IN THE SUPREME COURT OF

THE STATE OF NEVADA

REPUBLIC SILVER STATE DISPOSAL, INC., A NEVADA CORPORATION, Appellant, vs. ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., A/K/A ANDREW MILLER CASH, M.D., P.C.; AND DESERT INSTITUTE OF SPINE CARE, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondents.	Supreme Court No. 78572 District Court Case No. A738125

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VOLUME V

On Appeal from Judgment of the Eighth Judicial District Court, Clark County, Nevada

The Honorable Jerry A. Wiese II

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DESCRIPTION	DATE	VOL	PAGES
Order Re: Defendants' Motion for Summary Judgment	03/15/2019	VII	1396-1399
Notice of Entry of Order Re: Defendants' Motion for Summary Judgment	03/15/2019	VII	1400-1405
Republic Silver State Disposal, Inc.'s Motion for Reconsideration on Order Shortening Time	03/25/2019	VII	1406-1423
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Opposition to Plaintiff's Motion for Reconsideration on Order Shortening Time	03/27/2019	VII	1424-1439
Republic Silver State Disposal, Inc.'s Reply in Support of Motion for Reconsideration on Order Shortening Time	03/29/2019	VII	1440-1449
Reporter's Transcript of Proceedings Republic Silver State Disposal, Inc.'s Motion for Reconsideration on Order Shortening Time	04/03/2019	VII	1450-1470
Notice of Appeal	04/10/2019	VII	1471-1480
Notice of Cross Appeal	04/24/2019	VII	1481-1494
Order Denying Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment for Defendants	04/25/2019	VII	1495-1497
Notice of Entry of Order Denying Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment for Defendants	04/29/2019	VII	1498-1504

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company,

Petitioner

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and the HONORABLE JERRY A. WIESE, District Court Judge,

Respondents,

REPUBLIC SILVER STATE DISPOSAL, INC.; ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company; JAMES D. BALODIMAS, M.D.; JAMES D. BALODIMAS, M.D., P.C.; LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKYMOUNTAIN NEURODIAGNOSTICS, LLC, a Colorado Limited Liability Company; DANIELLE MILLER aka DANIELLE SHOPSHIRE; and NEUROMONITORING ASSOCIATES, INC.,

Real Parties in Interest.

SUPREME COURT CASE NO.: 72123

EIGHTH JUDICIAL DISTRICT COURT CASE NO.: A-16-738123-C

PETITIONER LAS VEGAS RADIOLOGY, LLC, A NEVADA LIMITED LIABILITY COMPANY'S MOTION FOR LEAVE TO JOIN JAMES D. BALODIMAS, M.D. AND JAMES D. BALODIMAS, M.D., P.C.'S PETITION FOR WRIT OF MANDAMUS

KIM IRENE MANDELBAUM, ESQ.
Nevada Bar No. 318
MARIE ELLERTON, ESQ.
Nevada Bar No. 4581
MANDELBAUM, ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Petitioner/Real Party in Interest
Las Vegas Radiology, LLC

Petitioner Las Vegas Radiology, LLC (Petitioner) by and through its attorneys of record, KIM IRENE MANDELBAUM, ESQ. and MARIE ELLERTON, ESQ., of MANDELBAUM, ELLERTON & ASSOCIATES, hereby respectfully requests leave to join James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus.

This Petition is made and based upon the paper and pleadings on file herein submitted with James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus, and such other documentary evidence as may be presented and any oral arguments at the time of the hearing of this matter. Petitioner thus hereby adopts the following as set forth in James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus:

(A) the relief sought;

(B) the facts and procedural history necessary to understand the issues presented by the petition;

(C) the issue presented;

(D) the reasons why the court should hear the issue; and

(E) the reasons why the writ should issue, including the points and legal authorities.

/ / /

/ / /

Pursuant to NRAP 21(e), this document is accompanied by a check in the amount of Two Hundred Fifty Dollars and no cents ($250.00), made payable to the Clerk of the Supreme Court.

DATED this 19th day of January, 2017

MANDELBAUM, ELLERTON & ASSOCIATES

By: _____
KIM IRENE MANDELBAUM, ESQ.
Nevada Bar No. 318
MARIE ELLERTON, ESQ.
Nevada Bar No. 4581
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Petitioner/Real Party in Interest
Las Vegas Radiology, LLC

VERIFICATION

Under penalty of perjury, the undersigned declares that she is the attorneys for Petitioner named in the foregoing Petition and knows the contents thereof; that the pleading is true of her own knowledge, except as to those matters stated on information and belief, and that as such matters she believes them to be true. This verification is made by the undersigned attorney pursuant to NRS 15.010, on the ground that the matters stated, and relied upon, in the foregoing Petition are all contained in the prior pleadings and other records of the District Court, true and correct copies of which have been attached to James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus.

EXECUTED this 19th day of January, 2017.

Marie Ellerton, Esq.

SUBSCRIBED AND SWORN to before me
this 19th day of January, 2017.

NOTARY PUBLIC in and for
said County and State

REBECCA DALY
Notary Public, State of Nevada
Appointment No. 94-4139-1
My Appt. Expires Jun 6, 2018

NRAP 28.2 ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] It has been prepared in proportionally spaced typeface using WordPerfect X5 in 14 point Times New Roman font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[X] Proportionally spaced, has a typeface font of 14 points or more, and contains 204 words.

3. I hereby certify that I have read Petitioner, Las Vegas Radiology, LLC's MOTION FOR LEAVE TO JOIN JAMES D. BALODIMAS, M.D. AND JAMES D. BALODIMAS, M.D., P.C.'S PETITION FOR WRIT OF MANDAMUS, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purposes. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported to a reference to the page of the transcript or appendix where the matter relied on is to be found.

///

///

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 19th day of January, 2017.

MANDELBAUM, ELLERTON & ASSOCIATES

By: Marie Ellerton

Kim Irene Mandelbaum, Esq.
Nevada Bar No.: 318
Marie Ellerton, Esq.
Nevada Bar No.: 4581
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Petitioner
Las Vegas Radiology, LLC

///

///

NRAP 17 ROUTING STATEMENT

This matter does not fall into one of the categories presumptively assigned to the Court of Appeals pursuant to NRAP 17 & 21, either by virtue of its subject matter or under NRAP 17(b)(8). Instead, this case should be heard by the Supreme Court pursuant to NRAP 17(a)(1) because it invokes the Nevada Supreme Court's original jurisdiction under Article 6 §4 of the Nevada Constitution, N.R.S. §34.160 and N.R.S. §34.320.

EXECUTED this 19th day of January, 2017.

MANDELBAUM, ELLERTON & ASSOCIATES

By: Marie Ellerton

Kim Irene Mandelbaum, Esq.
Nevada Bar No.: 318
Marie Ellerton, Esq.
Nevada Bar No.: 4581
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Petitioner
Las Vegas Radiology, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January 2017, service of a true and correct copy of the foregoing **PETITIONER LAS VEGAS RADIOLOGY, LLC, A NEVADA LIMITED LIABILITY COMPANY'S MOTION FOR LEAVE TO JOIN JAMES D. BALODIMAS, M.D. AND JAMES D. BALODIMAS, M.D., P.C.'S PETITION FOR WRIT OF MANDAMUS** was made as indicated below:

X by depositing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope:

Adam Laxalt, Esq.
Attorney General
Nevada Department of Justice
100 North Carson Street
Carson City, Nevada 89701
Counsel for Respondent/Real Party in Interest The Honorable Jerry A. Wiese

David Barron, Esq.
BARRON & PRUITT, LLP
3890 West Ann Road
North Las Vegas, Nevada 89031

John H. Cotton, Esq.
Michael D. Navratil, Esq.
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Attorneys for Petitioners

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Sacramento, California 95833
Attorneys for Defendant Danielle Miller aka Danielle Shopshire

James Murphy, Esq.
LAXALT & NOMURA, LTD.
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Attorneys for Defendant Neuromonitoring Associates

The Honorable Jerry A. Wiese
Eighth Judicial District Court
Department XXX
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Respondent

Robert C. McBride, Esq.
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Attorneys for Defendant Andrew M. Cash, M.D.

James Olsen, Esq.
OLSEN, CANNON, GORMLEY, ANGULO & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Defendants Bruce Katuna, M.D. and Rocky Mountain Neurodiagnostics

Rebecca Daly

An Employee of *Mandelbaum, Ellerton & Associates*

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

JAMES D. BALODIMAS, M.D., and JAMES D. BALODIMAS, M.D., PC,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevda, in and for the County of Clark, and the HONORABLE JERRY A. WISE, District Court Judge,

Respondents,

and

REPUBLIC SILVER STATE DISPOSAL, INC., ANDREW M CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, a Foreign Limited Liability Company; DANIELLE MILLER aka DANIELLE SHOPSHIRE; and NEUROMONITORING ASSOCIATES, INC.,

Real Parties in Interest.

Supreme Court Case No. 72123

District Case No. A-16-738123-C

BRUCE A. KATUNA, M.D. AND ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC'S MOTION FOR LEAVE TO JOIN JAMES D. BALODIMAS, M.D. AND JAMES D. BALODIMAS, M.D., P.C.'S PETITION FOR WRIT OF MANDAMUS

JAMES R. OLSON, ESQ.
Nevada Bar No. 000116
MAX E. CORRICK, II
Nevada Bar No. 006609
STEPHANIE M. ZINNA, ESQ.
Nevada Bar No. 011488
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Real Parties in Interest
Bruce A. Katuna, M.D. and
Rocky Mountain Neurodiagnostics, LLC

Law Offices of
OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Telecopier (702) 383-0701

Real Parties in Interest, Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC ("Katuna"), by and through its attorneys of record, OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI, and hereby respectfully request leave to join Petitioners James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus.

This Motion is made and based upon all the papers, pleadings and records on file herein, and such oral argument, testimony and evidence which may be presented upon the hearing of this matter. Katuna adopt the following as set forth in James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus:

(A) The relief sought;

(B) The facts and procedural history;

(C) The issue presented;

(D) The reasons the court should hear the issue;

(E) The reasons the writ should issue, including the points and authorities set forth;

(F) The arguments presented, including the lower court's failure to follow NRS 17.225(3), as the statute of limitations had run pursuant to NRS 41A.097 for any medical malpractice claim. The applicable statute of limitations on claims stemming from medical malpractice was July 12, 2014. Republic did not seek a release of potential claims until July 6, 2015, and did not file suit for contribution until June 27, 2016.

Pursuant to NRAP 21(e), this document is accompanied by a check in the

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OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI
Law Offices of
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Telecopier (702) 383-0701

amount of Two Hundred Fifty Dollars and no cents ($250.00), made payable to the Clerk of the Supreme Court.

DATED this 27 day of January, 2017.

OLSON, CANNON, GORMLEY
ANGULO & STOBERSKI

By _____
JAMES R. OLSON, ESQ.
Nevada Bar No. 000116
MAX E. CORRICK, II
Nevada Bar No. 006609
STEPHANIE M. ZINNA, ESQ.
Nevada Bar No. 011488
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Real Parties In Interest
Bruce A. Katuna, M.D. and
Rocky Mountain Neurodiagnostics, LLC

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A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Telecopier (702) 383-0701

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the attorney of record for Real Party in Interest Katuna named in the foregoing Petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as such matters he believes them to be true. This verification is made by the undersigned attorney pursuant to NRS 15.010, on the grounds that the matter stated, and relied upon, in the foregoing Petition are all contained in prior pleadings and other records of the District Court, true and correct copies of which have been attached to James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus.

DATED this 27 day of January, 2017.

JAMES R. OLSON

SUBSCRIBED AND SWORN to before me this 27th day of January, 2017

NOTARY PUBLIC in and for said County and State

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
CHERYL K. HARTLE
Appt. No. 92-0366-1
My Appt. Expires Dec. 3, 2020

OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI
Law Offices of
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
(702) 384-4012 Telecopier (702) 383-0701

CERTIFICATE OF COMPLIANCE

I hereby certify that this Motion for Leave to Join James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because this Motion has been prepared in a proportionally spaced typeface using WordPerfect X4 Times New Roman 14 pt. font. I further certify that this Motion complies with the page or type volume limitations of NRAP 32(a)(7).

I hereby certify that I have read this Motion, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Motion complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 27 day of January, 2017.

OLSON, CANNON, GORMLEY
ANGULO & STOBERSKI

By _____

JAMES R. OLSON, ESQ.
Nevada Bar No. 000116
MAX E. CORRICK, II
Nevada Bar No. 006609
STEPHANIE M. ZINNA, ESQ.
Nevada Bar No. 011488
9950 West Cheyenne Avenue
Las Vegas, NV 89129
Attorneys for Real Partis In Interest
Bruce A. Katuna, M.D. and
Rocky Mountain Neurodiagnostics,
LLC

OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI
Law Offices of
A Professional Corporation
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
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CERTIFICATE OF SERVICE

On the 21 day of January, 2016, the undersigned, an employee of Olson, Cannon, Gormley, Angulo & Stoberski, hereby served a true copy of Real Parties In Interest BRUCE A. KATUNA, M.D. and ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC's Motion to Join in Petitioners James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus, to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order (Administrative Order 14-2) effective June 1, 2014, and or mailed:

Kim Irene Mandelbaum, Esq. Marie Ellerton, Esq. Mandelbaum, Ellerton & Associates 2012 Hamilton Lane Las Vegas, NV 89106 P: 702-367-1234 F: 702-367-1978 filing@meklaw.net Attorneys for James D. Balodimas, M.D.; James D. Balodimas, M.D, P.C.; and Las Vegas Radiology	Robert C. McBride, Esq. Heather S. Hall, Esq. Carroll, Kelly, Trotter, Franzen, McKenna & Peabody 8329 West Sunset Road, #260 Las Vegas, NV 89113 P: 702-792-5855 F: 702-796-5855 rcmcbride@cktfmlaw.com hshall@cktfmlaw.com Attorneys for Defendants Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C. aka Andrew Miller Cash, M.D., P.C. and Desert Institute of Spine Care, LLC

David Barron, Esq. John D. Barron, Esq. Barron & Pruitt 3890 West Ann Road North Las Vegas, NV 89031 P: 702-870-3940 F: 702-870-3950 dbarron@lvnvlaw.com jbarron@lvnvlaw.com Attorneys for Republic Silver State Disposal	Stephen J. Erigero Timothy J. Lepore Roper, Majeske, Kohn & Bentley 3753 Howard Hughes Parkway, #200 Las Vegas, NV 891969 P: 702-954-8300 F: 213-312-2001 stephen.erigero@rmkb.com timothy.lepore@rmkb.com Attorneys for Century Surety company
John H. Cotton, Esq. Michael D. Naratil, Esq. John H Cotton & Associates 7900 West Sahara Avenue, #200 Las Vegas, NV 89117 P: 702-832-5909 F: 702-832-5910 jhcotton@jhcottonlaw.com mdnavratil@jhcottonlaw.com Attorneys for Defendants James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.	James Murphy, Esq. Daniel C. Tetreault, Esq. Laxalt & Nomura 6720 Via Austi Parkway, #430 Las Vegas, NV 89119 P: 702-388-1551 F: 702-388-1559 jmurphy@laxalt-nomura.com dtetreault@laxalt-nomura.com Attorneys for Defendant Neuromnitoring Association, Inc.
Anthony D. Lauria, Esw. Lauria Tokunaga Gates & Linn 1755 Creekside Oaks Dfrive, #240 Sacramento, CA 95833 and 601 South Seventh Street Las Vegas, NV 89101 P: 702-387-8633 F: 702-387-8635 alauria@lgtlaw.net Attorneys for Defendant Danielle Miller a/k/a Sanielle Shopshire	

An Employee of Olson Cannon Gormley Angulo & Stoberski

OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI
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9950 West Cheyenne Avenue
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IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES D. BALODIMAS, M.D.; AND JAMES D. BALODIMAS, M.D., P.C.,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
REPUBLIC SILVER STATE DISPOSAL, INC.; ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., A/K/A ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, A NEVADA LIMITED LIABILITY COMPANY; LAS VEGAS RADIOLOGY, LLC, A NEVADA LIMITED LIABILITY COMPANY; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, A FOREIGN LIMITED LIABILITY COMPANY; DANIELLE MILLER, A/K/A DANIELLE SHOPSHIRE; AND NEUROMONITORING ASSOCIATES,
Real Parties in Interest.

No. 72123

FILED

FEB 01 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING MOTIONS

Real parties in interest Las Vegas Radiology, LLC; Bruce A. Katuna, M.D.; and Rocky Mountain Neurodiagnostics, LLC have filed motions to join petitioners' petition for a writ of mandamus, stating that they adopt petitioners' arguments for the relief sought, the facts and procedural history necessary to understand the issues presented by the petition, the issue presented, the reasons why the court should hear the

issue, and the reasons why the writ should issue including the points and legal authorities. Cause appearing, the motions are granted. The clerk of this court shall amend the caption to remove Las Vegas Radiology, LLC; Bruce A. Katuna, M.D.; and Rocky Mountain Neurodiagnostics, LLC as real parties in interest and to include them as petitioners.

