeside Specialized Transport had an unintended dump on I-80 that caused crash.
- 10.2.2 Western Nevada Transport had at least one unintended dump.
- 10.2.3 He was on his third run of day.

- 10.2.4 He was hauling from Paiute Pit in Fernley to the Cemex plant in Reno on Galetti Way.
- 10.2.5 He was hauling ¾" gravel - concrete rock.
- 10.2.6 He was hauling the same material as on the previous two loads.
- 10.2.7 He was driving his issued vehicle.
- 10.2.8 He would occasionally tow different trailer(s).
- 10.2.9 The first unintended dump (July 2013) was in almost same spot - he was hauling sand.
- 10.2.10 The first dump was near the underpass at Derby Dam.
- 10.2.11 He was hauling the same direction for both dumps.
- 10.2.12 He was driving the same truck/trailers.
- 10.2.13 Both dumps were from the last trailer.
- 10.2.14 The Wadsworth Justice Court dismissed case - Tracy Shane attended court.
- 10.2.15 Tracy Shane is now with Cyclone Transport.
- 10.2.16 John Davis Construction was the source of the tractor.
- 10.2.17 He pulled over at Derby Dam and called 911.
- 10.2.18 The trooper claimed no injuries.
- 10.2.19 The gates were still open after he stopped.
- 10.2.20 He always used the manual lever due to his sight.
- 10.2.21 He always cycled the gates when heading into pits to clear material.
- 10.2.22 He heard that the ABS might have had something to do with dump.
- 10.2.23 It was nice weather - no details.
- 10.2.24 The truck/trailers were running normally.
- 10.2.25 The lights were on (safely).
- 10.2.26 Dan's cell phone number is: 775-338-7576.

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## 11. EXEMPLAR VALVE TESTING AND EXAMINATION

Three exemplar Versa valves, two part number VGK-4523-20C-D012 pilot-solenoid actuated valves [identical to the accident valve] and one VGA-4523-181J-U-218A-D012 latching/manual reset valve.

Forensic Engineering fabricated an experimental apparatus to facilitate its investigation regarding the unintended dumps. The apparatus was used with an exemplar valve installed to determine the details of valve function including the solenoid activation and deactivation voltage and current. It was also used to investigate the electrical and/or mechanical conditions that could cause the valve to inadvertently cause the bottom dump gates to open. The experimental apparatus is shown in Figures 11-1 and 11-2.

One of the VGK-4523-20C-D0 pilot-solenoid actuated valves was disassembled as shown in Figures 11-3 through 11-6. The design was analyzed and functionality it's determined.

It was determined that the solenoid that controls the dump valve can be activated by a voltage as low as 8.5 VDC; approximately 4.7 VDC lower than the typical system voltage of 13.2 VDC. Additional information obtained using the apparatus is contained in AEI's report.

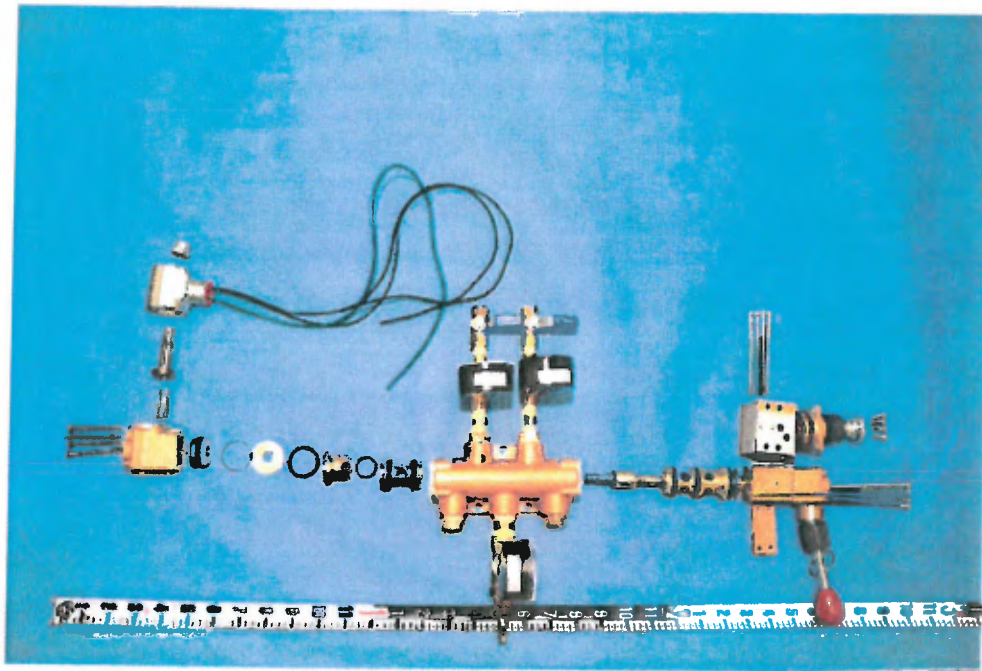
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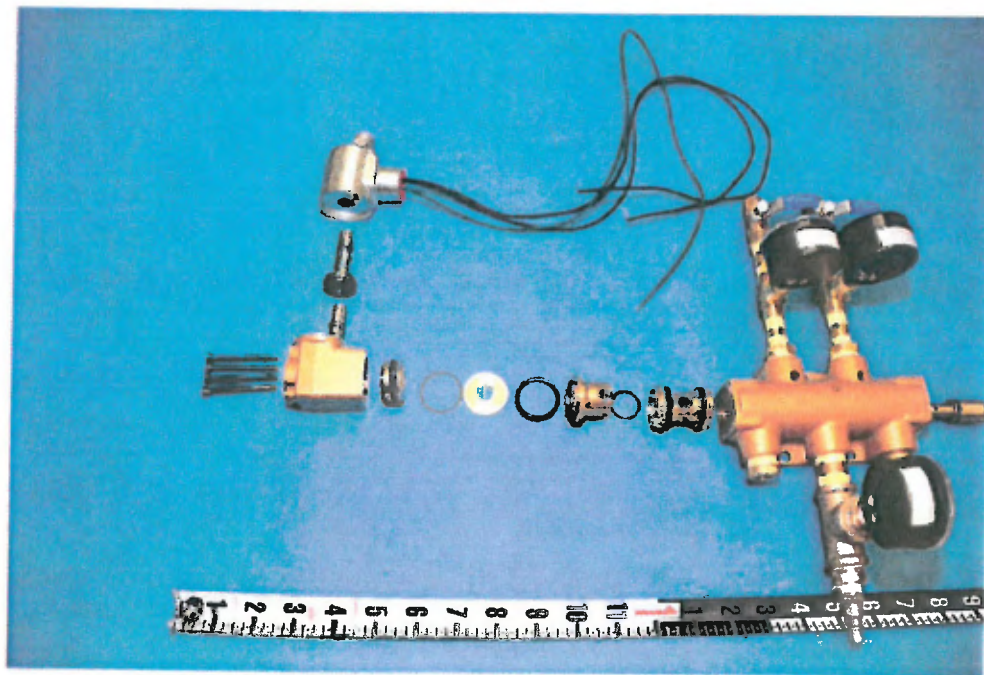
**Figure 11-1. Experimental Apparatus for Dump Valve and Control System Testing**



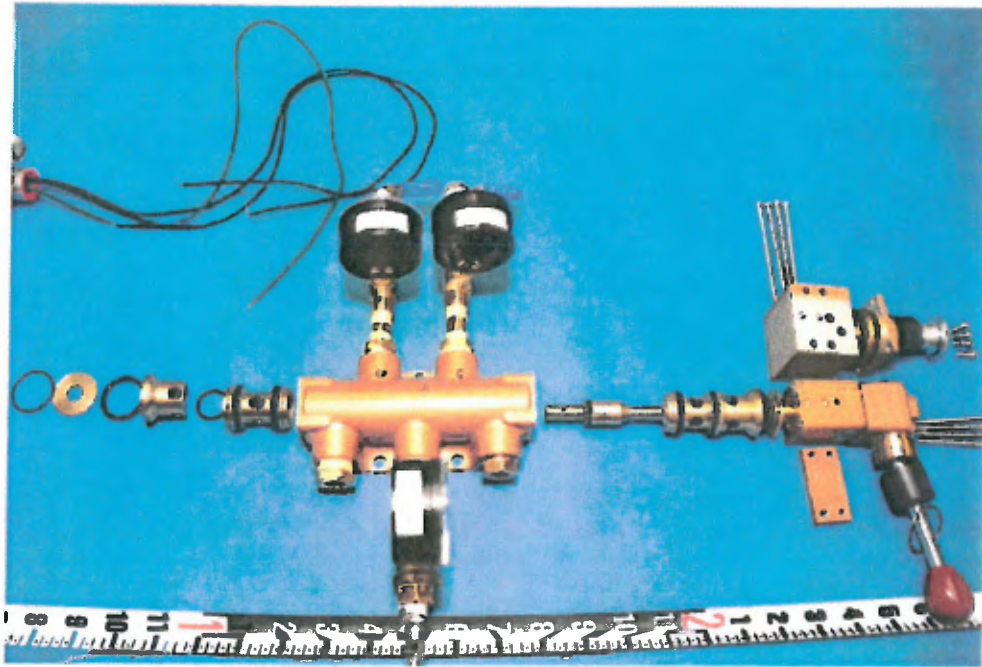
**Figure 11-2. Experimental Apparatus for Dump Valve and Control System Testing**



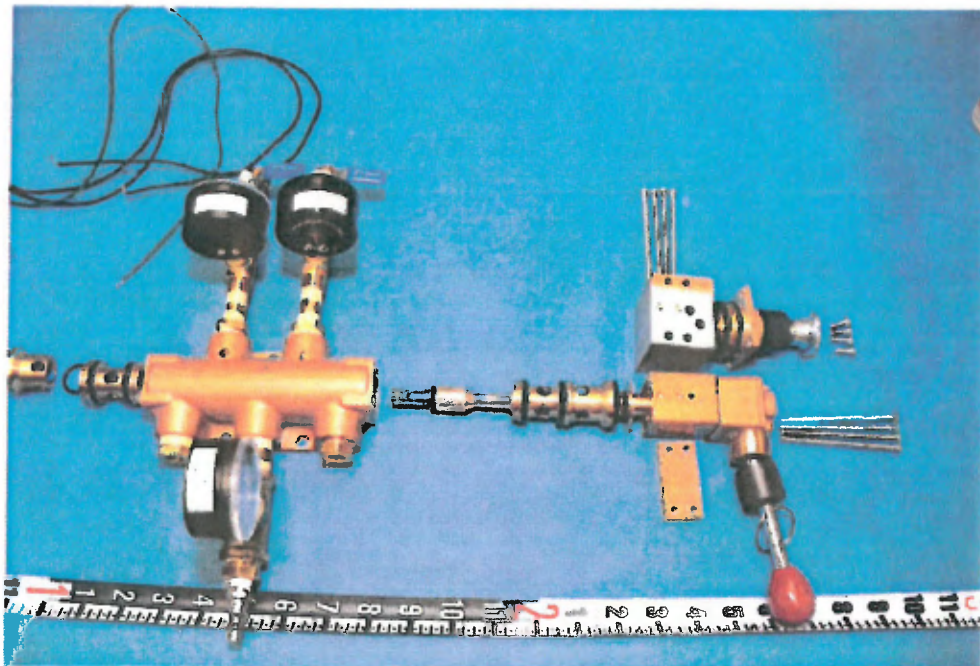
**Figure 11-3. Disassembled Exemplar Versa Bottom Dump Valve**



**Figure 11-4. Close View of Exemplar Versa Bottom Dump Valve Components**



**Figure 11-5. Close View of Exemplar Versa Bottom Dump Valve Components**



**Figure 11-6. Close View of Exemplar Versa Bottom Dump Valve Components**

## **12. SUMMARY OF UNINTENDED DUMP INFORMATION**

- 12.1 Mr. Koski stated that he is aware of other multiple, inadvertent activations of Versa valves used on Western Nevada Trucking trailers.
- 12.2 Capurro Trucking has experienced multiple unintended activations of the belly dump systems since 2006. Three of the unintended activations are discussed in the report by Ruhl Forensic.
- 12.3 Mr. Ferran at Western Nevada Transport (NVT) stated during an interview on October 13, 2016, that he was familiar with the erratic behavior, and unintended dumps involving Versa valves on Ranco belly dump trailers at NVT and other trucking companies including MDB trucking.
- 12.4 On July 25, 2013 and July 30, 2013, the tractor / trailer combination, owned and operated by MDB Trucking, and driven by Mr. Koski experienced unintended activation and dumping of the load in the third trailer.
- 12.5 Mr. Koski stated that he is aware of other multiple, unintended activations of Versa valves used on Western Nevada Trucking trailers.
- 12.6 Mr. Palmer stated that Capurro Trucking had experienced 4 or 5 inadvertent activations of their belly dump mechanisms.

There was never any electrical or mechanical malfunction discovered with any unintended activation of the Versa valves.

Additional information regarding unintended dumps involving Versa valves is being gathered by FEI and will be summarized in a supplemental report.

### 13. SUMMARY OF CONCLUSIONS AND OPINIONS

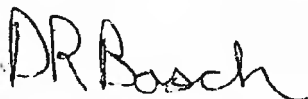
The following summary of conclusions and opinions are based upon FEI's investigation as summarized in Sections 1-1 through 1-12 above and upon the education, experience and training of the author. The opinions and conclusions are within a reasonable degree of scientific and engineering certainty. Forensic Engineering reserves the right to supplement its conclusions and opinions if additional information is discovered and/or provided.

- 13.1 After the unintended dump from the tractor triple-trailer bottom-dump combination (tractor unit 5694 and trailer units 6673, 66743 and 6775) in July 2013, MDB Trucking's mechanics did not find a tractor, trailer or Versa valve-related electrical or mechanical issue that could have caused the dump.
- 13.2 Forensic Engineering's examination of the evidence indicates that MDB Trucking's July 2013 investigation was thorough and complete and that the findings were correct.
- 13.3 In response to the July 2013 dump, MDB replaced the Versa valve (unnecessarily but as an extra measure of caution) on the trailer (unit 6775) that inadvertently dumped. It also isolated the dump valve control system power supply from the vehicle's accessory (lights) electrical system by connecting the dump valve control system directly to the tractor batteries. MDB also added a double-pole single-throw (DPST) master toggle switch in series with the individual trailer dump toggle switches to add a layer of redundancy to the control system. In other words, rather than requiring that one switch be manipulated to dump the chosen trailer, two switches require manipulation in order to complete the dump.
- 13.4 Note that the addition of the DPST master switch not only isolated the "hot" side of the dump valve control circuit from other tractor and trailer circuits, it also isolated the negative or ground side of the control circuit from all other circuits. This action made it impossible for electrical energy from the tractor or trailers to activate any of the dump valves without two toggle switches being placed in the "ON" position.
- 13.5 MDB determined that the probability of the driver causing the July 2013 unintended dump was extremely low.

- 13.6 Forensic Engineering's examination of the evidence indicates that MDB Trucking's response after the July 2013 unintended dump was technically appropriate and correct and completely eliminated any possibility that tractor or trailer-related electrical issues could inadvertently cause another unintended dump.
- 13.7 Given that Versa Valve intended that its valve be used as MDB Trucking used it, it was completely reasonable for MDB to continue using the valve after having eliminated any possibility that the MDB equipment could cause another unintended dump.
- 13.8 After the July 2014 unintended dump from trailer units 6775 and 6778, MDB Trucking immediately removed all of its bottom dump trailers from the roadway.
- 13.9 Forensic Engineering's investigation revealed that there were no electrical issues associated with tractor unit 5694 or trailer units 6772, 6774 or 6775 that caused the July 2014 unintended dump of crushed rock from trailer unit 6775 that lead to plaintiffs' injuries.
- 13.10 Forensic Engineering's investigation revealed that there were no electrical issues associated with tractor unit 5693 or trailer units 6776, 6777 or 6778 that caused the July 2014 unintended dump of sand from trailer unit 6778 near the same time and location as the trailer unit 6775 dump.
- 13.11 After the July 2014 unintended dumps, MDB Trucking legitimately and conscientiously could no longer trust the Versa valve design.
- 13.12 After the July 2014 unintended dumps, MDB Trucking immediately designed and installed on all of its bottom dump trailers a device that mechanically locked the Versa valve in the "gate closed" position and positively eliminated unintended dumps due to the defective Versa valve design.
- 13.13 MDB trucking immediately installed the valve locks on all of its bottom dump trailers before it redeployed the trailers onto the roadways.
- 13.14 Forensic Engineering's examination of the evidence indicates that MDB Trucking's response after the July 2014 unintended dumps was technically appropriate and correct and completely eliminated any possibility that the defectively designed Versa valve could cause any additional unintended dumps.

- 13.15 MDB Trucking's competitors have had many other unintended dumps from bottom dump trailers using the Versa valve, as documented during FEL's investigation.
- 13.16 In most of the unintended dump cases, an electrical issue associated with the truck or trailer(s) has been investigated and determined to not have been the root cause of the dump.
- 13.17 The only logical explanation for the numerous unintended dumps is that the Versa valve design is defective.
- 13.18 The Versa valve part number VGK-4523-20C-D0 design is defective.
- 13.19 The Versa valve part number VGK-4523-20C-D0 is unreasonably dangerous.
- 13.20 MDB Trucking was using the Versa valve as it was intended to be used.
- 13.21 MDB Trucking properly and reasonably maintained its vehicles in a condition that they did not cause the unintended dumps.
- 13.22 There were no vehicle issues that could have caused the Versa valve to activate and dump loads.
- 13.23 There is no evidence that the drivers caused the unintended dumps.
- 13.24 There were multiple alternative designs, including replacement of the electrical solenoid with a pneumatic solenoid that would have eliminated unintended dumps.
- 13.25 Given the severity of the consequences of unintended dumps, a valve that eliminated unintended dumps by redundancy or other alternative design in the control system was appropriate, reasonable and necessary.

The conclusions and opinions contained within this report are to a reasonable degree of certainty.



---

David Bosch, Ph.D.

# EXHIBIT A-6

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# EXHIBIT A-6

AA001287



Rimkus Consulting Group, Inc.  
1160 N. Town Center Drive, Suite 150  
Las Vegas, NV 89144  
(702) 304-1508 Telephone  
(702) 304-1498 Facsimile

## Report of Findings

### **MDB TRUCKING VS. VERSA VEHICLE ACCIDENT INVESTIGATION**

Cause No: CV15-02410

Style: **MDB** Trucking LLC vs. RMC Lamar Holdings, Inc. and Versa  
Products Company, Inc.

RCG File No: 01208443

Prepared For:

**LEWIS, BRISBOIS, BISGAARD & SMITH, L.L.P.**  
**6385 SOUTH RAINBOW BLVD., STE. 600**  
**LAS VEGAS, NV 89118**

Attention:

**MR. DAVID AVAKIAN**



Digitally signed by: Garrick F Mitchell  
DN: CN = Garrick F Mitchell C = US O = IdenTrust ACES Business  
Representative OU = RIMKUS CONSULTING GROUP INC  
Date: 2017.06.15 12:23:49 -07'00'

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**Garrick F. Mitchell, P.E.**  
**Engineering Number 16606**  
**Division Manager**

June 15, 2017

AA001288

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## Section I

### INTRODUCTION

On July 7, 2014, an incident involving a lost load from a commercial vehicle occurred on Interstate 80 (I-80) approximately 1/2 mile east of mile marker 39 in rural Washoe County, Nevada. A 2003 Peterbilt truck-tractor, vehicle identification number (VIN) 1XP5DB9X73D807486, operated by MDB Trucking, LLC, driven by Daniel Koski, and towing three belly-dump trailers, was traveling westbound on I-80. According to the Nevada Highway Patrol (NHP) report, the Peterbilt's rearmost trailer spilled its load of gravel onto both westbound lanes of I-80 in a curve. Multiple vehicles behind the Peterbilt came upon the spilled gravel at highway speeds and collided with one another.

Rimkus Consulting Group, Inc. (Rimkus) was retained to determine the cause of the lost-load incident. This report was reviewed by Joe R. Maseda, Vice-President – Forensic / Industrial.

This report was prepared for the exclusive use of Lewis, Brisbois, Bisgaard & Smith, L.L.P. and was not intended for any other purpose. Our report was based on the information available to us at this time, as described in the **Basis of Report**. Should additional information become available, we reserve the right to determine the impact, if any, the new information may have on our opinions and conclusions and to revise our opinions and conclusions if necessary and warranted.

## Section II

### CONCLUSIONS

1. Based on the information received to date, the Peterbilt's rear trailer (Unit 6775) lost its load of gravel when its belly-dump doors opened.
2. The Versa valve that controlled the dump doors on Unit 6775 functioned normally and predictably when tested repeatedly by Rimkus and others. This was irrespective of whether the valve was actuated manually using the hand lever or electrically via the control switches in the cab of the Peterbilt.
3. The Versa valve that controlled Unit 6775's dump doors was undamaged aside from normal wear and tear when inspected and disassembled by Rimkus and others.
4. For Unit 6775's dump doors to have opened in transit, the Versa valve had to be actuated. Specifically, either the manual lever was displaced to the right (e.g., due to being struck by airborne debris, such as that which damaged the adjacent fender), or the electric solenoid was energized.
5. The Versa valve was a single component, selected and installed by others, within a larger system designed by others. Any of various failures external to the valve, and outside of Versa's control, could have resulted in an uncommanded dump.
6. The trailer manufacturer had full responsibility for designing and implementing the belly-dump system, and the trailer's end user was responsible for inspecting and maintaining that system. These actions were outside of the responsibility and control of Versa.
7. The root cause of the incident is not known from the available information. However, there was no evidence the Versa valve did anything other than function as designed.
8. There was no evidence that a defect or deficiency of the Versa valve caused or contributed to an uncommanded opening of Unit 6775's dump doors.

### Section III

## DISCUSSION

### Background

MDB Trucking operates a fleet of tractor-trailers. The trailers discussed in this report are all of the belly-dump type (Photograph 1). Such trailers are used to haul bulk commodities such as sand, gravel, or aggregate. The trailer's open-top hopper is filled from above and emptied via the bottom (belly) of the trailer (Photograph 2). The trucks described in this report consist of a truck-tractor, a semi-trailer, and two "pup" trailers with integral dollies that connect to the pintle hook of the trailer ahead (Photograph 3).

Two clamshell-type dump doors open partially or fully to govern the rate at which the material is dumped (Photograph 4). The dump doors are actuated by two pneumatic cylinders; air pressure is required to open the doors by extending the cylinders and to close the doors by retracting the cylinders. The air that actuates the cylinders is supplied by the tractor's on-board air compressor and is stored in an air tank separate from the truck's air-brake system. A check valve at the inlet to the tank maintains the air in the tank when the truck is parked and the trailer air supply is vented to an exhaust port (Photograph 5).

The supply of air to the pneumatic cylinders for the dump doors is governed by a model VGK 4-way, 3-position valve manufactured by Versa Valves (Photograph 6). Compressed air from the air tank passes through a filter and lubricator (Photograph 7) and enters the inlet port of the Versa valve. The valve body contains a spool (Photograph 8) whose shape directs air from the inlet port to one of two outlet ports (referred to as "Port A" and "Port B"). The spool is shifted to one side or the other as described below to select which outlet port is pressurized. When one outlet port is connected to the inlet port, the other outlet port is vented to an exhaust port.

There are two means by which to operate the Versa valve: manually or electrically. The operation of the valve is summarized in the valve's Product Bulletin (see Attachment B, "Operation") and described in more detail below.

In manual operation ("Mode Two" in the Product Bulletin), a lever on one end of the valve assembly (Photograph 9) allows an operator to physically shift the spool in either direction. When the lever is angled away from the valve assembly (the "out" position), the spool is shifted away from the lever, and Port A is pressurized and Port B is vented. When the lever is angled toward the valve assembly (the "in" position), the spool is shifted toward the lever, and Port A is vented and Port B is pressurized. The lever can also be manually placed in a center ("neutral") position that blocks Port A and Port B from the inlet and exhaust ports.

The Versa valve can be operated electrically ("Mode One") via a solenoid on the opposite end of the valve assembly from the manual lever (Photograph 10). When the solenoid is electrically energized, a plunger is lifted off of the seat of a pilot valve, causing air pressure to act on the solenoid end of the spool and shift it toward the lever. This causes Port B to be pressurized and Port A to be vented. At the same time, air flows through internal passages in the valve housing and pressurizes an accumulator at the lever end of the assembly (Photograph 11). When the solenoid is de-energized, the air acting on the solenoid end of the spool is vented. The air pressure in the accumulator pressure acts as an "air spring" on the lever end of the spool, shifting the spool away from the lever and causing Port A to be pressurized and Port B to be vented. The manual lever moves when the spool shifts.

Energizing and de-energizing the Versa valve solenoid is controlled via switches in the tractor cab (Photograph 12). The driver must first toggle a master switch, followed by another switch corresponding to the trailer he wants to dump. This sends truck battery power (nominally 12 Volts DC) to the desired Versa valve to actuate it.

After the valve is actuated electrically, the accumulator remains pressurized. After closing the dump doors, if the manual lever is used to open the dump doors, the lever

will spring back to the "out" position when released. Manually pressing the accumulator button (**Photograph 13**) vents the accumulator and allows the lever to remain in any position.

#### **Vehicle Identification**

Each tractor and trailer in MDB Trucking's fleet is identified by a unit number. The truck being operated by Mr. Koski at the time of the subject incident was made up of the following:

- Unit 5694 was a 2003 Peterbilt truck-tractor, VIN 1XP5DB9X73D807486, Nevada license plate 50261A (**Photograph 14**).
- Unit 6773, the semi-trailer connected directly to Unit 5694, was a 2007 Ranco model LW21-32 belly-dump trailer, VIN 1R9BSA2077L008042, Idaho license plate TF6506 (**Photograph 15**).
- Unit 6774, the pup trailer connected to the rear of Unit 6773, was a 2003 Ranco belly-dump trailer, VIN 1R9BP45063L008610, California license plate 4EP2080 (**Photograph 16**).
- Unit 6775, the pup trailer connected to the rear of Unit 6774, was a 2002 Ranco belly-dump trailer, VIN 1R9BP45082L008431, Idaho license plate TE3528 (**Photograph 17**).

An exemplar truck was also inspected in the course of this matter. The exemplar was operated by Scott Palmer on the date of the subject incident and reportedly had an uncommanded dump of its rearmost trailer that same day. This truck was substantially identical in layout to Mr. Koski's truck and was made up of the following:

- Unit 5693 was a 2006 Peterbilt truck-tractor, VIN 1XP5DB9X76D641667, Nevada license plate 51018A (**Photograph 18**).

- Unit 6776, the semi-trailer connected directly to Unit 5693, was a 2007 Ranco model LW21-32 belly-dump trailer, VIN 1R9BSA2047L008046, Idaho license plate TF6505 (Photograph 19).
- Unit 6777, the pup trailer connected to the rear of Unit 6776, was a 2003 Ranco belly-dump trailer, VIN 1R9BP45003L008621, California license plate 4EP7054 (Photograph 20).
- Unit 6778, the pup trailer connected to the rear of Unit 6777, was a 2002 Ranco belly-dump trailer, VIN 1R9BP450X2L008432, Idaho license plate TE3532 (Photograph 21).

#### Accident History

On or about July 26, 2013, Mr. Koski was operating Unit 5694 (with the three trailers listed above) when he reportedly lost a load of sand from his rearmost trailer, Unit 6775. This incident reportedly occurred near the Derby Dam exit on I-80. No police report for this incident has been received to date. Following that incident, the Versa valve on Unit 6775 was replaced, the 4-conductor wiring from the control switches in the cab back to the trailers was replaced, the tractor wiring was modified to draw power for the Versa valves directly from the Peterbilt's batteries, and the master switch was added to the cab. MDB Trucking personnel stated these modifications were done to decrease the likelihood of an uncommanded opening of the dump doors, although no specific cause of the July 2013 incident was ever found.

On July 7, 2014, on the same morning as the subject incident, Mr. Palmer was operating Unit 5693 (with the three trailers listed above) when he reportedly lost a load of sand from his rearmost trailer, Unit 6778.

On July 7, 2014, the subject incident occurred, and Mr. Koski was operating Unit 5694 when he lost a load of gravel from his rearmost trailer, Unit 6775. Following this incident, locking mechanisms were installed on the Versa valves that held the manual levers in the "out" (dump doors closed) position (Photograph 22). This also prevented

the spool from shifting within the valve body, which prevented the valve from being actuated electrically unless the cotter pin was removed from the locking mechanism. This modification was made on all trailers with similar Versa valves.

#### **Witness Statements / Testimony**

In a written statement to NHP following the July 7, 2014 incident, Mr. Koski stated, "I was westbound on I-80 at Derby Dam hauling rock to Cemex on Galletti Way [in] Reno. I was going approximately 65 miles per hour (mph) when a gentleman in a pickup honked and waved me over. I stopped. He told me my back trailer gates came open and spilled the rocks and caused a bad accident. I immediately called 911 and waited for NHP."

There were 14 separate NHP reports for vehicle accidents the investigating Trooper(s) opined were related to gravel spilled onto the westbound lanes of I-80 from Unit 6775. The reports included handwritten driver statements. While each statement described that driver's interactions of the vehicles immediately around him, the common thread among the statements was that there was gravel on the roadway in a curve and that vehicles lost control while attempting to negotiate the curve or while attempting to avoid other stopped or crashed vehicles ahead. Some statements referenced a "cloud of dust," while two statements, those of Ernest Fitzsimmons and Barbara Gilbert, indicated that westbound traffic passed through an area of sand deposited on the roadway some distance (a "few miles," per Ms. Gilbert) prior to reaching the area of gravel.

Regarding the July 2013, incident, Mr. Koski testified that he was hauling his third load of sand that day when the incident occurred. He arrived at the cement plant where he was to unload and then realized the dump doors of his rear trailer, Unit 6775, were open.

Q And what happened next?

A I was coming towards town westbound and I got into the plant and I pulled up and got my first trailer out, and then I realized my back gates were open.

Q Okay. So you closed the gates after you discovered that they had been opened.

A Uh-huh.

Q How did you do that?

A Manually.

In later questioning about the July 2013 incident, Mr. Koski testified as follows:

Q Do you recall looking at Trailer 6775 after the 2013 dump when you pulled over?

A Just to close the gate with the manual valve.

Q Okay. And do you recall the position of the handle? Was the handle --

A It was in.

Regarding the July 7, 2014, incident, Mr. Koski testified that he was hauling his third load of 3/4-inch gravel when the incident occurred.

Q Okay. And did anything unusual occur on that third run?

A Yes. I had a gentleman pull up beside me in a pickup. And he had his windows down and he was telling me to pull over, so I pulled over. And I had to get on the dirt and he pulled over in front of me and put his brakes on. I had to put my brakes on. And the two trailers behind me stopped okay but the third one went sideways because it was empty, and I knew there was something wrong for the trailer to slide that like.

Q Okay. And once you stopped, what happened next?

A I got out and I went back to see if I saw anything back there. The gates were open and the valve was in the open position. So I closed it and I came back, got in the truck, and called the highway patrol. Then I called Tracy.

Q Okay. So you stopped. Had you touched the toggle switches at any point in time while you were driving?

A No.

Q Okay. And you did not know that there had been an opening in the third pup trailer until you had been flagged to move over to the side of the road. Is that correct?

A Yes.

Q And can you tell me which trailer it was that opened?

A The third one, 6775.

Q Okay. Could you see visually the debris in the road?

A No. I was about 5 miles in front of them by the time he stopped me.

Q Okay. So the first thing you did was walk back and you saw that the valve was in the open position. Is that correct?

A Yes.

Q Okay. And what did you do when you saw that?

A I called the -- well, I manually closed the valve and closed the gate and made sure everything operated.

Q And did it operate?

A Yes. And then I called the highway patrol.

Mr. Palmer was operating Unit 5693 with three belly-dump trailers in tow as listed above on July 7, 2014. He testified he was hauling his third load of sand that day when he was advised of a problem with his load.

Q Okay. And did anything occur on your drive to the plant?

A When I got to town, I received a phone call from somebody that says, "Hey, did you lose a load of sand?" And I said, "I don't think so." At that particular point, I was able to move the steering wheel slightly to the right and back to the left, and I could see the back trailer. I could see the back gate was wide open on the back trailer. And I said, "Oh, crap, I guess I did," at which time, I reached over -- first of all, I looked over to see if my switch was on, which it wouldn't. It wouldn't possibly be on, but that's the first thing I checked. And then I lifted up the cover for the rear trailer, turned the switch on and back off again, and that closed the gates.

Q Okay. So you first looked over in the --

A Visually inspected the switches to make sure the covers were down.

Q And were the covers down?

A Yes.

Q And do you recall where you pulled over?

A I didn't pull over.

Q Oh, I'm sorry. I thought you said you pulled over. So you were inspecting when you were driving?

A Well, if you are going down the road and you look in your mirror, you cannot see the gates. But if you turn your wheel just slightly to the right and back to the left, the back trailer will move over like this, move over six inches and back six inches. And when it moves back, you can see the gate and you can see it's open.

Q Okay.

A And that's when I reached over, opened it, turn the switched on, turned it off. And that energizes the solenoid and closes it, even though who knows why it was open. At that point, there was no reason for me to pull over. I just went to the plant.

Mr. Palmer testified that when he arrived at the plant to deliver his load, he looked at the Versa valve on Unit 6778 and saw that "At this point, it was closed... Out."

#### **Incident Site Information**

The subject incident occurred on a rural Interstate Highway with two lanes in each direction. The posted speed limit in the area was 70 mph. The NHP reports contained no diagrams or measurements. The limited number of photographs from the collision scene depicted two clusters of vehicles, one with a Honda Accord and a Ford Fusion (Photograph 23), and the other including a Chevrolet Monte Carlo (Photograph 24), a Chrysler Town & Country, and a Dodge Ram truck (Photograph 25). Both clusters appeared to be in a right-hand curve. Gravel was not readily discernible on the pavement, but light-colored scratches were visible that appeared consistent with dragging of gravel across the pavement under locked tires.

#### **Truck Inspections**

The truck Mr. Koski was driving, Units 5694 / 6773 / 6774 / 6775 (Photograph 26), had been returned to service shortly after the subject incident and had been driven over 154,000 miles between the July 7, 2014, incident and the first Rimkus inspection. The

Peterbilt's engine was started, and the truck's air tanks were charged using the engine-driven compressor to a pressure of approximately 130 pounds per square inch (psi). The locking mechanisms for the Versa valves had their cotter pins installed, which prevented the manual levers from being moved from the "out" (closed) position. All of the Versa valves had their lever ends protruding outside of the sheet-metal boxes in which they were mounted (Photograph 27), and the fiberglass fender beneath Unit 6775's Versa valve was broken (Photograph 28), consistent with an unknown impact.

With the pins removed, the dump doors on each trailer were actuated both manually and electrically. Using the manual levers, the dump doors could be opened / closed fully or set partially open by placing the lever in the center position. Using the switches in the Peterbilt's cab, the dump doors opened and closed fully. In each instance, the motion of the doors was predictable, although repeated cycling depleted the air pressure until the Peterbilt's compressor could recharge the air tank.

If the dump doors were opened and then closed electrically, the lever could be used to open the doors manually, although the lever would return to the "out" position as soon as it was released (and the doors would close) unless the accumulator button was pressed. If the dump doors were opened electrically, the lever could be used to close them, but the doors would open again (and the lever would return to the "in" position) when the lever was released.

The wiring that enabled electric actuation of the dump doors was traced from the Peterbilt's batteries to the cab switches and back to the trailers. Four-prong receptacles (Photograph 29) and plugs (Photograph 30) were used at the front and rear of each trailer to allow interconnection of the units. Much of the wiring was concealed within the trailer frame members (Photograph 31). Manipulating a switch in the cab resulted in a voltage reading of approximately 14 Volts DC on the wire to the Versa valve solenoid on the corresponding trailer.

Each set of dump doors had a means to limit the extent to which the doors could open. On Unit 6773, pins were placed in a series of numbered holes ahead of and behind the

dump doors (Photograph 32). An adjacent placard provided instructions that included, "Starting with gates closed tight, pin in hole No. 1 locks gates closed" (Photograph 33). On Units 6774 and 6775, chains on both ends of the dump doors (Photograph 34) could be used to limit door movement. At their tightest settings, the chains allowed only slight opening of the dump doors (Photograph 35).

Each trailer included a yellow warning placard (Photograph 36) that contained warnings and instructions for the gate (dump door) opening valve.

The placard included the instruction, "TO OPEN, RAISE CONTROL LEVER. TO CLOSE, RELEASE LEVER." This instruction differed from the operation of the Versa valve, which had a vertically-oriented lever that was pushed toward the trailer to open the dump doors and pulled away from the trailer to close them. The lever would not return to the closed position simply by releasing it unless the accumulator was still charged. The instructions appeared to apply to a different valve design, and it is not known whether Versa valves were originally installed on the trailers or were replacements for the factory originals. The trailers were purchased used, and trailer service records from prior to the purchase were not provided to MDB Trucking.

Rimkus inspected Units 5694 / 6773 / 6774 / 6775 a second time during a joint inspection. Additional testing was performed, but the dump doors still operated normally. If the dump-door air tank were depressurized, the dump doors could be pulled slightly open by hand. If the manual lever were placed in the open ("in") position while the air tank were charged from a depressurized state, the dump doors would gradually open as the tank pressure increased.

Electrical resistance readings were taken with an ohmmeter, and a megohmmeter ("Megger") was used to test the insulation of the wiring between the dump-door switches in the Peterbilt and the Versa solenoids. No open circuits or dead shorts to ground were found. The Versa valve was removed from Unit 6775 and stored for future laboratory testing (Photograph 37).

During a subsequent joint inspection, the truck driven by Mr. Palmer on July 7, 2014, specifically Units 5693, 6776, 6777, and 6778, was inspected (**Photograph 38**). The dump doors functioned normally when actuated manually or electrically. The Versa valve for Unit 6778 was removed and stored for future laboratory testing (**Photograph 39**).

#### **Versa Valve Testing / Disassembly**

The Versa valves removed from Units 6775 and 6778 were tested in a laboratory environment and then cleaned and disassembled with Rimkus and a representative of Versa among those present. Both valves had Versa Part Number VGK-4523-20C-D012, identifying them as Series "V", Model 20C, side-ported valves. The valve inlet ports were connected to a 120-psi air supply, while pressure gauges were installed on Port A and Port B (**Photograph 40**). Both Versa valves functioned normally, applying pressure to one port while venting the other whether the lever were manipulated or the solenoid was energized.

The solenoid wires were connected to a variable power source (**Photograph 41**), and the source voltage was ramped upward with the intention of measuring the voltage at which the solenoid activated. During a slow voltage sweep, there was no sharp "click" from the solenoid to indicate activation. During more rapid voltage sweeps, the solenoid from Unit 6775 audibly activated between 7 and 8 Volts DC with a current of approximately 0.45 Amps. The solenoid from Unit 6778 audibly activated at approximately 7.6 Volts and approximately 0.45 Amps of current. These values were within the solenoids' power ratings and were reasonable for on-off devices in a nominal 12-Volt electrical system.

Both Versa valves were cleaned (**Photograph 42**) and then disassembled (**Photograph 43**). There was some oily residue with dark solids in the valve cavities adjacent to the solenoid (**Photograph 44**), but the valves' internal components were otherwise in place and undamaged (**Photograph 45**). The rubber boots at the base of

the manual levers were worn (Photograph 46), and there was some visible contamination at the lever end of the valve spools (Photograph 47).

### Analysis

Based on the information received to date, the Peterbilt's rear trailer (Unit 6775) lost its load of gravel when its belly-dump doors opened. The police report and witness statements indicated gravel was spilled onto the roadway, and there was no evidence Unit 6775 overturned. Absent a structural failure of the trailer's hopper, any spilled gravel would have had to originate from an opening between the dump doors.

None of the photographs or testimony received to date have indicated whether the gravel was in a concentrated area or was spread over a longer section of highway. However, Mr. Koski's testimony indicated the doors were open and the Versa valve's lever was in the "in" (open) position when he stopped. This was consistent with a full opening of the dump doors under air pressure, resulting in a rapid dumping of the gravel onto the roadway while the Peterbilt was traveling at highway speed.

The Versa valve that controlled the dump doors on Unit 6775 functioned normally and predictably when tested repeatedly by Rimkus and others. This was irrespective of whether the valve was actuated manually using the hand lever or electrically via the control switches in the cab of the Peterbilt. While the valve was installed on Unit 6775 and supplied with compressed air, the trailer's dump doors never spontaneously moved from their commanded position.

The Versa valve that controlled Unit 6775's dump doors was undamaged aside from normal wear and tear when inspected and disassembled by Rimkus and others. The rubber boot at the base of the manual lever was torn, and some debris had infiltrated the valve, but this did not adversely affect its function.