It is so ORDERED.

Cherry, C.J.

cc: John H. Cotton & Associates, Ltd.
Lauria Tokunaga Gates & Linn, LLP/Las Vegas
Barron & Pruitt, LLP
Laxalt & Nomura, Ltd./Las Vegas
Olson, Cannon, Gormley, Angulo & Stoberski
Carroll, Kelly, Trotter, Franzen, McKenna & Peabody
Mandelbaum, Ellerton & Associates

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

JAMES D. BALODIMAS, M.D. and JAMES D. BALODIMAS, M.D., PC,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT, of the State of Nevada, in and for the County of Clark, and the HONORABLE JERRY A. WIESE, District Court Judge,

Respondents

REPUBLIC SILVER STATE DISPOSAL, INC., a Nevada Corporation; ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company; JAMES D. BALODIMAS, M.D.; JAMES D. BALODIMAS, M.D., P.C.; LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC a Colorado Limited Liability Company; DANIELLE MILLER aka DANIELLE SHOPSHIRE; NEUROMONITORING ASSOCIATES, INC.,

Real Parties in Interest.

SUPREME COURT CASE NO.: 72123

EIGHTH JUDICIAL DISTRICT COURT CASE NO.: A-16-738123-C

PETITIONERS, ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. AKA ANDREW MILLER CASH, M.D., P.C.; & DESERT INSTITUTE OF SPINE CARE, LLC'S MOTION FOR LEAVE TO JOIN JAMES D. BALODIMAS, M.D., P.C'S PETITION FOR WRIT OF MANDAMUS

ROBERT C. MCBRIDE, ESQ. (NV BAR NO. 7082)
HEATHER S. HALL, ESQ. (NV BAR NO. 10608)
8329 W. Sunset Road, Suite 260, Las Vegas, NV 89113, (702) 792-5855
Attorneys for Andrew M. Cash, M.D.; Andrew M. Cash, M.D. P.C. aka Andrew Miller Cash M.D., P.C.; and Desert Institute of Spine Care, LLC

Petitioners, Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C. aka Andrew Miller Cash, M.D., P.C.; & Desert Institute of Spine Care, LLC (Petitioners) by and through their attorneys of record, ROBERT C. McBRIDE, ESQ. and HEATHER S. HALL, ESQ. of CARROLL, KELLY, TROTTER, FRANZEN, McKENNA & PEABODY, hereby respectfully request leave to join James D. Balodimas, M.D., and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus.

This Petition is made and based upon the paper and pleading on file herein submitted with James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus, and such other documentary evidence as may be presented and any oral arguments at the time of the hearing on this matter. Petitioners thus hereby adopt the following as set forth in James D. Balodimas, M.D., and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus:

(a) The relief sought;

(b) The facts and procedural history necessary to understand the issues presented by the petition;

(c) The issue presented;

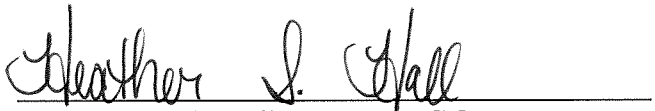
(d) The reasons why the Court should hear the issue; and

(e) The reasons why the Writ should issue, including the points and authorities.

Pursuant to NRAP 21(e), this document is accompanied by a check in the amount of Two Hundred Fifty Dollars and no cents ($250.00), made payable to the Clerk of the Supreme Court.

Dated this 2nd day of February, 2017.

CARROLL, KELLY, TROTTER, FRANZEN, McKENNA & PEABODY



ROBERT C. MCBRIDE, ESQ.
Nevada Bar No.: 7082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 10608
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Defendants,
Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C. aka Andrew Miller Cash, M.D., P.C.; & Desert Institute of Spine Care, LLC

VERIFICATION

Under penalty of perjury, the undersigned declares that she is the attorney for Petitioners named in the foregoing Petition and knows the contents thereof; that the pleading is true of her own knowledge, except as to those matters stated on information and belief, and that as such matters she believes them to be true. This verification is made by the undersigned attorney pursuant to NRS 15.010, on the ground that the matters stated, and relied upon, in the foregoing Petition are all contained in the prior pleadings and other records of the District Court, true and correct copies of which have been attached to James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus.

EXECUTED this 2nd day of February, 2017.

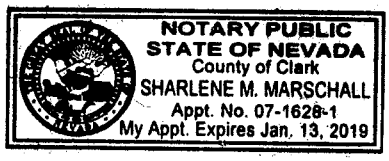
Heather S. Hall

HEATHER S. HALL, ESQ.

SUBSCRIBED AND SWORN to before me
this 2nd day of February, 2017.

Sharlene M. Marschall

NOTARY PUBLIC in and for said
County and State



NRAP 28.2 ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32 (a)(6) because:

[X] It has been prepared in proportionally spaced typeface using Word in 14 point Times New Roman Font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

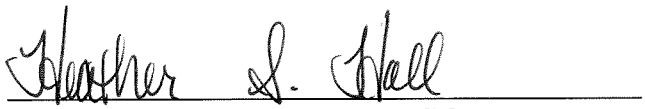
[X] Proportionally spaced, has a typeface font of 14 points or more, and contains 235 words.

3. I hereby certify that I have read Petitioners, Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C. aka Andrew Miller Cash, M.D., P.C.; & Desert Institute of Spine Care, LLC Motion for Leave to Join James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purposes. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported to a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements to the Nevada Rules of Appellate Procedure.

Dated this 2nd day of February, 2017.

CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA & PEABODY



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NRAP 17 ROUTING STATEMENT

This matter does not fall into one of the categories presumptively assigned to the Court of Appeals pursuant to NRAP 17 & 21, either by virtue of is subject matter or under NRAP 17(b)(8). Instead, this case should be heard by the Supreme Court pursuant to NRAP 17(a)(1) because it invokes the Nevada Supreme Court's original jurisdiction under Article 6 §34.160 and N.R.S. §34.320.

EXECUTED this 2nd day of February, 2017.

CARROLL, KELLY, TROTTER,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of February 2017, I served a true and correct copy of the foregoing petitioners, **ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. AKA ANDREW MILLER CASH, M.D., P.C.; & DESERT INSTITUTE OF SPINE CARE, LLC'S MOTION FOR LEAVE TO JOIN JAMES D. BALODIMAS, M.D., P.C'S PETITION FOR WRIT OF MANDAMUS** was made by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the service list below in the United States mail at Las Vegas, Nevada

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NEVADA DEPARTMENT
OF JUSTICE
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Counsel for Respondent/Real Party in Interest The Honorable Jerry A. Wiese

The Honorable Jerry A. Wiese
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An Employee of *CARROLL, KELLY, ROTTER, FRANZEN, McKENNA & PEABODY*

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES D. BALODIMAS, M.D.; AND JAMES D. BALODIMAS, M.D., P.C., LAS VEGAS RADIOLOGY, LLC, A NEVADA LIMITED LIABILITY COMPANY; BRUCE A. KATUNA, M.D.; AND ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, A FOREIGN LIMITED LIABILITY COMPANY;

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,

Respondents,

and

REPUBLIC SILVER STATE DISPOSAL, INC.; ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., A/K/A ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, A NEVADA LIMITED LIABILITY COMPANY; DANIELLE MILLER, A/K/A DANIELLE SHOPSHIRE; AND NEUROMONITORING ASSOCIATES,

Real Parties in Interest.

No. 72123

FILED

MAR 09 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING MOTION

Real parties in interest Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C. a.k.a Andrew Miller Cash, M.D., P.C.; and Desert Institute of Spine Care, LLC, have filed a motion to join petitioners James D. Balodimas, M.D.; and James D. Balodimas, M.D. P.C.'s petition for a writ of mandamus, stating that they adopt the arguments for the relief

sought, the facts and procedural history necessary to understand the issues presented by the petition, the issue presented, the reasons why the court should hear the issue, and the reasons why the writ should issue including the points and legal authorities. Cause appearing, the motion is granted. The clerk of this court shall amend the caption to remove Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C. a.k.a Andrew Miller Cash, M.D., P.C.; and Desert Institute of Spine Care, LLC, as real parties in interest and include them as petitioners.

It is so ORDERED.

Cherry, C.J.

cc: Olson, Cannon, Gormley, Angulo & Stoberski
John H. Cotton & Associates, Ltd.
Mandelbaum, Ellerton & Associates
Lauria Tokunaga Gates & Linn, LLP/Las Vegas
Barron & Pruitt, LLP
Laxalt & Nomura, Ltd./Las Vegas
Carroll, Kelly, Trotter, Franzen, McKenna & Peabody

IN THE SUPREME COURT OF THE STATE OF NEVADA

****

JAMES D. BALODIMAS, M.D., and JAMES D. BALODIMAS, M.D., P.C.,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT of the STATE of NEVADA, in and for CLARK COUNTY, NEVADA, and THE HONORABLE JERRY A. WIESE, District Court Judge,
Respondents,
And
REPUBLIC SILVER STATE DISPOSAL, INC.; ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company; LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, a Colorado Limited Liability Company; DANIELLE MILLER aka DANIELLE SHOPSHIRE; NEUROMONITORING ASSOCIATES, INC.,
Real Parties in Interest

Supreme Ct. Case #: 72123

District Ct. Case #: 16-A738123-C

REPUBLIC SILVER STATE DISPOSAL'S ANSWER TO PETITION FOR WRIT OF MANDAMUS, and JOINDERS THERETO

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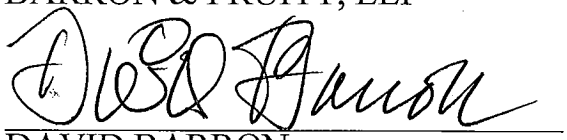
NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

1. Republic Silver State Disposal, Inc. is a wholly owned subsidiary of Republic Services, Inc.
2. Republic Services, Inc. is a publicly traded corporation
3. No attorneys, other than the undersigned; John D. Barron; and the firm of Barron & Pruitt, LLP have appeared as attorney of record for Republic Silver State Disposal, Inc.

BARRON & PRUITT, LLP



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NRAP 28.2 CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRCP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

> [X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Times New Roman 14-point; or
>
> [ ] This brief has been prepared in a monospaced typeface using [state name and version of word-processing program] with [state number of characters per inch and name of type style].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7), excluding the parts of the brief exempted by NRAP 32(a)(7)(C), because it is either:

> [X] Proportionately spaced, has a typeface of 14 points or more, and contains 5687 words; or
>
> [ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or
>
> [X] Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that Appellant's Brief, except as noted above, complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that Appellant's Brief is not in conformity

with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 6th day of April, 2017.

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I. Introduction.

This petition for an extraordinary writ follows several months of extensive briefing; two rounds of oral argument; and a written order denying three dispositive motions. Although the petitioner, James Balodimas, M.D. had not filed an Answer to either Respondent, Republic Silver State Disposal's (Republic) original or amended Complaints, Dr. Balodimas filed a Rule 12(c) "Motion for Judgment on the Pleadings."[1] Balodimas' co-defendants, Andrew Cash, M.D and Danielle Miller, filed separate Motions to Dismiss Republic's Amended Complaint for failure to state a claim. See NRCP 12(b)(5).

The three moving defendants—Drs. Balodimas and Cash, and Ms. Miller—filed joinders in one another's motions. The remaining defendants, Dr. Bruce Katuna; Las Vegas Radiology; and Neuromonitoring Associates, also filed joinders in the three Rule 12 motions.[2]

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[1]NRCP 12(c) authorizes motions for judgment on the pleadings "[a]fter the pleadings are closed for but within such time as not to delay the trial[.]" Pleadings are "closed" under NRCP 7(a) after an answer is filed.

[2] The three physician-defendants had corporate entities through which they conducted business, and which are named as defendants. For convenience, reference to these individuals contemplates their respective businesses and corporations as well. Ms. Miller has married, and taken the name Shopshire. Again for convenience, Mrs. Shopshire will be referred to by as "Danielle Miller" since that was her name at the time of the events alleged in Republic's pleading.

District Judge Jerry Wiese issued a written decision and order on December 13, 2016 denying the Balodimas motion, and those of his co-defendants. The pending Petition for a Writ of Mandamus contends Judge Wiese disregarded controlling authority in denying the motions, and that a writ should issue directing Judge Wiese to grant the Balodimas motion, and those of his co-defendants. For the reasons now discussed the writ petition should be denied.

II. The District Court appropriately applied the law in determining Rule 12 motions of the Petitioner and his co-defendants.

Republic's lawsuit against these defendants is for contribution under Nevada's adaptation of the Uniform Contribution Among Tortfeasors Act. See NRS 17.225 et seq. Basis for the contribution action is professional negligence in the treatment of Marie Gonzales.

Since the petitioner's Rule 12(c) motion (and Rule 12(b)(5) motions of the petitioner's co-defendants) was based on a supposed legal deficiency appearing of the face of Republic's pleading(s), the District Court was obliged to follow the recognized Nevada standard and treat all allegations in the assailed pleading as true, and that judgment for the moving party could be entered as a matter of law. Sadler v. PacifiCare of Nev., 130 Nev. ___, 340 P.3d 1264, 1266, (2014) ("[A] defendant will not succeed on a motion under rule 12(c) if there are allegations in the plaintiffs' pleadings that, if proved, would permit recovery", quoting Bernard v. Rockhill Dev.

Co., 103 Nev. 132, 136, 734 P.2d 1238, 1241 (1987)); accord, Bergmann v. Boyce, 109 Nev. 670, 674-75, 856 P.2d 560 (1993) ("[a] trial court may dismiss a complaint pursuant to NRCP 12 (b) (5) only if it appears to a certainty that a plaintiff can prove no set of facts which would entitle him to relief").

Here, that stringent standard was adhered to.

A. The allegations of Republic's Amended Complaint stated facts showing an entitlement to relief.

Ms. Gonzales claimed a low back injury from a January 14, 2012 traffic accident with a Republic refuse truck.[3] On January 29, 2013 she underwent spinal surgery at L4-5 and L5-S1[4] which her spinal surgeon, Dr. Andrew Cash, opined was medically necessary because of the accident.[5] As part of the operation, Dr. Cash implanted surgical hardware including "pedicle screws" which he imbedded into Ms. Gonzales' vertebral bodies as part of the operative procedure.[6]

To assure proper placement of the pedicle screws, a real-time procedure was conducted known as "intraoperative neuromonitoring."[7] It involves energizing the

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[3] Amended Complaint ¶ 21; Petitioner's Appendix (Writ App.), p. 4.
[4] Amended Complaint ¶ 25; Writ App. p. 5.
[5] Republic's Brief re Evidentiary Hearing, EXH. 1; Writ App. p. 148.
[6] Amended Complaint ¶ 37; Writ App. p. 7.
[7] Amended Complaint ¶¶ 28-37; Writ App. p. 5-7.

metallic screws with low-Amperage electrical current. Readings in "milli-Amps" (mA) below a recognized threshold indicate improper screw placement.[8]

In this case the neuromonitoring technician in the operating room with Dr. Cash was Defendant Danielle Miller (Shopshire), who was an employee of Defendant Neuromonitoring Associates.[9] According to a single-page report apparently authored by Ms. Miller, neuromonitoring readings never exceeded 4 mA—well below the 7.5 mA threshold for proper placement opined in the NRS Chapter 41A affidavits of Republic's neuromonitoring and spinal surgery experts, Drs. Jerry Saline and Howard Tung.[10]

Data gathered during the operation was being transmitted to Defendant Bruce Katuna, M.D. at his offices in Colorado. Dr. Katuna's charge was to monitor the incoming data, and assure it was not indicative of a pedicle screw breach, or other operative complication.[11] The accuracy of both neuromonitoring readings and their medical interpretation is imperative to the health of the patient: simply put, if screws

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[8] Amended Complaint ¶ 58, & EXH. 8 (NRS 41A.071 sworn declaration of Jerry Saline, Ph. D); Writ App. pp. 10-11; 40-41.

[9] Amended Complaint ¶¶ 29, 32-35, & EXH. 2; Writ App. pp. 5-7; 21.

[10] Amended Complaint ¶¶ 56, 58, & EXH. 6, 8; Writ App. pp. 10, 33-35, and 41-42.

[11] Amended Complaint ¶¶ 29-31, & EXH. 1; Writ App. pp. 5 and 19.

break through the pedicles and enter the neuroforamina, they can damage the patient's nerve roots.[12]

Immediately following the operation, Ms. Gonzales awoke in the recovery room with agonizing back and left leg pain[13] (reportedly worse than before the operation). Rather than order an imaging study, or take other steps to determine if his patient had experienced a surgical complication, Dr. Cash treated Ms. Gonzales for common post-surgical pain.[14] In fact, what she was experiencing were screws that had broken through her pedicles, and gone into her neuroforamina where they were impinging on her left L5 and S1 nerve roots.[15]

It was two weeks before Defendant Cash ordered an imaging study. On February 12, 2013, Ms. Gonzales underwent a CT series performed by Dr. Balodimas at the facilities of his co-defendant, Las Vegas Radiology.[16] Drs. Balodimas and Cash both reviewed the imaging study before Dr. Balodimas issued his report, in which he definitively ruled out a pedicle screw breach.[17]

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[12] Amended Complaint EXH. 6 and 8; Writ App. pp. 33-35 and 41-42.
[13] Amended Complaint ¶ 38; Writ App. p. 7.
[14] Id.
[15] Amended Complaint ¶ 43; Writ App. p. 8.
[16] Amended Complaint ¶ 38; Writ App. p. 7.
[17] Amended Complaint ¶¶ 40-42, & EXH. 4 and 5; Writ App. pp. 7-8.