For Unit 6775's dump doors to have opened in transit, the Versa valve had to be actuated. Specifically, either the manual lever was displaced to the right (e.g., due to being struck by airborne debris, such as that which damaged the adjacent fender), or

the electric solenoid was energized. If the manual lever were in the center (neutral) position, the air pressure holding the pneumatic cylinders in the retracted (closed) position could be lost, allowing the dump doors to open partially due to gravity and vehicle motion, but this scenario was not consistent with the testimony of Mr. Koski or Mr. Palmer. In any scenario, the valve could not "decide on its own" to pressurize Port B and exhaust Port A. There was no evidence of an internal failure, such as a failed O-ring, that would cause the valve to apply air pressure to the wrong outlet port.

The Versa valve was a single component, selected and installed by others, within a larger system designed by others. Any of various failures external to the valve, and outside of Versa's control, could have resulted in an uncommanded dump. Such failures could have occurred on the Peterbilt or on any of the three trailers comprising the truck Mr. Koski was driving.

The trailer manufacturer had full responsibility for designing and implementing the belly-dump system, and the trailer's end user was responsible for inspecting and maintaining that system. These actions were outside of the responsibility and control of Versa, who only designed, marketed, and sold a pneumatic device that could be actuated manually or electrically. The Versa valve was, in essence, nothing more than a pneumatic valve. It only conveyed air pressure to one of its two outlet ports while directing the other outlet port to an exhaust port. These pneumatic functions and the means for achieving them were described in the Product Bulletin (**Attachment B**).

While the valve is marketed for use in controlling belly-dump trailers or railroad cars, there are numerous components external to the Versa valve that must be selected, designed, and installed by individuals outside of Versa who are knowledgeable about their product (e.g., a belly-dump trailer). Those designers are solely responsible for integrating the Versa valve into their system, for identifying hazards associated with their product, and for eliminating, safeguarding, or warning end users about those hazards as warranted. This was stated in warnings on the printed material packaged with each individual valve (**Attachment C**).

MDB Trucking installed locking mechanisms on the Versa valves following the July 7, 2014, incident. While these locks prevent the valves from shifting from the closed ("out") position, they are not positive locks for the dump doors and are not fail safe. A loss of air pressure would result in a loss of the closing force normally exerted by the pneumatic cylinders, and the dump doors would essentially hang under their own weight and allow the dump doors to at least partially open. The pin-lock mechanism on the front trailers and the gate chains on the pup trailers serve to prevent the doors from opening, as explicitly described on placards on the front trailers (Photograph 32). Any such dump-door locks would be completely external from the Versa valves.

The precise root cause of the incident is not known from the available information. However, there was no evidence the Versa valve did anything other than function as designed. There was no evidence that a defect or deficiency of the Versa valve caused or contributed to an uncommanded opening of Unit 6775's dump doors.

While there was no indication the reported uncommanded opening of Unit 6778's dump doors resulted in a vehicle accident, the truck Mr. Palmer was driving was examined as an exemplar. Observations and testing of Unit 6778 were substantially similar to Unit 6775, and the Versa valve on Unit 6778 functioned predictably and reliably.

**Section IV**  
**BASIS OF REPORT**

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1. The subject truck (Units 5694, 6773, 6774, and 6775) was inspected and photographed, and the Versa valves functionally tested, at the MDB Trucking yard east of Sparks, Nevada, on June 15, 2016, by Garrick F. Mitchell, P.E.
2. The subject truck was inspected and photographed, and the Versa valves and associated wiring functionally tested, in a joint inspection at the MDB Trucking yard east of Sparks, Nevada, on October 13, 2016. The Versa valve from Unit 6775 was removed and retained as evidence by David Bosch, Ph.D., during this inspection.
3. The truck being driven by Mr. Palmer on July 7, 2014 (Units 5693, 6776, 6777, and 6778), was inspected and photographed, and the Versa valves and associated wiring functionally tested, in a joint inspection at the MDB Trucking yard east of Sparks, Nevada, on November 2, 2016. The Versa valve from Unit 6778 was removed and retained as evidence by David Bosch, Ph.D., during this inspection.
4. The Versa valves removed from Units 6775 and 6778 were tested and disassembled in a joint inspection at Anderson Engineering in Phoenix, Arizona, on November 30, 2016.
5. The following documents were reviewed in the preparation of this report:
  - a) NHP Traffic Accident Reports 140700794, 140700795, 140700796, 140700797, 140700793, 140700792, 140700788, 140700789, 140701224, 140700791, 140700790, 140702588, 140700786, and 140700621, with handwritten witness statements attached.
  - b) Fourteen color photographs taken by others, including five from the accident scene.

- c) MDB Trucking Work Orders and Annual Inspection Reports for the subject truck (MDBMAINT 1-337).
- d) Versa Valve Product Bulletin for Series V Bottom Dump Control Valves.
- e) Fitzsimmons Complaint.
- f) MDB Trucking and Koski's Answer to Fitzsimmons Complaint.
- g) MDB Trucking's Third-Party Complaint.
- h) RMC Lamar Holdings' Answer to Third-Party Complaint.
- i) MDB Trucking's Amended Third-Party Complaint.
- j) Ranco Bottom Dump Operation, Maintenance, and Parts Manual (RMC 1-73).
- k) MDB Trucking's Answers to Versa's First Request for Admissions.
- l) Daniel Koski's Answers to Versa's First Request for Admissions.
- m) MDB Trucking's Responses to Versa's Requests for Production of Documents (MDB 1-718).
- n) MDB Trucking's Amended Responses to Versa's Requests for Production of Documents (MDB 719-737).
- o) MDB Trucking's Second Amended Responses to Versa's Requests for Production of Documents.
- p) Daniel Koski's Responses to Versa's Requests for Production of Documents (undated and dated 12-23-16 and 1-11-17).
- q) MDB Trucking's Answers to Versa's First Set of Interrogatories.
- r) MDB Trucking's Amended Answers to Versa's First Set of Interrogatories.

- s) Daniel Koski's Answers to Versa's First Set of Interrogatories.
- t) Daniel Koski's Amended Answers to Versa's First Set of Interrogatories.
- u) Deposition transcript of Scott Palmer, Vols. I, II, and III, taken March 6-8, 2017.
- v) Deposition transcript of Daniel Koski, taken March 8, 2017.
- w) Deposition transcript of Patrick Bigby, taken April 10, 2017.
- x) Deposition transcript of Tracy Shane, taken April 11, 2017.
- y) Deposition transcript of Gerald Gramegna, with Exhibits, taken May 9, 2017.
- z) Deposition transcript of Bahram Nazmi, Volumes I and II, with Exhibits, taken May 9-10, 2017.

Section V  
ATTACHMENTS




- A. Photographs
- B. Versa Product Bulletin: Series "V" Valves
- C. Versa Valves Package Insert
- D. Curriculum Vitae

**Section V**  
**ATTACHMENT A**



**Photographs**

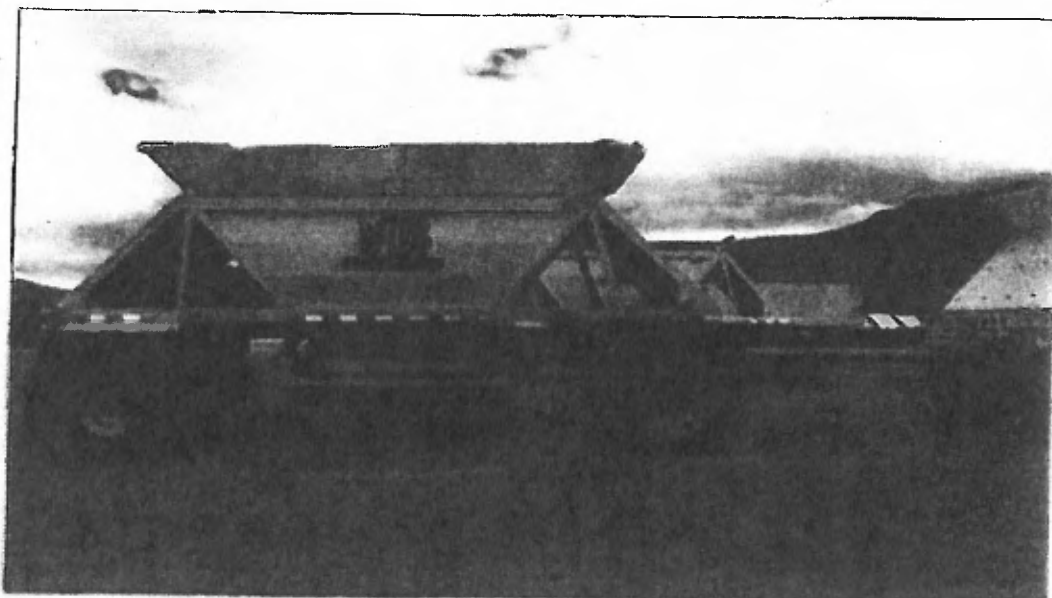
Photographs taken during our inspection, which were not included in this report, were retained in our files and are available to you upon request.



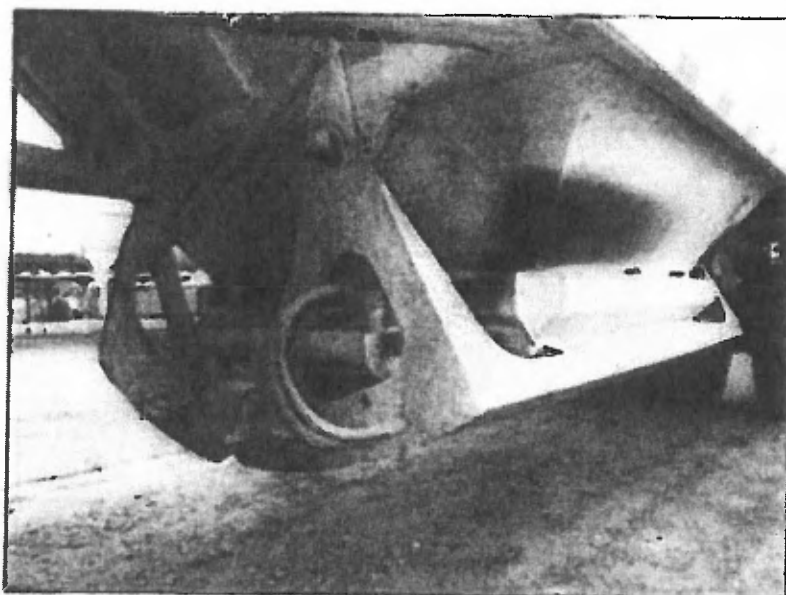
June 15, 2017  
RCG File No. 01208443

**AA001311**

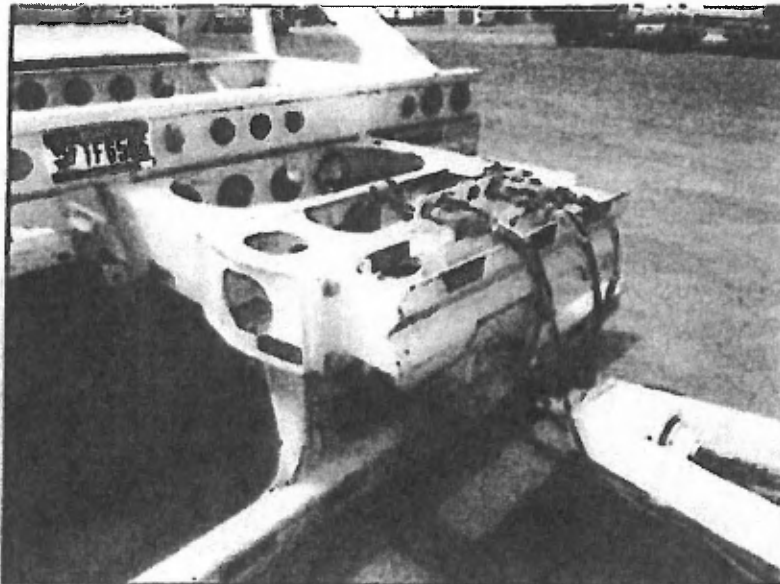
Photograph 1  
Typical belly-dump trailer in MDB fleet (Unit 6775 shown).



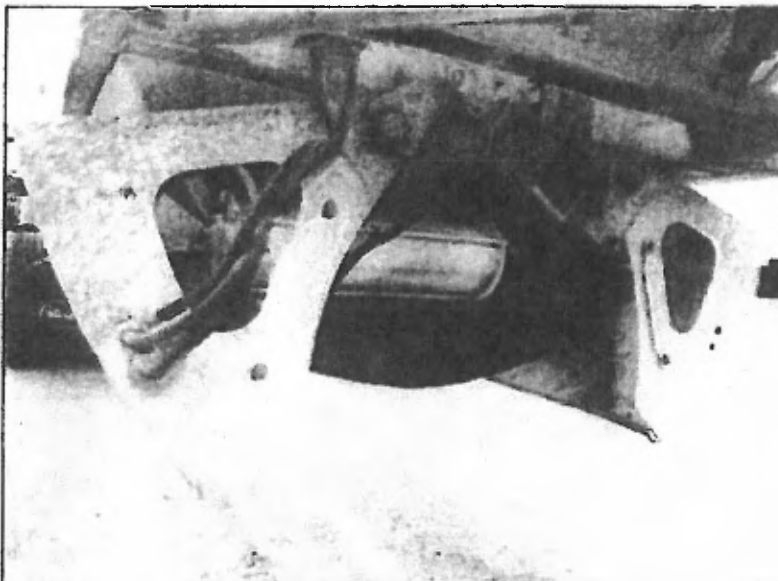
Photograph 2  
Overview of dump doors in belly of trailer in closed position (Unit 6774 shown).



**Photograph 3**  
Pintle-hook attachment for pup trailer.



**Photograph 4**  
Dump doors in fully open position.

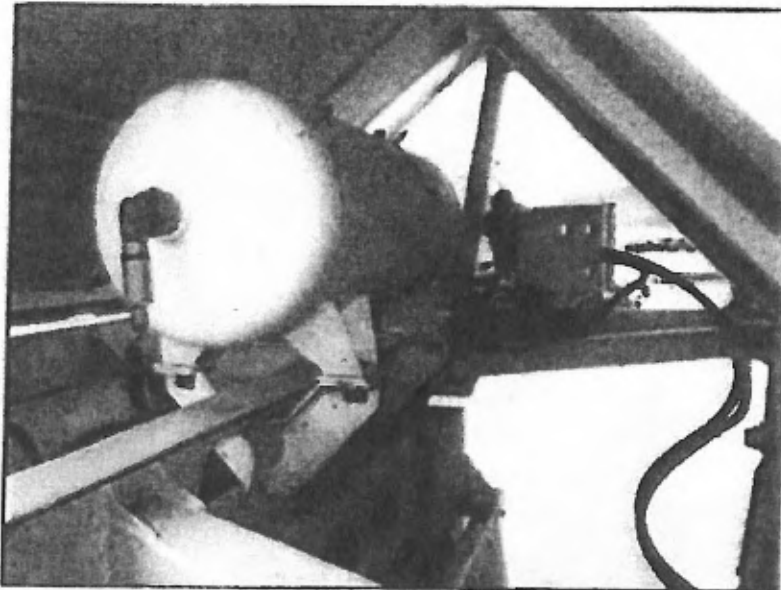


June 15, 2017  
RCG File No. 01208443

AA001313

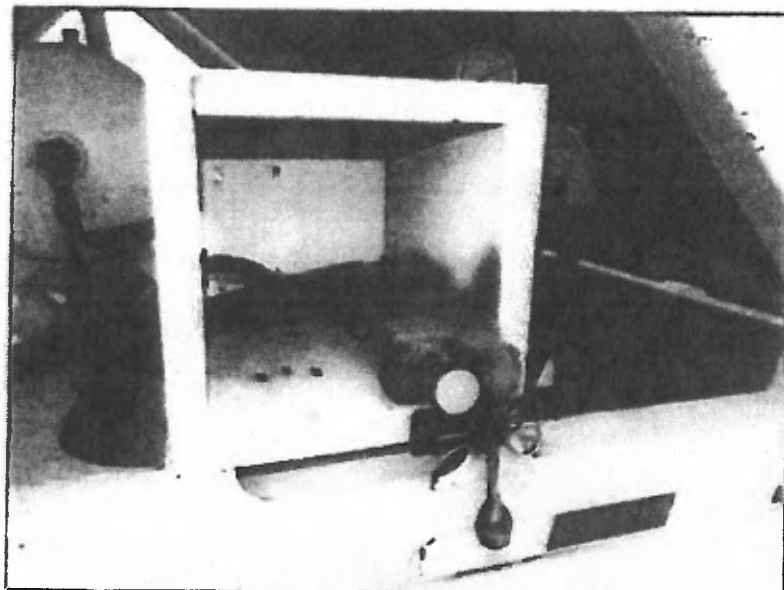
**Photograph 5**

Air tank for dump doors on Unit 6775.



**Photograph 6**

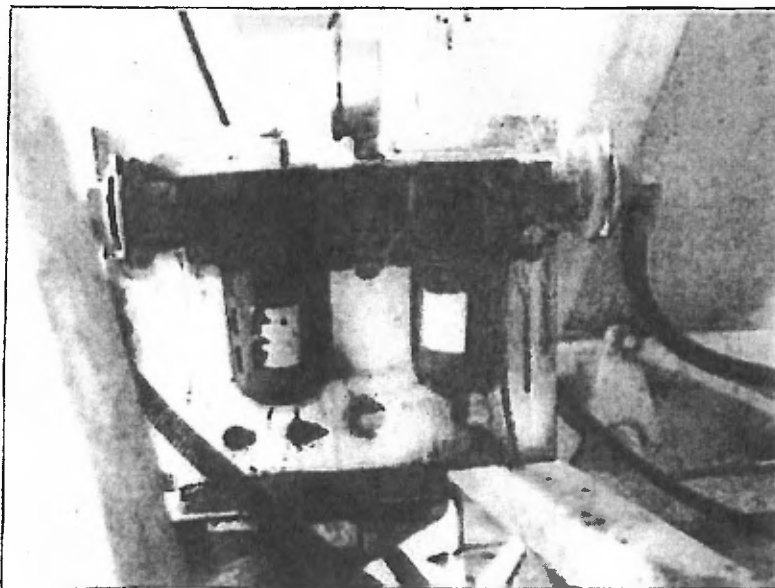
Overview of Versa valve in sheet-metal box on Unit 6775.



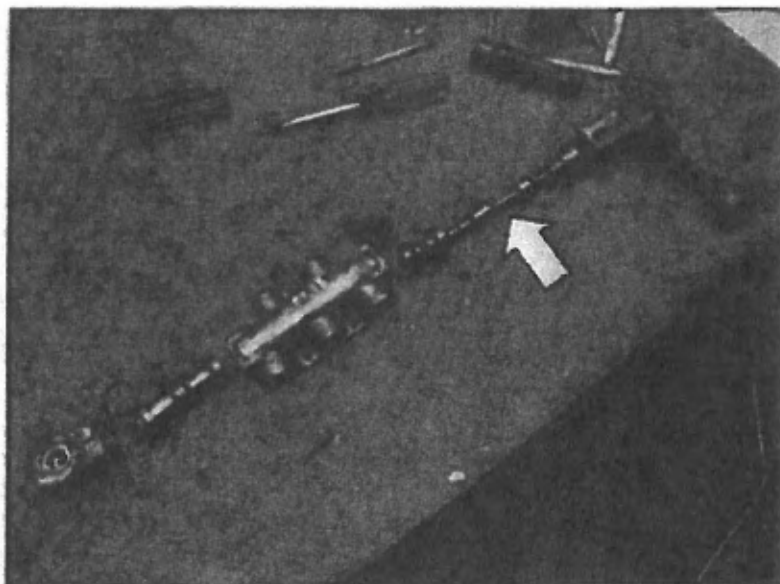
June 15, 2017  
RCG File No. 01208443

AA001314

**Photograph 7**  
Air filter and lubricator on Unit 6774.



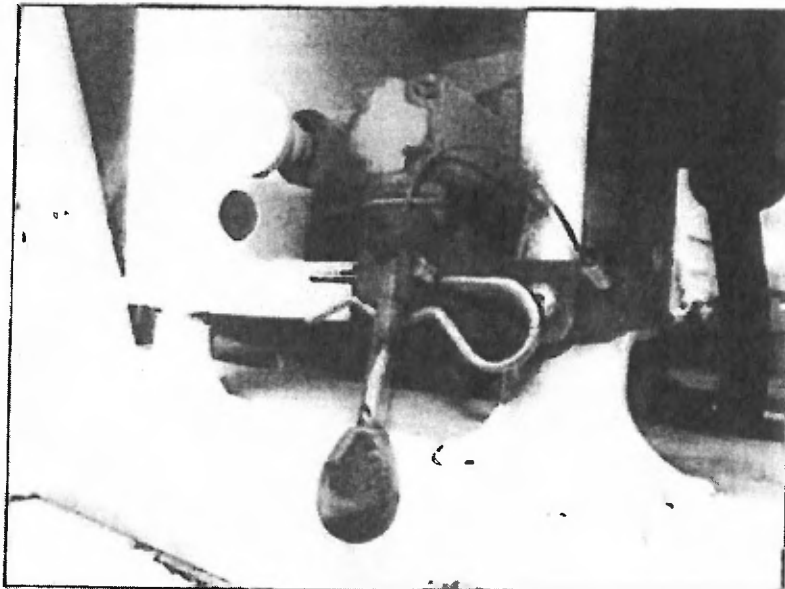
**Photograph 8**  
Spool internal to Versa valve.



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AA001315

**Photograph 9**  
Manual lever on one end of Versa valve assembly.



**Photograph 10**  
Solenoid on opposite end of Versa valve assembly from lever.

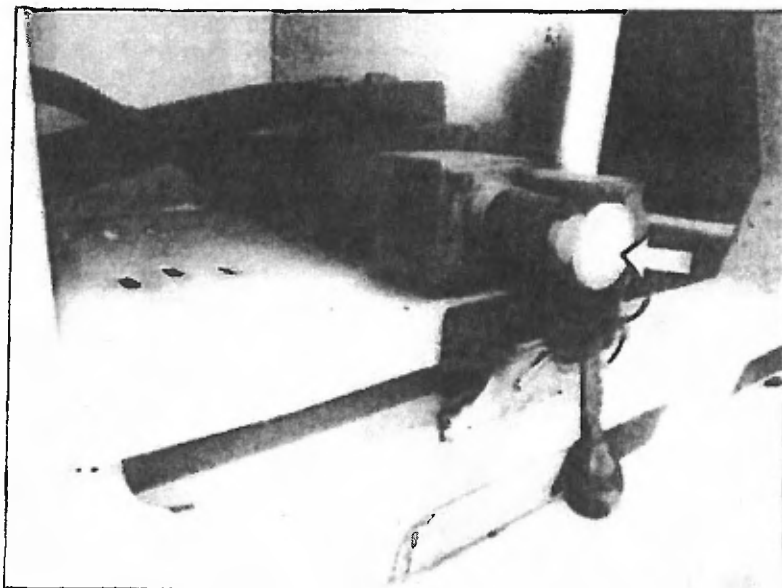


June 15, 2017  
RCG File No. 01208443

AA001316

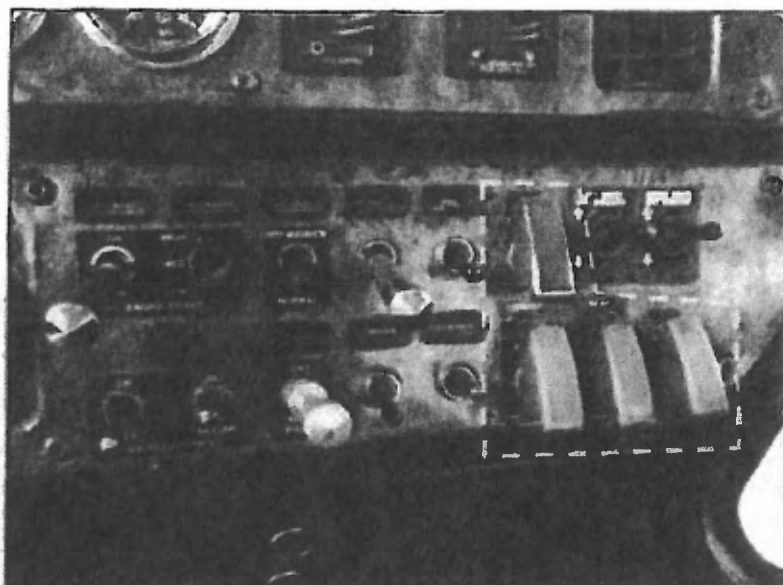
**Photograph 11**

Accumulator adjacent to manual lever. Arrow indicates accumulator button.



**Photograph 12**

Versa valve control switches in cab of Unit 5694 (indicated by dashed line).



June 15, 2017  
RCG File No. 01208443

AA001317

**Photograph 13**  
**Overview of Unit 5694.**



**Photograph 14**  
**Overview of Unit 6773.**



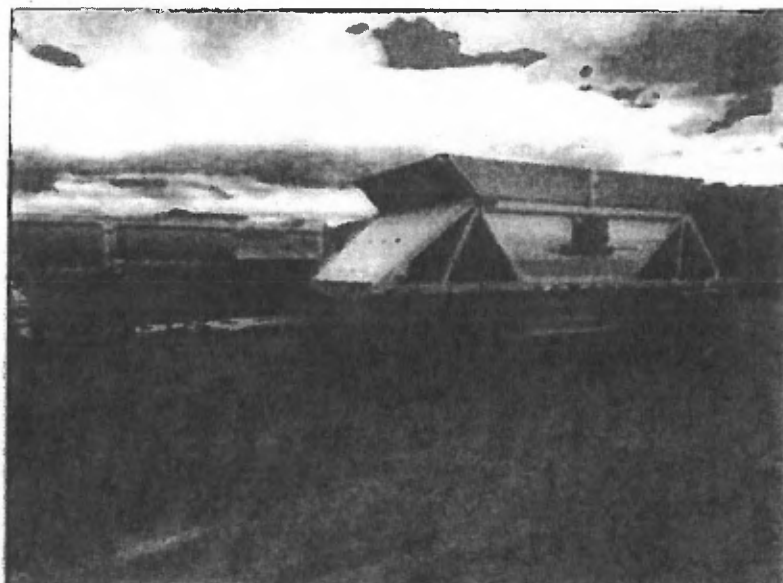
June 15, 2017  
RCG File No. 01208443

AA001318

**Photograph 15**  
Overview of Unit 6774.



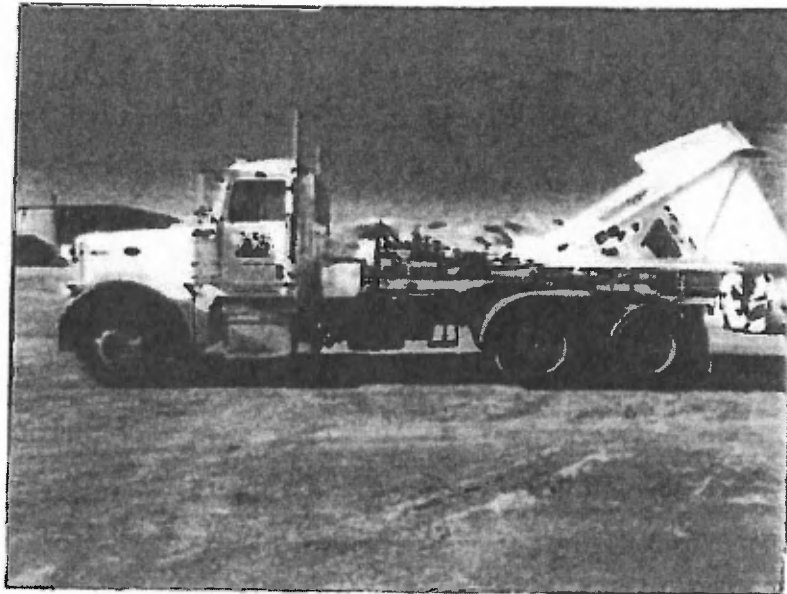
**Photograph 16**  
Overview of Unit 6775.



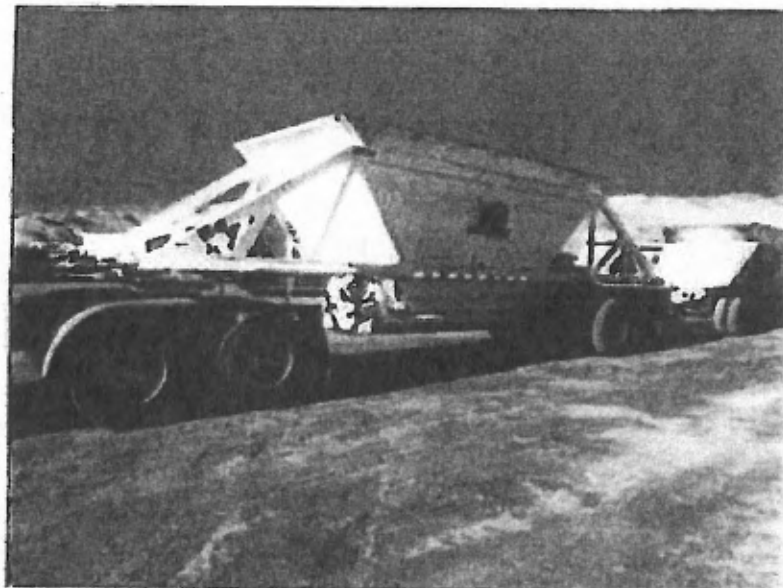
June 15, 2017  
RCG File No. 01208443

AA001319

**Photograph 17**  
Overview of Unit 5693.



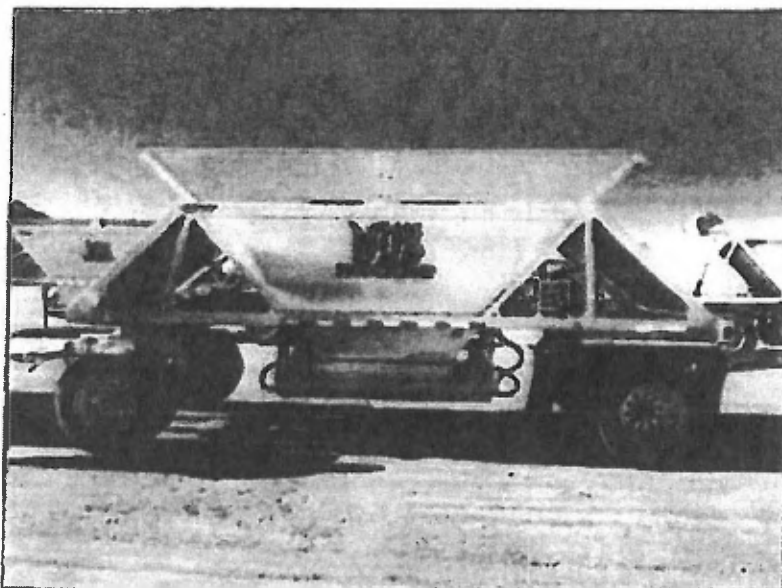
**Photograph 18**  
Overview of Unit 6776.



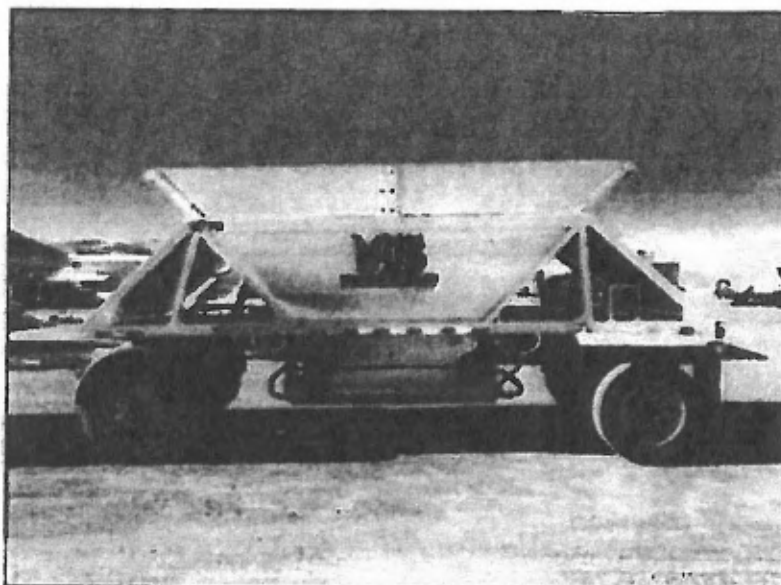
June 15, 2017  
RCG File No. 01208443

**AA001320**

**Photograph 19**  
Overview of Unit 6777.



**Photograph 20**  
Overview of Unit 6778.

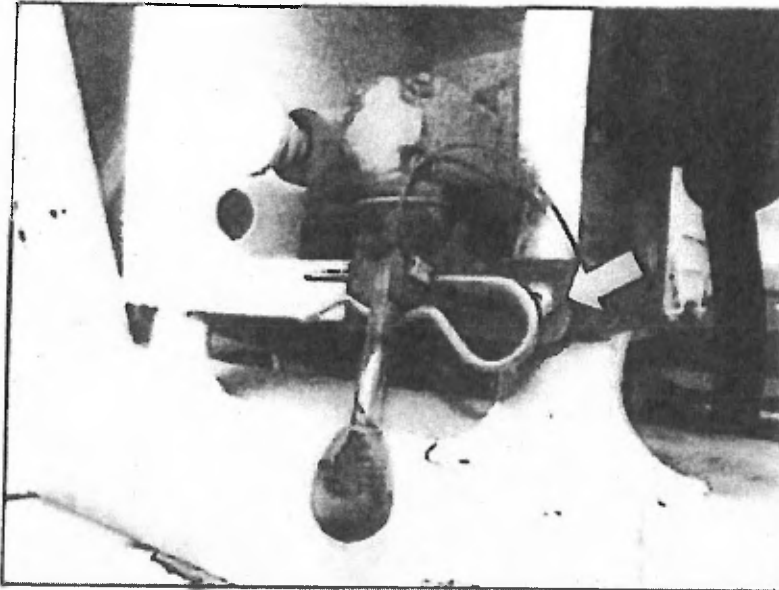


June 15, 2017  
RCG File No. 01208443

AA001321

**Photograph 21**

Locking mechanism installed on Unit 6775 by MDB Trucking.



**Photograph 22**

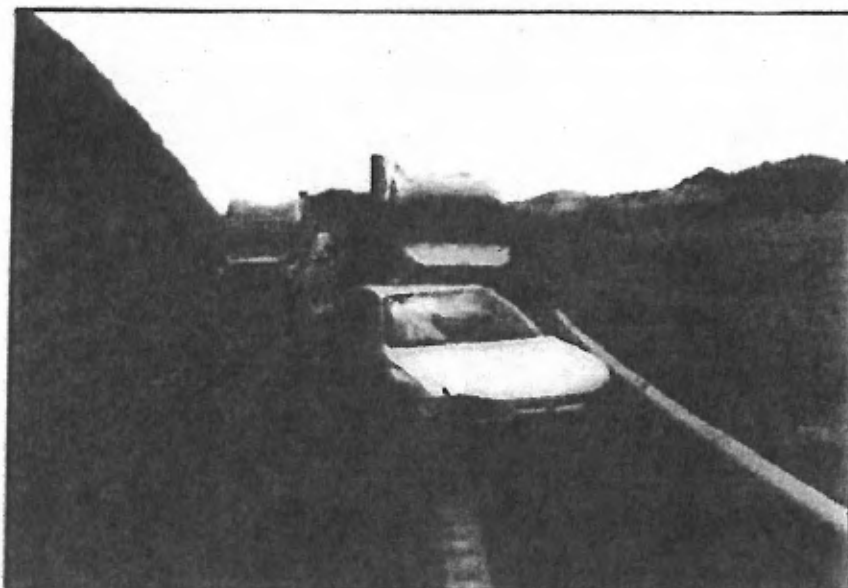
Photograph by others of portion of collision scene.



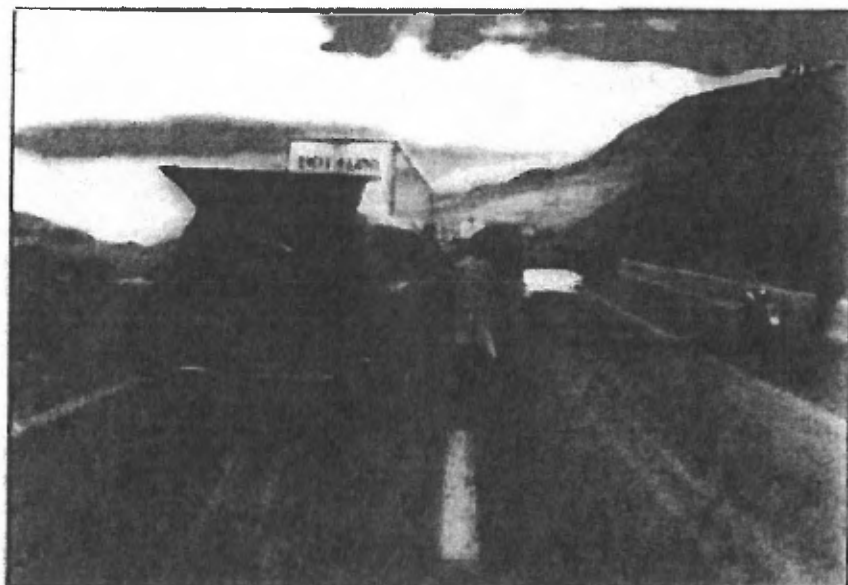
June 15, 2017  
RCG File No. 01208443

**AA001322**

**Photograph 23**  
Photograph by others of portion of collision scene.



**Photograph 24**  
Photograph by others of portion of collision scene.



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AA001323

**Photograph 25**

Overview of truck driven by Mr. Koski.



**Photograph 26**

Typical protrusion of Versa valve lever outside of mounting box.

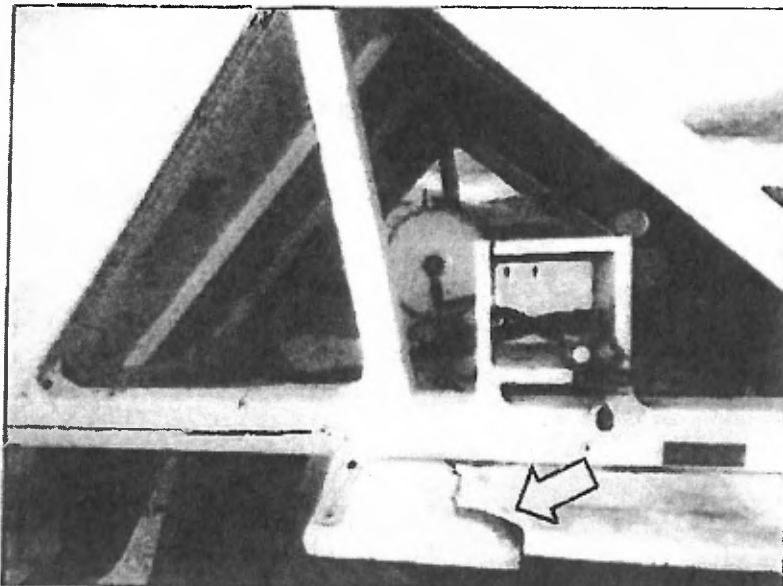


June 15, 2017  
RCG File No. 01208443

AA001324

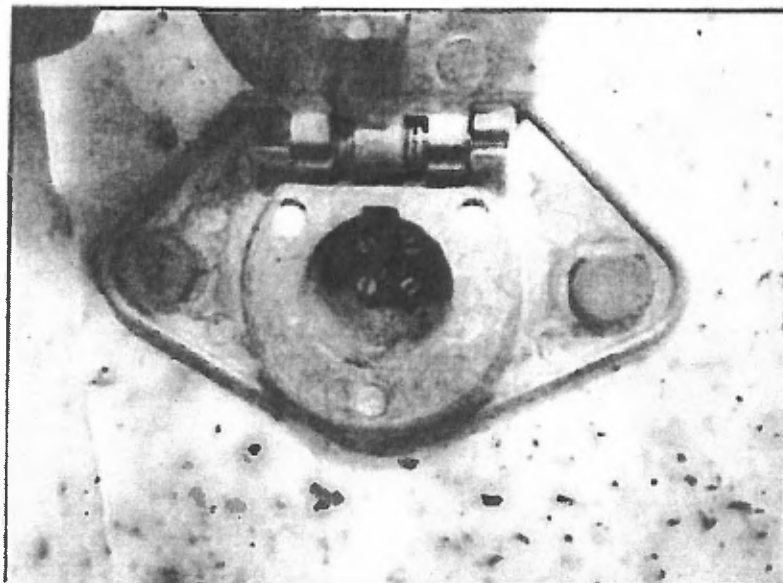
**Photograph 27**

Damage to fender beneath Unit 6775's Versa valve.



**Photograph 28**

Typical four-prong receptacle.



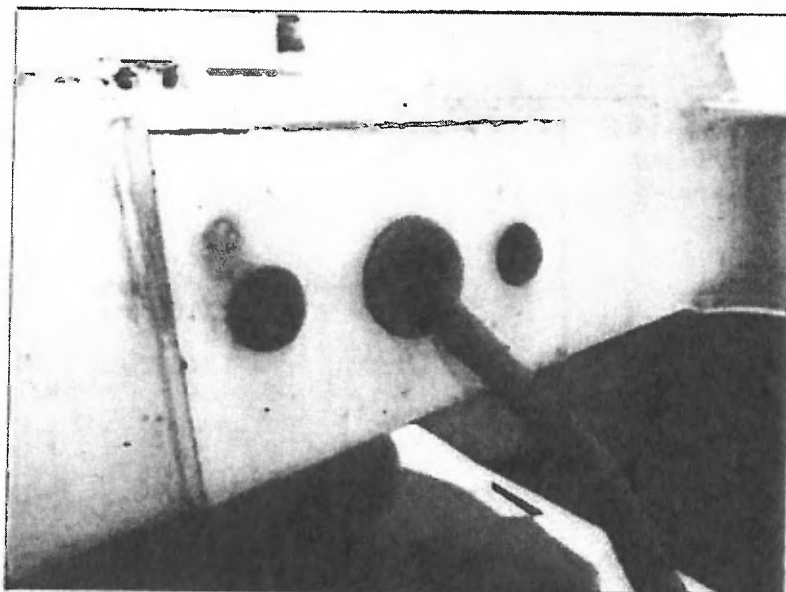
June 15, 2017  
RCG File No. 01208443

AA001325

**Photograph 29**  
Typical four-prong plug.



**Photograph 30**  
Versa valve wiring entering trailer frame member.

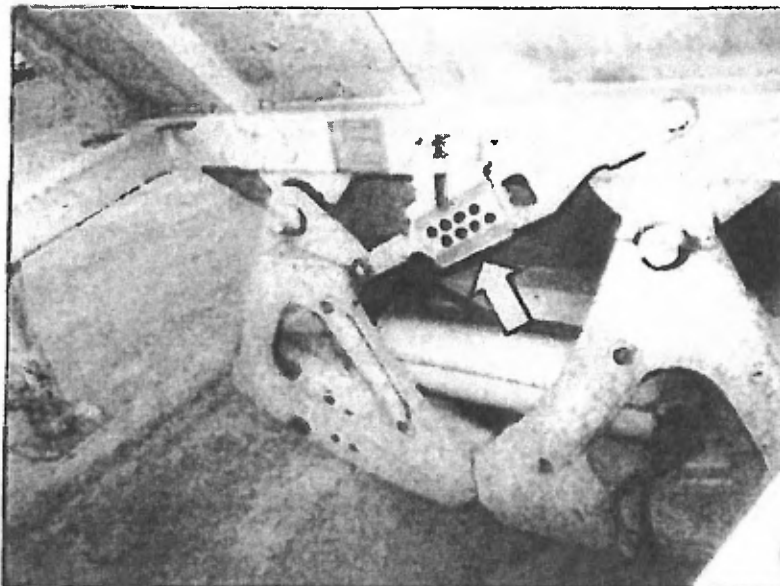


June 15, 2017  
RCG File No. 01208443

AA001326

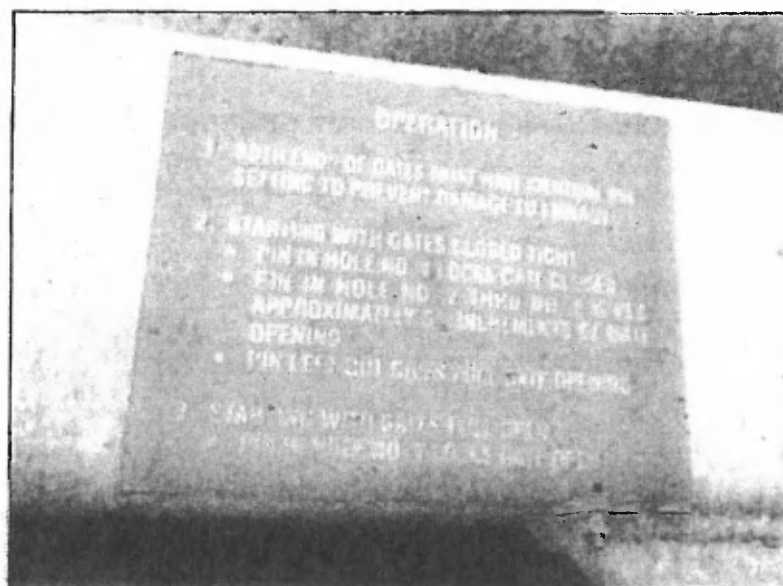
**Photograph 31**

Dump-door locking mechanism typical of semi-trailer Units 6773 and 6776.

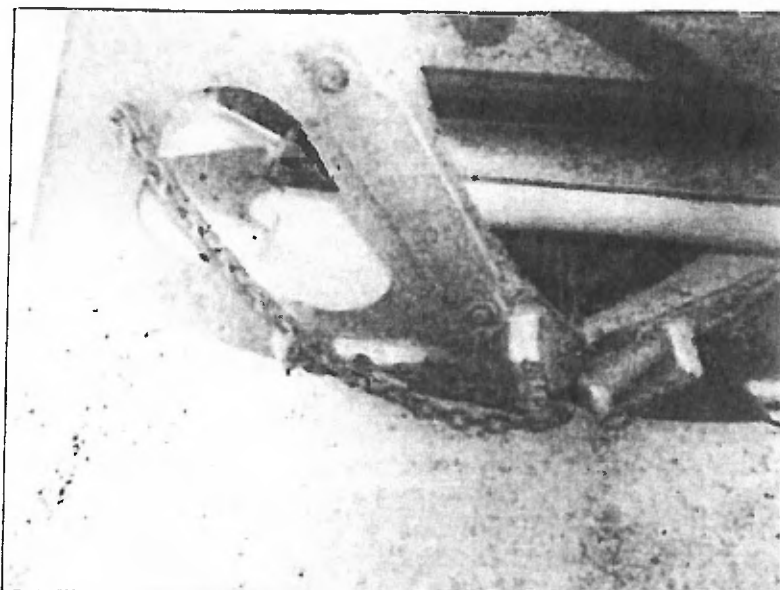


**Photograph 32**

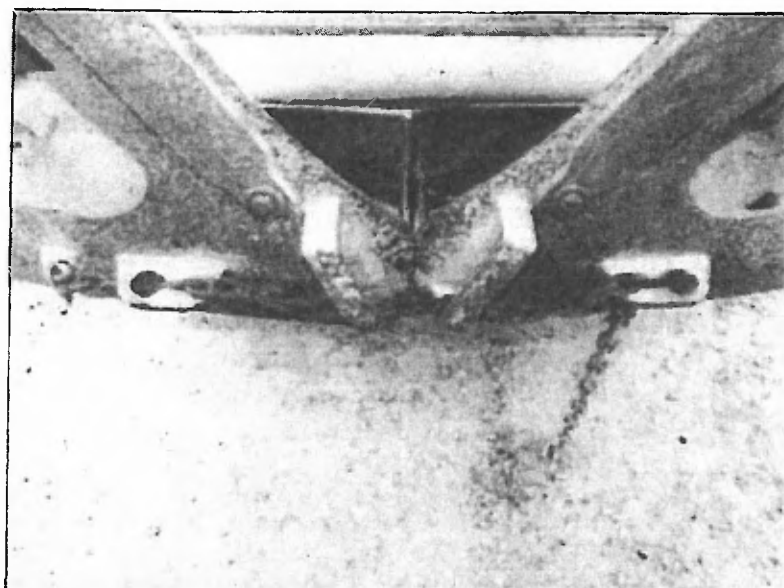
Placard on Unit 6773.



**Photograph 33**  
Gate chain on Unit 6775 at start of initial inspection.



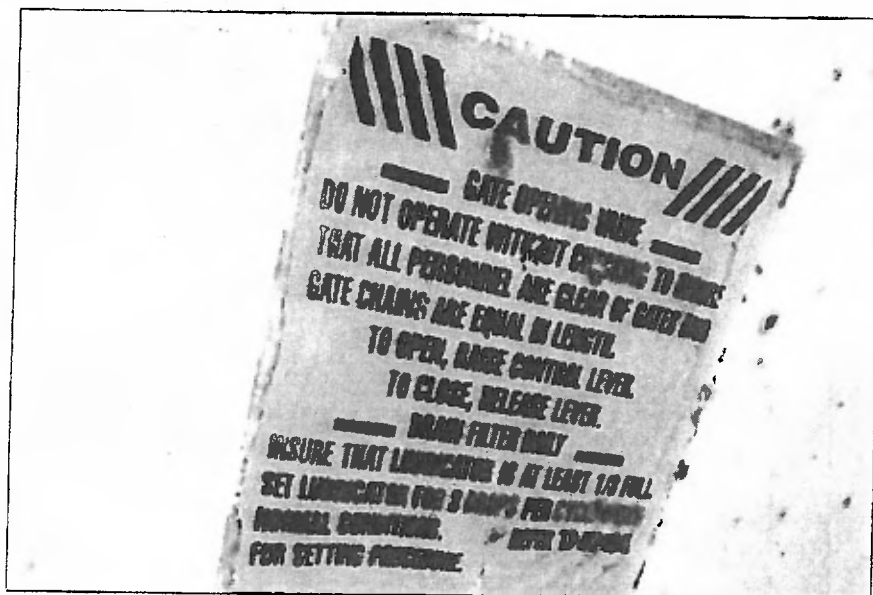
**Photograph 34**  
Gate chain on Unit 6775 installed so as to prevent dump doors from opening.



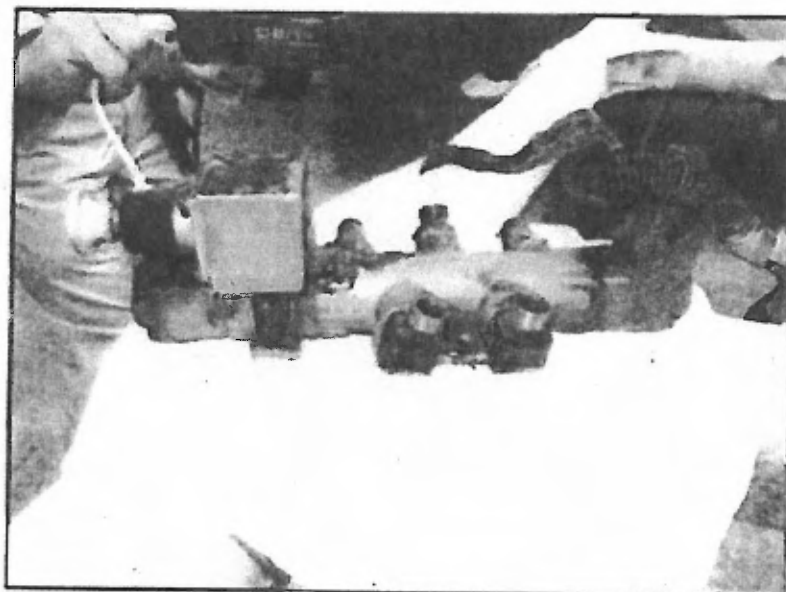
June 15, 2017  
RCG File No. 01208443

**AA001328**

**Photograph 35**  
Warning placard on pup trailers.



**Photograph 36**  
Versa valve removed from Unit 6775.



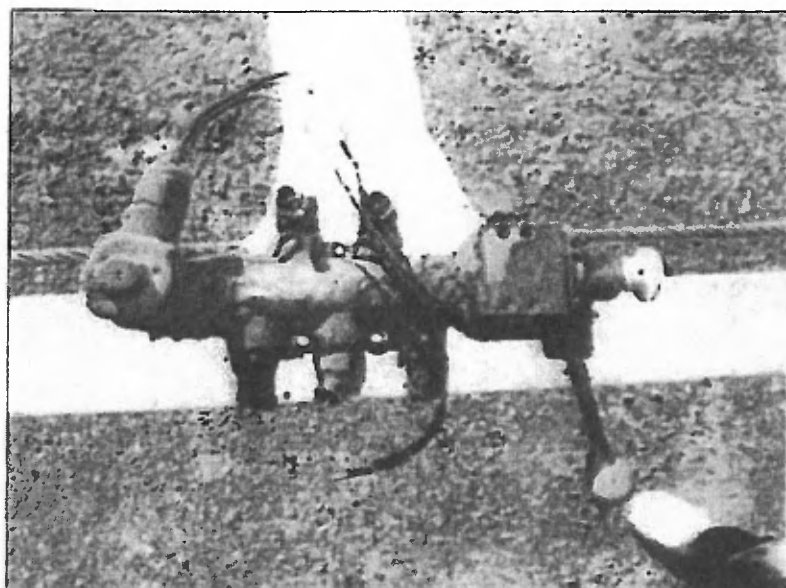
June 15, 2017  
RCG File No. 01208443

AA001329

**Photograph 37**  
Overview of truck driven by Mr. Palmer.



**Photograph 38**  
Versa valve removed from Unit 6778.

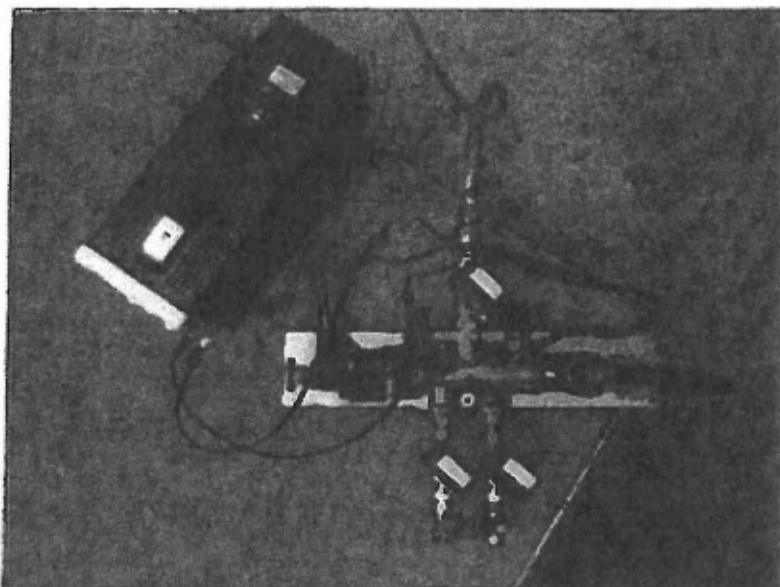


June 15, 2017  
RCG File No. 01208443

**AA001330**

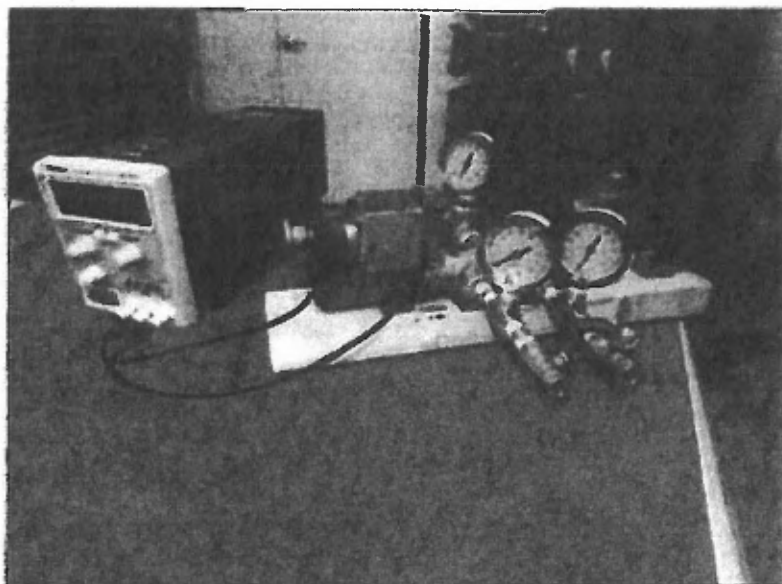
**Photograph 39**

Laboratory test configuration for functional testing of Versa valves.



**Photograph 40**

Versa valve from Unit 6775 connected to variable power source.

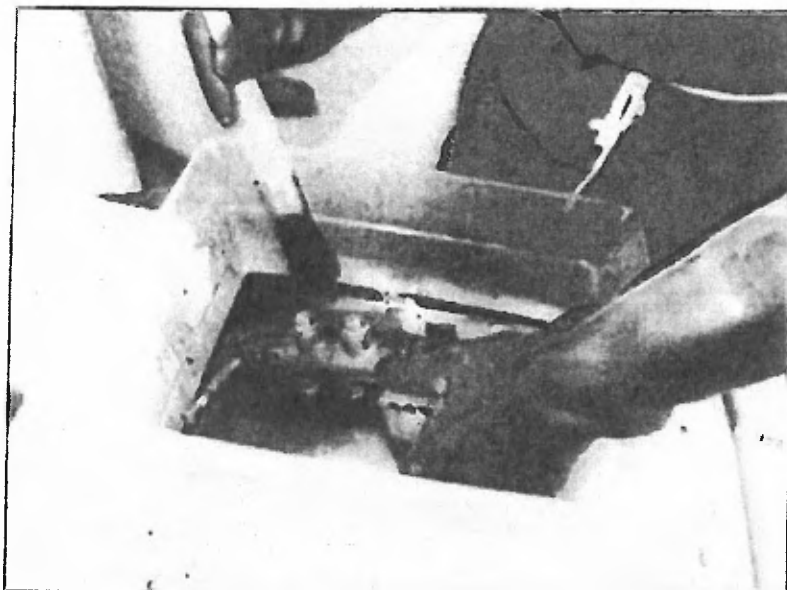


June 15, 2017  
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AA001331

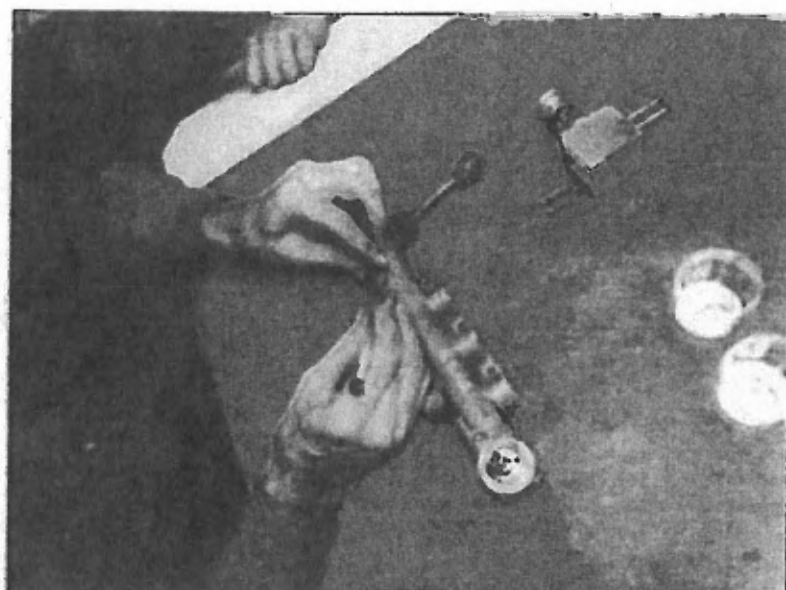
**Photograph 41**

Cleaning of Versa valve during laboratory examination.



**Photograph 42**

Disassembly of Versa valve during laboratory examination.

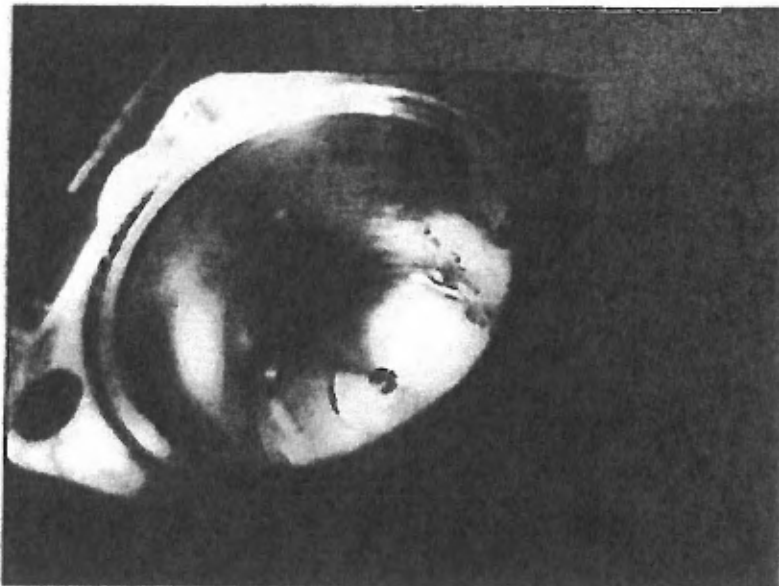


June 15, 2017  
RCG File No. 01208443

AA001332

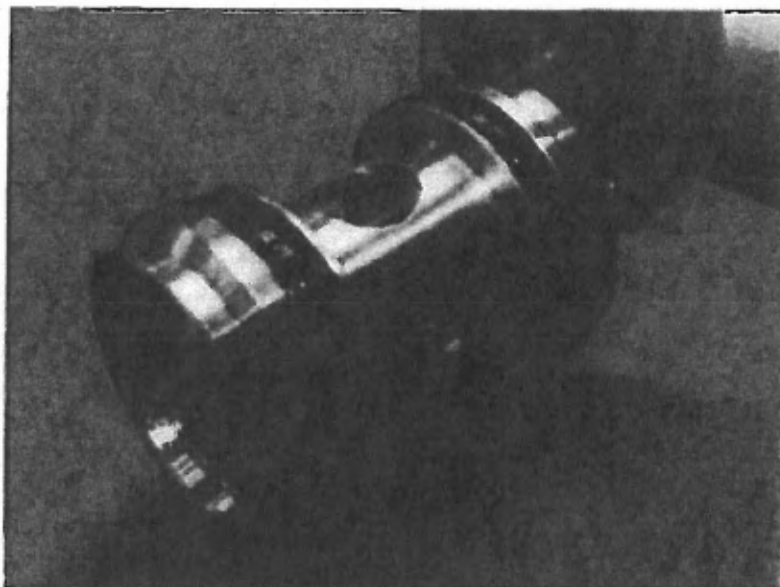
**Photograph 43**

Oily residue with dark solids in valve cavity of both disassembled Versa valves.



**Photograph 44**

Close-up view of O-rings from Unit 6775 Versa valve.

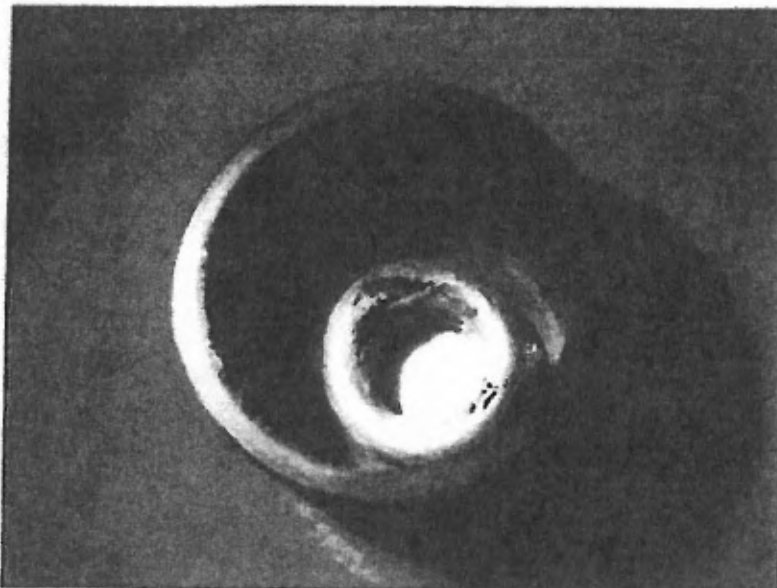


June 15, 2017  
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AA001333

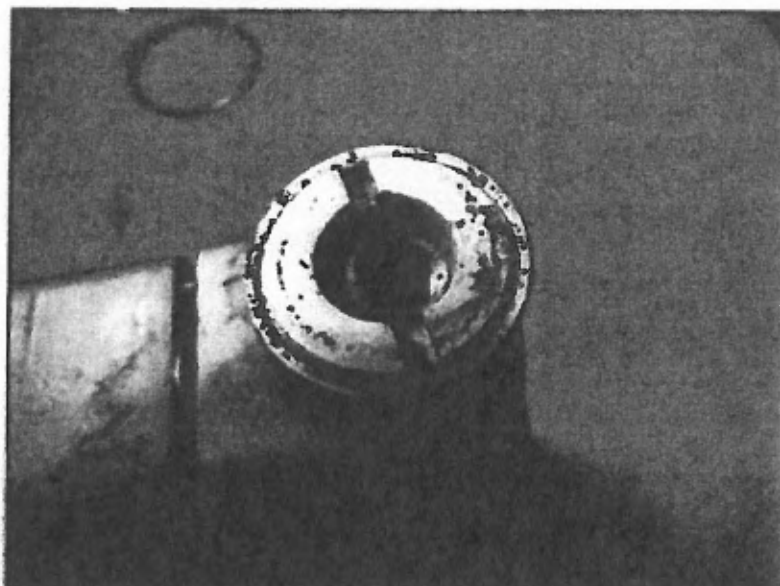
**Photograph 45**

Damaged rubber boot from manual lever of Unit 6778 Versa valve.



**Photograph 46**

Area beneath torn rubber boot in previous photograph.



June 15, 2017  
RCG File No. 01208443

AA001334

**Section V**  
**ATTACHMENT B**

**Versa Product Bulletin: Series "V" Valves**

June 15, 2017  
RCG File No. 01208443

**AA001335**

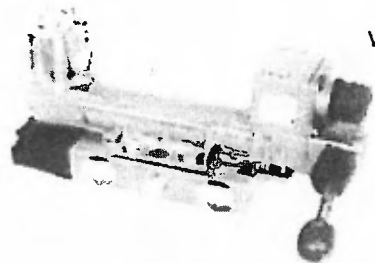


Bulletin 165  
January 2015

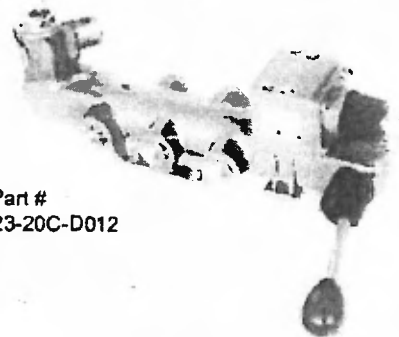
## Trouble Free Series "V" Bottom Dump Control Valves

*Trouble free for years despite exposure to heat, cold, dirt and vibration. Used as a "Bottom dump" valve for hopper control on bottom dump trailers or railroad coal cars.*

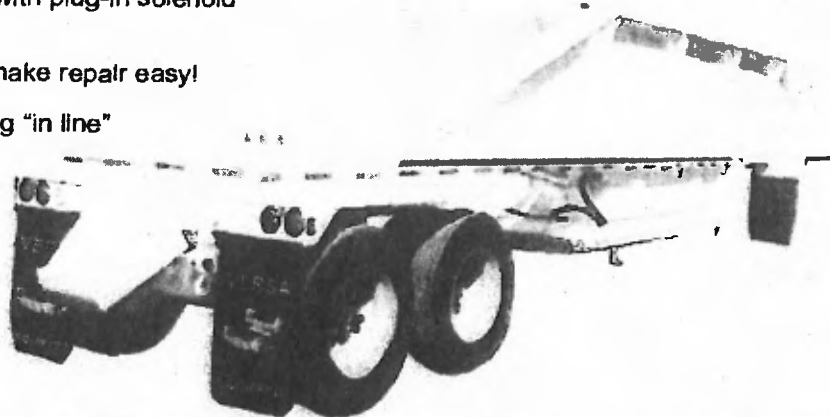
- Standard "Bottom Dump" operation provides both 2 position solenoid control and 3 position manual control in one valve.
- 1/2 inch NPT full flow construction.
- Bubble-tight seals provide leak free service for "creep free" hopper control.
- Withstands impact with thick walled forged brass construction.
- Prevents contamination from dirt and sand with Versa proven dust proof option keeping solenoid and main valve free from clogging.
- Solenoid actuators utilize "solenoid-pilot" design, no coil burn-out due to valve hang up.
- Main spring is "air spring," no mechanical spring to break or fail.
- Use of "solenoid-pilot" and "air spring" assure positive shift every time!
- Quick removal of valve with plug-in solenoid option.
- Standard 'O' ring seals make repair easy!
- Economical space saving "in line" version available.
- 100% factory tested at ISO 9001 certified facility.
- Supported by established worldwide distributor network.



Part #  
VGK-4533-20B-D012/  
M-450-APN-20M



Part #  
VGK-4523-20C-D012



Versa Products Company, Inc. 22 Spring Valley Rd. Paramus, NJ 07651 USA Phone (201) 843-2400 FAX (201) 843-3195  
Versa BV Postbus 10000, Alexanderlaan 1425 7312 GB Apeldoorn, The Netherlands Phone +31-55-366-1900 FAX +31-55-366-1905  
e-mail: sales@versa-valves.com [www.versa-valves.com](http://www.versa-valves.com)

AA001336

## Operation

### Mode One - Solenoid Application (2 position only)

To pressurize port 'B', and exhaust port 'A', electrically energize the solenoid (the energized solenoid also pressurizes the air spring section of the valve). Maintained contact is required. To pressurize port 'A' and exhaust port 'B', de-energize the solenoid. The air spring will return the plunger (the air spring section will remain pressurized). The valve will remain in this position until the solenoid is either energized again or valve is manually re-positioned.

### Mode Two - Lever Application (2 or 3 position)

To manually operate this valve, the solenoid must be electrically de-energized and the air spring section de-pressurize by depressing the palm button (this button is spring loaded and will reset itself). To pressurize port 'B' and exhaust port 'A,' move the hand lever toward the valve body. To pressurize port 'A' and exhaust port 'B', move the hand lever away from the valve body. To block all valve ports, move the lever midway between the two pressured positions noted above. The valve will remain in any one of the set 3 positions until either the lever is manually re-positioned or solenoid is energized.

General specifications	
Function:	4-Way, 2 and 3 position
Type:	Solenoid operated, air spring return, 2 position valve, or lever operated, 2 or 3 position valve
Media:	Air
Pressure:	50 to 175 psi
Flow C <sub>v</sub> :	4.0
Voltage:	12 DC
Power:	9.4 Watts
Duty:	Continuous duty coil
Connections:	1/4" NPT ports 1/2" NPT electrical conduit, solenoid leads are not polarity dependent
Materials:	Body: Brass
	Seals: Nitrile
	Coil: Epoxy molded
	Solenoid enclosure: Carbon steel, chromate coated

Part numbers			
Model	20C	20B	
Valve	VGK-4523-20C-D012	VGK-4533-20B-D012	M-450-APN-20M
Valve Description	Side Ported Valve	Manifold Mounted Valve	Manifold for -20B
Body Assembly	SA-4523-71-20C	SA-4533-71-20A	N/A
Seal Kit	V-4512-KP-20B	V-4512-KP-20B	N/A
Lever/Air Spring	SA-4322-75-20C	SA-4322-75-20B	N/A
Lever Kit	VY-4302-24D	VY-4302-24D	N/A
Solenoid Assembly	SA-4322-84-20C-D012	SA-4322-84-20A-D012	N/A
Solenoid Kit	E-3198-34-14-D012	E-3198-34-P-D012	N/A
Coil	P-1002-02-D012	P-1002-90P-D012	N/A
Junction Box Kit	N/A	N/A	P-1002-95L-20M

For dimensional information and additional details on service kits, please consult factory

Versa Products Company, Inc., 22 Spring Valley Rd., Paramus, NJ 07601 USA Phone (201) 843-2400 FAX (201) 843-3196  
 Versa BV, Prins Willem Alexanderlaan 1429, 7312 GB Apeldoorn, The Netherlands Phone +31-55-358-1900 FAX +31-55-358-1909  
 e-mail: sales@versa-valves.com www.vera-valves.com

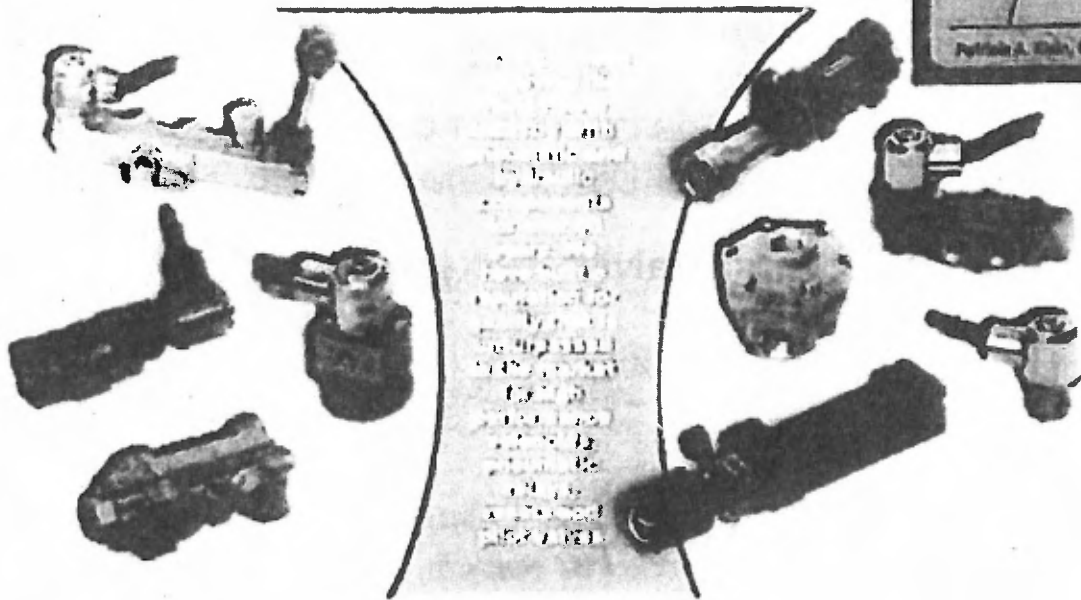
AA001337

Section V  
ATTACHMENT C

**Versa Valves Package Insert**

June 15, 2017  
RCG File No. 01208443

AA001338



#### WARNINGS REGARDING THE DESIGN APPLICATION, INSTALLATION AND SERVICE OF VERSA PRODUCTS

The warnings below must be read and reviewed before designing a system utilizing, building, servicing, or removing a Versa product. Improper use, installation or servicing of a Versa product could create a hazard to personnel and property.

##### DESIGN APPLICATION WARNINGS

Versa products are intended for use where compressed air or industrial hydraulic fluids are present. For use with media other than specified or for non-industrial applications or other applications not within published specifications, consult Versa.

Versa products are not inherently dangerous. They are only a component of a larger system. The system in which a Versa product is used must include adequate safeguards to prevent injury or damage in the event of system or product failure, whether this failure be of switches, regulators, cylinders, valves or any other system component. System designers must provide adequate warnings for each system in which a Versa product is utilized. These warnings, including those set forth herein, should be provided by the designer to those who will come in contact with the system.

Where questions exist regarding the applicability of a Versa product to a given use, inquiries should be addressed directly to the manufacturer. Confirmation should be obtained directly from the manufacturer regarding any questioned application prior to proceeding.

##### INSTALLATION, OPERATION AND SERVICE WARNINGS

Do not install or service any Versa product on a system or machine which first depressurizing the system and turning off any air, fluid, or electricity to the system or machine. All applicable electrical, mechanical, and safety codes, as well as applicable governmental regulations and laws must be complied with when installing or servicing a Versa product.

Versa products should only be installed or serviced by qualified, knowledgeable personnel who understand how these specific products are to be installed and operated. The individual must be familiar with the particular specifications, including conditions for temperature, pressure, lubrication, environment and filtration for the Versa product which is being installed or serviced. Specifications may be obtained upon request directly from Versa. If damages should occur to a Versa product, do not operate the system containing the Versa product. Consult Versa for technical information.

#### LIMITED WARRANTY DISCLAIMER AND LIMITATION OF REMEDIES

Versa's Series products are warranted to be free from defective material and workmanship for a period of ten years from the date of manufacture, provided said products are used in accordance with Versa specifications. Versa's liability pursuant to that warranty is limited to the replacement of the Versa product proved to be defective provided the allegedly defective product is returned to Versa or to authorized distributor. Versa provides no other warranties, expressed or implied, except as stated above. There are no implied warranties of merchantability or fitness for a particular purpose. Versa's liability for breach of warranty as herein stated is the only and exclusive remedy and in no event shall Versa be responsible or liable for incidental or consequential damages.

Versa Products Company Inc.  
22 Spring Valley Road  
Paramus, New Jersey 07652  
USA  
Phone: 201-843-2409  
Fax: 201-843-2831

Versa BV  
Prins Willem Alexanderlaan  
1429  
7321 GB Apeldoorn  
The Netherlands  
Phone: 01131-65-388-1800  
Fax: 01131-65-388-1809



www.versa-netherlands.com  
email: sales@versa-netherlands.com

CONFIDENTIAL

VER000150

AA001339

# EXHIBIT A-7

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Jacqueline Bryant  
Clerk of the Court  
Transaction # 6185377 : csulezic

# EXHIBIT A-7

AA001340

1 1520  
2 Katherine F. Parks, Esq., State Bar No. 6227  
3 Brian M. Brown, Esq., State Bar No. 5233  
4 Thierry V. Barkley, Esq., State Bar No. 724  
5 Thorndal Armstrong Delk Balkenbush & Eisinger  
6 6590 S. McCarran Blvd., Suite B  
7 Reno, Nevada 89509  
8 (775) 786-2882  
9 Attorneys for Defendant  
10 MDB TRUCKING, LLC

11  
12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
13  
14 IN AND FOR THE COUNTY OF WASHOE  
15

16 ERNEST BRUCE FITZSIMMONS and  
17 CAROL FITZSIMMONS, Husband and  
18 Wife,

19 Plaintiffs,

20 vs.

21 MDB TRUCKING, LLC; DANIEL  
22 ANTHONY KOSKI; ABC Corporations I-X,  
23 Black and White Companies, and DOES I-  
24 XX, inclusive,

25 Defendants.

CASE NO. CV15-02349

DEPT. NO. 10

CONSOLIDATED PROCEEDING

26  
27 AND ALL RELATED CASES  
28

29  
30 DECLARATION BY DAVID R. BOSCH, Ph.D

31 COMES NOW, David R. Bosch, Ph.D. declares under penalty of perjury that the  
32 foregoing is true and correct as follows:

- 33 1. I am over the age of 18 and have personal knowledge of the facts stated herein.  
34 2. This declaration is prepared in connection with Defendant MDB's Opposition to  
35 Versa's Motion for Sanctions based upon the doctrine of spoliation;  
36 3. I have been retained as forensic expert in the above-entitled matter by the  
37 Defendant MDB; a true and correct copy of my resume is attached hereto as Exhibit 1;  
38 4. Erik S. Anderson of Anderson Engineering of New Prague has also been

1 retained as a forensic expert in the above-entitled matter by the Defendant MDB; his  
2 resume is attached hereto as Exhibit 2;

3 5. Both myself and Mr. Anderson have been working extensively on this  
4 litigation since our retentions including inspections of the subject MDB Peterbilt truck and  
5 Ranco trailers that were driven Mr. Daniel Koski on the day of the accident of July 7, 2014  
6 as well as subsequent destructive testing of the Versa solenoid valves manufactured by  
7 Versa Products Company, Inc. that self activated on July 7, 2014 opening the gates of the rear  
8 Ranco bottom dump and releasing gravel on the I80 west highway;

9 6. Self activation is defined by us as an activation of the subject Versa solenoid  
10 valve without active human intervention or current from the truck's electric system which  
11 energizes the valve to open the gates with the switch in the open or off position;

12 7. I have reviewed Versa's Motion for Sanctions and related spoliation; and; in  
13 particular Exhibits 2; 3; 4; 6; 7 & 8.

14 8. Neither Mr. Palmer or Mr. Bigby as lay persons are experts in the fields of  
15 mechanical engineering, electrical engineering, or failure analysis; and they are not qualified to  
16 proffer opinions on the possible cause of the failures of the subject Versa solenoid valves on the  
17 day of the accident of July 7, 2017 especially as to whether there was a manufacturing or  
18 design defect in the subject Versa Products Company, Inc.'s solenoid valves; and as lay persons  
19 would not understand the use of the term "defect" as employed in their respective depositions;

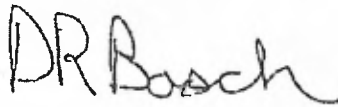
20 9. Even though both myself and Mr. Anderson have rendered preliminary opinions  
21 as to the absence of human intervention or error by Mr. Koski; and the absence of a mechanical  
22 wiring or ground fault that could have activated the subject rear Ranco Versa solenoid device, we  
23 continue to conduct our forensic investigations on the possible causes of the unit's self activation  
24 which could include a failure to adequately shield the subject Versa solenoid devices and or the  
25 sources of electro magnetic fields [EMF] sufficient to have energized the subject rear Ranco  
26 Versa valve involved in this accident;

27 10. I can state to a reasonable degree of certainty more probable than possible that  
28 there could not have been spoliation of evidence because the configuration of the wiring and

1 switching that was created after the first errant dump in July 29, 2013 eliminated any chance that  
2 the subject's MDB truck's electrical system could again errantly active the rear Ranco trailer  
3 on the day of the accident in July 7, 2014.