For the next several months Dr. Cash continued to treat Ms. Gonzales' worsening symptoms as post-operative pain. Then in June 2013 she consulted with Drs. Jason Garber and Stuart Kaplan, who immediately recognized that the Balodimas/Las Vegas Radiology CT study showed the pedicle screws had gone into the neuroforamina and were compressing the left L5 and S1 nerve roots.[18]

Dr. Kaplan performed a complete revision of the Cash operation on July 15, 2013, taking out the pedicle screws—which had already permanently damaged her nerve roots—and refusing her spine. Unfortunately, that did not solve the problem; Ms. Gonzales was now suffering from chronic radiculopathy because of the Cash operation.[19]

Ms. Gonzales filed suit against Republic and its driver, Deval Hatcher, on September 3, 2013.[20] By that time the medical treatment supporting the bulk of Ms. Gonzales' damage claims had already taken place. The exception was implantation of a spinal cord stimulator by Dr. Kaplan in February 2015 to provide palliative pain relief caused by her chronic, post-surgical radiculopathy.[21]

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[18] Amended Complaint ¶ 45; Writ App. p. 8.
[19] Amended Complaint ¶ 46; Writ App. pp. 8-9.
[20] Amended Complaint ¶ 48; Writ App. p. 9.
[21] Amended Complaint ¶ 47; Writ App. p. 9.

Without past and future "pain and suffering" considerations, Ms. Gonzales' attorneys retained experts who fixed her past and future medical expenses (and future assistive care) at between $4 million and $5 million.[22] Her case was settled on July 6, 2015 for $2 million.[23]

B. The Republic/Gonzales release preserved contribution rights by discharge of all "treatment providers" for injuries claimed in the January 14, 2012 traffic accident.

This Court in Russ v. General Motors Corp. 111 Nev. 1431, 906 P.2d 718 (1995), considered the scope of a release, and whether it discharged the liability of third-parties to the settlement agreement. The Russ court held the common law rule of "release of one release of all" was incompatible with the UCATA and that a release or covenant not to sue or enforce judgment "does not discharge any of the other tortfeasors from liability for the injury...unless its terms so provide." Id., 111 Nev. at 1436, 906 P.2d at 721 (quoting NRS 17.225(3)). Russ therefore stands for the proposition that a "release does not, in and of itself, release a party unless it was the intent of the injured person to release that party." Id., 111 Nev. at 1438, 906 P.2d at 722.

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[22] Amended Complaint ¶ 49; Writ App. p. 9.

[23] Amended Complaint ¶ 51; Writ App. p. 9.

During settlement negotiations, to "preserve all rights of contribution and equitable indemnity," Republic's counsel required that the Republic-Gonzales settlement agreement have release language "inclusive of all [Ms. Gonzales'] medical providers, including Dr. Cash and any other potentially responsible health care providers or third parties." Ms. Gonzales' counsel's unequivocal response was "We agree to those conditions[.]"[24]

The Republic-Hatcher/Gonzales Release executed on July 6, 2015 stated:

> As a part of their settlement and their mutual consideration stated above, this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE shall discharge and extinguish any and all claims or liabilities, including those for "economic" and "noneconomic" damages as set forth in NRS ch. 41A, [Marie Gonzales] may possess against any of her medical treatment providers for injuries she alleges to have sustained in the described incident of January 14, 2012.[25]

In his December 13, 2016 Order, Judge Wiese held that from the release language quoted above—discharging "all claims or liabilities, including those for 'economic' and 'noneconomic' damages as set forth in NRS ch. 41A, [Marie

[24] Republic's Brief re Evidentiary Hearing, EXH. 2; Writ App. p. 150.
[25] Id., EXH.3; Writ App. p. 153.

Gonzales] may possess against any of her medical treatment providers for injuries she alleges to have sustained in the described incident of January 14, 2012"—it is

> very clear that it was the intent of the parties that the Release would extinguish any claims or liabilities [Ms. Gonzales] had against her medical treatment providers, relating to the injuries she alleged as a result of the subject accident...[and] the Court concludes that the terms of the settlement agreement do extinguish the liability of the Defendants named in the present litigation, pursuant to *Saylor* [*v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 (2100)], *Pack* [v. *LaTorrette*, 128 Nev. ___, 277 P.3d 1246 (2012)], and *McNulty* [*v. Dist. Ct.*, 127 Nev. 1159, 373 P.3d 942 (2011) (unreported)].[26]

Republic filed its Complaint and Amended Complaint, respectively, on June 8 and June 27, 2016—both within the 1 year limitation period prescribed by Nevada's contribution statutes for initiation of contribution claims. NRS 17.285.

The dispositive motions of the petitioner and his co-defendants contended below—as in this writ petition—that Republic's contribution action is barred since it was not filed within the time limit for "professional negligence" claims based on medical malpractice set out in NRS 41A.097(2). And because the medical negligence limitations period had had already run when Republic settled the underlying Gonzales litigation, there was no "common liability" to extinguish, and no basis for a contribution action. As a consequence, Judge Wiese "manifestly

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[26] Order re: The Cash Defendants' Motion to Dismiss, the Balodimas Defendants' Motion for Judgment on the Pleadings, and Danielle Miller's Motion to Dismiss, and All Joinders, at p. 9; Writ App. p.201.

abused his discretion by failing to follow NRS 17.225(3)" (requiring a contribution plaintiff to discharge the joint liability as a pre-condition to the contribution action) when he denied the Rule 12 motions.

III. Why a Writ of Mandamus should not be issued.

In simplest terms, the writ petition is structured atop a false premise: That the limitation period for claims against medical practitioners for professional negligence, NRS 41A.097(2), bars contribution actions at the expiration of its statutory time limit. This is erroneous for two reasons.

First, contribution is a legislative creation, defining who may bring a contribution claim; when an inchoate claim ripens into a cause of action; and the time within which the claim must be commenced. See NRS 17.225 and 17.285.

The second reason is at least as important as the first: Simply put, NRS 41A.097(2) does not act—as the petitioner suggests—as a statute of repose running from the date of the malpractice and cutting off any contribution actions (and impliedly all other claims as well) after the limitation period has expired.

A. The right of contribution is a legislative creation.

Contribution is of course a means of loss distribution between or among multiple parties responsible for a single obligation. In the tort context, while Nevada historically permitted non-contractual "equitable" indemnity allowing one party to

shift an entire liability to another, it could only be done if the indemnitee's "liability is imposed...*solely* because of his relationship with the person who has committed the tortious act." Reid v. Royal Ins. Co., 80 Nev. 137, 142, 390 P.2d 45, 47 (1964) (emphasis in the original).[27] On the other hand, there was "no right of contribution between co-torfeasors." Id. The practical effect was that a Nevada defendant who caused an injury simply had no recourse against others who were responsible for the same injury.

That abruptly changed in 1973 when the Nevada State Legislature passed AB 743, and adopted the Uniform Contribution Among Tortfeasors Act (UCATA). See 1973 Statutes of Nevada, p. 1303.[28] Nevada's contribution statutes are now found at NRS 17.225 et seq. Sections pertinent to Judge Wiese's order of December 13, 2016 are now discussed.

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[27] The antecedent for permitting full indemnification if the indemnitee was passively at fault, while forbidding loss-sharing via contribution if the indemnitee was an active tortfeasor is thought to be Lord Kenyon's decision in Merryweather v. Nixan, 8 T.R. 186 (K.B. 1799). See Comment, *Uniform Contribution Among Tortfeasors Act*, Ohio St. Law Jour., vol. 9, issue 4, pp. 674-678 (1948), discussing historical misapplication of Merryweather's "no contribution" rule in tort cases ("[i]n most...joint obligations...e.g. contracts, suretyship, and admiralty, the equitable doctrine of contribution among joint obligors is the rule."). Id. at 675; see also Prosser, The Law of Torts, 273-274 (3d Ed. 1964).

[28] The UCATA was amended in 1979, replacing the arithmetic "pro rata" distribution scheme with division based on "equitable share[s] of the common liability," thus contemplating consideration of relative degrees of fault when apportioning the loss. See 1979 Statutes of Nevada, p. 1978.

B. NRS 17.225 defines when the right to contribution arises.

There are two indispensable predicates for a contribution claim under the UCATA, both found in NRS 17.225. The first is payment of a common liability discharging the tortfeasor seeking contribution (the "contribution plaintiff"), and even more critically, extinguishing the liability of the co-tortfeasors from whom contribution is sought (the "contribution defendants"). NRS 17.225(1). Whether a "judgment has not been recovered against all or any of them" is inconsequential. Id. The next prerequisite is that the contribution plaintiff "has paid more than his equitable share of the common liability," in which case, "his total recovery is limited to the amount paid by him in excess of his equitable share." NRS 17.225(2).

The contribution plaintiff can pay the common liability by way of settlement, NRS 17.225(3)[29], or by satisfaction of a judgment. NRS 17.235. But either way, to perfect of the contribution claim the payment must satisfy the dual predicates just identified. NRS 17.225(2).

[29] NRS 17.225(3) provides "A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what was reasonable."

1. A contribution action accrues upon payment of the common liability.

Nevada law is absolutely clear that "[a] claim for indemnity or contribution accrues when payment has been made." Aetna Cas. & Surety v. Aztec Plumbing, 106 Nev. 474, 476, 796 P.2d 227, 229 (1990). Here, Republic paid Ms. Gonzales its $2 million in settlement on July 6, 2015. At that point the claim ripened into one capable of adjudication, and was subject to the applicable limitations period.

2. The claim must be brought within the UCATA's limitation period.

NRS 17.285(1) states that "[w]hether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action."[30] In the event of a judgment, the limitation period begins to run on the contribution action "within 1 year after the judgment has become final by lapse of time for appeal or after appellate review." Id. (3).

[30] Although not at issue here, where a judgment has been entered against multiple defendants "contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action." NRS 17.285(2). But should the judgment find the defendants severally liable, the apportionment of liability will already have effectively been determined, and the judgment "shall be binding as among such defendants in determining their right to contribution." Id. (5).

In this case there was a settlement instead of a judgment, thus triggering application of NRS 17.285(4):

> 4. If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, his right to contribution is barred unless he has: ***
> (b) Agreed while action is pending against him to discharge the common liability and has within 1 year after the agreement paid the liability and commenced his action for contribution.

Both Republic's original and Amended Complaints were filed before the 1 year anniversary of the July 6, 2015 settlement. But in challenging Judge Wiese's ruling that Republic's action was well-timed under NRS 17.285, the petitioner argues whether the Republic-Hatcher/Gonzales Release purportedly discharged a common liability is beside the point. Instead, NRS 41A.097(2)—governing negligence claims against medical practitioners—had run on Ms. Gonzales' claim for treatment-related injuries before the July 6, 2015 settlement, and with it the time to bring this contribution claim also expired. So, the argument goes, it is now imperative for this Court to intervene through issuance of an extraordinary writ to correct Judge Wiese's supposed indifference to the law.

The petitioners' arguments are fallacious for several reasons, which are now discussed.

IV. Why the Petitioner's Arguments are in Error.

A. The limitations periods for contribution and medical negligence serve different purposes, and are for entirely different causes of action.

First, a Nevada contribution action is neither a continuation of a negligence-based tort claim, nor an adjunct subject to the underlying tort's limitation period. After all, contribution did not even *exist* until 1973, and is clearly a legislative construct with its own defined time limit within which to bring a claim.

Nor has the State Legislature given any indication the UCATA's 1 year limitation period is subordinate to any other (legislatively-imposed) statute of limitation, much less the limitation period imposed on medical negligence actions.

Rather, the UCATA and NRS Chapter 41A limitations periods are unrelated and serve different purposes: NRS 17.285(4)—by using a relatively short 1 year limitation period—accelerates distribution of an already-incurred loss among a group of responsible parties.[31] NRS 41A.097(2), on the other hand, is an effort to strike an acceptable medium between the interests of medical providers and patients claiming treatment-related injuries by barring claims "more than 3 years after the

[31] "Some compromise apparently must be made between a reasonable time to pay the [common obligation] and unduly extended liability for contribution. One year seems about the right compromise." Uniform Contribution Among Tortfeasors Act (1955), Commissioner's Comment, §3(c).

date of injury or 1 year after plaintiff discovers or through reasonable diligence should have discovered the injury, whichever occurs first[.]"

B. The limitation trigger for contribution actions is payment of a common liability.

Next, with few exceptions[32] the majority of states allow defendants to seek contribution in a separate action—with or without a judgment—within a defined period following payment of the joint obligation. The triggering event for limitations purposes is uniformly "when payment has been made." Aztec Plumbing, supra.

Though hardly exhaustive, the following is a list of jurisdictions statutorily defining the accrual event for a contribution claim. Comparable to NRS 17.285(4), the limitations trigger is payment of the common liability by the contribution plaintiff: Colo. Rev. Stat.§13-50.5-104 (adopted UCATA with contribution action to be brought 1 year after the common liability is paid); Conn. Gen. Stat Annot.§52-572(h)(2) (2 years after party seeking contribution "has made final payment in excess of [his or her] proportionate share of the claim"); Fla. Stat. Annot.§768.31 (adopted UCATA, with identical 1 year limitation as NRS 17.285(4)(b)); Iowa Code Annot. §668.6(3) (within 1 year after judgment becomes final, or 1 year from payment of funds discharging contribution defendant); Mass. Gen. Laws Annot.

[32] E.g. Indiana Code §34-51-2-12 ("there is no right of contribution among tortfeasors"); Utah Code Annot. 78B-5-820(2) ("a defendant is not entitled to contribution from any other person").

231B§3(d)(2) (1 year from discharge of common liability by payment); Neb. Rev. Stat. §25-206 (contribution claim subject to 4 year limitation for contracts not in writing; the claim accrues for limitations purposes with payment in excess of contribution plaintiff's proportionate share of the common liability, see Cepel v. Smallcomb, 628 N.W.2d 654 (Neb. 2001)); N.C. Gen. Stat. Annot. §1B-3(d) (within 1 year of discharge of the common liability); Ore. Rev. Stat. §31.810(4) (must commence contribution action within 2 years of payment of common liability); R.I. Gen. Laws §10-6-4 (not more than 1 year after "first payment" of common liability or in excess of contribution plaintiff's pro rata share); S.C. Code §15-38-40(D) (within 1 year after payment); Rev. Code of Wash. §4.22.050 (1 year from payment discharging the common liability).

C. Nevada contribution actions against medical practitioners are governed by NRS 17.285.

This Court has twice held in reported cases—with medical treatment providers as contribution defendants—that UCATA's 1 year limitation period at NRS 17.285(4) controls, not the "3 years from injury/1 year from actual or constructive notice" limitation period governing medical negligence lawsuits in NRS 41A.907(2). In fact, those two decisions, Saylor v. Arcotta, 126 Nev. 92, 225 P.3d 1276 (2010), Pack v. LaTourette, 128 Nev. ___, 277 P.3d 1246 (2012), dispose of the very issue raised in this petition for an extraordinary writ.

To briefly summarize, the injured parties in Saylor and Pack, were hurt in traffic accidents, and in Saylor the victim actually died from the alleged medical negligence shortly after the accident. The post-accident condition of the injured party in Pack was also supposedly worsened by negligent medical treatment. The defendants in Saylor and Pack filed third party complaints against the victims' health care providers, who in turn moved for dispositive rulings dismissing the third-party claims based on NRS 41A.097(2). The trial courts in Saylor and Pack granted the dispositive motions, finding the limitations in NRS 41A.097(2) had expired before the third party actions were filed.[33]

The Saylor appeal was considered first, and categorically rejected the lower court's reasoning:

> In Nevada, a claim for contribution is preserved by statute—NRS 17.225—and carries a fixed limitations period under NRS 17.285. Pursuant to NRS 17.285(2), a contribution claim arises "[w]here a judgment has been entered in an action against two or more tortfeasors for the same ... wrongful death." *See also Aztec Plumbing,* [106 Nev. 474, 476, 796 P.2d 227, 229]. The contribution claim must be filed "within 1 year after the judgment has become final by lapse of time for appeal or after appellate review." NRS 17.285(3). Thus, once a contribution claim arises, it is subject to a one-year statute of limitations.

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[33] The cases also considered if the defendants had a basis for claims of equitable indemnity. The Saylor and Pack courts held that they did not since there was no existing relationship between the medical providers and contribution/indemnity plaintiffs. Saylor, 126 Nev. at 95-96, 225 P.3d 1279-1280; Pack, 277 P.3d 1248-1249; cf. Reid v. Royal Ins. Co., discussed above at p. 8.

> Here, because NRS 17.285 specifically sets forth the applicable statute of limitations for contribution claims, and because that statute of limitations period has not yet begun to run in this case, the district court erred in concluding that appellants' contribution claim was time-barred under NRS 41A.097(2)'s medical malpractice statute of limitations.

126 Nev. at 96, 225 P.3d at 1279; accord Pack, 277 P.3d at 1248 ("In Saylor we clarified 'NRS 41A.097(2)'s limitations period does not apply to...contribution claims'").

The petitioner has not so much as mentioned either Saylor or Pack, even though Judge Wiese's order of December 13, 2016 relied on both cases in denying all Rule 12 motions. Nor has the petitioner tried distinguishing Saylor and Pack—singly or in tandem—or cited a single decision supporting the contention that there was no "common liability" to extinguish through the settlement with Ms. Gonzales since NRS 41A.097(2) had already extinguished the liability for each of the defendants.

A comprehensive review of the specific holdings of the numerous decisions from around the country rejecting the petitioner's base argument—that a tort limitation period determines the timeliness of a contribution action—is beyond the scope of this discussion. But one often-cited commentator has written that:

> The rule generally recognized is that a claim for contribution based on tort, where such claim is authorized, does not accrue, and the statute of limitations does not start to run thereon, at the time of the

> commission of the tort, or of the resulting injury or damage, but from the time of the accrual of the cause of action for contribution, which is at the time of payment of the underlying claim, payment of a judgment thereon, or payment of a settlement thereof, or at the time of other satisfaction or discharge of such claim in whole or in part, to an extent greater than his pro rata share of the common liability, by the party seeking contribution
>
> The reason for the rule, it has been said, is that otherwise the injured party could foreclose a tortfeasor's right to contribution by waiting to bring his action until just before the statute of limitations ran on his claim.

Brunner, *When Statute of Limitations Commences to Run Against Claim for Contribution or Indemnity Based on Tort*, 57 A.L.R.3d 867, §3[a].[34] See also Smith v. Jackson, 721 P.2d 508, 509-510 (Wash. 1986) (trial court's decision to dismiss a third-party complaint because the tort limitations had run was reversed since it "allow[s] the plaintiff to pick and choose among joint tortfeasors to determine which defendants should bear the entire loss without contribution"); Heinemann v. Hallum, 232 S.W.3d 420, 424 (Ark. 2006) (rejecting the 8th Circuit's holding under Arkansas law in Union Pacific R.R. v. Mullen, 966 F.2d 348 (1992), that "the cause of action for contribution begins to run with the commission of the underlying tort"; rather in Arkansas, "a party acquires the right of contribution as soon as he pays more than his share, but not until then...[and] as a consequence, the statute of limitations does

[34] Saylor, 126 Nev. at 95, 225 P.3d at 1278, cites the Brunner A.L.R. Annotation in the equitable indemnity context for the proposition that the "cause of action for indemnity is wholly distinct from the transaction or situation which gave rise to right to indemnity."

not begin to run until that time"); Independent Mfg. Co. v. Automotive Products, Inc., 233 S.E.2d 874 (Ga. App. 1977) ("inasmuch as the cause of action for contribution is an independent suit, the applicable statute of limitations for the plaintiff's cause of action against the defendant has no bearing on the defendant's third-party complaint for contribution against the alleged joint tortfeasor") (internal citations and quotations omitted); MetroHealth Medical Cntr. v. Hoffmann-LaRoche, Inc., 685 N.E.2d 529, 533 (Ohio 1997) (disapproving the Ohio Court of Appeals decision in Nationwide Ins. Co, v. Shenefield, 620 N.E.2d 866 (Ohio App. 1992), that running of the tort limitation also barred a later contribution claim); Martin v. CSX Transportation, Inc., 617 F.Supp.2d 662, 667 (N.D. Ohio 2009) ("the expiration of the limitations period on the underlying tort claim does not serve to extinguish liability in a subsequent contribution action").

D. NRS 41A.097(2) is not a statute of repose.

The petitioner's reading of NRS 41A.097(2) is that it creates a statutory bar, running from the date of the allegedly negligent treatment[35], which "by operation of law extinguish[ed] the potential liability between [Republic] and [Balodimas], prior to" the July 6, 2015 settlement.[36] Writ Petition, p. 7. Said differently, NRS

[35] The date of the alleged negligent treatment was February 12, 2013 for Dr. Balodimas and Las Vegas Radiology; January 29, 2013 for the remaining contribution defendants.

[36] The petitioner argued below that NRS 41A.097(2)'s 1 year "discovery" period ran from the date of injury, and certainly began no later than the July 15, 2013

41A.097(2) is effectively a statute of repose—a position this Court has flatly rejected. Libby v. District Court, 130 Nev. ___, 325 P.3d 1276 (2014).

The distinction between a statute of limitations and statute of repose is that "a statute of limitations bars a cause of action if not brought within a certain time period, a statute of repose prevents a cause of action from *arising* after a certain period," and that

> [a] statute of repose creates a *substantive right* in those protected to be free from liability *after the legislatively determined period of time, beyond which the liability will no longer exist* and will not be tolled for any reason.

54 C.J.S., *Limitations of Actions* §7; (emphasis added).

Some states of course have statutes of repose for medical malpractice[37] and

> [i]n general, a medical malpractice statute of repose begins to run at the time of the allegedly negligent act, not the time when the patient first sustains injury. ***[T]he statute of repose is distinct from the statute of limitations in that the statute of repose runs regardless of whether a patient is aware of any negligence at the time of termination of treatment or whether the patient is oblivious of any harm. A statute of repose terminates any right of action after a

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surgical revision performed by Dr. Kaplan. See Balodimas' Response to Republic's Brief re: Evidentiary Hearing, p. 5; Writ App. p. 190.

[37] Illinois for example has a medical malpractice statute of repose, running from the date of the negligent treatment, and applying to any treatment-related "action." See Heneghan v. Sekula, 536 N.E.2d 963, 967 (Ill. App. 1989) ("the medical malpractice statute of repose [Ill. Rev. Stat. 1983, ch. 110 ¶13-212] represents the legislative response to a perceived medical malpractice crisis and...was intended to apply to all actions for malpractice, whether brought by the injured patient or brought as a contribution claim by a defendant tortfeasor").

> specific time has elapsed regardless of whether or not there has as yet been an injury and regardless of whether the patient had not or, in the exercise of reasonable care, could not have discovered the nature of the injuries.

61 Am.Jur.2d, Physicians and Surgeons, §299.[38]

But in Libby v. Dist. Court, supra, this Court went to lengths to explain that NRS 41A.097(2)'s "three-year limitation begins to run when a plaintiff suffers appreciable harm, regardless of whether the plaintiff is aware of the injury's cause." 325 P.3d at 1278. And

> [t]o the extent that Dr. Libby suggests that the three-year limitation period is a statute of repose, we reject that contention. A statute of repose " 'bar[s] causes of action after a certain period of time, regardless of whether damage or an injury has been discovered,' " *Davenport v. Comstock Hills—Reno,* 118 Nev. 389, 391, 46 P.3d 62, 64 (2002) (alteration in original) (quoting *Allstate Ins. Co. v. Furgerson,* 104 Nev. 772, 775 n. 2, 766 P.2d 904, 906 n. 2 (1988)), whereas, a statute of limitations "forecloses suit after a fixed period of time following the occurrence or discovery of an injury." *Id.* NRS 41A.097(2)'s three-year limitation period runs "3 years after the date of injury." Because the three-year limitations period begins to run from the date of the plaintiff's injury, and not from the last date the plaintiff was treated by the health care provider, *NRS 41A.097(2)'s three-year limitation period is not a statute of repose, but is rather a statute of limitations.*

Id. at 1279, n.1; (emphasis added).

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[38] Some states combine a shorter limitation period from the time of the injury, with a longer period of repose barring *any* claim arising from the negligent act or omission. E.g. Ga. Code Annot. §9-3-71 (2 years from injury; 5 years from "the date on which the negligent or wrongful act or omission occurred"; and that the 5 year period is a "statute of ultimate repose").

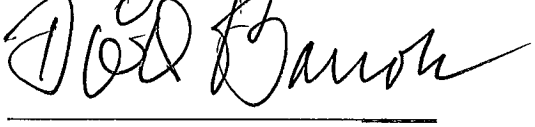
In combination, Saylor, Pack and Libby first resolve that the applicable limitations period for a contribution action under the UCATA against a negligent medical treatment provider is indeed 1 year from payment and discharge of the common liability; and second, that NRS 41A.097(2) is not a statute of repose and does not preclude a contribution claim from accruing should the medical negligence limitation period expire before extinguishment of a common liability.

V. Conclusion.

For the reasons stated, the positions taken in Petition for Writ of Mandamus are unmeritorious and the extraordinary writ should not issue.

Respectfully submitted,

BARRON & PRUITT, LLP



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of April, 2017, I served the foregoing **REPUBLIC SILVER STATE DISPOSAL'S ANSWER TO PETITION FOR WRIT OF MANDAMUS, and JOINDERS THERETO** upon all counsel of record:

☒ By electronically filing and serving the document(s) listed above with the Nevada Supreme Court: or

☐ By personally serving it upon him/her: or

☐ By mailing it by first class mail with sufficient postage prepaid it the following address(es).

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/s/ Doris R. Ligat
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IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES D. BALODIMAS, M.D., and JAMES D. BALODIMAS, M.D., P.C.,
Petitioners
vs.
THE EIGHTH JUDICIAL DISTRICT COURT of the STATE of NEVADA, in and for CLARK COUNTY, NEVADA, and THE HONORABLE JERRY A. WIESE, District Court Judge,
Respondents,
And
REPUBLIC SILVER STATE DISPOSAL, INC.; ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company; LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, a Colorado Limited Liability Company; DANIELLE MILLER aka DANIELLE SHOPSHIRE; NEUROMONITORING ASSOCIATES, INC.,
Real Parties in Interest

Supreme Ct. Case #: 72123

District Ct. Case #: 16-A738123-C

APPENDIX of REAL PARTY IN INTEREST/RESPONDENT REPUBLIC SILVER STATE DISPOSAL, INC.

VOLUME I

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

*****

REPUBLIC SILVER STATE DISPOSAL, INC., a Nevada Corporation, Plaintiff vs. ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company; JAMES D. BALODIMAS, M.D.; JAMES D. BALODIMAS, M.D., P.C.; LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, a Colorado Limited Liability Company; DANIELLE MILLER aka DANIELLE SHOPSHIRE; NEUROMONITORING ASSOCIATES, INC., a Nevada Corporation; DOES 1-10 inclusive; and ROE CORPORATIONS 1-10 inclusive Defendants.	Case No.: A-16-738123-C Dept No.: XXIII **AMENDED COMPLAINT for MEDICAL NEGLIGENCE and MEDICAL MALPRACTICE & JURY DEMAND**

Plaintiff REPUBLIC SILVER STATE DISPOSAL, INC., by and through its attorneys, BARRON & PRUITT, LLP, complains and alleges against Defendants as follows:

PARTIES

1. Plaintiff REPUBLIC SILVER STATE DISPOSAL, INC. is and was at all relevant times a Nevada corporation doing business in Clark County, Nevada.

2. Defendant ANDREW M. CASH, M.D. (CASH) is and was at all times relevant a

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resident of the state of Nevada; a physician licensed to practice medicine in Nevada as defined by NRS 630.014 and NRS 630.020; and doing business as a practicing physician in Clark County, Nevada, holding himself out as board certified and specializing in the field of orthopedic and spinal surgery.

3. Defendant ANDREW M. CASH, M.D., P.C. (CASH P.C.), is a Nevada professional corporation doing business as ANDREW M. CASH, M.D. On information and belief, Defendant CASH P.C. may also be or have been known as "ANDREW MILLER CASH, M.D., P.C." in filings with Nevada Secretary of State.

4. Defendant DESERT INSTITUTE OF SPINE CARE, LLC, is a Nevada limited liability company providing surgical and health care services in Clark County, Nevada.

5. Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. or ANDREW MILLER CASH, M.D., P.C.; or all of them is a member of Defendant DESERT INSTITUTE OF SPINE CARE, LLC. Moreover Defendants CASH; CASH P.C.; and DESERT INSTITUTE OF SPINE CARE are the agents, partners, joint venturers, employees and alter-egos of the others.

6. Defendants CASH and/or CASH P.C. were at all times relevant employees and/or agents of Defendant DESERT INSTITUTE OF SPINE CARE, LLC and in all acts or omissions complained of in this Amended Complaint, were acting within such employment and/or agency.

7. Defendant JAMES D. BALODIMAS, M.D. (BALODIMAS) was at all times relevant a resident of the state of Nevada; a physician licensed to practice medicine in Nevada as defined by NRS 630.014 and NRS 630.020; and doing business as a practicing physician in Clark County, Nevada, holding himself out as board certified and specializing in the field of radiology.

8. Defendant LAS VEGAS RADIOLOGY, LLC, is a Nevada limited liability company providing radiological services in Clark County, Nevada.

9. Defendant JAMES D. BALODIMAS, M.D., PC (BALADIMAS P.C.) is a Nevada professional corporation doing business as JAMES D. BALODIMAS, M.D.

10. Defendants BALODIMAS and/or BALADIMAS P.C. were at times relevant employees and/or agents of Defendant LAS VEGAS RADIOLOGY, LLC, and in all acts or omissions complained of in this Amended Complaint, were acting within such employment and/or

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agency.

11. Defendant BRUCE A. KATUNA, M.D. (KATUNA) is and was at times relevant a resident of the state of Colorado. It is further alleged that Defendant KATUNA is and was at all times relevant a physician licensed to practice medicine in Nevada as defined by NRS 630.014 and NRS 630.020 and that all acts, errors and omissions complained of against Defendant KATUNA occurred in or were directed into the state of Nevada. It is further alleged on information and belief that Defendant KATUNA holds himself out as board certified and a specialist in the field of neurology, and intra-operative neuro-monitoring.

12. On information and belief, Defendant KATUNA is a member of Defendant ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC is a Colorado limited liability company. In all acts or omissions complained of in this Amended Complaint, Defendant ROCKY MOUNTAIN NEURODIAGNOSTICS' conduct occurred in, or was directed into the state of Nevada.

13. On information and belief, Defendant KATUNA was at times relevant an employee and/or agent of Defendant ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC and in all acts or omissions complained of in this Amended Complaint was acting within such employment and/or agency.

14. Defendant DANIELLE MILLER aka Danielle Shopshire (MILLER) at all times relevant was a neuromonitoring technician practicing in Clark County, Nevada.

15. Defendant NEUROMONITORING ASSOICATES, INC. is a Nevada corporation providing neuromonitoring personnel and services in Clark County, Nevada.

16. On information and belief Defendant MILLER, in all acts or omissions complained of in this Amended Complaint, was acting as an employee and/or agent of Defendant NEUROMONITORING ASSOICATES.

17. The true names and capacities, whether individual, corporate, association or otherwise of Defendants DOES 1-10, inclusive, and ROE CORPORATIONS 1-10 inclusive, are unknown to Plaintiff, who therefore sues those Defendants by fictitious names.

18. REPUBLIC is informed, believes, and thereupon alleges that each of the Defendants designated as DOE 1-5 and ROE CORPORATION 1-5, and each of them, is an individual or business entity who is a "health care provider" as defined in NRS 41A.017. Each such fictitiously

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named Defendant caused the events and damages complained of; and each is negligently, vicariously or otherwise responsible for the breach of a legal duty which proximately caused the injuries and damages alleged. Alternatively, DOES 1-5 and ROE CORPORATIONS 1-5 are the owners, operators, employers, employees, joint venturers, alter egos, principals, servants, and/or agents of any or all of the Defendants named herein.

19. DOE 6-10 and ROE CORPORATION 6-10, and each of them, is an individual or business entity who is not a "health care provider" as defined in NRS 41A.017. Each such fictitiously named Defendant caused the events and damages complained of; and each is negligently, vicariously, or otherwise responsible for the breach of a legal duty which proximately caused the injuries and damages alleged. Alternatively, DOES 6-10 and ROE CORPORATIONS 6-10 are the owners, operators, employers, employees, joint venturers, alter egos, principals, servants, and/or agents of any or all of the Defendants named herein.

20. REPUBLIC will seek leave of this court to amend this Complaint to insert the true names and capacities of DOES 1-10 and/or ROE CORPORATIONS 1-10, inclusive, when the same have been ascertained, together with the appropriate charging allegations, and to join such Defendants in this action.