4 11. The routine maintenance of the subject Peterbuilt truck and rear Ranco trailers  
5 which occurred after August 1, 2013 or after the accident of July 7, 2014 would have absolutely  
6 no impact on the rear Ranco Versa solenoid valve as to cause the self activation of the Versa  
7 valve.

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10 DATED this 30 May, 2017.

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13 DAVID R. BOSCH, Ph.D.  
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**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 08:45 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

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**JOINT APPENDIX VOLUME 8 OF 18**

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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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9 PRODUCTS COMPANY, INC.

10  
11 DISTRICT COURT

12 WASHOE COUNTY, NEVADA

13 ERNEST BRUCE FITZIMMONS and  
CAROL FITZIMMONS, Husband and  
14 Wife,

15 Plaintiffs,

16 vs.

17 MDB TRUCKING, LLC, et. al.

18 Defendants.

19 AND ALL RELATED CASES.  
20  
21  
22  
23

Case No. CV15-02349

Dept. 10

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

24 COMES NOW, Defendant/Cross-Claimant/Cross-Defendant VERSA PRODUCTS  
25 COMPANY, INC., (hereinafter "VERSA"), by and through its attorneys of record, Josh  
26 Cole Aicklen, Esq., David B. Avakian, Esq. and Paige S. Shreve, Esq. of LEWIS  
27 BRISBOIS BISGAARD & SMITH, LLP, and hereby files this ERRATA TO  
28 DEFENDANT/CROSS-CLAIMANT/CROSS-DEFENDANT VERSA PRODUCTS

1 COMPANY, INC.'S MOTION TO STRIKE DEFENDANT/CROSS-CLAIMANT/CROSS-  
2 DEFENDANT MDB TRUCKING, LLC's CROSS-CLAIM PURSUANT TO NRCP 37; OR  
3 IN THE ALTERNATIVE, FOR AN ADVERSE JURY INSTRUCTION filed on May 15,  
4 2017.

5 PLEASE TAKE NOTICE that the Errata is to change the reference from NRCP 35  
6 to NRCP 37 in the title of the Motion and the Affidavit of David B. Avakian, Esq.

7 **AFFIRMATION**

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

10 DATED this 15<sup>th</sup> day of May, 2017

11 Respectfully submitted,

12 LEWIS BRISBOIS BISGAARD & SMITH LLP

13  
14  
15 By /s/ David B. Avakian  
16 JOSH COLE AICKLEN  
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27  
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CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of May, 2017, a true and correct copy of ERRATA TO 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 was served via U.S. Mail addressed as follows:

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

ERNEST BRUCE FITZSIMMONS and  
CAROL FITZSIMMONS, Husband and  
Wife,

Plaintiffs,

vs.

MDB TRUCKING, LLC; et al.

Defendants.

AND ALL RELATED CASES.

Case No. CV15-02349

Dept. No. 10

CONSOLIDATED PROCEEDING

**MDB'S OPPOSITION TO VERSA PRODUCTS COMPANY, INC.'S  
MOTION TO STRIKE AND/OR SPOILIATION INSTRUCTIONS**

COMES NOW, the Defendant/Cross-Claimant, MDB Trucking, LLC, by and through their undersigned counsel and hereby submits this opposition to Versa Products Company, Inc.'s Motion to Strike MDB's Cross-Claims and/or in the Alternative Spoliation Instructions. This opposition is based upon the pleadings and papers on file herein, the memorandum of points and authorities, affidavit of counsel, together with such other further evidence or testimony as may be proper in the premises.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

By their present motion, Versa Products Company, Inc. (hereinafter "Versa") seeks a court order striking MDB Trucking, LLC's (hereinafter "MDB") pending cross-claims against

1 Versa and/or in the alternative variation of spoliation instructions.

2 MDB respectfully submits Versa's arguments fail for the following reasons:

3 First, when Versa's counsel filed Versa's motion for sanctions on May 15, 2017 he  
4 completely failed to pursue any discovery consultation as required by this Court's Pretrial Order  
5 entered on December 15, 2016. **(III. DISCOVERY A. Consultation Before Discovery Motion**  
6 **Practice.)**

7 Versa's motion glaringly fails to comply with the provisions of WDCR 12(6) which  
8 requires that all discovery include a certificate of moving counsel certifying that after  
9 consultation with opposing counsel they have been unable to resolve the matter.

10 In fact, Versa's counsel Mr. Avakian made no attempt at any consultation until a letter  
11 from Mr. Aicklen was tendered on May 16, 2017. (See Affidavit of Counsel).

12 Second, MDB's routine maintenance did not spoliage or destroy material or relevant  
13 evidence that would prejudice Versa in any fashion.

## 14 **II. ARGUMENT**

### 15 **A. VERSA'S COUNSEL FAILED TO PURSUE DISCOVERY CONSULTATION AS REQUIRED BY** 16 **THE PRETRIAL ORDER AND THE WASHOE DISTRICT COURT RULES.**

17 In this regard, Versa's counsel filed their motion for sanctions on May 15, 2017 and  
18 completely failed to comply with the requirements of discovery consultation both under the  
19 WDCR 12(6) and this Court's Pretrial Order of December 15, 2016.

20 Mr. Aicklen made a belated attempt to initiate consultation the very next day by evidence  
21 of his letter of May 16, 2017. (See Affidavit of Counsel). Any belated attempt on discovery  
22 consultation after the fact is a clear violation of this Court's Pretrial Order and the provisions of  
23 the Washoe District Court Rules and this Court's Pretrial Order Sec. III(A) which clearly states:

24 "Prior to filing any discovery motion, the attorneys for the moving  
25 party must consult with opposing counsel about the disputed  
issues..." (emphasis added).

26 WCDR Rule 21 provides for sanctions for noncompliance with the rules.

27 MDB respectfully submits at the very minimum, Versa's motion for sanctions and  
28 spoliation of instructions should be summarily denied.

1 Furthermore, Versa should be required to reimburse counsel for MDB for their necessary  
2 time incurred in opposing Versa's frivolous spoliation motion.

3 **B. VERSA CLAIMS FOR SPOLIATION ARE WITHOUT MERIT.**

4 Spoliation is the destruction or significant alteration of evidence, or the failure to preserve  
5 property for another's use as evidence in pending or reasonably foreseeable litigation. The duty to  
6 preserve evidence of a litigant is to which it knows or reasonably should know and is "relevant"  
7 to the action. See *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 869, 900 P.2d 323, 325  
8 (quoting *Fire Ins. Exchange v. Zenith Radio Corp.*, 103 Nev. 648, 651, 747 P.2d 911, 914  
9 (1987).)

10 Parties engage in spoliation if they have had some notice that the documents were  
11 potentially relevant to litigation before they were destroyed.

12 See, *United States v. Kitsap Physician Srvc.*, 314 F.3d 995, 1001 (9<sup>th</sup> Cir. 2002) (citing  
13 *Akiona v. United States*, 938 F.2d 158, 161 (9<sup>th</sup> Cir. 1991).)

14 It is MDB's position that there was no relevant evidence negligently lost or destroyed that  
15 had any prejudicial effect on Versa's cross-claims or defenses.

16 MDB does not dispute that it performed routine maintenance both before and after the  
17 accident of July 7, 2014. A careful analysis of Versa's referenced maintenance logs in Versa's  
18 motion for sanctions relate to work orders on the Peterbilt truck (Unit 5694) (MDBMAINT129  
19 and MDB273) and the rear Ranco trailer (Unit 6773) (MDBMAINT160, 170). None of these  
20 were maintenance logs as to the subject Koski rear Ranco trailer involved in this accident. (Unit  
21 6775).

22 MDB has explained on more than one occasion through its discovery responses that  
23 actual modifications to the wiring system were performed in July 2013. (See Answer to Versa's  
24 First Set of Interrogatories to MDB Trucking; specifically answer to interrogatory no. 15, the  
25 2013 modifications eliminated the possibility of a mechanical ground fault in the wiring system  
26 to the rear Ranco traile Versa solenoid valve.) (Exhibit 1).

27 Mr. Scott Palmer testified as the designated Rule 30(b)(6) for MDB on March 7, 2017  
28 and specifically testified that the original wiring system as installed in July 2013 was not

1 modified beyond routine maintenance to some of the plugs. (See Deposition of Scott Palmer,  
2 March 7, 2017, Vol. II, p. 169, ls. 2-25) (Exhibit 2). The Versa valve itself which is the subject of  
3 this litigation was never modified, repaired or changed. (See Exhibit 2, Deposition of Scott  
4 Palmer, Vol. II, p. 170, ls. 1-4).

5 In fact, Versa has not presented one ounce of competent evidence that anything was done  
6 to modify the rear Ranco Versa solenoid valve involved in the accident of July 7, 2014.

7 MDB's decision to continue routine maintenance on the subject units after the accident of  
8 July 7, 2014 has no material impact on the relevant evidence regarding the self-activation of  
9 Versa's solenoid valve. It remains the position of MDB's experts (Dr. David Bosch) that any  
10 subject routine maintenance would have absolutely no impact on the rear Ranco Versa solenoid  
11 valve involved in this accident. Simply put, there could not have been spoliation of evidence  
12 because of the configuration of the wiring and switching created after the first errant dump in  
13 July 29, 2013 eliminated any chance that the subject MDB truck's electrical system could  
14 activate the rear Ranco Versa solenoid valve on the date of the accident. (See Declaration of Dr.  
15 David R. Bosch filed concurrently herein: specifically, pars. 10, 11).

16 At the end of the day, the issue remains whether to impose discovery sanctions for  
17 spoliation based upon the question as to whether or not relevant evidence existed. If this Court  
18 determines that relevant evidence simply was not spoliated then there is no basis to pursue any  
19 further analysis on the type of sanctions that should be considered. If the Court finds that MDB  
20 did not spoliage evidence, the basis for any sanctions do not exist.

21 Accord: *Shakespear v. Wal-mart Stores, Inc.*, 2013 U.S. Dist. Lexis 89762, 2013 W.L.  
22 3270545 (D. Nev. 2013) (Order by U.S. Magistrate Peggy A. Leen).

23 Accordingly, MDB submits this Court should find that Versa has failed to show that  
24 MDB's alleged failure to maintain routine maintenance items do not rise to any "culpable state of  
25 mind" nor that same would support Versa's motion for sanctions. See *Lologo v. Wal-mart Stores,*  
26 *Inc.*, 2016 U.S. Dist. Lexis 100559 (Dist. Nev. 2016) (Decision by U.S. Dist. Chief Judge Gloria  
27 M. Navarro).

28 ///

1 MDB respectfully submits there is simply no basis to pursue any of the factors enunciated  
2 by the Supreme Court in *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 92, 787 P.2d 777, 779  
3 (1990). The factors in *Young* simply have no application to the circumstances of this case since  
4 relevant evidence was never spoliated by MDB's routine maintenance practices.

5 Finally, even if this Court were to consider Versa's alternative sanctions, this case does  
6 not warrant the type of willful or culpable conduct meriting any spoliation instruction. At best,  
7 the Court should consider whether the evidence was negligently lost or destroyed, thus a  
8 permissible adverse inference jury instruction permits but does not require the jury to draw an  
9 adverse inference that the lost information would be negative as a result of a violation of a duty  
10 to preserve relevant evidence. Accord: *Bass-Davis v. Davis*, 122 Nev. 442, 134 P.3d 103 (2006).<sup>1</sup>

### 11 III. CONCLUSION

12 Based upon the foregoing reasons, MDB respectfully requests this Court deny Versa's  
13 motion for sanctions and/or in the alternative any spoliation evidentiary instructions.

14 DATED this 2nd day of June 2017.

15 THORNDAL ARMSTRONG  
16 DELK BALKENBUSH & EISINGER

17 By: 

18 Katherine F. Marks, Esq., State Bar No. 6227  
19 Brian M. Brown, Esq., State Bar No. 5233  
20 Thierry V. Barkley, Esq., State Bar No. 724  
21 6590 S. McCarran Blvd., Suite B  
22 Reno, Nevada 89509  
23 Attorneys for Defendant/Cross-Claimant  
24 MDB TRUCKING, LLC

<sup>1</sup> MDB makes this latter alternative argument for the sole purpose of preserving this latter evidentiary instruction.

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**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned hereby affirms that the preceding document filed in above-entitled court does not contain the social security number of any person.

DATED this 2nd day of June, 2017.

THORNDAL ARMSTRONG  
DELK BALKENBUSH & EISINGER

By: 

Katherine F. Parks, Esq., State Bar No. 6227  
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Reno, Nevada 89509  
Attorneys for Defendant/Cross-Claimant  
MDB TRUCKING, LLC

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal Armstrong Delk Balkenbush & Eisinger, and that on this date I caused the foregoing **MDB'S OPPOSITION TO VERSA PRODUCTS COMPANY, INC.'S MOTION TO STRIKE AND/OR SPOILIATION INSTRUCTIONS** to be served on all parties to this action by:

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

  x   Second Judicial District Court Eflex ECF (Electronic Case Filing)

\_\_\_\_\_ hand delivery

\_\_\_\_\_ electronic means (fax, electronic mail, etc.)

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

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Sonya Corthell*

DATED this   2   day of June, 2017.

  
An employee of Thorndal Armstrong  
Delk Balkenbush & Eisinger

## INDEX OF EXHIBIT(S)

Exhibit No.	Exhibit Description	No. of Pages
1	Answer to Versa Products Company, Inc.'s First Set of Interrogatories to MDB Trucking	18
2	Continued Deposition of PMK of MDB Trucking Scott Palmer	7

# EXHIBIT

# 1

# EXHIBIT

# 1

1 **DISC**

2 Katherine F. Parks, Esq., State Bar No. 6227  
3 Brian M. Brown, Esq., State Bar No. 5233  
4 Thierry V. Barkley, Esq., State Bar No. 724  
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9 Attorneys for Defendant/Cross-Claimant  
10 MDB TRUCKING, LLC

11  
12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
13  
14 IN AND FOR THE COUNTY OF WASHOE  
15

16 ERNEST BRUCE FITZSIMMONS and  
17 CAROL FITZSIMMONS, Husband and  
18 Wife,

19 Plaintiffs,

20 vs.

21 MDB TRUCKING, LLC; DANIEL  
22 ANTHONY KOSKI; ABC Corporations I-X,  
23 Black and White Companies, and DOES I-  
24 XX, inclusive,

25 Defendants.

Case No. CV15-02349

Dept. No. 15

Consolidated with

Case No.: CV15-02410

Case No.: CV16-00626

Case No.: CV16-02410

Case No.: CV16-00519 [Discovery  
Purposes]

26 **ANSWER TO VERSA PRODUCTS**  
27 **COMPANY, INC.'S FIRST SET OF**  
28 **INTERROGATORIES TO MDB**  
**TRUCKING**

29 AND RELATED CROSS-CLAIMS AND  
30 THIRD PARTY COMPLAINT.

31 **TO: CROSS-DEFENDANT AND THEIR COUNSEL OF RECORD:**

32 **ANSWER TO INTERROGATORIES**

33 **INTERROGATORY NO. 1:**

34 Please identify any individual assisting with these responses including, full name, residence,  
35 business address, occupation(s), and job title(s).

36 **ANSWER TO INTERROGATORY NO. 1:**

37 Scott Palmer, General Manager, MDB Trucking, LLC, 905 E. Mustang Road, Sparks,  
38 Nevada 89434.

THORNDAL ARMSTRONG  
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& EISINGER  
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1 **INTERROGATORY NO. 2:**

2 Please identify the three trailers attached to the Subject Peterbuilt truck, including the make,  
3 year, VIN, equipment number and the order in which they were attached to the Subject Peterbuilt  
4 truck.

5 **ANSWER TO INTERROGATORY NO. 2:**

6 The first trailer was an FT Ranco 2007 Idaho plate no. TF6508 [equipment no. 6773] VIN No.  
7 IR985A2077L008042. Second trailer no. 2 was an FT Ranco 2003 California plate no. 4EP2080  
8 [equipment no. 6774] VIN No. IR98P45063L008810. The third trailer was an FT Ranco 2002 Idaho  
9 plate no. TE3528 VIN No. IR98P45082L008431 [equipment no. 6775].

10 **INTERROGATORY NO. 3:**

11 Please identify which of the trailers listed in Interrogatory No. 2 allegedly dumped gravel on  
12 the roadway at the time of the subject accident.

13 **ANSWER TO INTERROGATORY NO. 3:**

14 Trailer No. 3.

15 **INTERROGATORY NO. 4:**

16 Identify each and every person(s) and/or entity that had possession of the trailer(s) identified  
17 in Interrogatory No. 3 from June 30, 2013 through the present.

18 **ANSWER TO INTERROGATORY NO. 4:**

19 MDB maintained possession of the subject trailer at all times.

20 **INTERROGATORY NO. 5:**

21 Please identify each and every person or corporation who performed service, repair,  
22 modification, or alteration work on the trailer(s) identified in Interrogatory No. 3 from June 30, 2013  
23 through the present.

24 **ANSWER TO INTERROGATORY NO. 5:**

25 Scott Palmer, General Manager of MDB Trucking, LLC, 905 E. Mustang Road, Sparks, NV  
26 89434. Patrick D. Bigby, mechanic with MDB Trucking, LLC, 905 E. Mustang Road, Sparks, NV  
27 89434.

28 ///

1 **INTERROGATORY NO. 6:**

2 If the trailer(s) identified in Interrogatory No. 3 was serviced, repaired or modified between  
3 June 30, 2013 and the present for any reason, please identify the following for each service, repair  
4 or modification.

- 5 a. The nature of the repair, service or modification;  
6 b. The date(s) of repair, service or modification;  
7 c. The name of the place(s) where the repair, service or modification was performed;  
8 and  
9 d. The reason(s) the repair, service or modification was made.

10 **ANSWER TO INTERROGATORY NO. 6:**

11 Defendants object this request is overly broad and unduly burdensome. Without waiving this  
12 objection, MDB will produce the maintenance records as they are maintained in the ordinary course  
13 of business under the provisions of Rule 33(d) as well as Rule 34.

14 **INTERROGATORY NO. 7:**

15 Identify each and every person(s) and/or entity that had possession of the Subject Peterbuilt  
16 truck from June 30, 2013 through the present.

17 **ANSWER TO INTERROGATORY NO. 7:**

18 MDB has maintained possession of the subject Peterbuilt truck at all relevant times.

19 **INTERROGATORY NO. 8:**

20 Please identify each and every person or corporation who performed service, repair.  
21 modification, or alteration work on the Subject Peterbuilt truck from June 30, 2013 through the  
22 present.

23 **ANSWER TO INTERROGATORY NO. 8:**

24 Patrick D. Bigby, mechanic for MDB Trucking. His current address is 395 Boise Court,  
25 Sparks, NV 89431.

26 **INTERROGATORY NO. 9:**

27 If the Subject Peterbuilt truck was serviced, repaired or modified between June 30, 2013 and  
28 the present for any reason, please identify the following for each service, repair or modification

- 1 e. The nature of the repair, service or modification;  
2 f. The date(s) of repair, service or modification;  
3 g. The name of the place(s) where the repair, service or modification was performed;  
4 and  
5 h. The reason(s) the repair, service or modification was made.

6 **ANSWER TO INTERROGATORY NO. 9:**

7 Defendant objects that this request is overly broad and neither relevant nor reasonably  
8 calculated to lead to the discovery of admissible evidence. Without waiving this objection, defendant  
9 will produce its records for the subject Peterbuilt truck as maintained in the ordinary course of  
10 business pursuant to the provisions of Rule 33(d) and well as Rule 34.

11 **INTERROGATORY NO. 10:**

12 Please list the dates the trailers identified in Interrogatory No. 2 have been used together  
13 during the five (5)-year period immediately prior to the date of the incident through the present.

14 **ANSWER TO INTERROGATORY NO. 10:**

15 Defendant objects that this request is overly broad and neither reasonably calculated to lead  
16 to the discovery of admissible evidence. Without waiving this objection, the Ranco trailer was  
17 purchased in 2012.

18 **INTERROGATORY NO. 11:**

19 Please list the dates that the Subject Peterbuilt truck used each trailer identified in  
20 Interrogatory No. 2 during the five (5)-year period immediately prior to the date of the incident  
21 through the present.

22 **ANSWER TO INTERROGATORY NO. 11:**

23 Defendant objects that this request is overly broad and neither relevant nor reasonably  
24 calculated to lead to the discovery of admissible evidence. Without waiving this objection, the  
25 subject Ranco trailer was purchased in 2012. As to the relevant dates for events involving a self-  
26 activation of the Versa products both the same Peterbuilt truck and Ranco trailers were involved on  
27 July 5, 2013 and July 7, 2014.  
28 ///

1 **INTERROGATORY NO. 12:**

2 Please state the contents of each load the trailer(s) identified in Interrogatory No. 3 carried  
3 between June 30, 2013 and July 8, 2014.

4 **ANSWER TO INTERROGATORY NO. 12:**

5 Defendant objects to this request as being overly broad and unduly burdensome and neither  
6 relevant nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving  
7 this objection, typical loads for the Ranco trailer would vary between sand and/or gravel. As to the  
8 dates of the incidents of July 31, 2013, as well as July 7, 2014, the subject Ranco trailer was carrying  
9 gravel.

10 **INTERROGATORY NO. 13:**

11 Please describe in detail every process in which DANIEL KOSKI could activate the dump  
12 gate of the trailer(s) identified in Interrogatory No. 3 on the day of the Subject Incident.

13 **ANSWER TO INTERROGATORY NO. 13:**

14 As Mr. Koski was driving at the time of the accident, there is no physical way he could have  
15 activated the master switch control panel to the latter trailer switches without leaning over and  
16 removing two of the red and orange covers. Mr. Koski previously indicated he did not activate any  
17 of the switches on the Peterbilt truck at the time of the accident.

18 **INTERROGATORY NO. 14:**

19 As to each investigation conducted concerning the subject incident, set forth the name,  
20 address, and occupation of the person or organization conducting the investigation, the basis of the  
21 investigation, whether anybody has conducted an interview of any party or of its agents or employees  
22 related to the event in question, whether anybody has conducted an interview of any witness to the  
23 event in question, and the location of any and all written reports made concerning the investigation.

24 **ANSWER TO INTERROGATORY NO. 14:**

25 Defendant objects to this request as subject to both attorney/client and work product  
26 privilege. Without waiving this objection, we have provided no recorded interview or written  
27 statements.

28 ///

1 **INTERROGATORY NO. 15:**

2 Provide the name and address of each and every expert witness whom you reserve the right  
3 to call at trial of this action and who has expressed an opinion upon any issue related to this action,  
4 including the subject matter and field in which the expert is qualified and will render an opinion in  
5 this matter, a summary of the grounds for each and every one of the expert's opinions, all facts and  
6 opinions which each and every expert has formulated with respect to this matter, whether each expert  
7 has made a personal investigation or examination of anything related to this matter, each and every  
8 item each expert has reviewed, the date and location of each written expert report, and each expert's  
9 specific general, educational, and professional credentials (a copy of each expert's most recent  
10 curriculum vitae may be provided in lieu of a written summary of that expert's credentials).

11 **ANSWER TO INTERROGATORY NO. 15:**

12 Defendant objects to this request as beyond the provisions of Rule 26(b)(4).

13 In accordance with the provisions of Rule 16.1, the trial experts, reports, and opinions will  
14 be provided in accordance with the current discovery schedule. Without waiving this objection,  
15 Defendant provides the following response. Dr. David Bosch, Ph.D. Forensic Engineer, 4665 S. Ash  
16 Avenue, Suite G4, Tempe, Arizona 85282. Dr. David Bosch has over 35 years of experience in  
17 materials engineering, mechanical engineering design and automotive technical fails. He specializes  
18 in mechanical design analysis for failures and defects. He currently holds a Ph.D. in engineering  
19 science from Arizona State University, Tempe, Arizona May 1994 as well as a Masters of Science  
20 and Engineering Science from Tempe, Arizona December 1990.

21 As a result of a prior incident involving the same exact Ranco trailer in July 2013, MDB has  
22 replaced a VERSA valve [solenoid system] with a new exact model [VGK-4523-20C-D012] obtained  
23 from VERSA Products through direct purchase in August 2013. MDB re-wired the dump valve  
24 circuit from valve to truck. This isolated the dump coil circuit and MDB removed the coil case  
25 ground from the circuit.

26 ///

27 ///

28 ///

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1 MDB then added a master switch and changed the voltage source from the dump control  
2 system. Furthermore, the dump control of the toggle switches on the Peterbuilt truck were guarded  
3 to also prevent inadvertent activation.

4 As to the latter rear Ranco trailer, the ABS sensor power and supply wire would be energized  
5 during the running of a tractor trailer combination. MDB had re-wired the system to eliminate a  
6 ground fault system from the rear of the system that could have been a possible cause of a  
7 mechanical fault ground to self-activate the rear VERSA valve [the accumulator valve] that opens  
8 the gates of the trailer. The subject VERSA valve solenoid system that was originally installed was  
9 replaced by an exact similar model purchased from Versa Products and installed in August, 2013 .  
10 The Versa valve is not a USDOT approved tested component.

11 It is understood the VERSA valve bottom valve dump is designed by the manufacturer  
12 VERSA Products to operate with a system voltage of 13.2 VDC. After testing upon a VERSA  
13 products exemplar dump valve, it was determined that same could be activated by an 8.5 VDC. Our  
14 experts' conclusion is that it was probable that there was no mechanical failure due to a ground fault  
15 system at the time of the accident which could have activated the VERSA valve in question. It is Dr.  
16 Bosch's opinion that in fact it was impossible. It is also not possible Mr. Koski would have activated  
17 the master switches in the Peterbuilt truck while driving.

18 MDB has also retained the services of Erik S. Anderson, a registered professional engineer  
19 of Anderson Engineering of New Prague, Inc., 3725 E. Roser Road, Suite 20, Phoenix, Arizona  
20 85040, (a registered engineer in several states including the State of Nevada as of 2013.) Mr.  
21 Anderson holds a Bachelor of Science and Electronic Engineering of North Dakota State of  
22 University, Fargo, North Dakota 1987. Mr. Anderson is a Certified Fire and Explosion Investigator  
23 (CVEI). Currently, Mr. Anderson has not prepared any formal opinions. However, it is a hypothesis  
24 that possible strong electrical fields would have precipitated the activation of the dump valve by  
25 inductive/capacitive coupling. This hypothesis is further borne out by evidence that a similar MDB  
26 Ranco trailer self-activated and dumped sand between mile marker 40 and the rest area of 180 west  
27 ten to fifteen minutes before the accident on the same day and in a similar proximity to the location  
28 of the accident between mile marker 38 and mile marker 39. Continuing forensic investigation is

1 being pursued including anticipated further inspections of the subject VERSA valve solenoid devices  
2 on both Ranco trailers.

3 **INTERROGATORY NO. 16:**

4 Please identify each and every component that was removed, repaired and/or modified from  
5 the trailer(s) identified in Interrogatory No. 3 between June 30, 2013 through the present. For each  
6 component identified in response to this Interrogatory, identify all persons who were involved in the  
7 removal, repair or modification, the date of such removal, repair or modification and the current  
8 location of the removed component.

9 **ANSWER TO INTERROGATORY NO. 16:**

10 Defendant objects that this request is being neither relevant nor reasonably calculated to lead  
11 to the discovery of admissible evidence. Without waiving this objection, the components which are  
12 involved and the modifications in August 2013 are identified in Answer to Interrogatory No. 15.

13 **INTERROGATORY NO. 17:**

14 Please identify each and every component that was removed, repaired and/or modified from  
15 the subject Peterbuilt truck between June 30, 2013 through the present. For each component  
16 identified in response to this Interrogatory, identify all persons who were involved in the removal,  
17 repair or modification, the date of such removal, repair or modification and the current location of  
18 the removed component.

19 **ANSWER TO INTERROGATORY NO. 17:**

20 Please refer to Answer to Interrogatory No. 15.

21 **INTERROGATORY NO. 18:**

22 Please identify whether the VERSA valve currently on the trailer(s) identified in  
23 Interrogatory No. 3 is the same valve that was on the said trailer when you purchased it. If not, please  
24 explain what valve the current VERSA valve replaced, why it was replaced, when it was replaced  
25 and by whom it was replaced by.

26 ///

27 ///

28 ///

1 **ANSWER TO INTERROGATORY NO. 18:**

2 Due to the self-activation of the VERSA valve component which occurred July 30, 2013, a  
3 decision was made to replace the subject VERSA valve which came with the original acquisition in  
4 2002 with the exact similar model VGK4523-20C-0012 which was purchased new and the  
5 replacement was installed on August 2, 2013. The person installing the VERSA valve solenoid  
6 device was Mr. Patrick Bigby.

7 **INTERROGATORY NO. 19:**

8 If you have replaced VERSA valve on the trailer(s) identified in Interrogatory No. 3, please  
9 identify when you replaced it, why it was replaced, when it was replaced, who replaced it and where  
10 did you purchased the replacement VERSA valve from?

11 **ANSWER TO INTERROGATORY NO. 19:**

12 Please refer to Answer to Interrogatory No. 18. This was done by Mr. Patrick Bigby.

13 **INTERROGATORY NO. 20:**

14 Please identify each and every truck and trailer that has received a CSMS Vehicle  
15 Maintenance violation 393.100(b), including the dates, VIN number and any unit involved with said  
16 truck or trailer.

17 **ANSWER TO INTERROGATORY NO. 20:**

18 Defendant objects that this request is neither relevant nor reasonably calculated to lead to the  
19 discovery of admissible evidence. Without waiving this objection, defendant Koski received a  
20 violation under 393.100(b) on July 30, 2013 involving the same tractor trailer (unit 5694) and same  
21 Ranco trailer (unit 6675). Mr. Koski also received a similar citation on the Peterbuilt truck and  
22 Ranco trailer on July 7, 2014. Both of these violations resulted in a dismissal of citations issued to  
23 Mr. Daniel Koski.

24 **INTERROGATORY NO. 21:**

25 Identify the person most knowledge of the repairs, modifications and maintenance of the  
26 subject trailers identified in Interrogatory No. 2, including each person's name, present address,  
27 present telephone number, and a complete summary of each person's knowledge of relevant  
28 information.

1 **ANSWER TO INTERROGATORY NO. 21:**

2 The person most familiar with general maintenance repairs and modifications of the  
3 Peterbuilt truck and Ranco trailer would be Patrick Bigby with MDB Trucking, 905 E. Mustang  
4 Road, Sparks, NV 89434. Other individuals that were involved with the process involve Tracy P.  
5 Shane, former dispatcher for MDB Trucking, 15 Rogers Ranch Road, Sparks, NV 89441 and Scott  
6 Palmer, the current General Manager for MDB Trucking, LLC, 905 E. Mustang Road, Sparks, NV  
7 89434.

8 **INTERROGATORY NO. 22:**

9 Identify the person most knowledge of the repairs, modifications and maintenance of the  
10 subject Peterbuilt truck, including each person's name, present address, present telephone number,  
11 and a complete summary of each person's knowledge of relevant information.

12 **ANSWER TO INTERROGATORY NO. 22:**

13 Please refer to Answer to Interrogatory No. 21.

14 **INTERROGATORY NO. 23:**

15 In the event that your response to any of the accompanying Requests to Admit is anything  
16 other than a complete and unqualified admission, set forth any and all facts and identify all  
17 documents supporting your response and provide the name, address and telephone number of each  
18 and every witness who will offer testimony in support of your response, together with a specific  
19 summary of their anticipated testimony.

20 **ANSWER TO INTERROGATORY NO. 23:**

21 Defendant objects this interrogatory would violate the provisions of Rule 33(a) (wherein  
22 answers to interrogatories shall not exceed 40 in number including discreet subpart). Without  
23 waiving this objection, defendant will provide the following answers regarding the request for  
24 admissions nos. 4, 5, 6, 8, 10, 11, 12, 16, 21, 23, 25 and 26.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

26 MDB has no further factual response to this request for admission. Routine maintenance  
27 disclosed a possible BU-1 circuit fault related to the ABS lighting system on July 8, 2014.

28 ///

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

2 MDB has no further factual response to this request for admission. Routine maintenance  
3 disclosed a possible BU-1 circuit fault related to the ABS lighting system on July 8, 2014.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

5 Review of routine maintenance records did not suggest any repairs or verifications to the  
6 four-way plug on the Peterbuilt truck after the accident. Standard routine review of the four-way plug  
7 on the Peterbuilt truck did occur on December 18, 2014 that only involved tightening screws on the  
8 system. The person most familiar with the latter testing and inspections was Mr. Scott Palmer.

9 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

10 Standard maintenance was performed on the Peterbuilt truck on November 10, 2014 which  
11 did include a limited adjustment of the valves. Work was performed by Mr. Patrick Bigby.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

13 Admitted with the qualification that standard routine maintenance was undertaken on  
14 November 10, 2014 by Mr. Patrick Bigby.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

16 Other than routine maintenance was undertaken, the ranco trailer involved is in the same  
17 condition. Maintenance was undertaken by Mr. Patrick Bigby as previously identified. MDB's  
18 maintenance records will be produced regarding the subject Ranco trailer.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

20 Mr. Bigby did not replace or otherwise modify the component VERSA valve which was  
21 installed in August 2013. The persons with most knowledge regarding the subject Ranco trailer is  
22 Mr. Patrick Bigby and Mr. Scott Palmer.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

24 MDB did not modify the initial bracketing or mounting for the subject VERSA valve but  
25 added a pin lock bracket system which has been previously identified in Answer to Interrogatory No.  
26 15. The installation of the VERSA valve lock pin system was installed by Mr. Scott Palmer on or  
27 about July 7, 2014 on the subject Ranco trailer unit 6775. This was to provide a positive lockout for  
28 the VERSA valve unit while the Ranco trailer was traveling on the highway. MDB will be relying

1 on its maintenance records but particularly maintenance no. 000244 regarding unit 6775.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

3 MDB has no further facts on this Request for Admission beyond the expert work product  
4 generated by its experts and specifically Answer to Interrogatory No. 15. Beyond routine records  
5 which were provided pursuant to Rule 34, no further specific documents are identified.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

7 MDB made no modifications, alterations or changes to the subject VERSA valve solenoid  
8 after the accident. The persons with most knowledge regarding same are Mr. Scott Palmer and Mr.  
9 Patrick Bigby.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

11 MDB did not perform any invasive or destructive testing of the subject VERSA valve  
12 involved in this incident. Defendant's experts Dr. David Bosch and Mr. Erik Anderson were  
13 identified on this issue.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

15 With the addition of the positive pin-lock system which was installed by MDB after the  
16 incident on July 7, 2014, it is impossible to determine if and when the VERSA valve may have self-  
17 activated at any other time after the subject pin-lock system was installed.

18 **INTERROGATORY NO. 24:**

19 Please state, and identify with specificity, any and all facts, evidence, documents or other  
20 support for your allegations, as contained in Paragraph 6 of your Cross-Claim, in which you allege  
21 that "the Ranco trailer was activated inadvertently."

22 **ANSWER TO INTERROGATORY NO. 24:**

23 Defendant objects to this request for contention interrogatories in advance of the completion  
24 of discovery and the completion of defendant's expert work product. Without waiving this objection,  
25 defendant will be relying on maintenance records produced by MDB Trucking regarding specifically  
26 the Ranco trailer involved in this accident both on July to 30, 2013, and July 2014. Defendant will  
27 also be relying on defendant's experts which have been retained in this matter as work product  
28 subject to protection under the provisions of Rule 26(b)(4) until formal disclosures are required

1 pursuant to Rule 16.1 on November 4, 2016. Please refer to defendant's Answer to Interrogatory No.  
2 15.

3 MDB will also be producing the maintenance records on the second Peterbuilt truck and  
4 Ranco trailer involved in dumping sand shortly before Mr. Koski's incident.

5 **INTERROGATORY NO. 25:**

6 Please state, and identify with specificity, any and all facts, evidence, documents or other  
7 support for your allegations, as contained in Paragraph 10 of your Cross-Claim, in which you allege  
8 that "Versa Valve solenoid control as a component to the Ranco trailer was unreasonably dangerous  
9 and defective."

10 **ANSWER TO INTERROGATORY NO. 25:**

11 Defendant objects to this request for contention interrogatories in advance of the completion  
12 of discovery and the completion of defendant's expert work product. Without waiving this objection,  
13 defendant will be relying on maintenance records produced by MDB Trucking regarding specifically  
14 the Ranco trailer involved in this accident both on July to 30, 2013, and July 2014. Defendant will  
15 also be relying on defendant's experts which have been retained in this matter as work product  
16 subject to protection under the provisions of Rule 26(b)(4) until formal disclosures are required  
17 pursuant to Rule 16.1 on November 4, 2016. Please refer to defendant's Answer to Interrogatory No.  
18 15.

19 MDB will also be producing the maintenance records on the second Peterbuilt truck and  
20 Ranco trailer involved in dumping sand shortly before Mr. Koski's incident.

21 **INTERROGATORY NO. 26:**

22 Please state, and identify with specificity, any and all facts, evidence, documents or other  
23 support for your allegations, as contained in Paragraph 12 of your Cross-Claim, in which you allege  
24 that Cross-Defendant VERSA "breached a duty of care owed to Cross-Claimant."

25 **ANSWER TO INTERROGATORY NO. 26:**

26 Defendant objects to this request for contention interrogatories in advance of the completion  
27 of discovery and the completion of defendant's expert work product. Without waiving this objection,  
28 defendant will be relying on maintenance records produced by MDB Trucking regarding specifically

1 the Ranco trailer involved in this accident both on July to 30, 2013, and July 2014. Defendant will  
2 also be relying on defendant's experts which have been retained in this matter as work product  
3 subject to protection under the provisions of Rule 26(b)(4) until formal disclosures are required  
4 pursuant to Rule 16.1 on November 4, 2016. Please refer to defendant's Answer to Interrogatory No.  
5 15.

6 MDB will also be producing the maintenance records on the second Peterbuilt truck and  
7 Ranco trailer involved in dumping sand shortly before Mr. Koski's incident.

8 **INTERROGATORY NO. 27:**

9 Please state, and identify with specificity, any and all facts, evidence, documents or other  
10 support for your allegations, as contained in Paragraph 22 of your Cross-Claim, in which you allege  
11 that you are "entitled to complete indemnity against Versa Products Company, Inc. with respect to  
12 all allegations or liabilities set forth in the First Amended Complaint."

13 **ANSWER TO INTERROGATORY NO. 27:**

14 Defendant objects to this request for contention interrogatories in advance of the completion  
15 of discovery and the completion of defendant's expert work product. Without waiving this objection,  
16 defendant will be relying on maintenance records produced by MDB Trucking regarding specifically  
17 the Ranco trailer involved in this accident both on July to 30, 2013, and July 2014. Defendant will  
18 also be relying on defendant's experts which have been retained in this matter as work product  
19 subject to protection under the provisions of Rule 26(b)(4) until formal disclosures are required  
20 pursuant to Rule 16.1 on November 4, 2016. Please refer to defendant's Answer to Interrogatory No.  
21 15.

22 MDB will also be producing the maintenance records on the second Peterbuilt truck and  
23 Ranco trailer involved in dumping sand shortly before Mr. Koski's incident.

24 **INTERROGATORY NO. 28:**

25 Please state, and identify with specificity, any and all facts, evidence, documents or other  
26 support for your allegations, as contained in Paragraph 25 of your Cross-Claim, in which you allege  
27 that you are "entitled to contribution from Cross-Defendant Versa Products Company, Inc. with  
28 respect to any settlement, judgment, award, or any other type of resolution of claims brought forward

1 by the Plaintiffs in their First Amended Complaint.

2 **ANSWER TO INTERROGATORY NO. 28:**

3 Defendant objects to this request for contention interrogatories in advance of the completion  
4 of discovery and the completion of defendant's expert work product. Without waiving this objection,  
5 defendant will be relying on maintenance records produced by MDB Trucking regarding specifically  
6 the Ranco trailer involved in this accident both on July to 30, 2013, and July 2014. Defendant will  
7 also be relying on defendant's experts which have been retained in this matter as work product  
8 subject to protection under the provisions of Rule 26(b)(4) until formal disclosures are required  
9 pursuant to Rule 16.1 on November 4, 2016. Please refer to defendant's Answer to Interrogatory No.  
10 15.

11 MDB will also be producing the maintenance records on the second Peterbuilt truck and  
12 Ranco trailer involved in dumping sand shortly before Mr. Koski's incident.

13 **CERTIFICATE OF OBJECTIONS**

14 The undersigned herein certifies that all objections have been prepared and stated by counsel  
15 on behalf of MDB Trucking.