21. Defendants CASH; CASH P.C.; BALADIMAS; BALADIMAS P.C.; LAS VEGAS RADIOLOGY; KATUNA; ROCKY MOUNTAIN NEURODIAGNOSTICS; MILLER; and NEUROMONITORING ASSOCIATES; and DOES 1-10 and ROE CORPORATIONS 1-10, each of them, were physicians, health care institutions, or other medical treatment providers who treated or performed services on behalf of Marie Gonzalez on or about January 29, 2013 and at times relevant thereafter for injuries she claimed to have resulted from a traffic accident with a commercial garbage truck owned and operated by REPUBLIC and driven by its then-employee, Deval Hatcher, occurring on or about January 14, 2012 in Clark County, Nevada. Gonzalez filed a legal action for injuries allegedly sustained in the aforementioned motor vehicle accident against REPUBLIC and Hatcher, entitled *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* (Eighth Judicial District Court Case No. A687931).

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

22. All the facts, circumstances, errors and omissions giving rise to the instant lawsuit

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occurred in Clark County, Nevada.

23. On or about April 4, 2012, Gonzalez, began treating with Defendant CASH for injuries to her low back allegedly sustained in the motor vehicle accident of January 14, 2012.

24. On or about December 19, 2012, Defendant CASH recommended that Gonzales undergo reconstructive spinal surgery at L4-5, L5-S1.

25. On or about January 29, 2013, Gonzalez underwent spinal surgery performed by Defendant CASH known as an "oblique lateral lumbar interbody fusion" (referred to below as "OLIF" or "OLIF procedure").

26. Defendant CASH's OLIF procedure on Gonzales was performed at the L4-5 and L5-S1 levels on the left.

27. The described OLIF procedure at L4-5, L5-S1 involved placement by Defendant CASH of so-called "pedicle screws."

28. Prior to the OLIF procedure Defendant CASH requested DOE 1 and/or ROE CORPORATION 1to hire, retain or otherwise obtain intraoperative neurophysiological monitoring services for the Gonzales OLIF.

29. The neurophysiological monitoring services referenced in the preceding paragraph were provided by Defendants KATUNA and ROCKY MOUNTAIN NEURODIAGNOSTICS, and Defendants MILLER and NEUROMONITORING ASSOICATES.

30. On information and belief, Defendant KATUNA remotely conducted the neurophysiological monitoring of the Gonzales OLIF from the state of Colorado. In so doing his actions were purposefully directed to the state of Nevada.

31. A true and correct copy of a March 6, 2013 "Intraoperative Neurophysiological Monitoring Report" from Defendant ROCKY MOUNTAIN NEURODIAGNOSTICS, signed by Defendant KATUNA, is attached as **EXHIBIT 1**. The neuromonitoring report (**EXHIBIT 1**) states that it is for intraoperative neuromonitoring of Gonzales' central and peripheral nervous systems, and that "Monitored responses showed no significant changes throughout the procedure, and the surgeon was so informed. Pedicle screw testing demonstrated thresholds suggesting low likelihood of pedicle breach."

32. Defendant MILLER was retained to perform, or alternatively assigned to perform as

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the agent Defendant NEUROMONITORING ASSOICATES; DOES 1and 6, or either of them ; and/or ROE CORPORATIONS 1 and 6, or either of them, neurophysiological monitoring services in connection with the OLIF procedure described in the preceding paragraphs.

33. Defendant MILLER was at all times relevant present in the operating room at Spring Valley Hospital in Clark County, Nevada, providing neurophysiological monitoring services during the described OLIF procedure as it was being performed by Defendant CASH at Spring Valley Hospital on January 29, 2013.

34. On information and belief, Defendant MILLER prepared, or had prepared at her direction, a document entitled "Neuromonitoring Report," dated January 29, 2013 concerning the neurophysiological monitoring of Gonzales during the described OLIF procedure. A true and correct copy of the described "Neuromonitoring Report," as currently available to REPUBLIC after good faith efforts to obtain the same, is attached as **EXHIBIT 2**.

35. The "Neuromonitoring Report," **EXHIBIT 2**, states in part:

> [Pedicle Screw Testing (PTS)] was requested by [Defendant Cash] to verify accuracy of screw position and confirm that the respective nerve root is not at risk from the screw placement. PST can detect subtle breaches in the pedicle wall that cannot be visualized with x-rays thereby providing a higher standard of safety and avoiding iatrogenic injury. Pedicle screws that do not elicit [Compound Muscle Action Potential (CMAP)] to stimulation less than 4 [milliamps (mA)] are deemed safe. The surgeon was handed a ball tip probe which is connected to our stimulator. Stimulation was started at 0 mA and slowly went up to 4 mA in 1 mA increments. If a screw was positioned close to a nerve root, we would see a response on our EMG window in the muscle that correlates to the level we are testing. **6 nerve prox** were tested (L4, L5, and S1 screws on the right and left side). Pedicles screw testing (PST) yielded no CMAPs to stimulation below 4 mA. The surgeon was satisfied with the PST responses and felt no need to reposition any of the placed screws. After PST was completed, rods were placed and the surgeon began to close, Final x-rays further confirmed safe screw placement.

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Emphasis is in the original.

36. In fact, the intraoperative neurophysiological monitoring performed and assessed by Defendants KATUNA and ROCKY MOUNTAIN NEURDIAGNOSTICS, and Defendants MILLER and NEUROMONITORING ASSOICATES was in error and below the standard of care, and failed to detect and accurately report pedicle screw breaches at L4-5, L5-S1, or either of them.

37. Attached as **EXHIBIT 3** is a true and correct copy of the operative report authored by Defendant CASH regarding the Gonzales OLIF procedure. **EXHIBIT 3** states in part that "All [pedicle] screws were carefully placed into the center of the pedicle and no bony breach of any pedicle was felt to occur." In fact, the operative report and opinion of Defendant CASH was in error and pedicle screw breaches had occurred at L4-5, L5-S1, or either of them.

38. Immediately after the OLIF surgery, Gonzalez reported severe back and left leg pain, and remained at Spring Valley Hospital as an in-patient for pain control until discharged on February 2, 2013. Prior to discharge from Spring Valley Hospital, Gonzales did not undergo electrodiagnostic, or CT or MRI imaging studies to assess whether the pain was caused by, or related to surgical complications, including breach of the pedicle screws.

39. Gonzales continued to experience pain after discharge from Spring Valley Hospital into her left hip and leg and returned to Defendant CASH for postsurgical follow-up on or about February 6, 2013. Defendant CASH then ordered a CT study of Gonzales' lumbar spine.

40. On February 12, 2013, a CT study of Gonzales' lumbar spine was performed at the facilities of Defendant LAS VEGAS RADIOLOGY.

41. A true and correct copy of Defendant LAS VEGAS RADIOLOGY's February 12, 2013 report for the CT study of Gonzales' lumbar spine is attached as **EXHIBIT 4**. **EXHIBIT 4** was signed by Defendant BALODIMAS who diagnosed "no evidence of significant mass effect upon the neural foramina by the pedicle screws," and that the "[c]ase was discussed with [Defendant CASH] at time of dictation."

42. On December 3, 2014, Defendant CASH testified under oath during his deposition as a treating physician in the *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* matter that, on or about February 12, 2013, he had reviewed the CT scan and Defendants LAS VEGAS RADIOLOGY and BALODIMAS's report (**EXHIBIT 4**), and that:

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> It said there might be some scar tissue versus disk material encroaching on the left foramina at L4-5, L5-S1. When I evaluated the patient on 12/12/13 (sic), I actually saw the CT scan, reviewed the report, [and] spoke with the radiologist [Dr. Balodimas]. He confirmed that on his report of the study and found that there was no neural impingement, meaning no compression on the nerve to be decompressed surgically and no complication or malfunction in the hardware to be addressed surgically.

Deposition of Andrew Cash, M.D., December 4, 2014, pg. 62, ln.2-11. A copy of the excerpted testimony is attached as **EXHIBIT 5**.

43. In fact, Defendants CASH and BALODIMAS were in error, and their assessments of the February 12, 2013 CT lumbar study were below their respective standard of care as the CT study demonstrated breach of the pedicle screws at L4-5, L5-S1, or either of them, where they displaced the nerve root(s).

44. After February 12, 2013, Gonzales' post-surgical pain continued notwithstanding additional treatment that included follow-up visits with Defendant CASH, and other health care providers, including those providing physio-therapy; spinal injections; and implantation of a trial spinal cord stimulator. At no time after the OLIF procedure did Defendant CASH recommend additional surgery to determine the cause of, or to rectify Gonzales' post-operative pain.

45. On or about June 7, and July 12, 2013, Gonzales consulted with Drs. Jason Garber and Stuart Kaplan of Western Regional Center for Brain & Spine Surgery for continued debilitating post-surgical pain. It was the opinion of Drs. Garber and Kaplan that the pain was in the L5 and S1 nerve distributions and that the pedicle screws on the left at L4-5, L5-S1 had breached the pedicles. To alleviate Gonzales' post-operative pain in her back and left leg it was recommended that she undergo an anterior fusion at L4-5, L5-S1, and that the existing hardware and pedicle screws on the left be replaced on the right at the same levels. The recommended surgery was performed by Dr. Kaplan at Spring Valley Hospital on July 15, 2013.

46. Notwithstanding the surgery of July 15, 2013, Gonzales suffered lasting injury to the L5 and S1 nerve roots, and developed chronic pain syndrome directly because of the failure of Defendants, and each of them, to have properly detected or diagnosed the pedicle screw breach,

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and/or to have rendered medical treatment to address the surgical complication in a timely fashion so as to avoid permanent pain, disability and impairment.

47. On or about February 10, 2015, Dr. Kaplan implanted a spinal cord stimulator for Gonzales' chronic back and leg pain, and on information and belief Gonzales will require battery replacements and further expense into the future in connection with the spinal cord stimulator.

48. On or about September 3, 2013, Gonzalez filed her Complaint in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.*, (Case No. A687931) against REPUBLIC and Deval Hatcher.

49. Gonzales' computation of damages pursuant to NRCP 16.1 (a) (1) (C) in the *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* matter, as supported by expert opinion, through June 15, 2015 included the following economic damages:

a. Past medical expenses (inclusive of all billings before and after January 29, 2013)—$ 1,108,510.16

b. Future medical expenses—$2,980,907.34 to $3,502,858.34

c. Loss of future earning capacity—$297,040.00 to $549,512.00

d. Loss of household services—$431,656.00

50. All or substantial portions Gonzales' claimed damages, including past and future pain, suffering and disability, and past and future costs of medical treatment and care and other "economic" damages as defined by NRS 41A.007, were due to the medical negligence and malpractice of the Defendants, and each of them, in their failure to have properly diagnosed the pedicle screw breach and/or to have rendered timely medical treatment to Gonzales to remove the pedicle screws and avoid permanent neurological damage.

51. On July 6, 2015, REPUBLIC settled *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.*, resolving all claims against itself, Deval Hatcher, and all Gonzales' health care providers, including but not limited to the Defendants herein, for $2,000,000.00.

52. REPBULIC is entitled, as a matter of law, to seek contribution from the Defendants, and each of them, pursuant to the provisions of the *Uniform Contribution Among Tortfeasors Act*, NRS 17.225, et seq., and receive all sums in excess of REPUBLIC's equitable share of the common liability from the Defendants, and each of them.

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53. REPUBLIC should also receive from the Defendants, and each of them, in amounts proportionate to the Defendants' shares of the common liability, reimbursement of REPUBLIC's fees and costs incurred in addressing and defending claims asserted in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* arising from the Defendants' medical malpractice or medical negligence.

FIRST CAUSE OF ACTION
(Medical Malpractice and/or Medical Negligence Against All Defendants)

54. Plaintiff incorporates each and every allegation stated above as though fully set forth herein.

55. During the course of treatment and services rendered to Marie Gonzalez, Defendants and each of them, failed to exercise the degree of skill, care and expertise normally exercised by comparable physicians, physician assistants, nurses, neuromonitoring technicians and/or "health care providers" as defined by NRS 41A.017 having similar skills, education, training, experience or otherwise similarly situated, and in so doing, fell below the standard of care as providers of such healthcare services. Such breach of the Defendants' respective standards of care was negligence, gross negligence, and/or recklessness.

56. Attached as **EXHIBIT 6** in support of REPUBLIC's allegations is the true and correct declaration under penalty perjury pursuant to NRS 41A.071 of Howard Tung, M.D., in which Dr. Tung states that in his professional opinion Defendant CASH's treatment of Marie Gonzales was below the standard of care for a spinal surgeon, and gives the reasons therefor. Dr. Tung also opines that the neuromonitoring services of Defendant KATUNA were below the standard of care, and gives the reasons therefor. The Tung declaration is incorporated by reference as if fully set forth herein.

57. Attached as **EXHIBIT 7** in support of REPUBLIC's allegations is the true and correct declaration under penalty perjury pursuant to NRS 41A.071 of David Seidenwurm, M.D., in which Dr. Seidenwurm states that in his professional opinion Defendant BALODIMAS' treatment of Marie Gonzales was below the standard of care for a radiologist, and gives the reasons therefor. The Seidenwurm declaration is incorporated by reference as if fully set forth herein.

58. Attached as **EXHIBIT 8** in support of REPUBLIC's allegations is the true and

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correct declaration under penalty perjury pursuant to NRS 41A.071 of Gerald Saline, Ph.D., in which Dr. Saline states that in his professional opinion professional and technical neuromonitoring services rendered by Defendants KATUNA and MILLER in the treatment of Marie Gonzales were below the standard of care, and gives the reasons therefor. The Saline declaration is incorporated by reference as if fully set forth herein.

59. As a direct and proximate result of Defendants' negligence, gross negligence, recklessness, and failure to use due care, Gonzalez suffered new and different injuries from those allegedly suffered in the motor vehicle accident of January 14, 2012.

60. As a direct and proximate result of the breach of the applicable standards of care imposed upon the Defendants, and each of them, REPUBLIC is entitled to recover damages for payment REPUBLIC made to Gonzalez for injuries directly and proximately caused by Defendants' negligent administration of medical care, diagnoses, treatment, and services, all of which caused new and different injuries from those allegedly suffered in the motor vehicle accident of January 14, 2012. REPUBLIC has thereby been damaged by paying more than its equitable share of a common liability in an amount in excess of $10,000.00.

61. It was necessary for REPUBLIC to retain the services of an attorney to defend against Gonzales' claims, including defense against damages caused exclusively by the negligence, gross negligence and recklessness of the Defendants, and each of them. REPUBLIC should also receive from the Defendants, and each of them, in amounts proportionate to the Defendants' shares of the common liability, reimbursement of REPUBLIC's fees and costs incurred in addressing and defending claims asserted in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* arising from the Defendants' medical malpractice or medical negligence.

62. It was also necessary for REPUBLIC to bring this action for contribution, and REPUBLIC is therefore entitled to recover attorney's fees and costs incurred.

SECOND CAUSE OF ACTION

(Respondeat Superior/Vicarious Liability: Defendants Cash; Desert Institute of Spine Care, LLC; KATUNA; Rocky Mountain Neurodiagnostics, LLC; Neuromonitoring Associates; Las Vegas Radiology, LLC; Does 1 & 6, and Roe Corporations 1 &6)

63. Plaintiff incorporates each and every allegation stated above as though fully set forth herein.

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64. Defendant CASH was acting within the course and scope of his employment with Defendant DESERT INSTITUTE OF SPINE CARE, LLC while providing medical treatment to Marie Gonzales, during and after the OLIF procedure performed on January 29, 2013, and all treatment thereafter.

65. Defendant DESERT INSTITUTE OF SPINE CARE, LLC is therefore liable for the injury and damages negligently caused by Defendant CASH pursuant to NRS 41.130.

66. Defendant KATUNA was acting within the course and scope of his employment with ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC while providing neuromonitoring services in connection with Gonzales' OLIF procedure performed on January 29, 2013, and related professional services thereafter.

67. Defendant ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC is therefore liable for the injury and damages negligently caused by Defendant KATUNA pursuant to NRS 41.130.

68. Defendant BALODIMAS was acting in the course and scope of his employment with LAS VEGAS RADIOLOGY, LLC in connection with conducting, and the interpretation of the February 12, 2013 CT studies of Gonzales' lumbar spine.

69. Defendant LAS VEGAS RADIOLOGY, LLC is therefore liable for the injury and damages negligently caused by Defendant BALODIMAS pursuant to NRS 41.130.

70. Defendant MILLER was acting within the course and scope of her employment with NEUROMONITORING ASSOICATES while providing neuromonitoring services in connection with Gonzales' OLIF procedure performed on January 29, 2013.

71. Defendant NEUROMONITORING ASSOICATES is therefore liable for the injury and damages negligently caused by Defendant MILLER pursuant to NRS 41.130.

72. Defendant MILLER was acting within the course and scope of her retention by Defendants CASH and DESERT INSTITUTE OF SPINE CARE, LLC; KATUNA and ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC; DOES 1 and 6; and ROE CORPORATIONS 1 and 6, or any or all of them, while providing neuromonitoring services in connection with Gonzales' OLIF procedure performed on January 29, 2013.

73. Defendants CASH and DESERT INSTITUTE OF SPINE CARE, LLC; KATUNA and ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC; Defendants and DOES 1 and 6; and

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ROE CORPORATIONS 1 and 6, or any or all of them, are therefore vicariously liable for the professional negligence, errors and omissions of Defendant MILLER.