16 Respectfully submitted this 30th day of September, 2016.

17 THORNDAL ARMSTRONG  
18 DELK BALKENBUSH & EISINGER

19 By: 

20 Katherine F. Parks, Esq., State Bar No. 6227  
21 Brian M. Brown, Esq., State Bar No. 5233  
22 Thierry V. Barkley, Esq., State Bar No. 724  
23 6590 S. McCarran Blvd., Suite B  
24 Reno, Nevada 89509  
25 Attorneys for Defendant/Cross-Claimant  
26 MDB TRUCKING, LLC  
27  
28

THORNDAL ARMSTRONG  
DELK BALKENBUSH  
& EISINGER  
6590 S. McCarran, Suite B  
Reno, Nevada 89509  
(775) 786-1882

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 ANSWER TO VERSA  
4 PRODUCTS COMPANY, INC.'S FIRST SET OF INTERROGATORIES TO MDB  
5 TRUCKING to be served on all parties to this action by:

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

7 ☐ Second Judicial District Court Efile ECF (Electronic Case Filing)

8 ☐ hand delivery

9 ☐ electronic means (fax, electronic mail, etc.)

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

11 Joseph S. Bradley, Esq.  
12 Sarah M. Quigley, Esq.  
13 Bradley, Drendel & Jeanney  
P.O. Box 1987  
Reno, NV 89505

14 Attorneys for Plaintiffs Ernest and Carol Fitzsimmons and Angela Wilt

15 Matthew C. Addison, Esq.  
16 Jessica L. Woelfel, Esq.  
McDonald Carano Wilson LLP  
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Reno, NV 89501

17 Attorneys for Defendant RMC Lamar Holdings

18 Josh Cole Aicklen, Esq.  
19 David B. Avukian, Esq.  
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20 Attorneys for Defendant Versa Products Co., Inc.

21 Jacob D. Bundick, Esq.  
22 Lisa J. Zastrow, Esq.  
Greenberg Traurig, LLP  
3773 Howard Hughes Parkway, Suite 400 North  
Las Vegas, NV 89169  
23 Attorneys for Defendants  
24 The Modern Group GP-SUB, Inc. and Dragon ESP, Ltd.

25 DATED this 3 day of October 2016.

26 THORNDAL ARMSTRONG  
DELA BALKENBUSH  
& EISINGER  
6390 S. 41st Ave., Suite B  
Reno, Nevada 89521  
(775) 786-2447

27   
28 An employee of Thorndal Armstrong  
Delk Balkenbush & Eisinger

1 VERIFICATION

2 COMES NOW, Scott Palmer being first duly sworn deposes and says under oath as follows.

3 1. Affiant has personal knowledge of the facts herein stated in this verification and is  
4 competent to testify thereto;

5 2. Affiant is the General Manager for the defendant in the above-entitled litigation;

6 3. Affiant has read the foregoing answers to him subscribed by him and knows the  
7 contents thereof;

8 4. Said answers to were prepared with the assistance and advice of counsel upon which  
9 he has relied;

10 5. The answers to interrogatories set forth herein are subject to inadvertent or  
11 undiscovered errors; and are based on available information to date; and, therefore, are necessarily  
12 limited by the records and information still in existence, presented, recollected; and, thus far  
13 discoverable in accordance with the provisions of these answers to interrogatories including  
14 discovery and expert work product;

15 6. Therefore, MDB reserves the right to make any changes to these answers to these  
16 interrogatories if it appears that any time admissions or errors have been made therein or that more  
17 accurate information is available;

18 7. Subject to the limitations set forth, said answers to interrogatories are true to the best  
19 of Affiant's knowledge, information or belief.

20 DATED this 30 day of September, 2016.

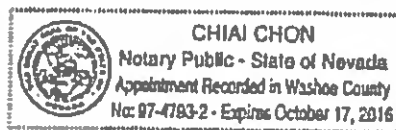
21  
22 By:   
23

SCOTT PALMER

24 SUBSCRIBED and SWORN to before me

25 this 30 day of September, 2016.

26  
27   
28 NOTARY PUBLIC



# EXHIBIT

## 2

# EXHIBIT

## 2

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

-o0o-

ERNEST BRUCE FITZSIMMONS and  
CAROL FITZSIMMONS, husband and  
wife,  
Plaintiffs,

Case No. CV15-02349  
Department No. 10

vs.

MDB TRUCKING, LLC; et al.,  
Defendants.

\_\_\_\_\_  
AND RELATED THIRD-PARTY MATTERS  
AND CONSOLIDATED CASE.  
\_\_\_\_\_

CONTINUED DEPOSITION OF PMK OF MDB TRUCKING

SCOTT ALEN PALMER

March 7, 2017

Reno, Nevada

Volume II

REPORTED BY: CONSTANCE S. EISENBERG, CCR #142, RMR, CRR  
Job No. 378331

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www.litigationservices.com

Page 166

1 Q At any time in your 35-year career, have you utilized  
2 that chain system?

3 A Oh, yes, extensively, but not to keep the gates from  
4 opening, to keep the gates -- to restrict the opening of the  
5 gates, yes --

6 Q Okay. So you have used them --

7 A -- for the size of windrow they want on a job site, yes.

8 Q Have you ever been injured in putting the chains on or  
9 off?

10 A All the trailers that I have ever chained are semi  
11 trailers that have ten feet between the axles and the gates. So  
12 you walk under the trailer and you chain them.

13 These are short trailers. They have -- it's only,  
14 like -- you can barely get your head in there to chain them.

15 Q So my question is, have you ever been injured setting up  
16 the chaining device --

17 A No.

18 Q -- under a truck?

19 A No.

20 Q Are you aware of any other employee that you've worked  
21 with being injured setting up a chain device underneath a belly  
22 dumper?

23 MR. BROWN: Objection, foundation.

24 THE WITNESS: I don't know of any.

25 ///

Page 167

1 BY MS. WOELFEL:

2 Q Okay. So going to the July 2014 release, my  
3 understanding is that Mr. Koski contacted MDE while he was at the  
4 site of the dump and he had pulled over; is that correct? He had  
5 contacted them to advise them that this incident in July of 2014  
6 had occurred?

7 A Yes.

8 Q And do you know who he spoke to?

9 A Tracy Shane.

10 Q Okay. And do you know if anybody requested that  
11 Mr. Koski take any photos or do any documentation of the truck or  
12 the site of the event?

13 MR. BROWN: Objection, foundation.

14 THE WITNESS: Okay. The site of the event was a rule  
15 back down the road. So it would be pretty hard for him to walk  
16 down the freeway a mile to take pictures, especially while they  
17 are waiting for fire and rescue to arrive.

18 He's on the side of the road, talking to a  
19 Highway Patrol officer at the time. I don't think that would be  
20 the time for Mr. Koski to be to do an independent investigation of  
21 what happened.

22 BY MS. WOELFEL:

23 Q So my question is, did anybody from MDE ask him to take  
24 any photos or document the truck?

25 A At the scene of the accident?

Page 168

1 Q At the scene of the accident.

2 A Well, the truck was not at the scene of the accident.

3 Q Well, the truck pulled over to the side of the road.

4 A No, he was not asked to do that.

5 Q Okay. Thank you.

6 Did you test the electrical system of any of the three  
7 trailers that were involved in this incident upon its return to  
8 the yard?

9 A No.

10 Q Why not?

11 A There was no need to.

12 Q Why was there no need to?

13 A Because we put lockout devices on there, which prevents  
14 the gates from opening.

15 We had already rewired the trailers completely. We had  
16 already checked the trailers out extensively.

17 At this point, we felt that putting a lockout device was  
18 the best way to prevent this from happening again. And so far, it  
19 has been two and a half years and we haven't had a problem.

20 Q So when you were -- when the truck came back to the  
21 yard -- and you said you had already rewired the trailer  
22 completely, you are talking about the rewire that took place one  
23 year ago?

24 A Yes.

25 Q And there was no inspection of the electrical system

Page 169

1 after July of 2014?

2 A No, not -- not in direct relation to that incident, no.

3 Well, I shouldn't say that. We didn't do that  
4 inspection. The forensic -- the people -- the scientists and  
5 forensic people came out and did a complete inspection, all -- a  
6 year later, or whatever it was, a year and a half later.

7 Q After the lawsuit had been filed?

8 A Yeah.

9 Q And the wiring system in the trailers, the subject  
10 trailers, is it your statement that the wiring system was exactly  
11 the same as the wiring system that was installed in July of 2013?

12 A To the best of my knowledge, yes, it was. I don't  
13 think -- we never -- we didn't make any modifications to it, no.

14 Q No modifications to it outside of changing plugs?

15 A Maybe -- exactly, something like that, yes.

16 Q Okay. Did you save the plugs that you changed after the  
17 July 2014 event until the time that the forensic inspection,  
18 electrical inspection had occurred?

19 A No.

20 Q What did you do with the plugs or any plugs that you  
21 changed on the subject trailers?

22 A We throw them in the garbage after that, yeah.

23 Q Did you do any testing -- outside of creating this pin  
24 system, did you do any testing to the Versa valve to see if it was  
25 malfunctioning in any way?

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1 A No, other than visual inspection of making sure it was  
2 mechanically sound, which means that it's still in place, the  
3 handle is still in place, there's no damage to it, it's still  
4 operating correctly, it's just got a pin in there now.  
5 Q Okay. Did you take a written statement from Mr. Koski  
6 after the July of 2013 release?  
7 A I don't believe so.  
8 MS. SHREVE: Take a rest room break?  
9 MS. WOELFEL: Sure. Take a five-minute rest room break.  
10 That's fine.  
11 MS. SHREVE: We can go off the record.  
12 (A recess was taken.)  
13 MS. WOELFEL: Okay. We can go back on the record.  
14 BY MS. WOELFEL:  
15 Q Can you tell me if anybody was injured in relationship  
16 to the July 2013 dump incident?  
17 A To my knowledge, nobody was injured.  
18 Q And, obviously, there were some injuries with respect to  
19 July of 2014, or alleged injuries, which is why this lawsuit has  
20 occurred.  
21 A Yes. Yes.  
22 Q Was MDB aware of those injuries on -- or the alleged  
23 injuries, on the day that the incident occurred?  
24 A Oh, yes, definitely.  
25 Q Was MDB concerned that they might get sued on the date

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1 of the incident?  
2 MR. BROWN: Objection to the extent it calls for  
3 speculation.  
4 You can answer.  
5 THE WITNESS: The sentiment in the company was everybody  
6 was concerned for the people that got hurt, and everybody really  
7 actually felt bad because we thought we tried everything to keep  
8 this from happening.  
9 And, yeah, I don't think anybody talked about getting a  
10 lawsuit. I don't think that was ever even a topic.  
11 BY MS. WOELFEL:  
12 Q Was -- did you think that it was a possibility that MDB  
13 might be involved in litigation as a result of the incident?  
14 MR. BROWN: Objection to the extent it calls for  
15 speculation, asked and answered.  
16 THE WITNESS: No, I didn't think anything about that,  
17 no. I mean --  
18 BY MS. WOELFEL:  
19 Q Did you -- I'm sorry, you can go ahead and finish.  
20 Did you have any discussions with ownership or --  
21 A Terry Davis?  
22 Q Yes, thank you.  
23 -- or Terry Davis?  
24 MR. BROWN: Don't.  
25 THE WITNESS: Oh, sorry.

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1 MR. BROWN: Just kidding.  
2 THE WITNESS: I don't think Terry -- I wasn't talking to  
3 Terry Davis at that -- I don't even think he was working there at  
4 that particular time. I'm not sure.  
5 BY MS. WOELFEL:  
6 Q Was there a go-between between you and ownership before  
7 Terry Davis arrived?  
8 A Okay. At 2014, Tracy Shane was the manager.  
9 Q Okay. And would Tracy talk directly with the two  
10 owners?  
11 A With the owner, with Travis Bonanno. Kari wasn't that  
12 involved with the business. It would be Travis Bonanno. And he  
13 would talk with him directly, yes.  
14 Q And once Travis left, is that when Terry Davis came  
15 onboard?  
16 A Travis? No, Travis is still around, he's just kind of  
17 too busy with the concrete stuff. So I think Terry helps him out  
18 as sort of his right-hand man type of thing. I think his position  
19 is sort of, yeah.  
20 Q Are you aware of any conversations amongst the ownership  
21 and/or management related to the possibly of litigation involving  
22 this accident after July 2014?  
23 MR. BROWN: Objection, vague as to time.  
24 Go ahead.  
25 THE WITNESS: No, there was no talk about that. Nobody

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1 was talking about that.  
2 BY MS. WOELFEL:  
3 Q Was there any instruction or discussion regarding  
4 preserving the evidence after this incident occurred on July 7th  
5 of 2014?  
6 A No. Once again, we didn't think it -- we did not think  
7 it was an issue.  
8 I think the Highway Patrol came out and did an  
9 inspection as well after this happened.  
10 Q When did the Highway Patrol do their inspection?  
11 A I might be misspeaking here, but I believe they did --  
12 came out the following day, did a cursory inspection. I'm not --  
13 follow-up to their --  
14 Q And did they come to the yard to do that inspection?  
15 A I think so, yes.  
16 Q Were you there when this inspection occurred?  
17 A Possibly not. I might have been out driving that day.  
18 Q Do you know who was there when this inspection occurred?  
19 A If it did, in fact, occur, which I'm not sure -- like I  
20 said, I believe it did -- Tracy Shane would have been there, and  
21 Pat Bigby would have been there.  
22 Whether they participated in it or they just let the  
23 Highway Patrol do their job, I'm not sure.  
24 Q Do you have any documents in MDB's possession related to  
25 this inspection by the Highway Patrol?

<p style="text-align: right;">Page 194</p> <p>1 before your deposition? Did you talk about anything else with  2 respect to your testimony the day before?</p> <p>3 A Oh, no. No.</p> <p>4 Q Did you get any more clarification or talk through any  5 other issues?</p> <p>6 A Huh-uh.</p> <p>7 MR. BROWN: Is that a "no"?</p> <p>8 THE WITNESS: Huh?</p> <p>9 MR. BROWN: Is that a "no"?</p> <p>10 THE WITNESS: Oh, yeah, no, we did not. We had other --  11 other projects we were trying to figure out before I had to take  12 off to go to deposition. So, no.</p> <p>13 BY MS. WOELFEL:</p> <p>14 Q So the only item that you discussed with Pat related to  15 your testimony or sought clarification from him this morning was  16 on the document that's Bates-labeled MDB 256; is that correct?</p> <p>17 A Yes, that's correct.</p> <p>18 Q Did you talk to any person other than Pat this morning,  19 you know, about seeking clarification or checking on the stuff  20 that you had testified about?</p> <p>21 A No, I did not talk to anybody.</p> <p>22 Q All right. Next page, MDB 258, date on there is  23 July 2nd, 2014. What's going on with this work order?</p> <p>24 A Same trailer again, came in with ABS light on again. He  25 would have done -- gone through his typical diagnostics test.</p>	<p style="text-align: right;">Page 196</p> <p>1 Q You don't keep those?</p> <p>2 A No.</p> <p>3 Q For any purpose.</p> <p>4 Okay. And then the next page -- it's actually out of  5 chron order here and we have discussed it. It's a repeat. Ignore  6 that one.</p> <p>7 A Okay.</p> <p>8 MS. WOELFEL: It's 5 o'clock right now. Why don't we  9 break and pick it up in the morning.</p> <p>10 THE WITNESS: Okay.</p> <p>11 MS. WOELFEL: And we'll shoot to have you done by  12 noontime. We'll do our best to make it happen. Okay?</p> <p>13 THE WITNESS: Okay.</p> <p>14 MS. WOELFEL: Thank you very much.</p> <p>15 THE WITNESS: Yes. Thank you.</p> <p>16 MS. SHREVE: Bye, everyone on the phone.</p> <p>17 (The proceedings concluded at 4:59 p.m.)</p> <p>18 -o0o-</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 195</p> <p>1 hooking the computer to it, found both sensors wires to the front  2 sensors damaged, replaced both wires.</p> <p>3 Q And with respect to the wires that he removed, he would  4 have thrown those away, correct?</p> <p>5 A Yes.</p> <p>6 Q Next page, MDB 262, that is the work order that was  7 completed on July 8th, 2014. Can you tell me what's going on with  8 this one.</p> <p>9 A Okay. Apparently, six days later, came back with the  10 ABS light on again, did the same troubleshooting and found BU-1  11 circuit fault. Traced circuit to the extension cable, replaced  12 cable and cleaned or cleared codes.</p> <p>13 Q Okay.</p> <p>14 A This time, he found the problem with the extension  15 cable.</p> <p>16 Q So the first fix on July 2nd didn't repair the problem.  17 It looks like the repair that Pat did six days later found the  18 source of that issue?</p> <p>19 A I would say that he replaced the sensors, and the sensor  20 wires go to an extension that goes the rest of the way. So  21 apparently -- replacing both sensor wires didn't fix it or just a  22 coincidence that the extension cable was also broken. But, yeah.</p> <p>23 Q And with respect to the items he replaced, he would  24 throw the ones he removed away; is that correct?</p> <p>25 A Yeah. No, we do not have those.</p>	<p style="text-align: right;">Page 197</p> <p>1 REPORTER'S CERTIFICATION</p> <p>2</p> <p>3 I, CONSTANCE S. EISENBERG, a Certified Court Reporter in  4 and for the State of Nevada, do hereby certify:</p> <p>5 That on Tuesday, March 7, 2017, at the hour of 9:45 a.m.  6 of said day, at 100 W. Liberty St., 10th Floor, Reno, Nevada,  7 personally appeared SCOTT ALLEN PALMER, who was duly sworn by me to  8 testify in the within-entitled proceedings;</p> <p>9 That said deposition was taken in verbatim stenotype  10 notes by me and thereafter transcribed into typewriting as herein  11 appears;</p> <p>12 That I am not a relative nor an employee of any of the  13 parties, nor am I financially or otherwise interested in this  14 action;</p> <p>15 That the foregoing transcript, consisting of 197 pages  16 through 197, is a full, true and correct transcription of my  17 stenotype notes of said deposition.</p> <p>18 DATED: At Reno, Nevada, this 16th day of March, 2017.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">           CONSTANCE S. EISENBERG, CCR #142, RMR, CRR       </p>

ERRATA SHEET

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5 I declare under penalty of perjury that I have read the  
6 foregoing \_\_\_\_\_ pages of my testimony, taken  
7 on \_\_\_\_\_ (date) at  
8 \_\_\_\_\_ (city), \_\_\_\_\_ (state),  
9  
10 and that the same is a true record of the testimony given  
11 by me at the time and place herein  
12 above set forth, with the following exceptions  
13

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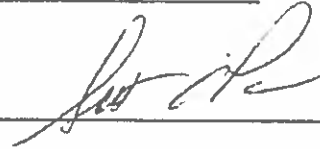

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1 1520  
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MDB TRUCKING, LLC

6  
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
8 IN AND FOR THE COUNTY OF WASHOE  
9

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

12 Plaintiffs,

13 vs.

14 MDB TRUCKING, LLC; DANIEL  
ANTHONY KOSKI; ABC Corporations I-X,  
15 Black and White Companies, and DOES I-  
XX, inclusive,

16 Defendants.  
17

18 AND ALL RELATED CASES  
19

CASE NO. CV15-02349

DEPT. NO. 10

CONSOLIDATED PROCEEDING

20 **DECLARATION BY DAVID R. BOSCH, Ph.D**

21 COMES NOW, David R. Bosch, Ph.D. declares under penalty of perjury that the  
22 foregoing is true and correct as follows:

- 23 1. I am over the age of 18 and have personal knowledge of the facts stated herein.  
24 2. This declaration is prepared in connection with Defendant MDB's Opposition to  
25 Versa's Motion for Sanctions based upon the doctrine of spoliation;  
26 3. I have been retained as forensic expert in the above-entitled matter by the  
27 Defendant MDB; a true and correct copy of my resume is attached hereto as Exhibit 1;  
28 4. Erik S. Anderson of Anderson Engineering of New Prague has also been

1 retained as a forensic expert in the above-entitled matter by the Defendant MDB; his  
2 resume is attached hereto as Exhibit 2;

3 5. Both myself and Mr. Anderson have been working extensively on this  
4 litigation since our retentions including inspections of the subject MDB Peterbilt truck and  
5 Ranco trailers that were driven Mr. Daniel Koski on the day of the accident of July 7, 2014  
6 as well as subsequent destructive testing of the Versa solenoid valves manufactured by  
7 Versa Products Company, Inc. that self activated on July 7, 2014 opening the gates of the rear  
8 Ranco bottom dump and releasing gravel on the I80 west highway;

9 6. Self activation is defined by us as an activation of the subject Versa solenoid  
10 valve without active human intervention or current from the truck's electric system which  
11 energizes the valve to open the gates with the switch in the open or off position;

12 7. I have reviewed Versa's Motion for Sanctions and related spoliation; and; in  
13 particular Exhibits 2; 3; 4; 6; 7 & 8.

14 8. Neither Mr. Palmer or Mr. Bigby as lay persons are experts in the fields of  
15 mechanical engineering, electrical engineering, or failure analysis; and they are not qualified to  
16 proffer opinions on the possible cause of the failures of the subject Versa solenoid valves on the  
17 day of the accident of July 7, 2017 especially as to whether there was a manufacturing or  
18 design defect in the subject Versa Products Company, Inc.'s solenoid valves; and as lay persons  
19 would not understand the use of the term "defect" as employed in their respective depositions;

20 9. Even though both myself and Mr. Anderson have rendered preliminary opinions  
21 as to the absence of human intervention or error by Mr. Koski; and the absence of a mechanical  
22 wiring or ground fault that could have activated the subject rear Ranco Versa solenoid device, we  
23 continue to conduct our forensic investigations on the possible causes of the unit's self activation  
24 which could include a failure to adequately shield the subject Versa solenoid devices and/or the  
25 sources of electro magnetic fields [EMF] sufficient to have energized the subject rear Ranco  
26 Versa valve involved in this accident;

27 10. I can state to a reasonable degree of certainty more probable than possible that  
28 there could not have been spoliation of evidence because the configuration of the wiring and

1 switching that was created after the first errant dump in July 29, 2013 eliminated any chance that  
2 the subject's MDB truck's electrical system could again errantly active the rear Ranco trailer  
3 on the day of the accident in July 7, 2014.

4 11. The routine maintenance of the subject Peterbuilt truck and rear Ranco trailers  
5 which occurred after August 1, 2013 or after the accident of July 7, 2014 would have absolutely  
6 no impact on the rear Ranco Versa solenoid valve as to cause the self activation of the Versa  
7 valve.

8  
9  
10 DATED this 30 May, 2017.

11   
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13 

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DAVID R. BOSCH, Ph.D.  
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DATED this 2nd day of <sup>June</sup> ~~May~~, 2017.

By: MAJ. [Signature]

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Thorndal Armstrong Delk Balkenbush & Eisinger, and that on this date I caused the foregoing **DECLARATION BY DAVID R. BOSCH, Ph.D** to be served on all parties to this action by:

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

  x   Second Judicial District Court Eflex ECF (Electronic Case Filing)

\_\_\_\_\_ hand delivery

\_\_\_\_\_ electronic means (fax, electronic mail, etc.)

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

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DATED this   2   day of June, 2017.

  
An employee of Thorndal Armstrong  
Delk Balkenbush & Eisinger

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## INDEX OF EXHIBIT(S)

Exhibit No.	Exhibit Description	No. of Pages
1	David R. Bosch, Ph.D. Resume	5
2	Erik S. Anderson Resume	3

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11 DISTRICT COURT  
12 WASHOE COUNTY, NEVADA

13 ERNEST BRUCE FITZIMMONS and  
14 CAROL FITZSIMMONS, Husband and  
Wife,

15 Plaintiffs,

16 vs.

17 MDB TRUCKING, LLC, et. al.

18 Defendants.

19 AND ALL RELATED CASES.  
20  
21

Case No. CV15-02349

Dept. 10

DEFENDANT/CROSS-  
CLAIMANT/CROSS-DEFENDANT  
VERSA PRODUCTS COMPANY, INC.'S  
REPLY TO MDB'S OPPOSITION TO  
VERSA PRODUCTS COMPANY, INC.'S  
MOTION TO STRIKE MDB TRUCKING,  
LLC'S CROSS-CLAIM PURSUANT TO  
NRCP 37; OR IN THE ALTERNATIVE,  
FOR AN ADVERSE JURY INSTRUCTION

22 COMES NOW, Defendant/Cross-Claimant/Cross-Defendant VERSA PRODUCTS  
23 COMPANY, INC., by and through its attorneys of record, Josh Cole Aicklen, Esq., David  
24 B. Avakian, Esq. and Paige S. Shreve, Esq., of the law firm LEWIS BRISBOIS  
25 BISGAARD & SMITH, LLP, and hereby replies to MDB's Opposition to VERSA  
26 PRODUCTS COMPANY, INC.'s Motion to Strike MDB's Cross-claim and/or for an  
27 Adverse Jury Instruction as follows:  
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 MDB TRUCKING LLC's ("MDB") Opposition fails for three easily identifiable errors.  
4 Specifically, the Opposition 1) misidentifies the type of underlying Motion; 2)  
5 mischaracterizes the salient legal issues; and 3) misapplies the facts of the underlying  
6 case.

7 A. Motion to Strike

8 VERSA PRODUCTS COMPANY, INC. ("VERSA") acknowledges that the Pretrial  
9 Order and WDCR 12(6) require a meet and confer prior to a party filing a discovery  
10 motion. See, MDB's Opposition P. 2:21-25. However, VERSA's Motion to Strike  
11 ("Motion") is in no way a discovery motion. Rather, *VERSA's Motion is a case dispositive*  
12 *motion*, akin to a Motion for Summary Judgment or Motion to Dismiss, and, thus, is not a  
13 discovery motion subject to the aforementioned meet and confer requirements.  
14 Accordingly, VERSA's Motion is properly before the Court and it appears that MDB only  
15 proffered such argument to distract from the true issue at hand: spoliated evidence and  
16 case dispositive sanctions.

17 B. Relevancy of Spoliated Evidence

18 MDB is concerned with identifying how the subject valve allegedly activated. See,  
19 Dr. David R. Bosch's Declaration filed concurrently with MDB's Opposition P. 2:5-11.  
20 Indeed, MDB's own expert has refined the issue as to understanding the sources of  
21 electric currents and magnetic fields that could have energized the subject valve. See, Id.  
22 at P. 2:20-26. Thus, it logically follows that *anything* involving electric currents or  
23 magnetic fields that interacts or supplies electricity to the subject valve is highly *relevant*  
24 to the instant action. However, MDB invites the Court to ignore the undisputed fact that  
25 *MDB discarded the electrical parts MDB used to supply electricity to the subject valve*  
26 *after the instant litigation and continued to discard the components for over a year and a*  
27 *half after the first lawsuit was filed.* See, VERSA's Motion for Spoliation at Exhibit 3 P.  
28 169:16-22.

1 To sidestep this issue, MDB's Expert, Dr. Bosch, declared that:

2 "[t]he configuration of the wiring and switching that was  
3 created after the first errant dump in July 29, 2013, eliminated  
4 any chance that the subject's MBD truck's electrical system  
could again errantly active [*sic*] the rear Ranco trailer on the  
day of the accident in July 7, 2014."

5 See, Dr. David R. Bosch's Declaration filed concurrently with MDB's Opposition P. 3:1-3.

6 Unfortunately, this statement only fortifies VERSA's argument that VERSA is  
7 prejudiced because VERSA cannot test Dr. Bosch's opinion since MDB destroyed the  
8 parts of the subject electrical system. To provide proper context, it is important to note  
9 how the subject truck, its trailers, and the corresponding electrical components work  
10 together. MDB's PMK, Scott Palmer testified regarding how the electrical components  
11 that were thrown out are connected to the subject valve and how those connections are  
12 the only way to electrically energize the valve:

13 Q. When MDB did their rewiring of Truck 5694 and the  
14 reinstallation -- or, sorry, not reinstallation but the installation of  
15 the Versa valve in Trailer 6775, where does the wire that goes  
16 to the Versa valve go in the actual truck? What connects it from  
the switch to the Versa valve with the new wiring that was put in  
place?

17 MR. PALMER: Okay. The positive side of the wire that goes to  
18 the solenoid that travels down the 4-way through all the  
subsequent trailers into the tractor, that would go to Switch No.  
19 3, the third one to the right, and that switch would get its power  
from the master switch.

20 Q. Okay. Stop you right there.

21 MR. PALMER: Yes.

22 Q. So when you say that would get the power, is there another  
23 wire that connects from the third switch to the master switch,  
then?

24 MR. PALMER: Yes.

25 Q. Okay. Is it the same wire that's coming from the Versa  
26 valve through the trailers to the Switch No. 3?

27 MR. PALMER: It's not the same wire, no.

28 Q. It's a different wire.

MR. PALMER: Yes. There's two terminals on the switch.

1 One terminal goes all the way to the back trailer to the solenoid  
2 and the other terminal goes to one of the terminals on the  
3 master switch. And when you put the switch in the on position,  
4 that closes the circuit and completes the circuit between those  
5 two wires and that's what supplies the actual power to the  
6 trailer.

7 Q. So from the master switch where does that wire go to?

8 MR. PALMER: The wire goes from the other terminal of the  
9 master switch -- I would say to call that the input terminal -- and  
10 that would go directly to the positive terminal on the battery with  
11 an inline fuse.

12 See, VERSA's Motion for Spoliation at Exhibit 2 P. 83:6-25;841-19.

13 Q. Okay. So if you do not activate the Versa valve on  
14 Trailer 6775 manually, am I correct that the only other  
15 way to activate it is electrically?

16 Is that correct?

17 MR. PALMER: Yes, that is correct.

18 Q. Okay. And where does that electricity come from in  
19 activating it if you are activating it electrically?

20 MR. PALMER: We're still talking about it comes from the - the  
21 power unity of the tractor? Is that what you're - - it comes from  
22 whatever truck just happens to be pulling that trailer.

23 Id. at P. 70:10-23.

24 Q. Okay. So when installing the Versa valve in 6775, if the  
25 two wires from the trailer were not attached to the Versa  
26 valve, could the Versa valve be activated electrically with  
27 the switch?

28 MR. PALMER: Can you please clarify when you say "attached  
to the trailer"? You're talking attached to the trailer wiring?

Q. The trailer wiring, yes.

MR. PALMER: That would be correct, yes. It could not, not  
from the tractor, no.

Id. at P. 72:2-13.

Q. No. The question is if the two wires on the Versa valve  
are not connected to the two wires in the truck, what are  
the ways the valve can be activated?

MR. PALMER: If the wires are not connected from the solenoid  
from the Versa valve to the wiring system of the trailer's tractor,  
the only other way for us to activate it purposefully is manually.

1 Id. at P. 73:24-25;74:1-8.

2 Accordingly, without such electrical parts, VERSA is highly prejudiced because  
3 VERSA cannot properly defend itself by demonstrating that such parts activated the  
4 subject valve rather than there being a defect in the subject valve, which would  
5 consequently nullify MDB's self activation claim.

6 **C. MDB Had Notice that the Spoliated Evidence Was Highly Relevant**

7 MDB's driver (DANIEL KOSKI) was involved in a serious twenty car injury accident  
8 as a result of one of MDB's trucks releasing a truckload of material onto a busy interstate  
9 highway. With so many parties involved and due to the gravity of the event, it is clear that  
10 *MDB was on notice that there was potential litigation on the horizon* where MDB's truck,  
11 and *all parts relating to the truck bed's opening, would be relevant evidence*. Accordingly,  
12 MDB's argument that it did not have notice that the truck, trailer, and electrical parts were  
13 relevant is meritless. MDB cannot hide under the pretext that it discarded such highly  
14 relevant evidence because of "routine maintenance." In any event, MDB's notice  
15 argument is completely meritless because the majority of spoliated evidence occurred  
16 *after* the first Complaint was filed.

17 **II. LEGAL ARGUMENT**

18 **A. VERSA'S Motion to Strike Is a Case Dispositive Motion, Not a Discovery Motion**

19 A motion for sanctions is not a discovery motion. Endurance Am. Specialty Ins. Co.  
20 v. Lance-Kashian & Co., No. CV F 10-1284 LJO DLB, 2011 U.S. Dist. LEXIS 117674, at  
21 \*7 (E.D. Cal. Oct. 12, 2011).<sup>1</sup> A dispositive motion is not a discovery motion. Balsam  
22 Brands Inc. v. Cinmar, LLC, No. 3:15-cv-04829-WHO, 2016 U.S. Dist. LEXIS 168573, at  
23 \*6 (N.D. Cal. Dec. 6, 2016).

24 Here, VERSA's Motion to Strike is a dispositive motion, nothing else. Simply put,

25 \_\_\_\_\_  
26 <sup>1</sup> Rule 37(b) does not have a meet and confer requirement; a movant seeking sanctions for failure to  
27 comply with court order need not either move to compel compliance or meet and confer with non-compliant  
28 party. Sharp v. Chase Manhattan Bank USA, N.A. (In re Commer. Fin. Servs.), Nos. 98-05162-R, 98-  
05166-R, 03-0008-R, 2005 Bankr. LEXIS 3488, at \*14 (U.S. Bankr. N.D. Okla. May 10, 2005)

1 due to MDB's spoliation of critical, highly relevant evidence, VERSA is requesting this  
2 court strike MDB's Complaint pursuant to NRCP 37(b). Applying Endurance Am. and  
3 Balsam Brands, because VERSA's Motion is a dispositive motion, seeking case  
4 terminating sanctions, *VERSA's Motion is not discovery motion*. Additionally, any meet  
5 and confer with MDB would have been frivolous, as MDB would never have agreed to  
6 strike its Complaint due to its client's own spoliation of evidence. Accordingly, because  
7 VERSA's Motion is not a discovery motion, it is not subject to the meet and confer  
8 requirement contained in the Pretrial Order and WDCR 12(6). Therefore, *VERSA's*  
9 *motion is properly before this Court*. Assuming *arguendo* the Court disagrees, a meet  
10 and confer conference would have been frivolous as MDB would not have agreed to  
11 strike their Complaint due to its own spoliation of evidence.

12 **B. The Electrical Components MDB Discarded Are Absolutely Relevant to this Case**

13 "Relevant evidence" means evidence having any tendency to make the existence  
14 of any act that is of consequence to the determination of the action more or less probable  
15 than it would be without the evidence. See, NRS 48.015.

16 Incredulously, MDB asserts that the electrical components that MDB discarded are  
17 not relevant. See, Dr. David R. Bosch's Declaration filed concurrently with MDB's  
18 Opposition P. 2:27-28;3-1:3. However, the issue, especially as MDB defines it, is  
19 identifying the electrical or magnetic force that allegedly activated the subject valve.  
20 Clearly, applying NRS 48.105, *the electrical parts that MDB discarded are relevant*  
21 *because they have a tendency to show that something other than a defect in the subject*  
22 *valve led to the subject valve activating* - likely, an issue with MDB's electrical system that  
23 supplies electricity to the subject valve. Further, MDB's own mechanic testified that he  
24 originally thought the alleged opening of the belly dump was due to "a short inside the  
25 electrical system." See, VERSA's Motion for Spoliation at Exhibit 8 P. 48:4-5.

26 Thus, VERSA is prejudiced because MDB is using its self-activating energy theory  
27 as a sword to creativity assign relevancy to the subject valve, while simultaneously using  
28 the theory as a shield to deny that the electricity supplying components MDB discarded

1 are not relevant. Moreover, Dr. Bosch's expert opinion that MDB's modifications to the  
2 subject truck eliminated any chance that the truck's electrical system would have  
3 activated the valve at the time of the accident is also unduly prejudicial because VERSA  
4 cannot test and defend against such claims without the subject component parts.

5 C. MDB Improperly Mislabels Its Discarding of Relevant Evidence as "Routine  
6 Maintenance"

7 The Nevada Supreme Court finds conduct willful when the violating party fails to  
8 disclose evidence in a way that demonstrates "active concealment" or appears to be  
9 "intentional or at least highly reckless." N. Am. Props. v. McCarran Int'l Airport, No.  
10 61997, 2016 Nev. Unpub. LEXIS 487, at \*9 (Feb. 19, 2016).

11 Here, as already established, MDB was on notice that the subject truck, trailer, and  
12 all parts, both electrical and nonelectrical, were relevant to the litigation. However, instead  
13 of preserving such evidence, MDB continued to use the component business practices;  
14 thus, creating forced and unnecessary wear and tear. Then MDB conducted "routine  
15 maintenance" whereby MDB destroyed highly relevant electrical components that  
16 interacted with the subject valve and discarded such components to VERSA's detriment.

17 Moreover, even assuming *arguendo* that MDB conducted the routine maintenance in  
18 good faith, MDB at a minimum should have set aside and preserved the component parts  
19 from the subject truck and trailer. Accordingly, applying N. Am. Props., MBD's conduct of  
20 reusing the valve and component parts and discarding the subject electrical components  
21 upon their removal, was willful because MDB's destructive conduct was either intentional  
22 or at the very least highly reckless.

23 ///

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1     III.     CONCLUSION

2             Based on the foregoing, VERSA respectfully requests that the Court grant  
3     VERSA's Motion and strike MDB's cross-claims, or in the alternative, issue an adverse  
4     jury instruction at trial.

5                             AFFIRMATION

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

8             DATED this 12th day of June, 2017

9                             Respectfully submitted,

10                            LEWIS BRISBOIS BISGAARD & SMITH LLP

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12  
13                            By             /s/ David B. Avakian

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24                                     PRODUCTS COMPANY, INC.  
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1 CERTIFICATE OF SERVICE

2 I hereby certify that on this 12th day of June, 2017, a true and correct copy  
3 of DEFENDANT/CROSS-CLAIMANT/CROSS-DEFENDANT VERSA PRODUCTS  
4 COMPANY, INC.'S REPLY TO MDB'S OPPOSITION TO VERSA PRODUCTS  
5 COMPANY, INC.'S MOTION TO STRIKE DEFENDANT/CROSS-CLAIMANT/CROSS-  
6 DEFENDANT MDB TRUCKING, LLC'S CROSS-CLAIM PURSUANT TO NRCP 37; OR  
7 IN THE ALTERNATIVE, FOR AN ADVERSE JURY INSTRUCTION was served via U.S.

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18 /s/ Susan Kingsbury  
An Employee of  
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26 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
27 **IN AND FOR THE COUNTY OF WASHOE**

28 ERNEST BRUCE FITZSIMMONS and  
CAROL FITZSIMMONS, Husband and  
Wife,

Plaintiffs,

vs.

MDB TRUCKING, LLC, et al.,

Defendants.

AND ALL RELATED CASES.

Case No.: CV15-02349

Dept. No.: 10

[Consolidated Proceeding]

**MDB TRUCKING LLC'S OPPOSITION  
TO DEFENDANT/CROSS-  
CLAIMANT/CROSS-DEFENDANT  
VERSA PRODUCTS COMPANY, INC.'S  
MOTION FOR SUMMARY JUDGMENT  
AGAINST DEFENDANT/CROSS  
CLAIMANT/CROSS-DEFENDANT MDB  
TRUCKING, LLC'S CROSS-CLAIMS**

Defendant/Cross-Claimant, MDB Trucking, LLC ("MDB"), by and through its  
counsel of record, the law firms of Morris Polich & Purdy and Thorndal Armstrong Delk

1 Balkenbush & Eisinger, hereby files the instant Opposition to Defendant/Cross-  
2 Claimant/Cross-Defendant Versa Products Company, Inc.'s Motion For Summary Judgment  
3 Against Defendant/Cross Claimant/Cross-Defendant MDB Trucking, LLC's Cross-Claims  
4 ("Opposition").

5 This Opposition is made and based on the following Memorandum of Points and  
6 Authorities; the Declaration of Colleen E. McCarty, attached hereto as **Exhibit A**, and the  
7 exhibits thereto; the pleadings and papers on file herein; and any oral argument the Court  
8 may permit at the hearing of this matter.  
9

10 DATED this 7<sup>th</sup> day of July, 2017.

11 MORRIS POLICH & PURDY LLP

12  
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26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I.**

28 **INTRODUCTION**

Defendant/Cross-Claimant/Cross-Defendant Versa Products Company, Inc.  
("Versa"), pursuant to its Motion for Summary Judgment Against Defendant/Cross-  
Claimant/Cross-Defendant MDB Trucking, LLC's Cross-Claims ("Motion"), contends that

1 summary judgment as to MDB's contribution claim should be granted in its favor because  
2 Plaintiffs were not injured by a Versa valve. Specifically, Versa argues that (1) there was no  
3 defect in the Versa valve at issue; (2) MDB did not seek Versa's advice when purchasing the  
4 subject Versa valve; and (3) MDB, not Versa, installed the subject valve.

5 In short, Versa is attempting to convince the court to dismiss the claims against it by  
6 ignoring the clear import of expert analysis and opinion, and instead rely on speculative  
7 testimony by MDB employees who have neither the experience nor expertise to comment on  
8 design deficiency. Indeed, Versa's Motion must fail because the expected expert testimony  
9 will establish, among other things that (1) the Versa valve is defective in its design, as they  
10 are susceptible to inadvertent activation due to environmental conditions, which is the only  
11 logical explanation for the unintended dump at issue; (2) the accident in question was not  
12 caused by any action, or inaction, of MDB or its employees; and (3) there were no vehicle  
13 issues that could have caused the Versa valve to activate and dump the load in question.

14 For purposes of a motion for summary judgment, these properly pleaded and  
15 supported facts must be accepted as true, and they create multiple genuine issues of material  
16 fact for the jury.

## 17 II.

### 18 STATEMENT OF DISPUTED FACTS

19 Versa takes great liberty with its Statement of Undisputed Facts by including factual  
20 assertions that are heavily disputed and legal conclusions favorable to Versa. Contrary to  
21 Versa's self-serving version of events, MDB sets forth the following background detailing  
22 the many relevant disputed facts at issue in the instant litigation.

23 ///

24 ///

1           **A. Subject Accident.**

2           The underlying action stems from a multi-vehicle accident on July 7, 2014 on  
3 Interstate 80, near mile marker 37, outside of Reno, Nevada. *See e.g.* First Amended  
4 Complaint, Case No. CV17-00514, at p. 6-10. The accident occurred when an MDB  
5 Peterbilt truck pulling three rear Ranco trailers, driven by Daniel Koski, inadvertently  
6 released its load of gravel from the last trailer onto the Interstate. *See id.* Mr. Koski was  
7 initially unaware that the third trailer accidentally released. *See Ex. A-1* at 54:1-2. He  
8 further took no affirmative action to cause the trailer to open. *See id.* at 56:8-11. Following  
9 the inadvertent release of gravel onto the Interstate, multiple vehicles collided and were  
10 damaged, and in some instances, their occupants sustained injuries. *See e.g.* First Amended  
11 Complaint, Case No. CV17-00514, at p. 4:6-13.  
12

13           **B. Subject Valve.**

14           The Ranco trailers owned and operated by MDB incorporated a valve that controls the  
15 air pressure utilized to operate the gates of the dumping system. *See Ex. A-2* at 4. The  
16 dumping gate valve on the Ranco trailer at issue was manufactured by Versa, part number  
17 VGK-5423-20C-D012. *See id.* Following several inadvertent activations of the Versa valve  
18 in the same tractor/trailer combination in July of 2013, also on Interstate 80 near mile marker  
19 37, MDB replaced what it suspected was a defective Versa valve with a new Versa valve.  
20 *See Ex. A-3* at 95-96. MDB purchased the new Versa valve on July 31, 2013 from Engs  
21 Motor Truck Company. *See id.* at 96:23-25 and 97:1-4. MDB mechanic, Patrick Bigby  
22 performed the installation. *See id.* at 97:21-23. Unbeknownst to MDB at the time, beginning  
23 in 2002, Versa manufactured a safer valve design which included a manual locking system.  
24 *See Ex. A-4* at 90-91.  
25  
26  
27  
28

1 Also on July 7, 2014, another MDB-owned tractor/trailer combination driven by  
2 MDB employee Scott Palmer experienced an unexplained activation of the Versa valve on  
3 Interstate 80 near mile marker 42. *See* Ex. A-2 at 3. As a result of the inadvertent activation,  
4 which occurred approximately ten minutes prior to that experienced by Mr. Koski, the third  
5 trailer released its load of sand on the Interstate. *See id.* Like Mr. Koski, Mr. Palmer took no  
6 affirmative action to cause the trailer to open. *See id.* There were no accidents associated  
7 with the spill. *See id.* Following the July 7, 2014 incidents, MDB removed all of its bottom  
8 dump trailers from the road and its maintenance team manufactured and installed a pin lock  
9 system to prevent self-activation of the Versa valves before re-deploying the trailers. *See* Ex.  
10 A-3 at 64. Following the subject incident in 2014, MDB's mechanics attempted,  
11 unsuccessfully, to isolate the cause of the dumps. *See* Ex. A-3 at 61-62.  
12

13  
14 As a result, in November of 2014, MDB retained two forensic engineering experts,  
15 David Bosch, Ph.D. and Erik Anderson, P.E., C.F.E.I., to provide an independent forensic  
16 engineering investigation of the accident at issue in the instant litigation. *See* **Ex. A-5 and A-**  
17 **2**, respectively. Among Dr. Bosch's conclusions, within a reasonable degree of scientific and  
18 engineering certainty:  
19

20 ...

21 13.9 Forensic Engineering's investigation revealed that there were no electrical  
22 issues associated with the tractor unit 5694 or trailer units 6772, 6774, 6775 that  
23 caused the July 2014 unintended dump of crushed rock from trailer unit 6775 that  
lead to plaintiffs' injuries.

24 13.10 Forensic Engineering's investigation revealed that there were no electrical  
25 issues associated with tractor unit 5693 or trailer units 6776, 6777, or 6778 that  
26 caused the July 2014 unintended dump of sand from trailer unit 6778 near the same  
time and location as the trailer unit 6775 dump.

27 ...  
28

1 13.15 MDB Trucking's competitors have had many other unintended dumps from  
2 bottom dump trailers using the Versa valve, as documented during FEI's  
investigation.

3 13.16 In most of the unintended dump cases, an electrical issue associated with the  
4 truck or trailer(s) has been investigated and determined to not have been the root  
cause of the dump.

5 13.17 The only logical explanation for the numerous unintended dumps is that the  
6 Versa valve design is defective.

7 13.18 The Versa valve part number VGK-4523-20C-D0 is defective.

8 13.19 The Versa valve part number VGK-4523-20C-D0 is unreasonably dangerous.

9 ...  
10

11 13.22 There were no vehicle issues that could have caused the Versa valve to  
12 activate and dump loads.

13 13.23 There is no evidence that the drivers caused the unintended dumps.

14 See Ex. A-5 at 58 (Emphasis Added).

15 Similarly, Mr. Anderson concluded:

16 It is my opinion, within a reasonable degree of engineering certainty, based up on my  
17 experience, education, and background, my examination of the vehicles and the Versa  
18 valve, my interviews, and the information supplied, that the inadvertent activation and  
19 dumping of the Ranco trailers that occurred on July 7, 2014, at approximately 9:00  
a.m. on Interstate 80 West at mile marker 38 outside of Wadsworth, Nevada, was not  
due to any action, or inaction, of MDB Trucking or its employees or drivers.

20 Further it is my opinion that the Versa valves are defective in design as they are  
21 susceptible to accidental activation from an external magnetic field.

22 See Ex. A-2 at 17 (Emphasis Added).

23 Versa too hired an expert, Garrick F. Mitchell, P.E., to conduct an investigation into  
24 the cause of the July 7, 2014 spill involving Mr. Koski. See Ex. A-6. In his expert report,  
25 Mr. Mitchell was unable to determine, or even opine, as to a possible cause of the inadvertent  
26 activation. Mr. Mitchell concluded:  
27

28 ...

7. The root cause of the incident is not known from the available information. However, there was no evidence the Versa valve did anything other than function as designed.

*See* Ex. A-6 at 2 (Emphasis Added).

Although the parties intend to rely heavily on the testimony of their retained engineering experts, recent motion practice initiated by Versa, including the instant Motion has inexplicably and improperly focused on the testimony of MDB employees, lay persons, to support Versa's contention that the Versa valve is not defective. To address this issue, Dr. Bosch filed a declaration in support of Defendant MDB's Opposition to Versa's Motion for Sanctions. *See Ex. A-7*. In it, Dr. Bosch states in pertinent part:

8. Neither Mr. Palmer or Mr. Bigby as lay persons are experts in the fields of mechanical engineering, electrical engineering, or failure analysis; and they are not qualified to proffer opinions on the possible cause of the failure of the subject Versa solenoid valves on the day of the accident of July 7, 2017 [sic] especially as to whether there was a manufacturing or design defect in the subject Versa Products Company, Inc.'s solenoid valves; and as lay persons would not understand the use of the term "defect" as employed in the respective depositions;

*See* Ex. A-6 at 2:14-19.

Regardless of the source, whether it be MDB employees, or the experts retained by MDB and Versa, the above-referenced investigative analyses evidence the clear genuine issues of material fact regarding the cause of the malfunction of the Versa valve and the resulting self-activation.

### III.

## LEGAL ARGUMENT

### A. Legal Standard.

In granting summary judgment, the district court must take great care. *Johnson v. Steel, Inc.*, 100 Nev. 181, 678 P.2d 676 (1984); *see also Montgomery v. Ponderosa Constr., Inc.*, 101 Nev. 416, 705 P.2d 652 (1985). Under Rule 56 of the Nevada Rules of Civil

1 Procedure, summary judgment is appropriate only if no genuine issues of material fact remain  
2 and the moving party is entitled to judgment as a matter of law. NRCP 56(e); *see also Wood*  
3 *v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). A genuine issue of  
4 material fact exists when “the evidence is such that a reasonable jury could return a verdict  
5 for the non-moving party.” *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 441  
6 (1993); *see also Delgado v. American Family Ins. Group*, 125 Nev. 564, 571, 217 P.3d 563,  
7 568 (2009). As such, “if there is conflicting evidence on a material issue, or if reasonable  
8 persons could draw different inferences from the facts, the question is one of fact for the jury  
9 and not one of law for the court.” *Reyburn Lawn & Landscape Designers, Inc. v. Plaster*  
10 *Dev. Co., Inc.*, 127 Nev. Adv. Op. 26, 255 P.3d 268, 275 (2011); *A.I. Credit Corp. v. Gohres*,  
11 299 F.Supp.2d 1156, 1158 (D. Nev. 2004) (holding that, where reasonable minds could differ  
12 on the material facts, summary judgment is not appropriate).

15 The party moving for summary judgment has the initial burden of production; that is  
16 demonstrating to the Court that there is no genuine issue of any material fact to be decided.  
17 *See, e.g., Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134  
18 (2007). This burden is not easily satisfied as the evidence and all reasonable inferences  
19 drawn from the evidence must be viewed in the light most favorable to the non-moving party.  
20 *See Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 137, 206 P.3d 572, 575 (2009). If the party  
21 moving for summary judgment fails to meet its initial burden of production, the opposing  
22 party is under no obligation to produce anything, even if it ultimately has the burden of  
23 persuasion at trial. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970).

25 Indeed, “[a] successful summary judgment motion requires the moving party to  
26 demonstrate both the absence of genuinely contested material facts as well as a prima facie  
27 entitlement to judgment as a matter of law based upon undisputed evidence that would be  
28

1 admissible at trial (or upon a lack of evidence if the nonmoving party bears the burden of  
2 persuasion at trial). Only after both showings have been made does the burden shift to the  
3 opposing party to prove the existence of genuinely disputed material facts. [Citations  
4 omitted.] Summary judgment cannot be granted unless and until all of these requirements are  
5 satisfied.” *Nutton v. Sunset Station, Inc.*, 131 Nev. Adv. Op. 34, 2015 Nev. App. LEXIS 4,  
6 at\*23-24 (Nev. Ct. App. 2015).

7  
8 **B. MDB’s Contribution Claim Must Be Determined By the Trier of Fact.**

9 MDB’s claim of contribution, although a separate cause of action with its own statute  
10 of limitations, necessarily relies on a showing of Versa’s liability for its product’s defect.  
11 Although Versa is well-aware of the conflicting expert testimony regarding the Versa valve,  
12 both from Dr. Bosch and Mr. Anderson for MDB, and from its own expert, Garrick Mitchell,  
13 P.E., Versa inexplicably relies on the testimony of lay persons to argue that there are no  
14 disputed facts to preclude summary judgment in its favor. In doing so, Versa not only  
15 ignores the testimony of disclosed expert witnesses, it also fails to cite controlling Nevada  
16 case law with respect to strict products liability.  
17

18 Indeed, as a threshold matter, the credibility of circumstantial evidence linking a  
19 Versa valve defect to the underlying accident at issue is not properly before this Court. It is a  
20 determination to be left to the jury. *Stackiewicz v. Nissan Motor Corp. in U.S.A.*, 100 Nev.  
21 443, 452, 686 P.2d 925, 930 (1984). In Nevada, strict liability in tort extends to all products.  
22 *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 470 P.2d 135, 138 (Nev.1970). Generally, a strict  
23 products liability action requires a plaintiff to establish that: (1) defendant placed a defective  
24 product on the market; (2) the defect caused plaintiff’s injury; and (3) the defect existed when  
25 the product left the hands of defendant. *See Rivera v. Phillip Morris*, 125 Nev. 185, 209 P.3d  
26 271, 275 (Nev.2009); *Allison v. Merck & Co.*, 110 Nev. 762, 878 P.2d 948, 952 (Nev.1994)  
27  
28

1 (citation omitted); *Shoshone Coca-Cola Co. v. Dolinski*, 82 Nev. 439, 420 P.2d 855, 858  
2 (Nev.1966); *Ginnis*, 470 P.2d at 138. A plaintiff need not, however, produce direct evidence  
3 of a specific product defect or negate any alternative causes of the accident. *Stackiewicz v.*  
4 *Nissan Motor Corp.*, 100 Nev. 443, 686 P.2d 925, 927 (1984). An “unexpected, dangerous  
5 malfunction” suffices. *Id.* at 448.

6  
7 In *Stackiewicz*, the Nevada Supreme Court allowed a strict liability claim regarding an  
8 alleged spontaneous defect in the steering mechanism of a car, which caused a traffic  
9 accident, to go to a jury. *Stackiewicz*, 100 Nev. at 452. The Court concluded, “[w]hen there  
10 is evidence of some dangerous condition, the ‘factfinder can find, where other identifiable  
11 causes are absent, that the mere evidence of a malfunction is sufficient evidence of a defect.’”  
12 *Id.* at 449 (quoting *Kileen v. General Motors Corp.*, 36 Conn.Sup. 347, 421 A.2d 874, 875  
13 (1980). “[A] specific defect in the product is not an essential element in establishing a cause  
14 of action.” *Id.* “When machinery malfunctions, it obviously lacks fitness regardless of the  
15 cause of the malfunction.” *Id.* (quoting *Lindsay v. McDonnell Douglas Aircraft Corp.*, 460  
16 F.2d 631, 639 (8th Cir. 1972).

17  
18 Consistent with the holding *Stackiewicz*, more recently, the United States District  
19 Court for the District of Nevada, denied summary judgment in favor of a firearms  
20 manufacturer on a claim of strict liability, where the specific cause of the malfunction could  
21 not be shown. *Smith v. Wolf Performance Ammunition*, No. 2:13-CV-2223 JCM NJK, 2015  
22 WL 2359063 (D. Nev. May 18, 2015). In so doing, the court cited to *Stackiewicz* and its  
23 progeny for the proposition that in certain circumstances “plaintiffs must be given an  
24 opportunity to prove that malfunctioning machines caused their injuries.” *Id.* at \*6 (citing  
25 *Allison v. Merck & Co.*, 110 Nev. 762, 878 P.2d 948 (1994)).  
26  
27  
28

1           Where, as here, there is sufficient circumstantial evidence of a defect or unreasonably  
2 dangerous condition, plaintiffs may rely on that evidence to establish a product defect. *Id.*  
3 Referencing *Allison*, the *Smith* court approvingly cited a number of cases from other  
4 jurisdictions wherein courts have held that evidence of a vehicle malfunctioning could be  
5 sufficient to support liability even if the exact cause of the malfunction was not established.  
6 *Id.* \*7 (citing *Allison*, 110 Nev. at 762, *Lindsay v. McDonnell Douglas Aircraft Co.*, 460 F.2d  
7 631 (8th Cir.1972), on remand 352 F.Supp. 633 (E.D.Mo.1972), affirmed 485 F.2d 1288 (8th  
8 Cir.1973) (a fire in a new Navy jet was evidence of a malfunction, which in turn was  
9 evidence of some defect where the jet caught on fire and crashed into ocean); *Kileen v. Gen.*  
10 *Motors Corp.*, 36 Conn.Supp. 347, 421 A.2d 874 (Conn.Super.Ct.1980); *Lee v. Crookston*  
11 *Coca-Cola Bottling Co.*, 290 Minn. 321, 188 N.W.2d 426 (Minn.Sup.Ct.1971); *Jagmin v.*  
12 *Simonds, Abrasive Co.*, 61 Wis.2d 60, 211 N.W.2d 810 (Wis.Sup.Ct.1973).

15           Here, Versa argues, based wholly on the testimony of MDB's non-expert employees,  
16 that (1) there was no defect in the Versa valve; (2) MDB did not seek Versa's advice when  
17 purchasing the subject valve; and (3) MDB, not Versa, installed the Versa valve on the  
18 trailer. *See* Motion at 10-14. Versa, however, misapprehends the necessary elements of a  
19 strict products liability claim. Pursuant to *Stackiewicz* and its progeny, whether MDB  
20 consulted Versa prior to purchasing the subject valve is irrelevant to this Court's analysis. So  
21 too is MDB's installation of the valve. Instead, to establish a defect in the Versa valve, MDB  
22 need only show evidence of an unexpected, dangerous, malfunction. *Stackiewicz*, 100 Nev.  
23 at 449. And this burden is easily satisfied by the testimony of both MDB's and Versa's  
24 retained experts.

26           Dr. Bosch states in his Declaration, that the Versa valve "self-activated on July 7,  
27 2014, opening the gates of the rear Ranco bottom dump and releasing gravel on the 180 west  
28

1 highway.” *See* Ex. A-7 at 2:7-8. He further defines self-activation as “an activation of the  
2 subject Versa solenoid valve without active human intervention or current from the truck’s  
3 electric system which energized the valve to open the gates with the switch in the open or off  
4 position.” *See id.* at 2:9-11. Both Dr. Bosch and Mr. Anderson concluded, in their respective  
5 expert reports that the malfunction of the Versa valve was not due to any action, or inaction  
6 of MDB Trucking or its employees. And, in the absence of human intervention, Dr. Bosch  
7 and Mr. Anderson opined that the Versa valve is defective in design as they are susceptible to  
8 accidental activation from an external magnetic field. Versa expert, Mr. Mitchell concurred  
9 that for the dump doors to open, the Versa valve “had to be actuated.” *See* Ex. A-7 at 2.  
10 However, he had no opinion with respect to the root cause of the incident.  
11

12         Indeed, based upon the expert testimony, it is clear that the Versa valve had an  
13 unexpected and dangerous malfunction which caused the trailer to release its load, resulting  
14 in the multiple vehicle accidents and injuries at issue in the underlying action. And, that the  
15 Versa valve did not perform as intended. While MDB’s experts have opined that exposure to  
16 external magnetic fields may have caused the self-activation of the Versa valve, MDB need  
17 not pinpoint the exact cause of the malfunction to prevail on a strict liability claim.  
18

19         The preceding points and authorities unequivocally demonstrate that MDB must be  
20 permitted to pursue its claim of contribution against Versa and that this final determination  
21 must be made by the trier of fact. Notwithstanding the number of pending motions recently  
22 initiated by Versa that make any request for summary judgment decidedly premature, the  
23 relevant case law clearly precludes the Court from determining fault between the parties as a  
24 matter of law. Versa has failed to provide evidence to negate MDB’s assertion that the Versa  
25 valve was defective, and to the contrary, even Versa’s own expert cannot opine definitively  
26  
27  
28

1 as to an alternative cause of the accident at issue. The trier of fact is properly tasked with  
2 weighing the disputed evidence, and Versa's Motion should be denied in its entirety.

3 IV.

4 **CONCLUSION**

5 For the foregoing reasons, MDB respectfully requests that this Court deny Versa's  
6 Motion for Summary Judgment in its entirety.  
7

8 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

11 DATED this 7<sup>th</sup> day of July, 2017.

12  
13  
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of MORRIS POLICH & PURDY LLP,  
3 and on this 7<sup>th</sup> day of July 2017, a true and correct copy of the foregoing **MDB TRUCKING**  
4 **LLC'S OPPOSITION TO DEFENDANT/CROSS-CLAIMANT/CROSS-DEFENDANT**  
5 **VERSA PRODUCTS COMPANY, INC.'S MOTION FOR SUMMARY JUDGMENT**  
6 **AGAINST DEFENDANT/CROSS CLAIMANT/CROSS-DEFENDANT MDB**  
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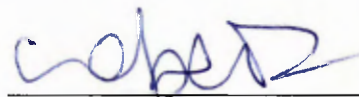
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An employee of Morris Polich & Purdy LLP

## INDEX OF EXHIBITS

**Exhibit Number** A      **Number of Pages** 3

Exhibit Description	Declaration of Colleen E. McCarty, Esq in Support of Oppositon
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**Exhibit Number** A-1      **Number of Pages** 19

**Exhibit Description** Pertinent portions of the transcript of the Deposition of Daniel Koski, for

**Exhibit Number** A-2      **Number of Pages** 19

Exhibit Description	Anderson Engineering, Forensic Engineering Report, MDB Trucking Acc

**Exhibit Number** A-3      **Number of Pages** 6

**Exhibit Description** Pertinent portions of the transcript of the Deposition of Patrick Bigby, M

**Exhibit Number** A-4      **Number of Pages** 4

**Exhibit Description** Pertinent portions of the transcript of the Deposition of Bahram Nazmi, V

**Exhibit Number** A-5      **Number of Pages** 59

Exhibit Description	Forensic Engineering Inc., Matter of MDB Trucking, Inc., Engineering In
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**Exhibit Number** A-6      **Number of Pages** 53

<b>Exhibit Description</b>	Report of Findings, MDB Trucking vs. Versa Vehicle Accident Investigat
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**Exhibit Number** A-7      **Number of Pages** 4

**Exhibit Description** Declaration by David R. Bosch, Ph.D., filed June 2, 2017, in support of

**Exhibit Number** \_\_\_\_\_ **Number of Pages** \_\_\_\_\_

## Exhibit Description \_\_\_\_\_

# EXHIBIT A

FILED  
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2017-07-07 05:47:13 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6185377 : csulezic

# EXHIBIT A

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1. I am an attorney licensed to practice law in the State of Nevada and am an associate in the law firm of Morris Polich & Purdy, LLP, attorneys for Defendants/Cross-Claimant, MDB Trucking, LLC.

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

3. I make this Declaration in support of MDB Trucking LLC's Opposition To Defendant/Cross-Claimant/Cross-Defendant Versa Products Company, Inc.'s., Motion For Summary Judgment Against Defendant/Cross-Claimant/Cross-Defendant MDB Trucking, LLC's., Cross-Claims.

4. Attached hereto as **Exhibit A-1** are true and correct copies of pertinent portions of the transcript of the Deposition of Daniel Koski, former truck driver for MDB, dated March 8, 2017.

5. Attached hereto as **Exhibit A-2** is a true and correct copy of Anderson Engineering, Forensic Engineering Report, MDB Trucking Accident, Prepare By Mr. Erik S. Anderson, P.E., C.F.E.I., dated June 16, 2017.

6. Attached hereto as **Exhibit A-3** are true and correct copies of pertinent portions of the transcript of the Deposition of Patrick Bigby, MDB mechanic, dated April 10, 2017.

7. Attached hereto as **Exhibit A-4** are true and correct copies of pertinent portions of the transcript of the Deposition of Bahram Nazmi, Versa Engineering Manager, dated May 9, 2017.

8. Attached hereto as **Exhibit A-5** is a true and correct copy of Forensic Engineering Inc., Matter of MDB Trucking, Inc., Engineering Investigation Report, prepared by Dr. David Bosch, dated June 16, 2017.

9. Attached hereto as **Exhibit A-6** is a true and correct copy of Report of Findings, MDB Trucking vs. Versa Vehicle Accident Investigation, prepared by Garrick F. Mitchell, P.E., dated June 15, 2017.

10. Attached hereto as **Exhibit A-7** is a true and correct copy of Declaration by David R. Bosch, Ph.D., filed June 2, 2017, in support of MDB's Opposition to Versa's Motion for Sanctions.

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

Executed this 7th July, 2017.

Colleen E. McCarty  
COLLEEN E. MCCARTY

# EXHIBIT A-1

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# EXHIBIT A-1

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<p>Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 FOR PLAINTIFFS: (Via telephone)</p> <p>4 BRADLEY DRENDEL &amp; JEANNEY</p> <p>5 BY: SARAH M. QUIGLEY, ATTORNEY AT LAW</p> <p>6 6900 South McCarran Boulevard, Suite 2000</p> <p>7 Reno, NV 89509</p> <p>8 775.775.525.9164</p> <p>9</p> <p>10 FOR MDB TRUCKING AND KOSKI:</p> <p>11 THORNDAL ARMSTRONG DELK BALKENBUSH &amp; EISINGER</p> <p>12 BY: BRIAN M. BROWN, ATTORNEY AT LAW</p> <p>13 THIERRY BARKLEY, ATTORNEY AT LAW</p> <p>14 6590 South McCarran Boulevard, Suite B</p> <p>15 Reno, NV 89509</p> <p>16 775.786.2882</p> <p>17</p> <p>18 FOR DRAGON AND MODERN GROUP: (Via telephone)</p> <p>19 GREENBERG TRAUIG, LLP</p> <p>20 BY: JACOB D. BUNDICK, ATTORNEY AT LAW</p> <p>21 3773 Howard Hughes Parkway, Suite 400 N</p> <p>22 Las Vegas, NV 89169</p> <p>23</p> <p>24</p> <p>25 //</p>	<p>Page 3</p> <p>1 A P P E A R A N C E S (Continued)</p> <p>2</p> <p>3 FOR RMC LAMAR HOLDINGS, INC:</p> <p>4 McDONALD CARANO WILSON LLP</p> <p>5 BY: JESSICA L. WOELFEL, ATTORNEY AT LAW</p> <p>6 100 West Liberty Street, Tenth Floor</p> <p>7 Reno, NV 89501</p> <p>8</p> <p>9 FOR VERSA PRODUCTS:</p> <p>10 LEWIS BRISBOIS BISGAARD &amp; SMITH LLP</p> <p>11 BY: PAIGE S. SHREVE, ATTORNEY AT LAW</p> <p>12 6385 South Rainbow Boulevard, Suite 600</p> <p>13 Las Vegas, NV 89118</p> <p>14</p> <p>15 ALSO PRESENT: Bill Carder, Philip Mannelly</p> <p>16</p> <p>17 -o0o-</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																																
<p>Page 4</p> <p>1 I N D E X</p> <p>2 Deposition of DANIEL KOSKI</p> <p>3</p> <table border="0"> <tr> <td>EXAMINATION BY</td> <td>PAGE</td> </tr> <tr> <td>4 Ms. Woelfel</td> <td>4, 105</td> </tr> <tr> <td>5 Ms. Shreve</td> <td>92</td> </tr> <tr> <td>6</td> <td></td> </tr> <tr> <td>7</td> <td></td> </tr> <tr> <td>8 E X H I B I T S</td> <td></td> </tr> <tr> <td>9 EXH.</td> <td></td> </tr> <tr> <td>NO. DESCRIPTION PAGE</td> <td></td> </tr> <tr> <td>10</td> <td></td> </tr> <tr> <td>11 Exhibit 30 Phone records</td> <td>74</td> </tr> <tr> <td>12 -o0o-</td> <td></td> </tr> <tr> <td>13</td> <td></td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>24</td> <td></td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	EXAMINATION BY	PAGE	4 Ms. Woelfel	4, 105	5 Ms. Shreve	92	6		7		8 E X H I B I T S		9 EXH.		NO. DESCRIPTION PAGE		10		11 Exhibit 30 Phone records	74	12 -o0o-		13		14		15		16		17		18		19		20		21		22		23		24		25		<p>Page 5</p> <p>1 BE IT REMEMBERED that on Wednesday, March 8,</p> <p>2 2017, commencing at 1:38 p.m. of said day, at</p> <p>3 McDonald Carano Wilson LLP, 100 West Liberty Street,</p> <p>4 Tenth Floor, Reno, Nevada, before me, CHRISTINA M.</p> <p>5 AMUNDSON, a Certified Shorthand Reporter, personally</p> <p>6 appeared DANIEL KOSKI.</p> <p>7 -----</p> <p>8 DANIEL KOSKI,</p> <p>9 called as a witness in the matter herein,</p> <p>10 who, having been first duly sworn, was examined</p> <p>11 and testified as follows:</p> <p>12 E X A M I N A T I O N</p> <p>13 BY MS. WOELFEL:</p> <p>14 Q Good afternoon, Mr. Koski.</p> <p>15 A Good afternoon.</p> <p>16 Q My name is Jessica Woelfel. And you've</p> <p>17 been sitting through the last several days of</p> <p>18 deposition so I presume you are now familiar with</p> <p>19 the process. Would you agree?</p> <p>20 A I would think so. Yes.</p> <p>21 Q Okay. And I'll go over some of the</p> <p>22 admonitions, though I know that you have heard them</p> <p>23 now a few times.</p> <p>24 A Okay.</p> <p>25 Q You are under oath.</p>
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<p style="text-align: right;">Page 54</p> <p>1 he said, Do you know you lost your load out of your  2 back trailer, and I said, No, I didn't. He said,  3 Well, I was trying to pull you over, and I said, I  4 won't pull over for people staring at me. If you  5 want to wave me over, I will. He goes, Oh, okay.  6 Q Did that person tell you that he saw you  7 lose the load?  8 A He didn't say. He just told me I'd lost a  9 load back there.  10 Q Do you know where you lost the load, what  11 specific location?  12 A Derby Dam, just about right under the  13 overpass.  14 Q What did you do after you learned that you  15 had lost a load?  16 A I called Tracy and told him that I'd lost a  17 load out of my back trailer and I finished unloading  18 and went back and got another one.  19 And he got ahold of Reno-Sparks -- or Cemex  20 and told them that we'd lost part of the load. I  21 guess he made the change on the bill of lading.  22 Q Did you continue to haul material in that  23 third pup trailer for the rest of the day?  24 A Yes.  25 Q How many more loads did you use in that pup</p>	<p style="text-align: right;">Page 55</p> <p>1 trailer?  2 A It probably would have been three at the  3 most.  4 Q Okay. Did Tracy tell you not to use that  5 third pup trailer after the release?  6 A No. I believe he had me unplug the 4-way  7 wires to the trailers.  8 Q Did you continue to use that third trailer  9 6775 -- actually, let's go ahead and clarify.  10 Was the trailer that lost the load of sand  11 on that day in July 2013 Trailer No. 6775?  12 A Yes, it was.  13 Q And so this was your third load where you  14 lost the load of sand.  15 A Yes.  16 Q Did you carry any other material in Trailer  17 No. 6775 on that day?  18 A It would have been sand, I believe. They  19 left me on sand for quite a while after that  20 happened.  21 Q Okay. So you closed the gates after you  22 discovered that they had been opened.  23 A Uh-huh.  24 Q How did you do that?  25 A Manually.</p>
<p style="text-align: right;">Page 56</p> <p>1 Q Okay. Did you do anything to investigate  2 why that opening had occurred?  3 A I'm not qualified to inspect any electrical  4 or anything like that but I just -- the manual.  5 Q Had you touched the toggle switches inside  6 the cab while you were driving?  7 A No.  8 Q Had you done anything that you can think of  9 that caused that Trailer No. 6775 to open while  10 driving?  11 A No.  12 Q And so after you got to Cemex in Sparks on  13 that third trip, you unloaded the first two pup  14 trailers that contained material. Is that correct?  15 A Yes.  16 Q Okay. And then tell me what you did.  17 A Been a while, but I believe I pulled to the  18 lot across the street and got ahold of the highway  19 patrol and explained. And they sent an officer over  20 there to check things out and they wrote me a  21 citation.  22 Q Okay. Did the highway patrol conduct any  23 type of investigation or inspection of the vehicle?  24 A I don't believe it was until later that  25 night or the next day. They did come down to our</p>	<p style="text-align: right;">Page 57</p> <p>1 yard and did an inspection.  2 Q So after the highway patrol came and met  3 with you, what did you do after that?  4 A Well, they came about 5:00 at night, so I  5 went home.  6 Q Okay. I'm a little confused and I just  7 want to make sure that I understand.  8 Did you run any other loads that same day  9 after you discovered that Trailer 6775 had opened  10 the load?  11 A Yes, I believe I did.  12 Q Okay. And did you say you ran maybe three  13 more loads?  14 A That would have been normal, yeah.  15 Q Okay. And did you meet with the highway  16 patrol before you ran those three other loads or at  17 the end of the day?  18 A It would have been before.  19 Q Okay. So you met with the highway patrol  20 and then you went and did about three more loads?  21 A Yes.  22 Q And you used Trailer 6775 to haul sand  23 during those last three loads?  24 A Yes. We took a couple safety measures.  25 I'm pretty sure I unplugged the 4-way electrical and</p>

# **EXHIBIT A-2**

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# **EXHIBIT A-2**

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Anderson **Engineering**™  
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FAX: 602.437.3272  
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info@aenpi.com

## ***Forensic Engineering Report***

---

**File Name:** MDB Trucking Accident

**Our File Number:** 2015258

**Date of Accident:** July 7, 2014

**Accident Location:** Mile Marker 39, IR80, West Bound  
Wadsworth, Nevada

**Prepared By:** Mr. Erik S. Anderson, P.E., C.F.E.I.

**Prepared For:** Thierry V. Barkley, Esq.  
Thorndal Armstrong Delk Balkenbush & Eisinger  
6590 South McCarran Blvd. # B  
Reno, Nevada 89509

**Issue Date:** June 16, 2017

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AA001195

## I. Summary

On July 7, 2014, at approximately 9:00 a.m., an accident occurred on Interstate 80, at mile marker 39, outside of Reno, Nevada. The accident occurred when a tractor / triple trailer combination inadvertently released its load from the last trailer onto the Interstate. The tractor / trailer combination was travelling West on the Interstate freeway. The tractor / trailer combination was owned and operated by MDB Trucking at the time of the accident.

I have examined the tractor / trailer combination and the electrical system of the vehicle and trailers associated with the actuator valve for the dumping system. I have examined the route of the tractor / trailer combination from where the load was picked up in Wadsworth, Nevada, to the accident site. I have interviewed those knowledgeable with the facts surrounding the accident and the operation of the dumping system. I have reviewed documents and depositions regarding this accident and the operation of the dumping gate valve manufactured by Versa Products Company.

It is my opinion that the accident was not caused by any action, or inaction of MDB Trucking or its employees. The Versa valve for the dumping system is susceptible to erratic operation and external magnetic fields can cause inadvertent operation. The Versa valve is defective in design due to its propensity for inadvertent operation.

## II. Introduction / Background Information

On July 7, 2014, the tractor / trailer combination, owned and operated by MDB Trucking, was hauling aggregate West on Interstate 80, when the third trailer inadvertently dumped its load. The accidental release of material occurred West of exit 40, near mile marker 39, at approximately 9:00 a.m.

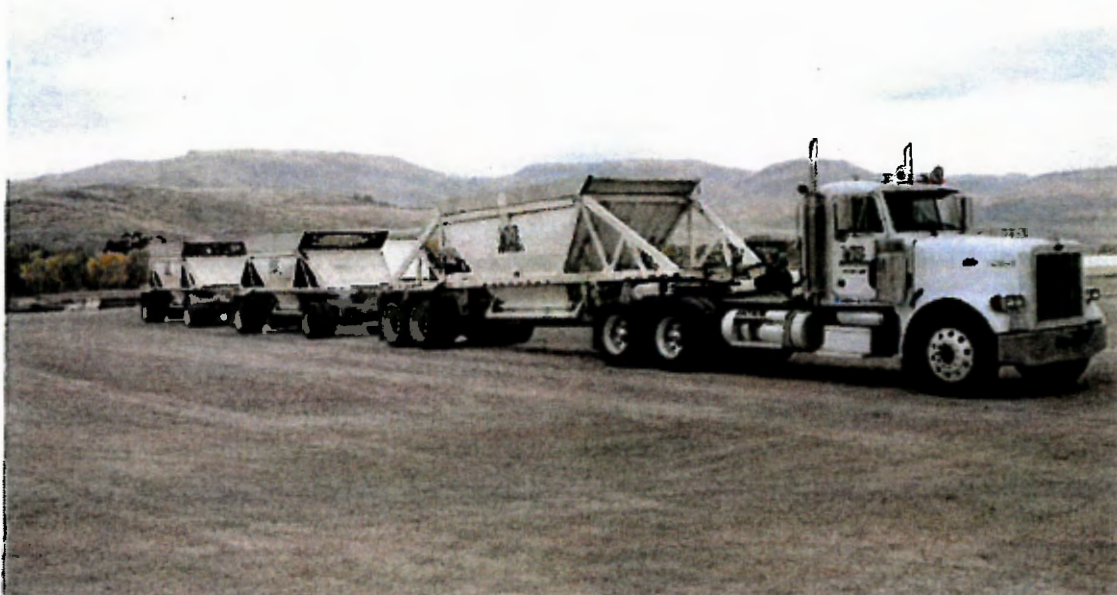
The driver of the tractor / trailer was Mr. Daniel A. Koski. Mr. Koski was a licensed driver working for MDB Trucking. Mr. Koski was unaware that his third trailer had accidentally released. Mr. Koski was flagged down by another vehicle traveling West who informed him of the inadvertent release.

Mr. Koski was hauling concrete rock from the Paiute Pit in Wadsworth, Nevada to the Cemex plant in Reno, Nevada. Mr. Koski was on his third run of the day.

The diesel tractor driven by Mr. Koski was manufactured by Peterbilt Motors Company with a manufacturing date of 01/2003. The tractor VIN is 1XP-5DB9X-7-3D807486. The MDB Trucking number given this tractor is 5694.

The three trailers are of Ranco manufacture.

	VIN	Mfg. Date	MDB Trucking No.
1 <sup>st</sup> trailer (con. to tractor)	1R9DBSA2077L008042	10/2006	6773
2 <sup>nd</sup> trailer (middle)	1R9BP450631008610	10/2003	6774
3 <sup>rd</sup> trailer (last)	1R9BP45082L008431	09/2002	6775



**MDB Trucking Tractor / Trailer Operated by Daniel Koski.**

Also on July 7, 2014, another tractor / trailer combination, owned and operated by MDB Trucking was hauling aggregate West on Interstate 80, when the third trailer inadvertently dumped its load. The accident release of material occurred East of exit 40 at approximately 8:50 a.m. The inadvertent activation of the Versa valve occurred near the rest stop at mile marker 42 on Interstate 80.

The driver of the tractor / trailer combination was MDB Trucking licensed driver Mr. Scott Palmer. Mr. Palmer was traveling West, approximately 10 minutes ahead of Mr. Koski. Mr. Palmer was unaware that his third trailer had inadvertently released its load. Mr. Palmer was hauling sand from the Paiute Pit in Wadsworth, Nevada to Cemex in Reno, Nevada. Mr. Palmer discovered that his third trailer accidentally dumped when he received a phone call asking him if his trailer had inadvertently activated when he arrived in Reno. Mr. Palmer was on his third run of the day.

The diesel tractor, driven by Mr. Palmer, was manufactured by Peterbilt Motors Company with a manufacturing date of 01/2003. The tractor VIN is 1XP-5DB9X-7-3D807486. The MDB Trucking number given this tractor is 5693.

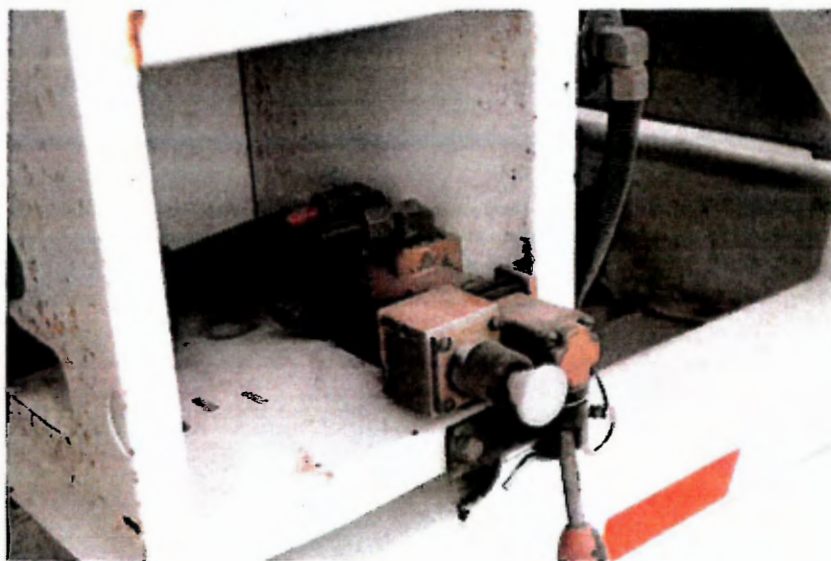
The three trailers are of Ranco manufacture.

	VIN	Mfg. Date	MDB Trucking No.
1 <sup>st</sup> trailer (con. to tractor)	1R9BSA2047L008046	10/2006	6776
2 <sup>nd</sup> trailer (middle)	1R9BP45003L008621	10/2003	6777
3 <sup>rd</sup> trailer (last)	1R9BP450X2L008432	09/2002	6778



**MDB Trucking Tractor / Trailer Operated by Scott Palmer.**

The Ranco trailers owned and operated by MDB Trucking incorporate a valve that controls air pressure utilized to operate the gates of the dumping system. The valves were manufactured by Versa Products Company, Inc. The Versa valves on the Ranco trailers are part number VGK-5423-20C-D012.



**Versa Valve on Trailer 6775.**

On April 28, 2016, the location of the accident and portions of the route traveled by Mr. Koski and Mr. Palmer were examined and documented, along with portions of the MDB Trucking tractor / trailer combination driven by Mr. Koski. Mr. Pat Bigby, head mechanic with MDB Trucking was also interviewed on April 28, 2016.