74. As a direct and proximate result of the negligence of the Defendants, and each of them, and REPUBLIC paid more than its equitable share of a common liability in resolving claims asserted by Gonzales against REPUBLIC and Hatcher, and REPUBLIC was thereby damaged in an amount in excess of $10,000.00.

75. It was necessary for REPUBLIC to retain the services of an attorney to defend against Gonzales' claims, including defense against damages caused exclusively by the negligence, gross negligence and recklessness of the Defendants, and each of them. REPUBLIC should also receive from the Defendants, and each of them, in amounts proportionate to the Defendants' shares of the common liability, reimbursement of REPUBLIC's fees and costs incurred in addressing and defending claims asserted in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* arising from the Defendants' medical malpractice or medical negligence.

76. It was also necessary for REPUBLIC to bring this action for contribution, and REPUBLIC is therefore entitled to recover attorney's fees and costs incurred.

THIRD CAUSE OF ACTION
(Negligent Supervision and Retention)

77. Plaintiff incorporates each and every allegation stated above as though fully set forth herein.

78. Defendant MILLER was at all times relevant was retained, directed, supervised, and acting under the authority of Defendants CASH; KATUNA; DOES 1 and 6; any or all of whom had non-delegable duties to control the details of Defendant MILLER's activities in connection with her rendering neuromonitoring services regarding Marie Gonzales.

79. Defendants CASH; KATUNA; DOES 1 and 6; and ROE CORPORATION 1 and 6 breached their non-delegable duties to determine the suitability and professional qualifications of Defendant MILLER, and to supervise and control the details of MILLER's activities.

80. Because of such breaches of the Defendants' non-delegable duties, pedicle screws implanted as part of the OLIF procedure were allowed to breach the pedicles at L5, S1 and enter the neuroforamina causing the injuries and damages complained of.

81. As a direct and proximate result of the negligence of the Defendants, and each of

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them, REPUBLIC paid more than its equitable share of a common liability in resolving claims asserted by Gonzales against REPUBLIC and Hatcher, and REPUBLIC was thereby damaged in an amount in excess of $10,000.00.

82. It was necessary for REPUBLIC to retain the services of an attorney to defend against Gonzales' claims, including defense against damages caused exclusively by the negligence, gross negligence and recklessness of the Defendants, and each of them. REPUBLIC should also receive from the Defendants, and each of them, in amounts proportionate to the Defendants' shares of the common liability, reimbursement of REPUBLIC's fees and costs incurred in addressing and defending claims asserted in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* arising from the Defendants' medical malpractice or medical negligence.

83. It was also necessary for REPUBLIC to bring this action for contribution, and REPUBLIC is therefore entitled to recover attorney's fees and costs incurred.

FOURTH CAUSE OF ACTION
(Contribution Against All Defendants)

84. Plaintiff incorporates each and every allegation stated above as though fully set forth herein.

85. Because REPUBLIC made payment to Marie Gonzales in settlement for injuries that were due to the fault, negligence and carelessness of Defendants, and each of them, REPUBLIC should be required to pay no more than its equitable share of the common liability to Gonzales, as provided by NRS 17.225, et. seq., and thus receive contribution from the Defendants, and each of them in accordance with their equitable shares of that common liability.

86. Because the Defendants have not paid their equitable share of the common liability, REPUBLIC is damaged in an amount in excess of $10,000.00.

87. It was necessary for REPUBLIC to retain the services of an attorney to defend against Gonzales' claims, including defense against damages caused exclusively by the negligence, gross negligence and recklessness of the Defendants, and each of them. REPUBLIC should also receive from the Defendants, and each of them, in amounts proportionate to the Defendants' shares of the common liability, reimbursement of REPUBLIC's fees and costs incurred in addressing and defending claims asserted in *Gonzalez v. Hatcher, Republic Silver State Disposal, Inc.* arising from

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the Defendants' medical malpractice or medical negligence.

88. It was also necessary for REPUBLIC to bring this action for contribution, and REPUBLIC is therefore entitled to recover attorney's fees and costs incurred.

JURY DEMAND

REPUBLIC SILVER STATE DISPOSAL, INC. demands a jury as preserved by the U.S. and Nevada Constitutions, and NRCP 38.

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

1. For general damages in excess of TEN THOUSAND DOLLARS ($10,000.00);
2. For special damages in excess of TEN THOUSAND DOLLARS ($10,000.00);
3. For pre-judgment and post-judgment interest;
4. For reasonable attorney fees;
5. For costs of suit; and
6. For such other and further relief as this Court may deem just and proper.

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638.06

EXHIBIT 1

EXHIBIT C

AFFIDAVIT OF AUTHENTICITY OF RECORDS

STATE OF Colorado)
) ss.
COUNTY OF Boulder)

NOW COMES Bruce Katzman, who after first being duly sworn states:

1. That the Affiant is employed as a physician with Rocky Mountain Neurodiagnostics and in that capacity is a custodian of the records of Rocky Mountain Neurodiagnostics.

2. That on the 18th day of May, 2015, the Affiant was served with a subpoena in connection with the above entitled cause, calling for production of all records, written, electronic or otherwise, for MARIE GONZALEZ (DOB: [redacted] SSN: [redacted]) from 01/01/2005 to the Present, including, but not limited to

11. All medical records;
12. All charts;
13. All notes including those made by or at the direction of a doctor/physician, physician assistant, nurse, orderly, lab technician, or specialist;
14. All test requests and results;
15. All diagnostic films/videos/images/reels and reports;
16. All pharmacy and prescription records;
17. All communication records including email and written correspondence;
18. All billing and payment records;
19. All insurance, Medicaid or Medicare records;
20. All records related to information submitted to insurance, Medicaid or Medicare.

3. That Affiant:

☐ (a) has made a diligent search of the records of Rocky Mountain Neurodiagnostics and found no records responsive to the Subpoena Duces Tecum.

OR

☑ (b) has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

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4. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the Affiant or Rocky Mountain Neurodiagnostics.

Signature

Bruce A. Katina
Print

Subscribed and sworn before me, a Notary Public, on this 21st day of May 2015.

NOTARY PUBLIC
My commission expires: 1.14.18

MICHELLE L. BERNARDONI
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20114001866
MY COMMISSION EXPIRES JANUARY 14, 2018

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
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Rocky Mountain Neurodiagnostics

Bruce Katuna, M.D. 2217 Harvard Ct. Longmont, CO 80503 (303) 776-6293

INTRAOPERATIVE NEUROPHYSIOLOGIC MONITORING REPORT

Patient Name:	Maria Gonzales
Medical Record #:	904944162-35294396
Surgeon:	Dr. Cash
Technician:	Danielle Miller
Date of Monitoring:	January 29, 2013
Beginning Time:	0758
Ending Time:	0956
Date of Report:	March 6, 2013

On January 29, 2013 intraoperative monitoring of the central and peripheral nervous system of Maria Gonzales was performed during an OLIF of L4-S1.

Real-time neurophysiologist oversight was provided. Tested modalities included upper and lower extremity somatosensory evoked potentials (SSEPs), and free-running electromyography (FR-EMG).

Baseline responses were interpreted and were within normal limits.

Monitored responses showed no significant changes throughout the procedure, and the surgeon was so informed. Pedicle screw testing demonstrated thresholds suggesting low likelihood of pedicle breach.

Impression: Normal intraoperative neurophysiologic monitoring study.

Bruce A. Katuna, M.D.
Board Certified in Neurology (American Board of Psychiatry and Neurology, 1993)
Board Certified in Clinical Neurophysiology (American Board of Psychiatry and Neurology, 1996, 2010)

EXHIBIT 2

Neuromonitoring Report

Patient: Gonzales, Maria ID#: 904944162-35294396
DOB: 12/26/1937 (55) Sex: Female
Diagnosis: Radiculopathy

Surgeon: Cash,Andrew MD Anesthesia:
Assistant: Technician: Miller, Danielle

OR#: 6
Procedure Date: 1/29/2013 Procedure: Lateral L4-S1 OLIF

Parameters and Stimulus parameters:
Surgeon Cash,Andrew MD requested intraoperative neurophysiological monitoring for patient Gonzales, Maria. The main objective of this monitoring is to preserve the existing neurological functions and to report any significant changes in sensory and EMG signals.

95941: Intuna online
IONM time: Patient in OR- 7:09 am Incision Time-7: 58 am Close- 9:56 am Patient out of OR- 10:15 am 3 Hrs

95938,95927: Upper and Lower Extremity SSEP: gain 20uv, band pass: 30-500 Hz, Digital filters implemented as desired. Nerve stimulation initiated at 25 and 45 mA (adjusted as necessary) applied to the ulnar and tibial nerves at the wrists and ankles; respectively, with interleaved excitation= 2.18/sec, Somatosensory evoked potentials are commonly used to monitor the sensory pathways of the spine, the signals that bring information to the brain. They were tested by using electrical stimulation at the peripheral nerves, the posterior tibial nerve (ankle) and the ulnar nerve (wrist). The stimulus was then recorded from the patient's sensory cortex (brain) . During surgery, compression and distraction of nerves and spinal cord tissue were monitored by watching for changes in the conduction frequency and amplitude.

95885 EMG: Free-running and triggered/captured: threshold-30uV; gain 50uV, band pass 30-3000 Hz. Recorded from muscles bilaterally. Electromyography involves testing the electrical activity of muscles. Because the muscles are innervated by nerves, EMG's were used to protect the integrity of the spinal nerves. When a patient is asleep, the muscle activity is quiet. With mechanical, thermal, or electrical irritation, IONM will see muscle firing or bursts of activity. 1. vastus lateralis, 2.vastus medialis, 3. tibialis anterior, 4. EHL, 5. gastroc

95937 NJT: Neuromuscular transmission testing (abductor pollicis brevis-abductor digiti minimi), amplifier and display gain adjustable. Band pass= 30-3000 Hz. Ulnar nerve stimulation initiated at 15 mA and adjusted as necessary. Train of Four was tested throughout to confirm patient had 4/4 twitches before monitoring EMG responses. This confirms that anesthesia did not give relaxation drugs to the patient and that we will be able to properly detect nerve root injury.

95909 : Nerve Conduction Study for PST (Pedicle Screw Testing). PST was requested by the surgeon to verify accuracy of screw position and confirm that the respective nerve root is not at risk from the screw placement. PST can detect subtle breaches in the pedicle wall that cannot be visualized with x-rays thereby providing a higher standard of safety and avoiding iatrogenic injury. Pedicle screws that do not elicit CMAPs to stimulation less than 4MA are deemed safe. The surgeon was handed a ball tip probe which is connected to our stimulator. Stimulation was started at 0mA and slowly went up to 4 mA in 1mA increments. If a screw was positioned close to a nerve root, we would see a response on our EMG window in the muscle that correlates to the level we are testing. 6 nerve pros were tested (L4, L5, and S1 screws on the right and left side). Pedicle screw testing (PST) yielded no CMAPs to stimulation below 4 mA. The surgeon was satisfied with the PST responses and felt no need to reposition any of the placed screws. After PST was completed, rods were placed and the surgeon began to close. Final x-rays further confirmed safe screw placement.

Procedure:
Prior to surgery the patient was interviewed and IOM explained. In the OR, the Monitoring protocols for SSEP and EMG and TOF were implemented. Following anesthetic intubation, subdermal needle electrodes were applied at the scalp (Fpz, Cz, C3', C4', and M1, M2 or C7, International 10-20 co-ordinate system) specified muscles, and stimulation sites, and recorded in bipolar pairs. Intraoperative baseline SSEPs and EMGs were recorded just after final positioning of the patient. Electrode impedance was maintained and appropriately balanced. Data acquisition commenced as soon as possible following intubation and continued throughout the surgical procedure.

Baseline Recording:
Intraoperative baseline SSEPs and EMGs recorded just after final positioning of the patient for the Lateral L4-S1 OLIF

EXHIBIT 3

OBLIQUE/POSTERIOR INTERBODY FUSION L4L5, L5S1

PATIENT:	Gonzales, Marie
DATE OF OPERATION:	01/29/2013
HOSPITAL:	Spring Valley
HOSPITAL MRN:	35294396
HOSPITAL ACCT:	904944162
SURGEON:	Andrew M. Cash, M.D.
ASSISTANT:	Wes Smith, PA-C

PREOPERATIVE DIAGNOSIS:
Traumatically induced lumbar radiculopathy
Internal disc disruption at L4-5 and L5-S1, MVA

POSTOPERATIVE DIAGNOSIS:
Traumatically induced lumbar radiculopathy
Internal disc disruption at L4-5 and L5-S1, MVA

OPERATIVE PROCEDURE:

1. Far Lateral Discectomy L4-5.
2. Far Lateral Discectomy L5-S1.
3. Posterolateral arthrodesis, bilateral L4-5.
4. Posterolateral arthrodesis, bilateral L5-S1.
5. Anterior Lumbar arthrodesis L4-5.
6. Anterior Lumbar arthrodesis L5-S1.
7. Segmental Posterior Lumbar spinal instrumentation L4-S1.
8. Application of intervertebral biomechanical device L4-5.
9. Application of intervertebral biomechanical device L5-S1.

ANESTHESIA:	General endotracheal
ANESTHESIOLOGIST:	Timothy Beckett, M.D.
ESTIMATED BLOOD LOSS:	100cc
COMPLICATIONS:	None
DRAINS:	None
SPECIMEN:	None

PATIENT:	Gonzales, Marie
HOSPITAL MRN:	35294396
HOSPITAL ACCT:	904944162

HARDWARE USED:

(1)28mmx11mmPeek(Interbody)
(1)28mmx14mmPeek(Interbody)
(1)6.5x35mmPercScrew
(2)6.5x40mmPercScrew
(3)SetScrews
(1)80mmCurvedNotchedRod

Indications for Surgery:

The patient has clinical and radiographic signs and symptoms consistent with the preoperative diagnosis. The diagnoses and prognosis have been explained the patient. The risks and potential complications associated with the operation have been explained. The patient is aware that this procedure may not meet expectation and that other procedures may be required in the future. The advantages and disadvantages of alternative methods of treatment have been explained to the patient. The patient has agreed to the procedure and signed the operative consent.

Description of the Operative Procedure:
The patient was taken to the operating room and placed under general anesthesia. Preoperative antibiotics were given prior to incision. A Foley catheter was placed.

The patient was then turned carefully into the modified prone position. Jelly rolls and foam pads were then used to position the patient in some lumbar lordosis and carefully pad all body parts.

Intraoperative monitoring was utilized during the entire case with real time interpretation of motor and sensory evoked potentials.

Two fluoroscopic x-ray machines were then positioned to provide AP and lateral visualization of the appropriate segment. Extensive time and careful stereotactic planning was then carried out at this time to determine incision location, incision size, pedicle screw length and diameter, and the angle of surgical approach to the anterior aspect of the affected interspace. A sterile marker was used to mark this planned incision site.

A wide surgical prep was made of the thoracolumbar area and the surgical field was then draped in the usual sterile fashion.

The patient was then turned using the rotation of the surgical table so that a near direct approach to the lumbar spine could be achieved anterior to the transverse process. A 4-mm stab incision was then made superior to the mid iliac crest and then using biplanar fluoroscopic visualization, a neuromonitoring probe was then passed sequentially through the retroperitoneal space and muscle layers into the desired disc anterior to the transverse process. Electrical stimulation was performed during placement of the probe into the desired disc space. There was no burst of electrical activity seen at less than 4 milliamps of stimulation. A dilating tube was then passed

EXHIBIT 4

Las Vegas Radiology

TOMORROW'S RADIOLOGY IMAGING... TODAY

7500 Smoke Ranch Road, Suite 100
Las Vegas, Nevada 89128
Phone: 702-254-5004 Fax: 702-432-4005

Exam Date: February 12, 2013

REFERRED BY
ANDREW CASH, MD,

PATIENT INFORMATION
Patient: GONZALES, MARIE G DOB: [redacted]
MRN: 100475-1 Accession #: 231599
Exam: CT LUMBAR W/O

CT OF THE LUMBAR SPINE WITHOUT CONTRAST

CLINICAL HISTORY: Back pain, postoperative.

COMPARISON STUDY: 12/07/2012.

TECHNIQUE: Serial axial views through the lumbar spine performed. Coronal, sagittal and 3-D reconstructed images obtained.

FINDINGS:

There is left posterior fixation hardware at L4, L5, and S1. Spacer material is identified at L4-5 and L5-S1. Facet hypertrophic changes are identified at these levels.

There is no evidence of significant mass effect upon the neural foramina by the pedicle screws.

The metallic hardware at the interspaces yields artifact at the left neural foramen of L5-S1 and L4-5. Cannot rule out scar tissue versus disc material encroaching upon the left foramina at these levels. Case discussed with physician at time of dictation.

IMPRESSION:

1. There is no evidence of acute fracture.

2. Cannot rule out disc protrusion or scar tissue at the left foramina of the L4-5 and L5-S1. Spacer material at these interspaces is associated with metallic artifact.

JB/amr

Electronically signed by: JAMES BALODIMAS, MD
Date: 02/12/13
Time: 12:19

EXHIBIT 5

DISTRICT COURT

CLARK COUNTY, NEVADA

MARIE GONZALEZ, Plaintiff, vs. DEVAL M. HATCHER, an individual; REPUBLIC SILVER STATE DISPOSAL, INC., a Nevada Corporation; DOE OWNERS I through V, inclusive, DOE DRIVER, ROE EMPLOYER and ROE COMPANIES, Defendants.	Case No. A687931

DEPOSITION OF ANDREW CASH, M.D.
LAS VEGAS, NEVADA
DECEMBER 3, 2014

Reported By: LISA MAKOWSKI, CCR 345, CA CSR 13400

JOB NO: 226989

evaluation.

It said there might be some scar tissue versus disk material encroaching on the left foramina at L4-5 and L5-S1. When I evaluated the patient on 12/12/2013, I actually saw the CT scan, reviewed the report, spoke with the radiologist. He confirmed that on his report of the study and found there was no neural impingement, meaning no compression on the nerve to be decompressed surgically and no complication or malfunction in the hardware to be addressed surgically.

Going to the next note, which is 2/20/2013 --

Q. Can we stay on that --

A. Absolutely.

Q. -- radiology report. Sorry.

I'm looking at it, and the findings are described, of course, toward the bottom of the page. I think the middle of the three paragraphs on this page says, There is no evidence of significant mass effect upon the neural foramina --

A. That is correct.

Q. -- by the pedicle screws.

And what specifically is that describing?

A. Okay. So specifically where the nerve

REPORTER'S DECLARATION

STATE OF NEVADA)
COUNTY OF CLARK)

I, Lisa Makowski, CCR No. 345, declare as follows:

That I reported the taking of the deposition of the witness, ANDREW CASH, M.D., commencing on Wednesday, December 3, 2014 at the hour of 4:03 p.m.

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth; that, before the proceedings' completion, the reading and signing of the deposition has been requested by the deponent or a party.

That I thereafter transcribed said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of said shorthand notes taken down at said time.

I further declare that I am not a relative or employee of any party involved in said action, nor a person financially interested in the action.

Dated at Las Vegas, Nevada this 15th day of December, 2014.

Lisa Makowski

Lisa Makowski, CCR 345

EXHIBIT 6

I, Howard Tung, M.D., do declare and state as follows:

1. I am a licensed physician currently practicing medicine in the State of California and am license to practice medicine in the State of Nevada. I have knowledge of the matters set forth herein and, if called as a witness, would and could competently testify to the following facts:

2. I am a Diplomate of the American Board of Neurological Surgery and Clinical Professor of Neurological Surgery at the University of California, San Diego. I have been licensed and certified during all pertinent times of my review of records in this case. My background and qualifications are more fully described in my Curriculum Vitae.

3. Based upon my education, training, and experience, I am familiar with the diagnosis, care, and management of patients presenting with symptoms similar to those of Marie Gonzalez. I am aware of the standards of care required for medical providers practicing in the community for the evaluation and treatment of physical conditions presented by Ms. Gonzalez, as well as the standards of care in medical clinics in the United States.

4. Based upon my education, training, and experience, I have reached certain opinions regarding Marie Gonzalez's care and treatment based on my review of medical records, including those from Andrew Cash, M.D., Stuart Kaplan, M.D., Bruce Katzna, M.D. of Rocky Mountain Neurodiagnostics, and various radiological studies of Ms. Gonzalez's spine. I have also reviewed the depositions of Andrew Cash, M.D. and Stuart Kaplan, M.D. taken in association with Gonzalez v. Republic Silver State Disposal, Inc., Eighth District Court Case No. A-13-687931-C. Based upon my review of these materials, I note the following:

5. It is my understanding that Andrew Cash, M.D. made the recommendation that Marie Gonzales undergo a lumbar fusion procedure on the basis of results from a December 7, 2012 discography study. It is well-known from an evidence-based standpoint that discography has not been shown to be useful in selection of patients for surgery and improvement of surgical outcomes. This recommendation has been endorsed by a number of professional medical societies. While the decision to proceed with surgical intervention with lumbar fusion approaches a breach in the standard of medical care, it does not fall below this.

6. It is my understanding that Andrew Cash, M.D. performed a lumbar fusion surgery on Ms. Gonzalez at the L5-S1 level on January 29, 2013. Ms. Gonzalez is noted to have immediate postsurgical onset of severe left leg pain. Despite the clinical change in Ms. Gonzalez's medical status, it is my understanding on information and belief that she did not receive radiologic imaging when she was admitted to the hospital. Subsequent to the initial follow-up visit with Andrew Cash, M.D., a CT scan was obtained on February 12, 2013. I have reviewed the CT scan and it unequivocally shows an obvious breach of the left L5 pedicle screw with root compression. It is my understanding that revision surgery was not completed by Andrew Cash, M.D. and the medical records indicate a delay of several months until the revision surgery of Stuart Kaplan, M.D. on July 15, 2013

7. It is my opinion that, given her correlative severe neurological symptoms, the standard of care for a spine surgeon would require removal and/or replacement of the offending pedicle

screw and Andrew Cash, M.D. fell below this standard. It is my understanding that Andrew Cash, M.D. indicated that he reviewed the February 12, 2013 CT scan of Marie Gonzalez. It is my opinion that a prudent spine surgeon would have recognized this breach of the pedicle and associated the breach of the malpositioned pedicle screw with Ms. Gonzalez's worsening postoperative left leg pain. Nevertheless, it is also my understanding that Andrew Cash, M.D. concluded that there was "no compression of the nerve to be decompressed surgically and no complication or malfunction in the hardware to be addressed surgically."

8. It is my opinion that Andrew Cash, M.D.'s conclusions with respect to the positioning of the surgical hardware placement in Marie Gonzalez were erroneous. Further validating the malpositioned left L5 pedical screw and its association with Ms. Gonzalez's worsening and severe left leg pain is her improvement following the revision surgery performed by Stuart Kaplan, M.D. in July 2013. It is my understanding that Stuart Kaplan, M.D. also indicated in his deposition that the pedicle screw was causing irritation and compression of the left L5 nerve root.

9. From my review of the Operative Report of Andrew Cash, M.D. and the Neuromonitoring Report by Bruce Katuna, M.D. from Rocky Mountain Neurodiagnostics, it is my understanding that remote monitoring was completed given that Rocky Mountain Neurodiagnostics is located in Colorado. The Neuromonitoring Report indicates pedicle screw testing was completed up to 4 milliamps. Stimulation was started at 0 milliamps and slowly went up to 4 milliamps in 1 milliamp increments. It is my understanding that Rocky Mountain Neurodiagnostics' conclusion was that the pedicle screw testing up to 4 milliamps deemed the pedicle screw to be safe.

9. It is my opinion that the Bruce Katuna, M.D.'s conclusion with respect to pedicle screw testing is not consistent with the literature and the pedicle screw testing and failure to reposition the screw at the time of surgery falls below the standard of care. Studies show that the average value for an acceptable screw using pedicle screw testing was greater than 7.5 milliamps and thresholds less than 5 milliamps have generally resulted in screw removal.

10. Based on my review of the pertinent medical records and my experience and training, it is my opinion, to a reasonable degree of probability, that Marie Gonzalez's clinical condition has been irretrievably altered. It is my opinion, to a reasonable degree of medical probability, that had the malpositioned pedicle screw been determined at surgery or shortly after the February 12, 2013 CT scan, Ms. Gonzalez's current severe radicular symptoms would be improved from her current status. Furthermore, it is my opinion to a reasonable degree of medical probability that it is more likely than not that Ms. Gonzalez's need for future medical care would be improved and she would not likely be in chronic pain. Finally, it is my opinion, to a reasonable degree of medical probability, that Ms. Gonzalez would not have required placement of a spinal cord stimulator for chronic pain and radiculopathy to which the malpositioned placement of the pedicle screw contributed.

This affidavit is not intended to, and does not, contain all of my findings and opinions reached on the care and treatment of Marie Gonzalez by Andrew Cash, M.D. and Bruce Katuna, M.D. I

declare under penalty of perjury under the laws of the State of Nevada the foregoing is true and correct.

HOWARD TUNG, M.D.

EXHIBIT 7

Sutter Health
We Plus You

Sutter Imaging
1600 Expo Parkway
Sacramento, CA 95815

I, David Seidenwurm, M.D., do declare and state the following:

1. I am a licensed physician in the State of California, Nevada and Texas, and practice exclusively in the field of radiology and neuroradiology. I have personal knowledge regarding the matters set forth herein, and if called upon to testify, would competently do so, except as to those matters stated on understanding, information or belief, and as to those matters, I believe them to be true. I state as well any medical opinions set forth below to a reasonable degree of medical probability.

2. I am certified by the American Board of Radiology, and hold memberships and leadership positions in several medical societies and professional groups, among them the American Society of Neuroradiology and the American College of Radiology. My background and professional qualifications are more fully set forth in my attached Curriculum Vitae.

3. I was retained as an expert witness in my field of neuroradiology in the matter Marie Gonzales v. Deval Hatcher and Republic Silver State Disposal, Inc. (District Court, Clark County, Nevada, Case #A-687931). Through that retention I became familiar with Ms. Gonzales' treatment records and diagnostic imaging for injuries to her lower back which she claimed to have sustained in a traffic accident that formed the basis of the Gonzales v. Hatcher lawsuit. Such treatment was provided to Ms. Gonzales by, among others, Andrew Cash, M.D. and one or more radiologists practicing in association with or as part of Las Vegas Radiology, including James Balodimas, M.D.

4. On or about January 29, 2013, Andrew Cash, M.D. performed lumbar fusion surgery on Ms. Gonzales at L5-S1. Fixation hardware implanted by Dr. Cash included pedicle screws on the left at L5 and S1.

5. Ms. Gonzales' medical records confirm that she experienced severe post-operative pain into the left leg after the January 29, 2013 operation.

6. It is my understanding from the Gonzales medical records, and the December 3, 2014 deposition testimony of Dr. Cash taken in Gonzales v. Hatcher, post-surgical imaging studies were performed regarding Ms. Gonzales' lumbar spine approximately two weeks after the January 29, 2013 surgery.

7. Because of Ms. Gonzales' continuing post-operative pain, Dr. Cash ordered a CT scan of her lumbar spine, which was performed by Las Vegas Radiology on February 12, 2013. A report regarding the CT study of Ms. Gonzales' lumbar spine was dictated and signed by James Balodimas, M.D.

8. I have personally reviewed the February 12, 2013 report of Dr. Balodimas and the described CT images themselves. The imaging study demonstrates the pedicle screws at L5 and S1 positioned within the neural foramina, where they appear to displace the left L5 and left S1 nerve roots. The positioning of the pedicle screws within the neural foramina in a manner that produces neural displacement and likely clinical impingement upon neural structures is not mentioned in the Las Vegas Radiology/Balodimas radiology report. Rather, the report states "there is no evidence of significant mass effect upon the neural foramina by the pedicle screws". The report

describes a discussion of the radiological findings with Dr. Cash "at the time of the dictation."

9. With respect to the radiological interpretation, a prudent radiologist should reasonably be expected to detect the position of pedicle screws on the majority of similar studies. The screws and interbody hardware do produce some artifact in the February 12, 2013 CT imaging, but the degree of artifact is relatively small, as modern CT techniques and modern hardware had been employed. It is my professional opinion that Dr. Baloomas' failure to have detected entry of the L5 and S1 pedicle screws into the neural foramina; to have identified the screws' displacement of the nerve roots at their respective levels; and eventual failure to report such findings was below the standard of care for a prudent radiologist.

10. Correlating the clinical and imaging findings with respect to Ms. Gonzales' post-operative symptoms and the mal-positioned pedicle screws by the surgeon who placed them would also have been reasonably expected, as noted in the affidavit of neurosurgeon, Dr. Howard Tung. While I defer to the expertise of Dr. Tung regarding spinal surgery, I fully concur, and can state to a reasonable degree of medical probability in my specialty, that Dr. Cash—who testified in his December 2014 deposition (referenced previously) that he personally reviewed the post-operative CT scan and spoke with the radiologist regarding the study—erroneously concluded the surgical hardware, especially the pedicle screws at L5 and S1, had been properly placed when in fact they had breached their pedicles, entered into the neuroforamina, and had displaced the left S1 and left L5 nerve roots. Based on my experience and training, the surgeon would ordinarily recognize the intended anatomical result of his or her surgical procedure. This is particularly the case with respect to hardware placement. Since pedicle screws are intended for placement within the pedicle, and not for placement within the spinal canal or neural foramina, a spine surgeon in the ordinary course of clinical practice may be expected to recognize this abnormal imaging finding. This is especially true when there is correlation of the clinical and imaging findings and the anatomical and clinical operative result.

11. This affidavit is not intended to state all my findings, conclusions and opinions regarding all of Ms. Gonzales' radiological imaging and their interpretation by Dr. Cash, Dr. Baloomas, or others involved in Ms. Gonzales' treatment. I therefore reserve my right and opportunity to expand upon the matters set forth above, or address other or additional matters as the need may arise.

I declare under penalties of perjury under the laws of the State of Nevada that the foregoing is true and correct except as to any matters stated upon understanding, information or belief, and as to those I believe them to be true.

3/28/16

David Seidenwurm, M.D.

EXHIBIT 8

I, Jerry Saline, Ph.D., do declare and state as follows:

1. I am a licensed audiologist with a subspecialty in Neurophysiology, currently practicing in the State of California. I have knowledge of the matters set forth herein and, if called as a witness, would and could competently testify to the following facts:

2. I am a Diplomate of the American Board of Audiology and am licensed to practice clinical and surgical Neurophysiology by the Board of Medical Quality Assurance in the State of California. I have been licensed and certified during all pertinent times of my review of records in this case. My background and qualifications are more fully described in my Curriculum Vitae.

3. Based upon my education, training, and experience, I am familiar with the diagnosis, surgical methods, and neurophysiologic methodologies and standards for patients undergoing surgical intervention similar to Ms. Gonzalez' surgery. I am aware of the standards of care required for Neurophysiology providers, practicing in the community as related to surgical intervention of physical conditions presented by Ms. Gonzalez, as well as the standards of care in medical facilities in the United States.

4. Based upon my education, training, and experience, I have reached certain opinions regarding the intraoperative neurophysiologic care of Ms. Gonzalez following my review of medical records, including those from Andrew Cash, M.D., Stuart Kaplan, M.D., Bruce Katuna, M.D. of Rocky Mountain Neurodiagnostics, anesthesia records, and various other medical records related to Ms. Gonzalez' surgical spine procedures. I have also reviewed the depositions of Andrew Cash, M.D. and Stuart Kaplan, M.D., taken in association with Gonzalez v. Republic Silver State Disposal, Inc., Eighth District Court Case No. A-13-687931-C. Based upon my review of the materials made available to me, I note the following:

5. Other than a short narrative summary report by Dr. Bruce Katuna, of Rocky Mountain Neurodiagnostics, no intraoperative neurophysiology data, records, or report were presented in any records for my review. If, in fact, the only report regarding the surgical intraoperative data and records was that provided by Dr. Katuna, then the process and methodology for performing surgical spine monitoring, presentation of data, and reporting falls well below the community standards of care. It is widely accepted among professional Neurophysiology practitioners, hospitals, and professional societies, including the American Clinical Neurophysiology Society, that a complete record of averaged waveforms should be stored. If, due to technical and storage constraints, a complete record is either not possible or is impractical, then representative averaged waveform samples should be preserved in long-term storage. It is further recognized that any unaveraged data, including free electromyographic (EMG) data, should be included in the long-term storage of patient records, as required by law and should include the times of surgical events and procedures. Any Alerts that were issued directly to the surgeon or anesthesiologist should be noted. The anesthetics and various drugs used should be recorded in the long-term neurophysiology records, and any significant changes in medications or dosages should be noted. Additionally, the monitoring records should contain any significant changes in the

patient's physiological parameters, including blood pressure and patient temperature. The above information, along with stored averaged and unaveraged waveforms should be maintained in the long-term patient records and available for review as required by law. Finally, a final report summarizing the monitoring records should include peak latency and amplitude values and should be filed in the patient's medical records chart.

6. From my review of the operative report of Andrew Cash, M.D., in context with the neuromonitoring report by Bruce Katuna, M.D. of Rocky Mountain Neurodiagnostics, it is my conclusion that remote monitoring was performed with the technical components being conducted by Danielle Miller, affiliated with Neuromonitoring Associates, in the operating room. The professional interpretive component was performed by Dr. Katuna at a remote reading site in Colorado. The report by Dr. Cash, spine surgeon, indicates that some type of probe was used within the disc space to identify nerve roots. The report, in context with Dr. Katuna's neuromonitoring report, indicates that pedicle screw testing was completed up to 4 milliamps only. It is my understanding that Drs. Cash and Katuna concluded that the probe testing of pedicle screw continuity and electrical impedances of up to 4 milliamps indicated satisfactory placement of the L5 and S1 pedicle screws.