On October 13, 2016, the tractor / trailer combination driven by MDB Trucking driver Daniel Koski was examined, tested, photographed, and documented. The Versa valve from MDB Trucking trailer number 6775 was removed from the Ranco trailer.

On October 13, 2016, Adam Ferran, the shop foreman for Western Nevada Transport, was interviewed.

On November 2, 2016, the tractor / trailer combination driven by MDB Trucking driver Scott Palmer was examined, tested, photographed, and documented. The Versa valve from MDB Trucking trailer number 6778 was removed from the Ranco trailer.

On November 2, 2016, MDB Trucking driver Scott Palmer was interviewed. On November 3, 2016, MDB Trucking driver Daniel Koski was interviewed.

On November 30, 2016, the Versa valves from MDB Trucking trailer numbers 6775 (Koski) and 6778 (Palmer) were bench tested, documented, and photographed.

A copy of all photographs taken will be supplied with the report along with photograph identifications.

### **III. Documents Relied Upon**

---

1. State of Nevada Traffic Accident Report, Accident Number NHP 140700621.
2. State of Nevada Citation Number X00760952.
3. State of Nevada Citation Number X00862816.
4. Driver/Vehicle Examination Report Number NV7290001379.
5. Complaint for Personal Injuries CV13 01372.
6. Report dated 5/13/14 and authored by Peter A. Philbrick.
7. Defendant's (MDB and Koski) Answers to Plaintiffs' First Set of Interrogatories.
8. Defendant Versa Products Company, Inc.'s Responses to Defendant MDB Trucking, LLC's First Set of Interrogatories.
9. Documents produced by Versa Products Company, Inc.
10. Deposition transcript of Scott Palmer dated March 6, 7, and 8, 2017.
11. Deposition transcript of Daniel Koski dated March 8, 2017.
12. Deposition transcript of Tracy Shane dated April 11, 2017.
13. Deposition transcript of Patrick Bigby dated April 10, 2017.
14. Deposition transcript of Gerald Gramegna dated May 9, 2017.
15. Deposition transcript of Bahram Nazmi dated May 9 and 10, 2017.

### **IV. Erratic Operation of Versa Valves**

---

Multiple incidences of erratic operation associated with the Versa valve have been witnessed. Some of those incidences of erratic behavior are described as follows.

- a. Dan Koski, with MDB Trucking, witnessed the Versa valve pulsating back and forth, after removing the Cotter Key that held it in the closed position.
- b. On July 25, 2013 and July 30, 2013, the tractor / trailer combination, owned and operated by MDB Trucking, and driven by Mr. Koski experienced inadvertent activation and dumping of the load in the third trailer.

The tractor / trailer combination Mr. Koski was driving in July 2013, was the same as that he was driving in July 2014. Mr. Koski was driving West on Interstate 80, near mile marker 37 when the inadvertent dumping occurred on July 25, 2013. Mr. Koski was driving West on Interstate 80, near mile marker 41 when the inadvertent dumping occurred on July 30, 2013. The load that was inadvertently dumped was sand from the Paiute Pit in Wadsworth, Nevada.

- c. Capurro Trucking has experienced multiple inadvertent activations of the belly dump systems since 2006. Three of the inadvertent activations are listed below.
  1. Capurro Trucking inadvertent activation of the dumping system occurred on August 27, 2010.
  2. On February 12, 2013, the tractor / trailer combination owned and operated by Capurro, experienced an inadvertent activation and dumping of a trailer. The tractor was manufactured by Peterbilt and the trailers were manufactured by Ranco. The Capurro driver was traveling West on Interstate 80.
  3. On March 10, 2013, the tractor / trailer combination owned and operated by Capurro, and driven by Nelse Wynne, experienced an accidental dumping of a trailer. The trailers were manufactured by Ranco. The tractor was a 2005 Peterbilt. Mr. Wynne was traveling West on Interstate 80.

There was never any electrical or mechanical malfunction discovered with any inadvertent activation of the Versa valves.

#### **V. Inspections / Testing**

- a. On April 28, 2016, the locations of the inadvertent activation and dumping on July 7, 2014, of the belly dump Ranco trailers that were pulled by tractors driven by Mr. Koski and Mr. Palmer, were viewed and examined.

The inadvertent activations occurred on Interstate 80, Westbound, both East and West of exit 40.

- b. The Paiute Pit in Wadsworth, Nevada, where the aggregate that was accidentally dumped came from, was visited.

The potential sources of electromagnetic interference ("EMI") and radio frequency interference ("RFI") along the route were also observed and documented.

Potential sources of electrical fields were found near exit 30 on Interstate 80. The Frank A. Tracy electrical generation plant is located at this exit. Electrical transmission lines span Interstate 80. At exit 40 on Interstate 80 is a communication tower. The tower has multiple communication antennas attached.



**Electrical Generation Plant and Communications Tower.**



**Google Earth View Path of Travel.**

- c. On April 28, 2016, the tractor / trailer combination driven by Mr. Koski on July 7, 2014, was examined, photographed, and documented. The examination occurred at MDB Trucking located at 905 East Mustang Road, Sparks, Nevada.

The tractor was turned ON and the operation of the belly dump system was observed. The wiring of the electrical system of the belly dump trailers was observed, photographed, and examined.

The tractor / trailer combination is approximately 112 feet long. The electrical wiring for the belly dump system of the truck driven by Mr. Koski was found to have been modified after the accidental dumping in July of 2013. The power to the individual solenoids for the Versa valves are switched individually. There are 3 switches that control individually the Versa valve for each trailer. There was an additional master switch incorporated into the system that switches both the hot and ground conductors for the switches that control the individual Versa valves.



**Versa Valve Activating Switches.**

To operate the Versa valves the master switch must be turned ON before any power is delivered to the individual trailer switches. Switch covers were incorporated for the 4 switches that activate the Versa valves.

- d. On October 13, 2016, the tractor / trailer combination driven by MDB Trucking driver Daniel Koski was examined, tested, photographed, and documented. The examination occurred at MDB Trucking located at 905 East Mustang Road, Sparks, Nevada.

During the examination, the truck was started and the air pressure was allowed to increase. It was noted that it took approximately 20 minutes for the air pressure to come up to a level high enough to actuate the belly dump system at the third trailer. Once the air pressure was sufficient, manual operation of the valve on the third trailer was performed with the use of the Versa valve lever. The belly dump system operated as expected without any erratic behavior. When the lever was pushed toward the trailer, the belly dump doors would open. When the lever was pulled away from the trailer, the belly dump doors would close.

An aftermarket Cotter Key and associated bracket was attached to the trailer after the inadvertent activation on July 7, 2014. The Cotter Key modification restricts the Versa valve lever from movement toward the trailer. With the Cotter Key in place, holding the Versa valve

lever stationary, the solenoid for the Versa valve was energized. The belly dump doors did not open, and the Versa valve lever remained in its original position.

Without the Cotter Key in place, the solenoid was activated, the Versa valve lever moved toward the trailer, and the belly dump gates opened. When the solenoid for the Versa valve was deactivated, the lever moved back away from the trailer, and the belly dump gates closed.

All the Versa valves were individually activated and their operation was observed. The belly dump gates for the individual trailers opened and closed as expected from the use of the activation switches in the cab of the tractor. The functionality of the master switch was tested and found to function as expected. With all the individual trailer belly dump switches in the ON position, the main switch was cycled. All the belly dump gates opened and closed on all the trailers with the activation of the master switch.

The wiring to the activation switches for the Versa valves was examined. Power to the master switch comes from one of the 12 Volt batteries for the tractor. The power conductor insulation coming from the positive of the battery has black insulation. The positive black conductor is protected with a 30 Amp fuse. The yellow insulated conductor is attached to the negative of the tractor battery.

The black and yellow conductors are both connected to a DPST (double pole single throw) master switch. The master switch switches both the hot and ground of the power to the Versa valves. From the master switch, the black insulated wire feeds each of the individual trailer Versa valves SPST (single pole single throw) switches.

From the activation switches, 4 wires travel out of the tractor to power the individual Versa valves. The four wires are a common ground and 3 individual hot wires; one for each Versa valve.

Resistance readings were taken and recorded at the activation switches in the cab of the tractor.

	Resistance reading between hot and ground (Ohms)
First trailer	16.0 to 16.6
Second trailer	17.1 to 22.4
Third trailer	22.4 to 23.3

The resistance between the ground wire traveling back to the trailers and the chassis of the tractor was found to be greater than 60 MOhms when tested with a Fluke multimeter. The resistance between the ground conductor and the chassis was found to be approximately 370 MOhms, and increasing, when using a Megger on the 250 Volt DC scale. There are no electrical shorts between the chassis of the vehicle and the return conductor for the Versa valves.

The connections at the back of the first trailer and the second trailer for the 4-wire cable that controls the Versa valves was examined and resistance measurements between the conductors were taken. At the back of the first trailer, resistance readings of 18 Ohms and

15.7 Ohms were found between pins 2 to 4 and pins 1 to 3 respectively. At the back of the second trailer, resistance reading of 16.1 Ohms was found between pins 1 to 3.

The Versa valve from MDB Trucking trailer number 6775 was removed from the Ranco trailer and preserved for further examination.

- e. On November 2, 2016, the tractor / trailer combination driven by MDB Trucking driver Scott Palmer was examined, tested, photographed, and documented. The examination occurred at MDB Trucking located at 905 East Mustang Road, Sparks, Nevada.

The functionality of the Versa valves associated with the tractor / trailer combination was tested similarly as with the tractor / trailer combination driven by Mr. Koski. The Versa valves functioned similarly. The wiring was different from the vehicle driven by Mr. Koski in that it did not incorporate a master switch.

In the cab of the tractor, resistance measurements were taken between the hot conductors to each of the trailer Versa valves and ground.

Resistance between:	Measurement (Ohms)
hot conductor for the first trailer Versa valve to ground	18.3
hot conductor for the second trailer Versa valve to ground	20.7
hot conductor for the third trailer Versa valve to ground	22.1

Resistance measurements were taken at the 4-pin connections from the tractor back to the last trailer. The results are as follows:

Resistance readings at the Pogo Stick Plug connector from the tractor to the first trailer			Connection at the front of the first trailer		
Pins		Resistance (Ohms)	Pins		Resistance (Ohms)
1 to 2		31.4	1 to 2		15.2
1 to 3		11.7	1 to 3		34.5
1 to 4		27.7	1 to 4		32.2
2 to 3		11.8	2 to 3		19.2
2 to 4		34.3	2 to 4		17.4
3 to 4		12.2	3 to 4		32.4
			2 to GND		1.9

Connection at back of first trailer, female connector			
Pins	Resistance (Ohms)	Pins	Resistance (Ohms)
1 to 2	12.2	1 to GND	12.2
1 to 3	14.9	2 to GND	12.9
1 to 4	550 K	3 to GND	-2
2 to 3	16.5	4 to GND	550 K
2 to 4	550 K		
3 to 4	530 K		
Connection at back of second trailer			
Pins	Resistance (Ohms)	Pins	Resistance (Ohms)
1 to 2	>60 M	1 to GND	30 M
1 to 3	17.6	2 to GND	>60 M
1 to 4	>60 M	3 to GND	30 M
2 to 3	>60 M	4 to GND	>60 M
2 to 4	>60 M		
3 to 4	>60 M		
Connection at back of third trailer			
Pins	Resistance (Ohms)	Pins	Resistance (Ohms)
1 to 2	>60 M	1 to GND	>60 M
1 to 3	>60 M	2 to GND	0.1
1 to 4	>60 M	3 to GND	>60 M
2 to 3	>60 M	4 to GND	15
2 to 4	15		
3 to 4	>60 M		

The Versa valve from MDB Trucking trailer number 6778 was removed from the Ranco trailer and preserved for further examination

- f. On November 30, 2016, the Versa valves from MDB Trucking trailer numbers 6775 (Koski) and 6778 (Palmer) were bench tested, documented, and photographed. The examination and testing of the Versa valves occurred at 4665 South Ash Avenue, Suite G-4, Tempe, Arizona.

The Versa valves are part number VGK-4523-20C-D012. The Versa valve from trailer 6775 was examined first. The resistance of the coil of the solenoid was measured and found to be approximately 15 Ohms. A DC source of 12 Volts was applied to the solenoid coil. The solenoid activated. The power source was then decreased and the voltage and current were recorded. The voltage was decreased in increments of 0.5 Vols. It appeared that the solenoid

did not deactivate when the voltage was decreased slowly. The test was repeated, and the solenoid was found to deactivate at 1.5 Volts.

Air pressure was then connected to the Versa valve. With a pressurized valve, the voltage to the solenoid coil was increased slowly to determine what voltage the solenoid activates. The solenoid was found to activate at 7.1 Volts and 0.46 Amps.

The Versa valve was then broken down and the individual components were examined.

The Versa valve from trailer 6778 was similarly tested. The resistance of the solenoid coil was measured at approximately 15 Ohms. The solenoid was found to activate at 12 Volts and 0.78 Amps. The minimum amount of voltage to activate the solenoid was found to be 8.1 Volts and .54 Amps, and the solenoid dropped out at 1.4 Volts and 0.08 Amps.

The Versa valve was then broken down and the individual components were examined.

## **VI. Interviews**

- a. Pat Bigby, head mechanic for MDB Trucking, was interviewed on April 28, 2016.

Mr. Bigby stated that after the inadvertent activation of the Versa valve in July of 2013 on the Koski vehicle certain changes were made to the belly dump system. The Versa valve from the last trailer of the vehicle driven by Mr. Koski was replaced with a new Versa valve. The master switch was installed to control the activation switches. The wiring for the activation of the Versa valve solenoids was replaced.

The green wire ground for the Versa valve solenoids was disconnected and taped off. Mr. Bigby stated that this was done because when he energized the green wire, the Versa valve would activate.

- b. Adam Ferran, the shop foreman for Western Nevada Transport, was interviewed on October 13, 2016.

Mr. Ferran stated that Western Nevada Transport purchased the Ranco trailers new and then sold them to MDB Trucking in 2012. Mr. Ferran was familiar with the erratic behavior, and accidental activation of the Versa valves on Ranco belly dump trailers.

- c. Scott Palmer, driver for MDB Trucking, was interviewed on November 2, 2016.

Mr. Palmer learned about the inadvertent dumping on July 7, 2014, when he was called and told that Mr. Koski had inadvertently dumped his load. Mr. Palmer was coming into Reno, Nevada when he received the notifying phone call.

He later learned that he lost the load from his third trailer on this run. The inadvertent dumping occurred on Interstate 80, while traveling West, just East of the rest area near exit 40. Mr. Palmer was hauling concrete sand from the Paiute Pit in Wadsworth, Nevada to the Cemex plant in Reno, Nevada.

Mr. Palmer was driving approximately 10 minutes ahead of Mr. Daniel Koski who was hauling on the same route. Mr. Palmer stated that Mr. Koski recalls driving through the sand that was inadvertently dumped. Mr. Koski experienced an inadvertent activation and dumping of his third trailer's load West of exit 40, while traveling West on Interstate 80, within a few minutes of Mr. Palmer's inadvertent activation and dumping.

The inadvertent activation and dumping of the third trailer was the first time Mr. Palmer lost a load with the tractor / trailer he was driving. Mr. Palmer had experienced inadvertent activation with other vehicles.

Mr. Palmer was unaware that he had experienced an inadvertent dump until he arrived in Reno. To close the belly dump doors, the activation switch was cycled. The switch for the third trailer dumping mechanism was turned ON and then OFF. This then caused the belly dump doors to close. Mr. Palmer stated that all the activation switches in both his truck and Mr. Koski's truck were in the OFF position at the time of the inadvertent activation and dumping.

Mr. Palmer stated that Capurro Trucking had experienced 4 or 5 inadvertent activations of their belly dump mechanisms. Capurro Trucking is located in Sparks, Nevada. Mr. Palmer did not intentionally or accidentally activate the Versa valve for his third trailer.

d. Daniel Koski, former driver for MDB Trucking, was interviewed on November 3, 2016.

Mr. Koski was driving West on Interstate 80 on July 7, 2014, when he was flagged down by another motorist who informed him that his load of aggregate had dumped on the Interstate. Mr. Koski was on his third run between the Paiute Pit in Wadsworth, Nevada to the Cemex plant in Reno. Mr. Koski was hauling gravel,  $\frac{3}{4}$  minus, of concrete rock.

Mr. Koski recalled having previous issues with the inadvertent dumping of his load. His previous inadvertent dumping occurred near the Derby Dam underpass while traveling West on Interstate 80. When the last trailer dumped near Derby Dam, the first two trailers remained full, and the gates to the third trailer remained open. The Derby Dam underpass is near exit 36 on Interstate 80.

Mr. Koski stated that he is aware of other multiple, inadvertent activations of Versa valves used on Western Nevada Trucking trailers. Mr. Koski did not intentionally or accidentally activate the Versa valve on his third trailer.

## **VII. Versa Valve Operation**

---

The part number VGK-4523-20C-D012 Versa valve is described as bottom dump control valve. The valve can be operated in 2 modes.

One mode is the use of the solenoid. The solenoid must be energized for pressure on one side and exhaust on the other. The energization of the solenoid also pressurizes the air spring. Then when the solenoid is de-energized, the air spring will reverse the pressure and exhaust ports.

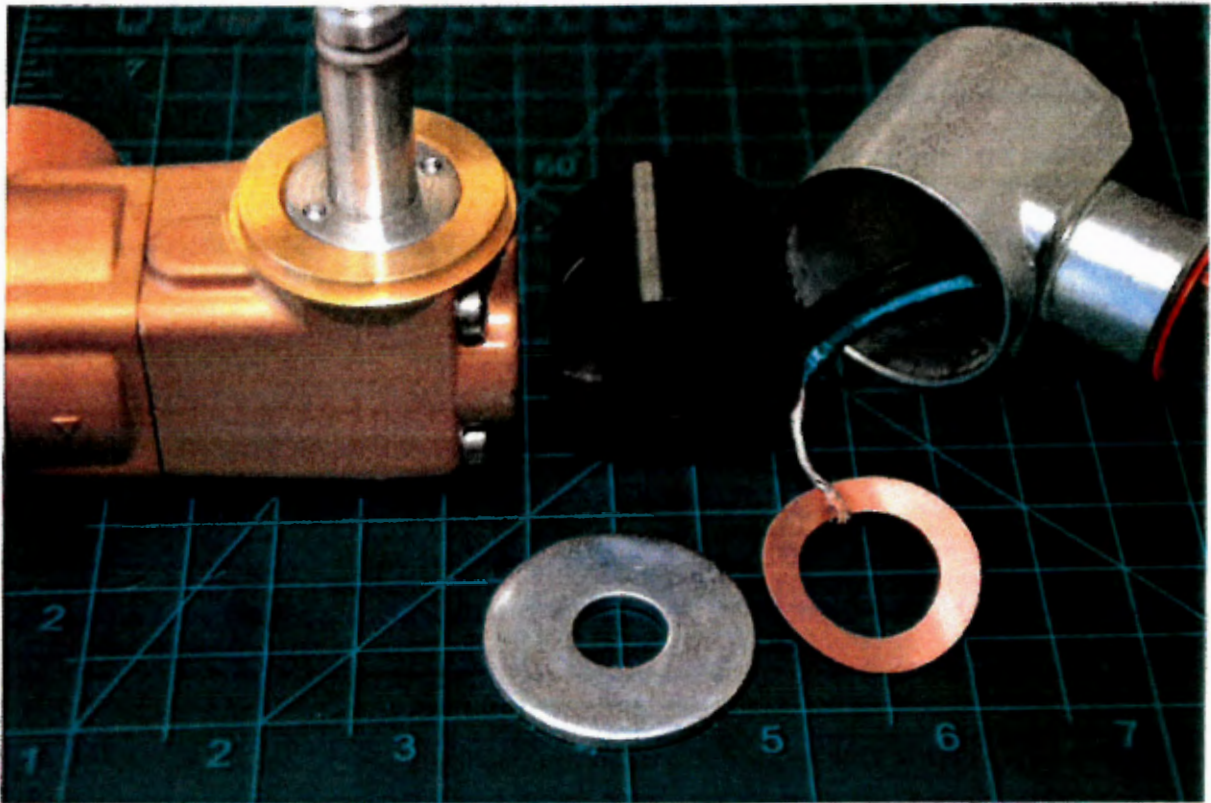
The other mode for use of the valve is manually with the use of the lever. With the solenoid de-energized and the air spring de-pressurized, the lever can move the valve to pressure one side and exhaust the other, to reverse the pressure in the ports, or to close all ports.

The valve operates between 50 to 175 psi. It is rated for 12 Volts and 9.4 Watts. The solenoid coil is rated for continuous duty.

Further analysis of the Versa valve was severely limited due to the lack of information provided regarding the components, testing, and operation of the valve.

#### **VIII. Solenoid / Magnetic Theory**

Solenoids are a loop of wire, or a coil, that is used to create a magnetic field. The coil of wire is typically manufactured using solid copper magnet wire. The coil is typically placed around a ferrous material.



**Versa Valve Solenoid Components.**

The coil incorporated in the Versa valve solenoid is energized with approximately 12 Volts DC creating a current to flow through the coil. The current is approximately 0.78 Amps, at 12 Volts, and 9.4 Watts. The resistance of the coil is approximately 15 Ohms. The relationship between voltage, current, and power is given by the following laws.

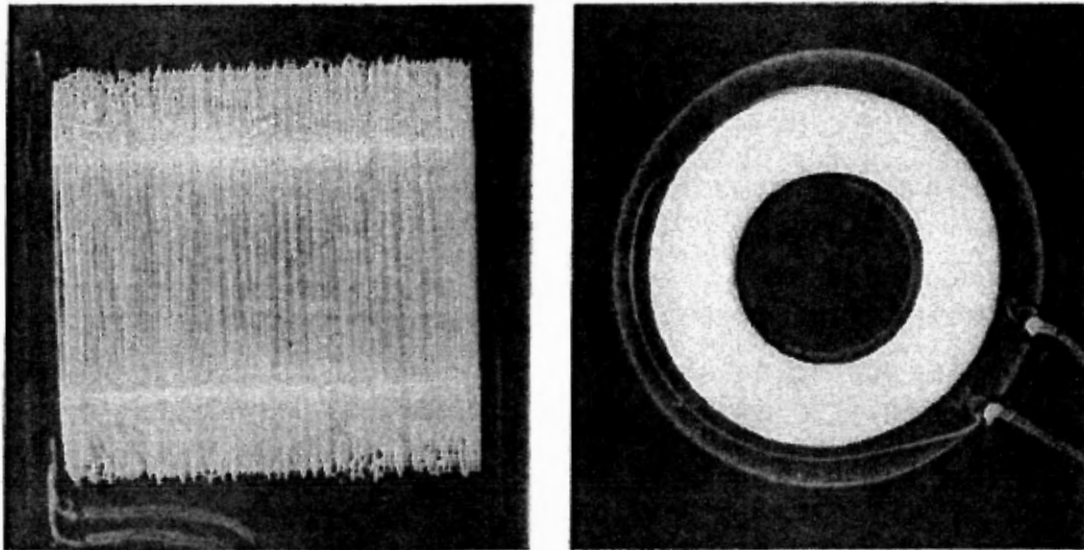
Ohms Law  
Watts Law

$$V = I \times R$$
$$P = V \times I$$

Where:

R = Resistance (Ohms)  
V = Voltage (Volts)  
I = Current (Amps)  
P = Power (Watts)

The coil for the Versa valve solenoid appears to have approximately 2500 turns. An x-ray of an exemplar coil from a similar Versa valve is shown below.



**X-Ray Film of Versa Valve Coil.**

The magnetomotive force (mmf) is given by the number of turns on the coil multiplied by the current flowing through the coil.

$$\text{mmf} = N \times I$$

Where:

N = number of turns on coil  
I = Current (Amps)  
mmf = magnetomotive force

and:

$$\text{mmf} = H \int X d\beta$$

Where:

H = Magnetic Field Strength (Ampere Turns / Meter)  
 $\beta$  = Magnetic flux Density (Teslas, Webers / Meter<sup>2</sup>)

and:

$$\beta = \mu H$$

$$\mu = \mu_0 \mu_r$$

Where:

$$\mu_0 = 4\pi \times 10^{-7} \text{ Henrys / meter} = \text{permeability of air}$$

$\mu_r$  = relative permeability

The current through the coil creates a magnetic field that is quantified by the amount of current multiplied by the number of turns. The magnetic field produces a proportional magnetic flux, and a magnetic flux density.  $H$  is the magnetic field strength and  $\beta$  is the magnetic flux density.

For the coil to produce a magnetic field and a corresponding magnetic flux, there must be current flow through the coil. Without current flow through the coil, the coil cannot produce a magnetic flux.

The magnetomotive force developed in the solenoid coil on the Versa valve overcomes a spring force and moves a plunger, thus increasing the inductance of the coil, and causing the valve to change state.

The force required to overcome the spring on the solenoid plunger is approximately 1.2 lbs. The movement of travel of the plunger appears to be approximately 0.2 inches.

## **IX. Analysis**

---

The potential for an external source of EMI or RFI to interfere with the operation of the Versa valve in the solenoid operation mode was explored. The large size of the tractor / trailer combination can potentially hold a large electric charge. The tractor / trailer combination can also potentially act as a large antenna causing it to be susceptible to RFI. The energy from EMI or RFI would have to discharge through the coil of the solenoid to create the force required to move the plunger. The coils for the Versa valves on Mr. Koski's truck were isolated from the truck. One side of the solenoid coil was not connected to the vehicle ground. Therefore, there is no path for the current to flow to ground, or discharge, through the solenoid coil.

The wiring for the Versa valves for the Koski truck was different than that for the Palmer truck. The Koski truck incorporated a master switch that disconnected the hot and ground from all the solenoids. The Palmer truck did not incorporate a master switch. Both vehicles inadvertently dumped their loads of aggregate at relatively the same time, on the same road, going the same way, on each of their 3<sup>rd</sup> trips on the same routes.

After the inadvertent dumping of aggregate that occurred to the Koski vehicle twice within a few days in 2013, the vehicle was rewired, a new Versa valve was installed, along with the master switch. All these changes did not stop further inadvertent dumping of aggregate.

The Versa valve was found to fluctuate between states multiple times until the air pressure was vented. The fluctuations occurred even when wiring to the Versa valve was disconnected. There have been multiple occasions when inadvertent dumping of loads

occurred on MDB Trucking vehicles, Capurro Trucking vehicles, and other trucking company vehicles, where after close examination of the vehicles involved, no electrical or mechanical malfunction could be found.

The examinations of the MDB Trucking vehicles operated by Mr. Koski and Mr. Palmer revealed that there were no electrical problems with the wiring to the Versa valves on the trailers. There were no shorts to ground and no shorts to hot.

## **X. Discussion**

---

The potential for a mechanical failure of the Versa valve will be discussed by Dr. David R. Bosch. It is my understanding that Dr. Bosch's opinion is that the Versa valves did not inadvertently activate due to a mechanical failure of the valve or the vehicle.

The Versa valve was not operating in the lever mode when the inadvertent activations occurred. There was no physical force moving the lever handle causing the Versa valve to activate.

Therefore, the only mode the Versa valve can be operating in at the time of the inadvertent activation is the mode involving the solenoid. The solenoid incorporates a coil to create the force needed to move the plunger. For the coil to be the source of the force to move the plunger, there must be current flowing through the coil.

The witness and the examination of the vehicles precludes current flowing through the coil for the solenoid due to the wiring and the witnessing of the erratic behavior while there was no connection to the coil. Without a connection of power or ground to the coil, there can be no current flow.

The Versa valve is susceptible to external magnetic fields. An external magnetic field can cause the plunger to move. When all other potential failure modes have been negated, the only cause of the failure must be that which cannot be ruled out.

The Versa valve that inadvertently activated on the MDB Trucking vehicle that Mr. Koski was driving on July 7, 2014, was only a year old. The Versa valve that inadvertently activated on the MDB Trucking vehicle that Mr. Palmer was driving on July 7, 2014, was significantly older. Both failed to function properly.

## **XI. Conclusion**

---

It is my opinion, within a reasonable degree of engineering certainty, based upon my experience, education, and background, my examination of the vehicles and the Versa valve, my interviews, and the information supplied, that the inadvertent activation and dumping of the Ranco trailers that occurred on July 7, 2014, at approximately 9:00 a.m. on Interstate 80 West at mile marker 39 outside of Wadsworth, Nevada, was not due to any action, or inaction, of MDB Trucking or its employees or drivers.

Further it is my opinion that the Versa valves are defective in design as they are susceptible to accidental activation from an external magnetic field.

These opinions are based on information and work performed to date. I reserve my right to alter my opinion should further work be performed, or in the event of new information.

**XII. Publications**

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I have not authored any publications within the last ten years.

**XIII. Compensation**

---

I am compensated on an hourly rate basis for all work performed on this matter.

Sincerely,



---

Erik S. Anderson, P.E., C.F.E.I.

# EXHIBIT A-3

FILED  
Electronically  
CV15-02349  
2017-07-07 05:47:13 PM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 6185377 : csulezic

# EXHIBIT A-3

AA001213

1 IN THE SECOND JUDICIAL DISTRICT COURT  
2 OF THE STATE OF NEVADA  
3 IN AND FOR THE COUNTY OF WASHOE  
4

5 ERNEST BRUCE FITZSIMMONS )  
and CAROL FITZSIMMONS, ) Case No. CV15-02349  
6 husband and wife, ) Dept. No. 10  
7 )

8 Plaintiffs, )

9 vs. )

10 MDB TRUCKING, LLC, et al., )

11 Defendants. )

12 AND ALL RELATED CASES. )  
13

**CONDENSED  
TRANSCRIPT**

14  
15  
16  
17 DEPOSITION OF PATRICK BIGBY

18 Taken on Monday, April 10, 2017

19 At 11:30 a.m.

20 At 100 West Liberty Street, 10th Floor

21 Reno, Nevada  
22

23  
24  
25 REPORTED BY: JANET ANN MENGES, CCR #206

Page 2

## APPEARANCES:

## For the Plaintiffs:

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BY PAIGE SHREVE 108

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## (Continued Appearances)

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(702) 645-0150

Page 5

## PATRICK BIGBY

called as a witness, being first duly  
sworn, was examined and testified  
as follows:

## EXAMINATION

BY MS. WOELFEL:

Q. Good afternoon.

Could you state and spell your full name for the  
record, please?

A. My name is Patrick Dean Bigby, P-a-t-r-i-c-k D-e-a-n  
B-i-g-b-y.

Q. Patrick, where do you live?

A. I live in Sparks.

Q. What is your address?

A. 395 Boise Court, Sparks, Nevada, 89431.

Q. My name is Jessica Woelfel. I'm one of the attorneys  
in this matter. I represent RMC Lamar and I will be asking you  
some questions today.

Have you ever had your deposition taken before?

A. I have not.

Q. Have you ever been a party to a lawsuit before?

A. No.

Q. Have you ever testified in court before?

A. I have not.

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1 A. Yes.  
 2 Q. Were you the person that installed the Versa valve  
 3 once it -- once you received the new one?  
 4 A. Yes.  
 5 Q. Had you ever installed a Versa valve before coming to  
 6 work at MDB?  
 7 A. No.  
 8 Q. Did you receive any training with respect to the  
 9 installation of the Versa valve?  
 10 A. No.  
 11 Q. Did you read the manual or read any manual on how to  
 12 install a Versa valve?  
 13 A. I'm unaware that there is a manual for that.  
 14 Q. So you did not read any manuals prior to installing  
 15 it?  
 16 A. I did not.  
 17 Q. So I want to move to the July 2014 incident involving  
 18 Mr. Koski. Can you tell me how you became aware of the  
 19 July 7th, 2014 incident?  
 20 A. I was informed by Tracy Shane.  
 21 Q. Were you working that day?  
 22 A. I was.  
 23 Q. Okay.  
 24 And how did you learn from Tracy Shane that this  
 25 incident had taken place?

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1 A. Pardon?  
 2 Q. How did you learn from Tracy Shane, did he call you,  
 3 did you see him in person, can you recall how he conveyed the  
 4 information regarding the incident to you?  
 5 A. I believe it was in person in the shop.  
 6 Q. And what did he say to you?  
 7 A. I cannot recall the exact words.  
 8 Q. Do you know what kind of material was being hauled by  
 9 Mr. Koski on July 7th, 2014?  
 10 A. No, I was unaware.  
 11 Q. Did Tracy Shane indicate to you whether or not there  
 12 had been injuries as a result of the incident?  
 13 A. He did not indicate anything about injury.  
 14 Q. Tell me what he told you when he first spoke with you  
 15 about this incident?  
 16 A. Ma'am, that is quite a while ago. I can't tell you  
 17 verbatim.  
 18 Q. Can you give me your best recollection regarding what  
 19 you discussed?  
 20 A. The best I could say is that the gates had opened on  
 21 his trailer on I-80.  
 22 Q. Any discussion about how that happened, did you and  
 23 Tracy discuss the reason for the opening?  
 24 A. No, we didn't know the reason.  
 25 Q. Did you discuss the fact that it was the same person

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1 who had the previous dump a year ago, was there any concern  
 2 about that?  
 3 A. We didn't discuss any of that, no, but it may have  
 4 been mentioned that it was Dan. I'm sure it would have been.  
 5 Q. Did you inspect the truck after it returned to the  
 6 site, the MDB site?  
 7 A. Yes.  
 8 Q. And you inspected the trailer that had inadvertently  
 9 opened?  
 10 A. Correct.  
 11 Q. Was anybody else involved in the inspection?  
 12 A. I believe Scott Palmer.  
 13 Q. Did you inspect it on the same day that the incident  
 14 occurred?  
 15 A. I believe we initially did, yes.  
 16 Q. Describe for me what you did during that inspection?  
 17 A. I believe we checked our connections, made sure the  
 18 4-ways were proper. If I recall I think we turned on the brakes  
 19 and the lights and such and see if we could not get an  
 20 uncommanded opening.  
 21 Q. Did you find anything wrong?  
 22 A. No, ma'am.  
 23 Q. Did you conduct any other type of investigation  
 24 related to how this opening occurred?  
 25 A. From that time?

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1 Q. Yes.  
 2 A. No.  
 3 Q. So you did an inspection with Scott Palmer you believe  
 4 on the same day that the incident occurred?  
 5 A. I believe so, but I'm not certain of that.  
 6 Q. And after that -- how long did that inspection take?  
 7 A. An hour, two hours.  
 8 Q. Did you do any other inspection or testing on the  
 9 trailer at issue after that one to two hour inspection with  
 10 Scott Palmer?  
 11 A. At that point in time we put mechanical lockouts on  
 12 it.  
 13 Q. So you were not able to discover any type of an  
 14 electrical short that would have led to the incident; is that  
 15 correct?  
 16 A. That is correct.  
 17 Q. And whose idea was it to come up with a mechanical  
 18 lockout system?  
 19 A. That would be Scott Palmer.  
 20 Q. I want to go back to your one to two hour inspection.  
 21 Can you walk me through each thing that you did during that  
 22 inspection?  
 23 A. We started at the tractor, the source of the power,  
 24 checked the connections at the battery and then I believe we  
 25 went into the cab and checked the wiring behind the panel to

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1 make sure we didn't have any wires come loose from the toggle  
2 switches, which we did not, and then we checked the wiring to  
3 the deck of the trailer or the tractor looking for any abrasions  
4 and stress to the wiring, which there was none.

5 Then we checked from the tractor to the trailer, the  
6 cord to make sure it hadn't been abraded on the deck or any  
7 other way of crossing, even though theoretically there is no  
8 power on there unless the switch is turned on. We inspected the  
9 wires as best we could following the trailer to make sure that  
10 they hadn't rubbed through on top of another wire that  
11 potentially might have been hot creating a circuit all the way  
12 through to that last valve.

13 Q. Did you see any evidence --

14 A. No, ma'am.

15 Q. -- of any hot spots or anything, nothing?

16 A. No.

17 Q. So you were unable to determine the cause of the  
18 inadvertent dump?

19 A. Correct.

20 Q. Did you talk to Mr. Koski about anything that he might  
21 have done to cause the inadvertent dump?

22 A. I did not.

23 Q. Do you know if Scott Palmer did?

24 A. I do not know whether he did or did not.

25 Q. Did you run any tests on the Versa valve following the

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1 the mechanical lockout device?

2 A. On a few of them, yes.

3 Q. Did you or Scott Palmer or somebody else design the  
4 mechanical lockout device?

5 A. It's my understanding that Scott Palmer had seen these  
6 devices and whether he designed it or copied it, I do not know.

7 Q. Did you have any discussion with him about the devices  
8 before the decision was made to utilize them?

9 A. No.

10 Q. Were you involved in installing the mechanical lockout  
11 devices into the Versa valves on the various trailers?

12 A. Yes.

13 Q. Did you guys -- did MDB institute -- Scratch that.

14 After July 7, 2014 did MDB require that all trailers  
15 have a mechanical lockout in place before they were able to be  
16 put on the road?

17 A. That's my understanding, yes.

18 Q. Were you able to reach any conclusion as to the cause  
19 of the July 7th, 2014 inadvertent dump?

20 A. No.

21 Q. Going back to the July 2013 dump, I had asked you if  
22 you had replaced the Versa valve. Do you recall that?

23 A. Um-hum.

24 Q. Yes?

25 A. Yes.

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1 July 7th, 2014 event?

2 MR. BROWN: Objection, foundation.

3 THE WITNESS: No.

4 BY MS. WOELFEL:

5 Q. Did you evaluate or test the air system?

6 MR. BROWN: Objection, foundation.

7 THE WITNESS: I don't recall. I think we assumed that  
8 it was fine, because it still had air

9 BY MS. WOELFEL:

10 Q. What do you mean it still had air?

11 A. From the trailer when it arrived when we were looking  
12 at it the air tank that operates the valves or the gates was  
13 still full of air, had air pressure.

14 Q. So because of that you didn't conduct any other tests  
15 on the air system?

16 A. I did not see any need at that moment.

17 Q. Did you speak with the police department or anyone  
18 else about this incident?

19 A. No.

20 Q. Now describe for me the decision to use the mechanical  
21 lockout system, did you participate in that decision at all?

22 A. No, I was unaware of those particular devices of  
23 varying degrees, otherwise we probably would have put it on the  
24 first set the first time.

25 Q. Did you help with the fabrication of those devices,

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1 Q. And you told me that you did replace the Versa valve.  
2 What did you do to the Versa valve that you removed from trailer  
3 6775?

4 A. I believe we disposed of it.

5 Q. Okay.

6 When you were inspecting trailer 6775 after the  
7 July 7th, 2014 incident did you identify any problems with the  
8 way the trailer was manufactured that you believe contributed to  
9 the unauthorized dump?

10 A. At that the time, no.

11 Q. Do you believe that there is a problem as you sit here  
12 today with the way trailer 6775 was manufactured that  
13 contributed to the unauthorized dump?

14 MR. BROWN: Objection, foundation, calls for expert  
15 opinion.

16 THE WITNESS: No.

17 BY MS. WOELFEL:

18 Q. In your work after July 7, 2014 on trailer 6775 have  
19 you been able to identify any problems with the design of the  
20 trailer that you believe contributed to the July 7, 2014  
21 unauthorized dump?

22 MR. BROWN: Same objection.

23 THE WITNESS: No.

24 MS. WOELFEL: We have been going for about an hour and  
25 a half. Why don't we take a five-minute break.

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1 also have pipe threads that could be utilized and I did utilize  
2 pipe threads and unions, which made a solid junction for the air  
3 and eliminates the O rings from leaking in the future.

4 Q. What would be the result of the air leak?

5 A. Pardon?

6 Q. What is the result of the air leaking at the gate  
7 control valve?

8 A. At this one, this particular one besides basically  
9 what we were dealing with was just a loss of air. It's still  
10 part of the system. The air compressor from our tractor is  
11 working harder to try to make up for this air. It still has  
12 plenty of air to operate properly the cylinders on the gates and  
13 maintain pressure in the tank, it's just unacceptable to have  
14 that air leak.

15 Q. Okay.

16 And this was shortly before the unauthorized dump in  
17 July of 2013 involving this trailer, correct?

18 A. It appears so, yes.

19 Q. When that unauthorized dump in July 2013 took place  
20 did you check to see if what is described on this work order  
21 played any part in that unauthorized release?

22 A. I did not make any specific test to this, perhaps  
23 checked for leaks, but I don't believe there would have been any  
24 found.

25 Q. The next page is Bates labeled MDB 015 and it's a work

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1 Q. Okay.

2 And did you place the order for a new Versa valve?

3 A. I believe so. I went and picked it up at our vendor.

4 Q. Were you the person that made the choice on which  
5 Versa valve to purchase?

6 MR. BROWN: Objection, foundation.

7 THE WITNESS: You could say that, I suppose.

8 BY MS. WOELFEL:

9 Q. Did you have any discussions with anybody else at MDB  
10 about what type of Versa valve to purchase in order to replace  
11 the one that you had removed?

12 A. No.

13 Q. So if you placed the order then it would have been  
14 your decision on which Versa valve to order?

15 A. Yes.

16 Q. Did you look at any other types of Versa valve when  
17 you were making a decision on what to purchase?

18 A. No.

19 MS. WOELFEL: Keep that exhibit in front of you. I  
20 want to show you what we will mark as Exhibit 7.

21 (Exhibit 7 was marked.)

22 BY MS. WOELFEL:

23 Q. Handing you an invoice that is dated July 31st, 2013,  
24 and it's an invoice ordering a side port Versa valve. Do you  
25 see that?

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1 order dated August 1st, 2013. It says by Pat and performed by  
2 Pat. Is that your handwriting?

3 A. It does appear to be, yes.

4 Q. Can you describe for me what you were doing in this  
5 work order?

6 A. It says that we were investigating unintentional gate  
7 opening. At this point it appears to me that I have begun to  
8 replace and isolate the circuit for the Versa valve's function  
9 in this particular work order, replaced the Versa valve,  
10 isolated the dump valve circuit. I have difficulty reading my  
11 own handwriting. Install the Versa valve and rewire dump valve  
12 circuit from valve to truck isolating dump circuit and I removed  
13 a coil case ground from the circuit.

14 Q. So you rewired the dump valve circuit in the same  
15 manner that you rewired 6774 that we talked about?

16 A. Correct.

17 Q. Then it says you replaced the Versa valve. Did you  
18 take off the Versa valve, did you remove the Versa valve from  
19 6775?

20 A. I'm pretty sure I would have, yes.

21 Q. What did you do with the Versa valve that you removed?

22 A. My best recollection is we disposed of it.

23 Q. Did you run any tests on it after you removed it from  
24 the trailer?

25 A. I do not believe so.

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1 A. I do.

2 Q. And it's with Eng's Motor Truck Company. Is that with  
3 whom you placed your order for a new Versa valve?

4 A. That is correct.

5 Q. You said you went and picked it up at Eng's when it was  
6 ready?

7 A. Correct.

8 Q. How do you pronounce this company?

9 A. I believe it's Eng's.

10 Q. So going back to work order MDB 015, do you know if  
11 Eng's had the Versa valve in stock and you just went and picked  
12 it up or did you have to place an order and have it delivered?

13 A. If I recall correctly it was in stock.

14 Q. Okay.

15 And you went and picked it up and then did you notice  
16 when you opened the package for the Versa valve that there was  
17 any written documentation included with it?

18 A. I would have to say that there probably was.

19 Q. Did you read it before you replaced the Versa valve?

20 A. I did not.

21 Q. Did anyone assist you in installing the new Versa  
22 valve?

23 A. I do not believe so.

24 Q. Okay.

25 After you installed the new Versa valve did you

# **EXHIBIT A-4**

**EXHIBIT A-4**

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Page 2		Page 4	
1	A P P E A R A N C E S:	1	THE COURT REPORTER: Please
2	THORNDAL ARMSTRONG DELK BALKENBUSH &	2	raise your right hand. Do you swear
3	EISINGER, PC	3	that the testimony you're about to
4	6590 South McCarran Boulevard, Suite B	4	give in this matter will be the
5	Reno, Nevada 89509	5	truth, the whole truth, and nothing
6	BY: BRIAN M. BROWN, ESQ.	6	but the truth so help you God?
7	Attorneys for MDB Trucking, LLC and Daniel	7	THE WITNESS: Yes, I do.
8	Anthony Koski	8	BAHRAM NAZMI,
9	775-786-2882 bmb@thorndal.com	9	conducting business at
10	LEWIS BRISBOIS BISGAARD & SMITH LLP	10	Versa Products Company, Inc.,
11	6385 South Rainbow Boulevard, Suite 600	11	22 Spring Valley Road,
12	Las Vegas, Nevada 89118	12	Paramus, New Jersey 07652,
13	BY: PAIGE S. SHREVE, ESQ.	13	having been first duly sworn by
14	Attorneys for Versa Products Company, Inc.	14	the notary public, was examined
15	702-893-3383	15	and testified as follows:
16	702-693-4317 Paige.Shreve@lewisbrisbois.com	16	EXAMINATION BY MR. BROWN:
17	MCDONALD CARANO WILSON LLP (via telephone)	17	Q. Sir, would you please state your full
18	100 West Liberty Street, 10th Floor	18	name?
19	Reno, Nevada 89501	19	A. It's Bahram Nazmi, B-a-h-r-a-m
20	BY: JESSICA L. WOELFEL, ESQ.	20	N-a-z-m-i.
21	Attorneys for RMC Lamar, Dragon ESP and	21	Q. And, Mr. Nazmi, what is your
22	Modern Group	22	profession or occupation?
23	775-788-2000 jwoelfel@mcdonaldcarano.com	23	A. I'm engineering manager at Versa
24	ALSO PRESENT:	24	Products.
25	SHARKEY & CAMPISI	25	Q. And how long have you been employed as
	188 Eagle Rock Avenue, P.O. Box 419		
	Roseland, New Jersey 07068		
	BY: GREGORY G. CAMPISI, ESQ.		
	973-226-7155 gcampisi@sharkeycamlaw.com		
	MORRIS POLICH & PURDY LLP		
	3800 Howard Hughes Parkway, Suite 500		
	Las Vegas, Nevada 89169		
	BY: JEREMY J. THOMPSON, ESQ.		
	702-862-8300		
	702-697-7527 jthompson@mpplaw.com		
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	BAHRAM NAZMI		
	Examination by Mr. Brown		
	EXHIBITS		
	NUMBER DESCRIPTION IDENT.		
	Exhibit 3 Parts production drawings, 124		
	VER000154-000217		
	(Exhibit attached to this		
	transcript.)		
	the engineering manager for Versa Products?		
	A. 17 and a half years.		
	Q. And you were here during the		
	deposition that took place this morning of the		
	other person most knowledgeable deposition. Is		
	that correct?		
	A. That is correct.		
	Q. And you're here in your capacity as a		
	representative of Versa Products. Correct?		
	A. That is correct.		
	Q. Other than meeting with your		
	attorney, what did you do in preparation for your		
	deposition this afternoon?		
	A. As I recall, nothing.		
	Q. Did you do anything in preparation at		
	any time for your deposition other than meet with		
	your attorneys?		
	A. Yes. I had to put together some		
	documents which we provided to the counsel.		
	Q. Okay. And did you just do that on		
	one occasion or have you done that on multiple		
	occasions, put together documents for your attorney?		
	A. For this case?		
	Q. Yes.		
	A. Multiple times.		



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1 saying?  
2 A. That's what I was saying.  
3 Q. Okay.  
4 A. I assume cars have solenoids, too.  
5 Q. Do you know if cars are required to  
6 have electromagnetic field screening devices on any  
7 of its component parts?  
8 A. I don't know.  
9 Q. Have you ever heard of an  
10 electromagnetic field screening device?  
11 A. No.  
12 Q. Did you talk with Mark about  
13 electromagnetic field screening devices?  
14 A. I have never heard of that, so  
15 probably I did not talk to him about that.  
16 Q. Number 2, if we went through the VAG  
17 model, that's the model with the latch. Is that  
18 correct?  
19 A. Yes.  
20 Q. Okay. If we went through the  
21 production process again, is it very similar to  
22 that of the VGK?  
23 A. Yes.  
24 Q. Except we add in this latch feature.  
25 Is that correct?

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1 A. That's correct.  
2 Q. You heard Gerry's testimony this  
3 morning that when the latch feature is added to  
4 this valve that the manner in which the manual  
5 handle works is different. Did you hear that  
6 testimony?  
7 A. Yes.  
8 Q. Do you agree with that testimony?  
9 A. Yes.  
10 Q. Would you explain to me why it's  
11 different? What does the process of adding the  
12 latch do with the valve that results in this handle  
13 functioning differently?  
14 A. For as far as I know with the latch,  
15 you lift up the latch and then it can operate, but  
16 you have to hold onto the latch, open. You release  
17 the latch, closes, and it locks, so it's different  
18 than you don't have it [sic].  
19 THE COURT REPORTER: So it's  
20 different what?  
21 A. As far as operation goes, it's  
22 different.  
23 Q. But if you recall Gerry's testimony,  
24 Gerry told me that in the VGK -- he called it  
25 something else, clean --

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1 A. Bottom dump?  
2 Q. Bottom dump. Both of those are bottom  
3 dump valves. Correct?  
4 A. Right. But that's a more generic one.  
5 Q. Okay. The VGK, he told me that when  
6 you're using the valve manually by activating it  
7 with the handle that the activation of the valve was  
8 different with regard to the model with the latch as  
9 compared to the model without the latch. Do you  
10 recall that?  
11 A. I believe if I recall correctly, he  
12 was referring to the center position where it's  
13 easier with a version without the latch to maintain  
14 that center position as opposed to the one with the  
15 latch. With the latch you still can maintain that,  
16 but it's more difficult to do it.  
17 Q. That's what I was talking about. You  
18 heard that testimony?  
19 A. Correct.  
20 Q. And do you agree with him that that's  
21 true?  
22 A. I agree with him, yes.  
23 Q. Why is that true?  
24 A. It's just the way you have to use two  
25 hands, lift, hold, and then --

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1 Q. So it's the operator. It's not the  
2 valve itself? Nothing about the adding of the latch  
3 changes the way the handle works? It's merely the  
4 fact because now someone needs to hold it?  
5 A. Yes. But again, that's your intended  
6 for the centering position [sic]. Then it's easier  
7 without the latch.  
8 Q. Anything other than --  
9 A. It's just a matter of operator.  
10 Q. So the addition of the latch has no  
11 mechanical impact on the handle operation but the  
12 operator feels a difference because they're doing  
13 two things simultaneously? Is that what you're  
14 telling me?  
15 A. Not quite. As far as ease of  
16 operation is concerned, yes, the one without the  
17 latch. It's easier for maintaining the central  
18 position.  
19 Q. What do you have --  
20 A. But the latch provides you the stop of  
21 the accidental shift of the handle so nobody can  
22 walk up to it and just unintentionally shift it.  
23 Q. Or if the solenoid is activated when  
24 you don't want it to be, it would prevent that, too.  
25 Correct?



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## **Matter of MDB Trucking, Inc.**

Case Number: FE14-1111A

## **Engineering Investigation Report**

June 16, 2017

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## 1. INTRODUCTION

On November 11, 2014, Forensic Engineering Incorporated (FEI) was retained by Thorndal Armstrong Delk Balkenbush & Eisinger to provide an independent forensic engineering investigation of the accident involving a tractor triple-bottom-dump-trailer combination. The accident occurred on July 7, 2014, at approximately 9:00 a.m. in the west bound lanes of Interstate 80, near mile marker 39.

The accident was initiated when the third (end or rearmost) bottom dump trailer in the combination suddenly and unexpectedly dumped a load of crushed rock onto the roadway. The accident was exacerbated when a number of vehicles encountered the dumped crushed stone, causing multiple collisions. The bottom dump trailer that malfunctioned was designed and manufactured by Ranch Manufacturing Company (RANCO), Lamar, Colorado, which is presently owned by Dragon Products, LTD, Beaumont, Texas.

Forensic Engineering's investigation to date has included:

- 1.1 Review of the documents supplied by Mr. Barkley, including the relevant vehicle service records;
- 1.2 Case research regarding the bottom dump apparatus control systems and unintended dump scenarios;
- 1.3 Case research regarding unintended electromagnetic solenoid activations;
- 1.4 Fabrication of an dump control valve test system;
- 1.5 Testing, disassembly and examination of an exemplar Versa valve;
- 1.6 Multiple inspections and testing of the accident tractor triple-bottom-dump-trailer combination;
- 1.7 Multiple inspections and testing of the second tractor triple-bottom-dump-trailer combination that suddenly and unexpectedly dumped a load of sand onto the roadway near the location and nearly the same time as the accident combination dumped its load;
- 1.8 Multiple inspections and testing of the Versa valve that was removed from the accident trailer unit 6775;

- 1.9 Multiple inspections and testing of the Versa valve that was removed from the 2<sup>nd</sup> trailer; unit 6778;
- 1.10 Extensive in situ electrical testing of the dump control valve system of both vehicle combinations;
- 1.11 Laboratory testing, disassembly and examination of the Versa valve that was removed from trailer unit 6775.
- 1.12 Laboratory testing, disassembly and examination of the Versa valve that was removed from trailer unit 6778.

Forensic Engineering was requested to prepare a report and to render its conclusions and opinions regarding its investigation. Conclusions and opinions by FEI are contained throughout its report and are summarized in Section 13. Appendix 1 contains the *Curriculum Vitae* of the author.

## **2. SUMMARY OF MATERIALS REVIEWED**

Forensic Engineering reviewed the following documents and technical resources during its investigation. Excerpts from the materials that were relevant to FEI's assignment are provided following the document's listing.

- 2.1 Vehicle Inspection Reports obtained at [www.quicktransportsolutions.com](http://www.quicktransportsolutions.com), 19 pages
- 2.2 RANCO Bottom Dump Operation – Maintenance and Parts Manual, 88 pages
- 2.3 Dragon RANCO Steel Mini Bottom Dump Trailer information from Dragon Products website, 6 pages
- 2.4 State of Nevada Traffic Accident Report, July 7, 2014, 12 pages
  - 2.4.1 Event Number: 140700621
  - 2.4.2 DOI: July 7, 2014
  - 2.4.3 TOI: 9:00 a.m.
  - 2.4.4 LOI: Westbound lanes of I-80 east of Reno, Nevada, approximately 2,640 feet east of mile marker 39

- 2.4.5 Conditions: two-way, divided, median barrier, curve, relatively level, daylight, clear weather conditions, debris in roadway
- 2.4.6 Photographs were taken
- 2.4.7 No diagram was created
- 2.4.8 Narrative: V-3, V-2 and V-1 were traveling west on I-80 near mile marker 39, in that sequence. V-3 spilled a load of gravel on the #1 and #2 westbound travel lanes. V-2 came upon the gravel on the roadway at highway speeds (sic), in a curve. V-2 slowed rapidly and steered right to avoid a collision with a commercial motor vehicle. Accident number 140702588. V-1 was unable to avoid striking V-2. V-1 struck the right rear of V-2 with its left front. V-1 came to rest in the #1 travel lane facing west. V-2 rotated clockwise, struck [the] right concrete barrier with its left front, struck V-1's right side with its front and came to rest with its rear in contact with the concrete barrier and its front in contact with the right side of V-1, on its wheels facing southeast. V-3 stopped west of the accident scene and contacted NHP. [An additional 14 accident numbers are listed.]
- 2.4.9 V-1
  - 2.4.9.1 Mr. Berlie Langston
  - 2.4.9.2 White, 2005 Ford F-150
  - 2.4.9.3 Damaged left front
  - 2.4.9.4 Statement: Gravel on the road created dust (blinding dust). Everyone stop (sic) suddenly. Multitude of veh (sic) involved. Chain reaction.
- 2.4.10 V-2
  - 2.4.10.1 Ms. Olivia John
  - 2.4.10.2 Silver, 2008 Chrysler Sebring
  - 2.4.10.3 Damaged right rear
  - 2.4.10.4 Statement: I drove through the first pile of sand then saw a dust cloud ahead. I then saw the lights on [the] semi-truck. The truck swerved from the slow lane and stopped suddenly. I was in the fast lane. I hit

my brakes and swerved to missed (sic) the semi. I then hit sand and my car began to slide. There was nothing but a dust cloud. I then saw a white truck and other cars. I then came to a stop against another truck.

2.4.11 V-3

2.4.11.1 Mr. Daniel Koski

2.4.11.2 White, 2003 Peterbilt Tractor

2.4.11.3 Statement: I was west bound [on] I-80 at Derby \_\_\_\_\_ (illegible) hauling rock to Cemex on Galletti Way \_\_\_\_\_ (illegible). I was going about 65 mph when a gentleman in a pickup honked and waived me over. I stopped [and] he told me my back trailer gates come (sic) open and spilled the rocks and caused a bad accident. I immediately called 911 and waited for NHP.

- 2.5 Sierra Appraisal and Adjusting Service repair cost estimate for insured Berlie Langston, 6 pages
- 2.6 State of Nevada traffic citation number XD1158121, Daniel Koski, illegible, 2 pages
- 2.7 Safety Measurement System [SMS], Complete SMS Profile, USDOT # 2157396, 5 pages
- 2.8 Vehicle inspection records (accident vehicle), 2 pages
- 2.9 Vehicle work orders (accident vehicle), 3 pages
- 2.10 Health insurance records, Olivia John, 9 pages
- 2.11 Ten black and white copies of photographs, lever locks, valves, incident scene, 10 pages
- 2.12 Defendant's [MDB] Answers to Plaintiffs' First Set of Interrogatories, January 12, 2016, 14 pages
  - 2.12.1 As a result of a prior incident involving the same exact Ranco trailer in July 2013, MDB replaced the Versa valve and rewired the dump valve circuit from valve to truck. Thus isolating the dump coil circuit and removing the coil case ground [coil shield] from the circuit.

- 2.12.2 MDB employees added a master switch and changed the voltage source for the dump control system.
- 2.12.3 A similar MDB Ranco semi-trailer self-activated and dumped sand between mile marker 40 and the rest area [on] I80 West ten to fifteen minutes before the accident on the same day and in proximity to the location of the accident between Mile Mark (sic) 38 and Mile Marker 39.
- 2.13 Defendant's [Koski] Answers to Plaintiffs' First Set of Interrogatories, January 12, 2016, 16 pages
- 2.13.1 On the morning of July 7, 2014, Mr. Koski picked up a load of crushed rock. At approximately 9:00 a.m. he was traveling westbound on I80 between mile marker 39 and 28 en route to deliver the rock to Ready Mix Plant in Reno when the rock in the rearmost trailer inadvertently dumped onto the roadway. The truck he was driving had safety features including a master switch and three slave switches that controlled the dump systems for each of the three individual trailers. The master switch and slave switches were off at the time of the incident. He did not touch nor inadvertently activate the dump control switches. Driver error was not involved. I was employed by MDB from June 8, 2012, until I retired on December 1, 2014.
- 2.13.2 Mr. Koski picked up the tractor and trailers on July 7, 2014, at the MDB facility at approximately 5:30 a.m. He traveled to Piute Pit Wadsworth and picked up a load of crushed gravel at approximately 7:30 a.m. He entered I80 West at the Wadsworth ramp at approximately 8:40 a.m. and was traveling toward Reno.
- 2.13.3 Mr. Koski had one prior similar event where the same subject Ranco trailer self-activated and dumped a load. I was cited on July 30, 2013. The charge was dismissed.
- 2.14 Defendant's Rule 16.1 Disclosure Statement, December 15, 2015, 7 pages
- 2.14.1 Exhibit: State of Nevada Traffic Accident Report, July 7, 2014, 12 pages

- 2.14.2 Exhibit: Sierra Appraisal and Adjusting Service repair cost estimate for insured Berlie Langston, 6 pages
- 2.14.3 Exhibit: State of Nevada traffic citation number XD1158121, Daniel Koski, illegible, 2 pages
- 2.14.4 Exhibit: Safety Measurement System [SMS], Complete SMS Profile, USDOT # 2157396, 5 pages
- 2.14.5 Exhibit: Vehicle inspection records (accident vehicle), 2 pages
- 2.14.6 Exhibit: Vehicle work orders (accident vehicle), 3 pages
- 2.14.7 Exhibit: Health insurance records, Olivia John, 9 pages
- 2.14.8 Exhibit: Ten black and white copies of photographs, lever locks, valves, incident scene, 10 pages
- 2.14.9 Exhibit: Financial Pacific Insurance Company Commercial Lines Policy, countersigned December 12, 2015, 328 pages
  - 2.14.9.1 The following units were insured.
    - 2.14.9.1.1 2003 Peterbilt 379, VIN: 1XP5DB9X73D807486 (Unit #5694, tractor)
    - 2.14.9.1.2 2007 Ranco, VIN: 1R9DBSA2077L008042 (Unit #6773, semi-trailer)
    - 2.14.9.1.3 2003 Ranco, VIN: 1R9BP450631008610 (Unit #6774, trailer)
    - 2.14.9.1.4 2002 Ranco, VIN: 1R9BP45082L008431 (Unit #6775, trailer)
    - 2.14.9.1.5 2006 Peterbilt 379, VIN: 1XP5DB9X76D641667 (Unit #5693, tractor)
    - 2.14.9.1.6 2007 Ranco, VIN: 1R9BSA2047L008046 (Unit #6776, semi-trailer)
    - 2.14.9.1.7 2003 Ranco, VIN: 1R9BP45003L008621 (Unit #6777, trailer)

- 2.14.9.1.8 2002 Ranco, VIN: 1R9BP450X2L008432 (Unit #6778, trailer)
- 2.15 Plaintiff's Initial Disclosure of Witnesses Pursuant to NRCP 16.1, December 1, 2015, 6 pages
- 2.16 Plaintiff's Initial Production of Documents Pursuant to NRCP 16.1, December 1, 2015, 4 pages
- 2.16.1 Exhibits: Medical records for Ms. Olivia John, 176 pages
- 2.17 Defendant's [MDB & Koski] Rule 34 Response to Plaintiffs' Request for Production of Documents, January 19, 2016, 12 pages
- 2.17.1 Exhibit: Service, maintenance and inspection records for truck driven by Mr. Daniel Koski, tractor number 5674, trailer numbers 6773, 6774 and 6775 (front, middle and rear, respectively), 255 pages
- 2.17.1.1 See summary of records in Section 3 below.
- 2.17.2 Exhibit: Service, maintenance and inspection records for truck driven by Mr. Scott Palmer, tractor number 5673, trailer numbers 6776, 6777 and 6778 (front, middle and rear, respectively), 82 pages
- 2.17.2.1 See summary of records in Section 4 below.
- 2.18 Defendants [MDB] Amended Answers to Plaintiff's First Set of Interrogatories, February 3, 2016, 4 pages,
- 2.19 Defendant Versa Products Company, Inc.'s Responses to Defendant MDB Trucking, LLC's First Set of Interrogatories, January 6, 2017, 12 pages
- 2.20 Defendant/Cross-Claimant Versa Products Company, Inc.'s First Supplement to Its Early Case Conference List of Witnesses and Documents, January 24, 2017, 11 pages
- 2.20.1 Exhibit: QP-11 Assembly Test Procedure, Rev. K, 3 pages
- 2.20.2 Exhibit: Engineering drawings, 4 pages (see Figures 2-1 through 2-4)
- 2.20.3 Exhibit: ISO 9001:2008, Certification of Registration, March 20, 2015, 25 pages
- 2.20.4 Exhibit: Product Return Analysis Reports (Copy), February 18, 2004 through August 2, 2016, 34 pages

- 2.20.5 Exhibit: Engineering Change Requests (ECRs), 8 pages
- 2.20.6 Exhibit: Versa Valves Bottom Dump Control Valves brochure, Bulletin 165, January 2015, 2 pages
- 2.20.7 Exhibit: Valve Repair Kit Instruction Sheet, 2 pages
- 2.20.8 Exhibit: Assembly Job Traveler, VGK-4523-20C-D012, October 26, 2012, 3 pages
- 2.20.9 Exhibit: Warnings Regarding the Design Application, Installation and Service of Versa Products, 1 page
- 2.20.10 Exhibit: UL Certification for Peter Paul Electronics Co. Inc. solenoids, undated, 3 pages
- 2.21 Defendant Versa Products Company, Inc.'s Responses to Defendant MDB Trucking, LLC's First Set of Requests for Production, January 24, 2017, 24 pages
- 2.22 Defendant Versa Products Company, Inc.'s First Amended Responses to Defendant MDB Trucking, LLC's First Set of Requests for Production, May 8, 2017, 7 pages
  - 2.22.1 Exhibit A: Engineering drawings, 64 pages
  - 2.22.2 Exhibit B: Versa's valve failure investigation documents, 11 pages
- 2.23 Defendant/Cross-Claimant/Cross-Defendant Versa Products Company, Inc.'s Motion for Summary Judgement Against Defendant/Cross-Claimant/Cross-Defendant MDB Trucking, LLC's Cross-Claims, May 1, 2017, 16 pages
  - 2.23.1 Exhibit 1: MDB Trucking, LLC's Cross-Claim Against RMC Lamar Holdings, Inc., (fka Ranch Manufacturing Company) and Versa Products Company, Inc., June 15, 2016, 7 pages
  - 2.23.2 Exhibit 2: Volume 3, deposition transcript of Mr. Scott Palmer, March 8, 2017, 101 pages
  - 2.23.3 Exhibit 3: Deposition transcript of Mr. Tracy Shane, April 11, 2017, 130 pages
  - 2.23.4 Exhibit 4: Deposition transcript of Mr. Patrick Bigby, April 10, 2017, 123 pages
  - 2.23.5 Exhibit 5: Volume 2, deposition transcript of Mr. Scott Palmer, March 7, 2017, 196 pages

- 2.24 Defendant Versa Products Company, Inc.'s Second Amended Responses to Defendant MDB Trucking, LLC's First Set of Requests for Production, May 10, 2017, 7 pages
  - 2.24.1 Exhibit: Privilege/Redaction Log, 2 pages
  - 2.24.2 Exhibit: Engineering drawings, 64 pages
- 2.25 Defendant/Third –Party Plaintiff's Request for Testing, September 30, 2016, 5 pages
- 2.26 Moad v Nelse Wynne; Capurro Trucking, Complaint for Personal Injuries, June 24, 2013, 6 pages
  - 2.26.1 Exhibit: Expert report by Peter Philbrick, Ruhl Forensics, May 13, 2014
  - 2.26.2 Mr. Philbrick failed to determine the root cause for the Capurro trucking unintended dump.
  - 2.26.3 Mr. Philbrick was mistaken when he stated that a mechanical failure could have caused the Capurro trucking unintended dump.
  - 2.26.4 Mr. Philbrick was mistaken when he opined that "Since no electrical or mechanical failures were found or noted the only other option is driver error."
  - 2.26.5 Mr. Philbrick was not qualified to make a determination regarding the root cause for the Capurro trucking unintended dump.
  - 2.26.6 The records reviewed by Mr. Philbrick revealed that Capurro trucking had had at least five prior incidents of unintended dumps.
- 2.27 Deposition transcript of Mr. Daniel Koski, March 8, 2017, 107 pages
- 2.28 Deposition transcript of Mr. Daniel Koski, March 8, 2017, 107 pages
- 2.29 Volume 1 deposition transcript of Mr. Scott Palmer, March 6, 2017, 123
- 2.30 Deposition of Mr. Gerald Gramegna, May 9, 2017, 76 pages
- 2.31 Volume 1 deposition transcript of Mr. Bahram Nazmi, May 9, 2017, 135 pages
- 2.32 Volume 2 deposition transcript of Mr. Bahram Nazmi, May 10, 2017, 214 pages
- 2.33 Ranco Bottom Dump Operation – Maintenance & Parts Manual, 88 pages
- 2.34 Dragon Ranco Bottom Dump Trailer brochures, 6 pages
- 2.35 Carfax 2003 Peterbilt Conventional 379, VIN: 1XP5DB9X73D807486
- 2.36 MDB Trucking, LLC Inspection reports, [www.quicktransportsolutions.com](http://www.quicktransportsolutions.com), 23 pages

- 2.37 Versa Valves V and T Series Bulletin, 2014, 72 pages
  - 2.37.1 An alternative Versa valve design includes a lockout mechanism described as a "latching/manual reset valve" that functions essentially the same as the lockout mechanism designed and installed by MDB Trucking, LLC.
- 2.38 NV Energy document titled "Generating Resources", 1 page
- 2.39 Article titled "Air valve commands bottom-dump trailer, <http://hydraulicspneumatics.com>, 3 pages
  - 2.39.1 The article describes an alternative bottom-dump control valve design manufactured by AIRman, Inc., that precludes tampering and unintended dumps.
- 2.40 Article titled "New Technology for Bottom Dump Hopper Valves Solves Old Problems", 3 pages
  - 2.40.1 The article addresses unintended dumps involving train cars that are used to haul coal. The same solution can be applied in the immediate case.

The article essentially states that if residual air pressure is present in the dump reservoir (as little as 15 PSI) and either the manual override is actuated, the control valve could be shifted to the "open" condition without anyone's knowledge. With insufficient pressure to actuate the dump mechanism, the dump cylinder would not move (typical cylinder operating pressure with the car loaded is 25-35 PSI). Once the valve is shifted to the "open" condition, it will stay there until a signal to "close" is sent to it either manually or electrically while there is sufficient pressure to shift the valve element back to the "close" position. During charging of the tractor-trailer combination prior to unloading, a valve left in the "open" position due to some inadvertent action continues to supply air to the "open" side of the cylinder. Once the cylinder reaches a pressure that is high enough to operate the dump mechanism (again 25-35 PSI), the "ticking bomb" explodes – the trailer prematurely dumps. The inherent danger in this situation is that the tractor-trailer combination is in motion and could be at speed on a highway and could lead to an accident involving other vehicles.

In the case being discussed, it is known that there is an internal pilot passage feeding the solenoid. The article essentially states that since this passage exists, it could be equipped with an internal pressure sensing check valve assembly. This safety check assembly would not allow the solenoid to shift the valve's main element to the "open" position unless the supply pressure to the valve was sufficient to actuate the cylinder and thus the dumping mechanism. Since the pilot passage in the valve body contains such a small volume, there would never be enough "stored" or trapped pressure downstream of the safety device to allow unintended movement of the main valve element. This type of technology would indeed prevent inadvertent operation of the opening circuit without someone's knowledge of the event and the premature dumping of coal. Lexair, Inc. has embodied the built-in safety check feature described above as an option for its bottom dump hopper valve product line. A similar design could have been integrated with the existing Versa valve design.

- 2.41 Two protocols written by Erik Anderson, Anderson Engineering, and David Bosch titled "Proposed Protocol for the Recovery of the Versa Valve from MDB Trucking Ranco Trailer Number 6778 and the testing and inspection of the MDB Trucking Tractor Number 5693, and Ranco Trailers Number 6776, Number 6777, and Number 6778" and "Proposed Protocol for the Destructive Testing of the Versa Valves recovered from MDB Trucking Ranco Trailers Number 6775 and Number 6778", October 31, 2016, 4 pages
- 2.42 Protocol written by Erik Anderson and David Bosch titled "Proposed Versa Valve's Valve Examination and Testing Protocol", November 12, 2016, 7 pages
- 2.43 Protocol written by Erik Anderson and David Bosch titled "Proposed Versa Valve's Valve Examination and Testing Protocol – Revision 1", November 10, 2016, 7 pages
- 2.44 FEI and AEI Responses to Versa's Protocol Objections, November 17, 2016, 3 pages
- 2.45 FEI's inspection notes photographs for inspections completed on June 9, 2015, October 24 & 25, 2015, February 29, 2016, April 28 & 29, 2016, May 3, 2016, October 13, 2016, October 24 & 26, 2016, November 2, 2016, November 15, 2016 and November 30, 2016.

- 2.46 MDB Bills of lading #7068 and #7584, July 7, 2014, 2 pages
- 2.47 Driver's Daily Time Sheet & Log, Dan Koski, Tractor 5694, trailers 6773, 6774 and 6775, July 7, 2014, 1 page
- 2.48 Driver's Daily Time Sheet & Log, Scott Palmer, Tractor 5693, trailers 6776, 6777 and 6778, July 7, 2014, 1 page
- 2.49 Versa Valve's document contained within valve packaging, 1 page
  - 2.49.1 There were no installation instructions or valve specification included.
- 2.50 Forty-four color Google Earth images
- 2.51 Five color photographs of the accident scene (contained in Figures 2-5 through 2-9)
- 2.52 Various media website videos describing the accident were reviewed.
- 2.53 Peter Paul Electronics, "Solenoid Valves 101", Copyright 2003, 23 pages
- 2.54 University of Pittsburgh Safety Manual, "Guidelines for Radio Frequency Radiation (RF)", 03-022, August 25, 2015, 6 pages
- 2.55 "Introducing Electromagnetic Field Momentum", Ben Yu-Kuang Hu, European Journal of Physics, 33 (2012), 873-881, 9 pages
- 2.56 "Electromagnetic Induction and Radiation", J. Newman, 2008, 24 pages
- 2.57 "The Fields Outside a Long Solenoid with a Time-Dependent Current", Kirk T. McDonald, Joseph Henry Laboratories, Princeton University, 1996, 11 pages
- 2.58 "Can a solenoid emit/receive electromagnetic radiation?" [www.physicsforums.com](http://www.physicsforums.com), 2 pages

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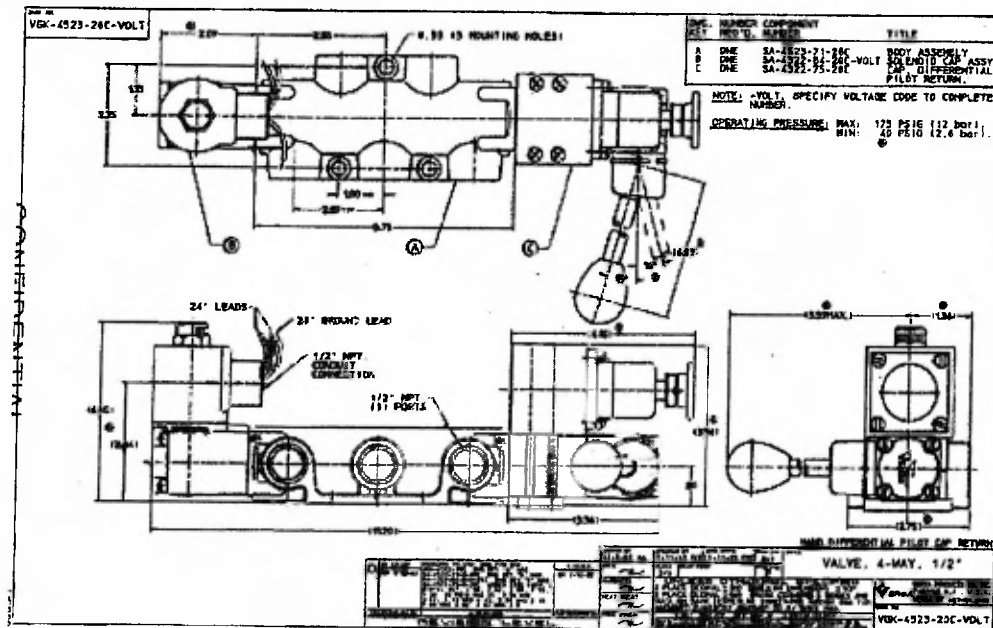


Figure 2-1. Engineering Drawing of Versa Valve Part No. VGK-4523-20C-D0

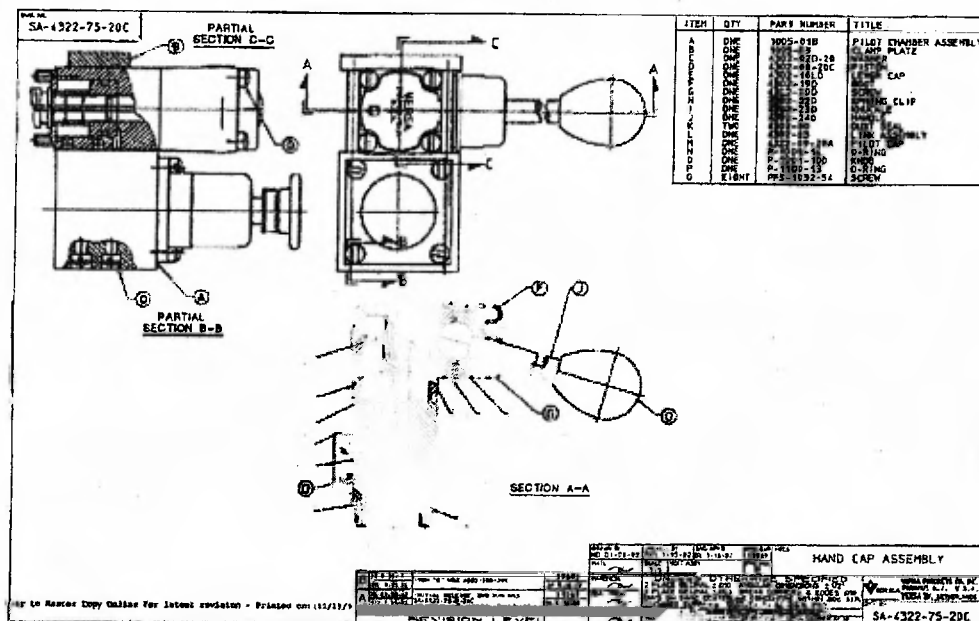


Figure 2-2. Engineering Drawing of Versa Valve Part No. VGK-4523-20C-D0

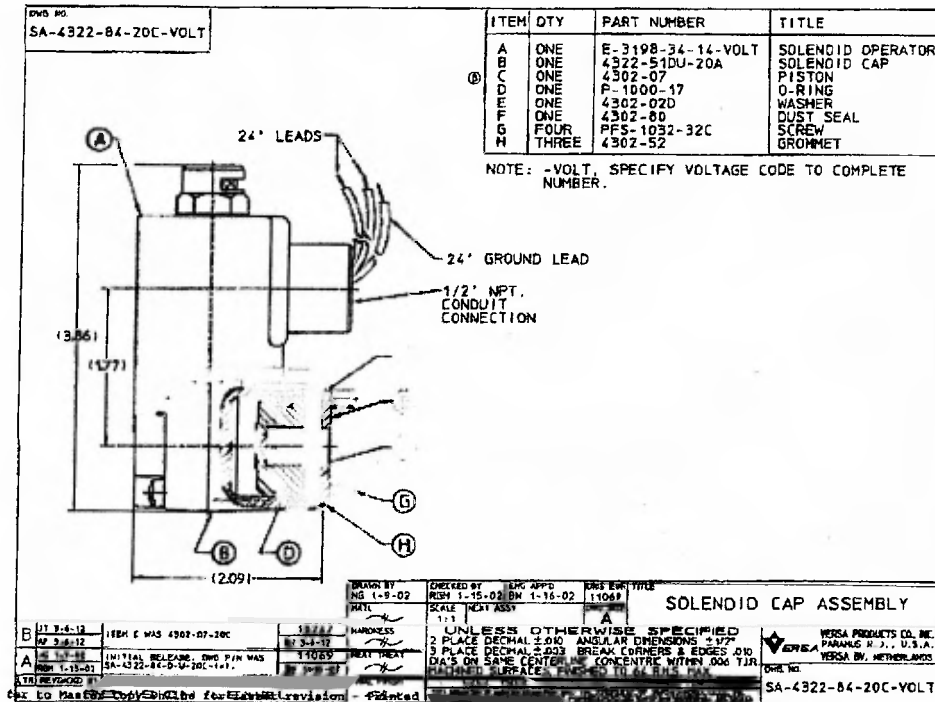


Figure 2-3. Engineering Drawing of Versa Valve Part No. VGK-4523-20C-D0

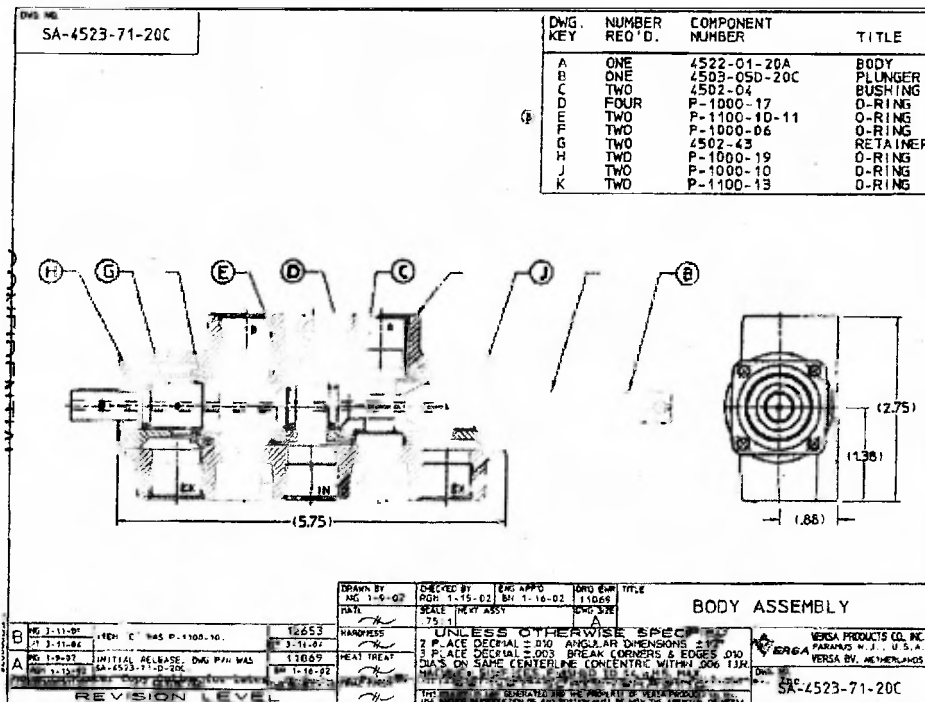


Figure 2-4. Engineering Drawing of Versa Valve Part No. VGK-4523-20C-D0



**Figure 2-5. Accident Scene – Looking Southeast**



**Figure 2-6. Accident Scene – Looking Northeast**