7. It is my opinion that the conclusions of Dr. Cash and Dr. Katuna, with respect to satisfactory L5/S1 pedicle screw placement during Ms. Gonzalez' surgery are inconsistent with the literature regarding intraoperative spinal nerve root stimulation in general, and pedicle screw stimulation protocols specifically. Furthermore, failure to identify and reposition a mal-positioned pedicle screw, based upon a stimulus threshold determinant of only 4 milliamps, falls below the standard of care. It is widely reported in the related literature that the lowest value for an acceptable placement of a screw, using pedicle screw electrical probe testing without eliciting any EMG activity, is at or above 7.5 milliamps, and thresholds less than 5 milliamps generally resulted in screw removal and repositioning.

This affidavit is not intended to, and does not, contain all of my findings and opinions reached regarding the case and treatment of Marie Gonzalez by Andrew Cash, M.D., Bruce Katuna, M.D. and others. I declare under penalty of perjury, under the laws of the State of Nevada, that the foregoing is true and correct.

Jerry W. Saline, Ph.D. CCC-A

along this same route. Following this, a 7-mm working channel was then passed sequentially into the disc space. The working channel was manually held in position while a series of disc cleaning tools was passed through the channel to remove the affected disc, decompress the nerve roots in the neural foramina, and decorticate the vertebral endplates at that segment.

Arthrodesis of the intervertebral space via an anterior retroperitoneal exposure and application of an intervertebral biomechanical device was then accomplished by using the working channel that had been placed in the retroperitoneal space anterior to the transverse processes. A customized PEEK vertebral body replacement device was then inserted into the mid portion of the intervertebral discs and then packed tightly with allograft bone for stabilization and arthrodesis of the intervertebral spaces. This was done under biplanar fluoroscopic guidance. All bone was confined to the borders of the disc space. The working channel was then removed.

The patient was then turned into a true prone position and two parallel incisions were made approximately 2 cm on side of the midline in the previously stereotactically determined locations. The incisions were just through the lumbodorsal fascia and further dissection was then carried down bluntly to expose the bone above the pedicles in a Wiltse type approach.

Using biplanar fluoroscopy and percutaneous techniques, the desired pedicles were then cannulated using an awl and then stereotactically sized screws were then inserted segmentally under direct fluoroscopic visualization. All screws were carefully placed into the center of the pedicle and no bony breach of any pedicle was felt to occur. An interconnecting rod was applied to both sides.

The remaining exposed bony surfaces were then decorticated using the Cobb periosteal, and allograft bone combined with a bone marrow aspiration were then placed along the posterolateral surfaces for arthrodesis.

The subcutaneous tissue was closed with 2-0 Vicryl and then a running subcuticular stitch was placed. Steri-Strips were applied and Xeroform, sterile 4x4 gauze and a Tegaderm were placed.

All sponge, needle and cottonoid counts were correct. There were no significant permanent changes from baseline with neuromonitoring. Following awakening from anesthesia, the patient was extubated. The patient could voluntarily move all

Electronically signed,

Andrew M. Cash, M.D.

D: 01/29/2013
T: 01/29/2013

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CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

REPUBLIC SILVER STATE DISPOSAL, INC., a Nevada Corporation,

Plaintiff

vs.

ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company; JAMES D. BALODIMAS, M.D.; JAMES D. BALODIMAS, M.D., P.C.; LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, a Colorado Limited Liability Company; DANIELLE MILLER aka DANIELLE SHOPSHIRE; NEUROMONITORING ASSOCIATES, INC., a Nevada Corporation; DOES 1-10 inclusive; and ROE CORPORATIONS 1-10 inclusive

Defendants.

Case No.: A-16-738123-C

Dept No.: XXX

REPUBLIC'S BRIEF RE EVIDENTIARY HEARING

Hearing Date:11/9/16
Hearing Time: 9:00AM

Plaintiff REPUBLIC SILVER STATE DISPOSAL, INC., by and through its counsel BARRON & PRUITT, LLP, hereby submits the following Brief and General Objection to the Court's Minute Order of Oct. 13, 2016.

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MEMORANDUM OF POINTS AND AUTHORITIES

Because of the extensive briefing the Court has already received and reviewed, it will hopefully suffice that this is a case seeking the statutory remedy of contribution. See *Uniform Contribution Among Tortfeasors* Act, NRS 17.225 et seq. Contribution is sought for amounts Republic Silver State Disposal paid in excess of its "equitable share" of a common liability when it settled a lawsuit brought by Marie Gonzales against Republic and its former employee, Deval Hatcher. Ms. Gonzales filed her suit against Republic and Mr. Hatcher on September 3, 2013 for injuries she claimed from a January 14, 2012 traffic accident in Clark County.

That lawsuit was settled, and a release was executed on July 6, 2015. Contribution is appropriately sought because the release affirmatively discharged—in addition to Republic and Mr. Hatcher—Ms. Gonzales' claims against all health care professionals who treated her for injuries she allegedly sustained in the January 2012 accident. Republic has alleged, and will be prepared to prove to the finder of fact, that those health care professionals named as defendants in this lawsuit were negligent in their treatment of injuries suffered by Ms. Gonzales, which her principal physician, Dr. Andrew Cash, opined were the directly caused by the January 14, 2012 accident. See medical record of Andrew Cash, dated February 20, 2013, attached as **EXHIBIT 1.**

In its Minute Order of October 13, 2016, this Court has set a November 9, 2016 evidentiary hearing to consider two issues prior to disposition of three Rule 12 motions:

1) Do the terms of the settlement agreement between Gonzales and Republic extinguish the liability of the Defendants named in the present litigation?
2) If the statute of limitations set forth in NRS 41A.097 applies, is there sufficient evidence to determine, for purposes of the pending Motions, when the statute of limitations expired as it relates to each Defendant?

With all deference, Republic objects to an evidentiary hearing for two reasons discussed below.

1. ***Rule 12 motions attacking the sufficiency of a pleading should, as a matter of law, be based on the face of the pleading, and without consideration of matter outside the pleading.***

The first objection is that the motions currently before the Court are brought either under NRCP 12(b)(5) for failure to state a claim, or subsection (c) of the same rule for judgment on the pleadings. Both forms of a Rule 12 motion address a complaint's legal sufficiency.[1] Using the "beyond a doubt" standard, see *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228 n. 6, 181 P.3d 670, 672 n. 6 (2008), a Rule 12(b)(5) motion asks this question: from the face of the pleading, is the plaintiff is entitled to no relief under any set of facts that could be proven in support of the claim? *Id.*, 124 Nev. at 228, 181 P.3d at 672. In answering this question, the court must accept the pleading's allegations as true, and extend to the non-moving party all reasonable inferences that can be drawn from the pleading. *Id.*

Although the October 13 Minute Order is couched as a "request," Republic reads the directive as an order, to which Republic will comply in good faith, though under the protest of this objection. By coupling its decisions on the Rule 12 motions to evidentiary matters outside of the assailed complaint, the Court has effectively converted the Rule 12 motions into motions for summary judgment under Rule 56, where, as succinctly put by the Nevada Civil Practice Manual, "the pleadings play a limited role." *Id.*, Ch. 17 ("Summary Judgment") §17.12 [1]. Simply put, whether bought by a "claimant" or "defending party," a motion for summary judgment under NRCP 56 presupposes the existence of a "claim." *Id.*, (a) and (b). And whether Republic's amended complaint states a "claim" is the very point of the pending motions.

The second objection is to the production at this juncture of the Gonzales-Republic release, and its consideration in deciding the pending motions. Republic's amended complaint at ¶51 alleges in full:

> On July 6, 2015, REPUBLIC, settled *Gonzales v. Hatcher, Republic Silver state Disposal, Inc.*, resolving all claims against itself, Deval Hatcher, and all of Gonzales' health care providers, including but not limited to the Defendants herein for $2,000,000.00.

[1] As stated in prior briefing the Rule 12(c) motion is facially defective since the pleadings are not yet "closed" since the movant, Defendant Balodimas, has not filed an answer. See Motions for judgment are also typically plaintiffs' motions, relying on the admissions of the responding party; for this reason a Rule 12(c) motion can be defeated by the denials and affirmative defenses since a court may not go beyond the face of a pleading. See *Bernard v. Rockhill Development Co.*, 10 Nev.132, 135, 734 P.2d 1238, 1241 (1987). Nor will a defendant "succeed on a motion under Rule 12(c) if there are allegations in the plaintiff's pleadings that, if proved, would permit recovery." *Id.*

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While Republic's allegations at ¶51 of the amended complaint should, as a matter of law, be taken as true, *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 873, 8 P.3d 837, 839 (2000); see also *Buzz Stew*, supra, 124 Nev. at 228, 181 P.3d at 672[2], Republic is attaching the Release as relevant predicate to a right of contribution under NRS 17.225(3) and 17.245(1)(a). It should not go unnoticed, however, that by demanding access to the release all the defendants have taken the same inconsistent position: On the one hand they contend the Republic claim is barred by a limitations exclusively applicable to claims of medical malpractice and negligence under NRS Ch. 41A. On the other hand they acknowledge Republic is asserting a contribution claim—subject to its own 1-year limitation period under NRS 17.285(4)(b); otherwise, what difference does the release make?

Though the release is not the subject of any pending motion, the scope and effect of the Gonzales-Republic release begins with a discussion of Nevada's controlling authority regarding whether a release may be read to include third parties to the settlement agreement.

2. The Gonzales-Republic release for injuries allegedly resulting from the January 14, 2012 accident was intended and drafted to extinguish Gonzales's claims against all her health care providers.

At common law, the rule was "release of one, release of all." This led to harsh results—by signing a "general" release, a claimant could unwittingly extinguish claims against third-parties also potentially liable for his or her damages. Nevada has broken from the common law rule, and the intent of the parties to the release controls who is released from liability.

In *Russ v. General Motors Corp.*, 111 Nev. 1431, 906 P.2d 718 (1995), Laura Russ, was severely injured in a traffic accident when the van she was driving collapsed, and its engine entered the passenger compartment. Russ signed a release foregoing her claim against the adverse driver, Scott Haight, in exchange for Haight's auto liability policy limits.[3] The verbiage of the release also had boilerplate purporting to release "all other persons, firms or corporations" for claims arising from the same accident. The injured driver and her husband then sued the manufacturer of her vehicle, GM, and the dealership that sold it to her, Fairway Chevrolet. *Id.*, 111 Nev. at 1432-1433; 906 P.2d at 719.

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[2] The same applies to a Rule 12(c) motion. See *Bernard v. Rockhill Development Co.*, discussed at n.1, above.

[3] The undersigned can speak with some authority on this point since he represented the adverse driver and the auto insurer, Hawkeye Security.

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The manufacturer and dealership moved for summary judgment contending the release extinguished claims against them as well. In opposition the plaintiff submitted the declaration of her attorney's assistant, Guy Potter, who negotiated with the adverse driver's insurer, Hawkeye Security. The upshot of Potter's declaration was that it was not the intention of the Russ or Hawkeye to release GM or Fairway, and that at the time the release was signed, no lawsuit against GM and Fairway was pending, or even contemplated. *Id.*, 111 Nev. at 1434; 906 P.2d at 720. The Potter declaration was largely disregarded by the district court as beyond Potter's personal knowledge or hearsay, and was "insufficient to raise a genuine issue of fact as to the liability of [GM] or Fairway." Instead, the district court granted summary judgment, holding the release "clear and unambiguous" and that "the class of released entities defined in the release included not only [GM] and Fairway but all other firms and corporations." *Id.* An appeal was taken.

The *Russ* decision reviewed in considerable detail Nevada's law of release. In substance the *Russ* court found the harshness of the common rule was legislatively overturned by both the *Uniform Joint Obligor's Act*, NRS Ch. 101, and *Uniform Contribution Among Tortfeasors Act*, NRS 17.225, et seq.:

> The Nevada Legislature adopted the Uniform Contribution Among Tortfeasors Act ("UCATA") in 1973. The UCATA was drafted to specifically address the inequities that resulted from adherence to the traditional common law rule. *Neves* [*v. Potter*, 769 P.2d 1047 (Colo. 1989)] at 1050. In pertinent part, the UCATA states:
>
> > When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury ...:
> >
> > 1. It does not discharge any of the other tortfeasors from liability for the injury ... *unless its terms so provide....*

111 Nev. at 1436; 906 P.2d at 721.

Our Supreme Court then surveyed the three schools of thought regarding the law of release. First, "[s]ome jurisdictions hold that all possible tortfeasors are released by a general, boilerplate release." *Id.* Second, "[o]ther jurisdictions narrowly construe the 'unless its terms so provide' requirement [as found in, e.g., NRS 17.245] only to discharge a tortfeasor who is named in the release

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or identifiable from the face of the release." *Id.* Finally, "[a] third view probes the intentions of the parties by holding that a boilerplate release can only discharge an unnamed tortfeasor if the parties to the release *intended* such a result." *Id.* (emphasis original).

The *Russ* Court definitively held that "[o]ur cases that address the issue at bar adhere to the latter view because it is the more reasoned approach" and frowned upon the "absolute bar view" because it "frustrate[s] the intent of the UCATA to abrogate the common law" rule that a release of one tortfeasor automatically released all others. *Id.*, 111 Nev. at 1436-7; 906 P.2d at 721.

The court also found unpersuasive "[t]he view that a release only discharges tortfeasors who are named in the release, or identifiable from the release." *Id.* 111 Nev. at 1438; 906 P.2d at 721-2. The thrust of *Russ*, therefore, is that "a release does not, in and of itself, release a party unless it was the intention of the injured person to release that party"; that "determining an injured party's intentions depends upon proof and is not susceptible to resolution as a matter of law"; and that "[s]uch a determination is appropriately a jury question." *Id.* 111 Nev. at 1438; 906 P.2d at 722.

Perhaps important for the Court's evidentiary hearing, as an evidentiary matter *Russ* also held that the district court "was required to accept the Potter declaration, and any inferences drawn from it, as true during the summary judgment proceeding," and that:

> a court should provisionally receive all credible evidence concerning a party's intentions to determine whether the language of a release is reasonably susceptible to the interpretation urged by the party. (Citation.) If the court decides that the extrinsic evidence makes the language in the release reasonably susceptible to the interpretation urged, the extrinsic evidence should be admitted to aid the court's interpretation of the contract.

111 Nev. at 1438-1439; 906 P.2d at 723.

As is now discussed, the Gonzales-Republic release was fashioned to exonerate from any potential liability of "any [of Mrs. Gonzales'] medical treatment providers."

a. The intent of the parties to the Gonzales-Republic release was clearly established during the negotiation process and in the Release's language.

During discovery in *Gonzales*, it was reasonably certain Dr. Cash's operation on January 29, 2013 had led directly to Dr. Kaplan's complete revision of Cash's "work" on July 15, 2013. Whether

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Cash had committed malpractice was unclear, however—certainly the term had not crossed Dr. Kaplan's lips when he was deposed in late 2014, and Dr. Cash's testimony downplayed the need for the revision altogether. In fact, when deposed, Dr. Cash effectively placed the blame for not identifying the pedicle screws entering Mrs. Gonzales' neuroforamina on the radiologist, Dr. Balodimas. When asked about the Balodimas CT study performed on February 12—just two weeks after his operation—Dr. Cash testified:

> It said there might be some scar tissue versus disk material encroaching on the left foramina at L4-5, L5-S1. When I evaluated the patient on 12/12/13 (sic), I actually saw the CT scan, reviewed the report, [and] spoke with the radiologist [Dr. Balodimas]. He confirmed that on his report of the study and found that there was no neural impingement, meaning no compression on the nerve to be decompressed surgically and no complication or malfunction in the hardware to be addressed surgically.

See Amended Complaint ¶35.

The larger point, however, is that when settlement negotiations were occurring in June 2015, there were irregularities in Mrs. Gonzales' treatment by Drs. Cash and Balodimas, but whether they rose to actionable professional negligence was uncertain. That is why, as condition of settlement, Republic wanted to preserve its rights to seek contribution—a condition to which Mrs. Gonzales' counsel agreed.

Attached as **EXHIBIT 2** is a copy of email correspondence between counsel making it plain-as-day their intent to have Mrs. Gonzales' release cover Dr. Cash, and her other health care professionals in who provided her treatment for the January 14, 2012 accident:

> Because we wish to preserve all rights of contribution and equitable indemnification, our form of release will be inclusive of all medical providers, including Dr. Cash and any other potentially responsible health care providers or third- parties. So long as that is fully understood, I think we can move forward to finalize the settlement.
>
> /S/ David Barron

Mrs. Gonzales' counsel's response was brief but unquestionable:

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We agree to those conditions...

/S/ Ryan Anderson

Because of that understanding the Release, attached as **EXHIBIT** 3, has the following language, in which Mrs. Gonzales clearly agreed that:

> As a part of their settlement and their mutual consideration stated above, this SETTLEMENT AGREMEENT; RELEASE and COVENANT NOT TO SUE shall discharge and extinguish any and all claims or liabilities, including those for "economic" and "noneconomic" damages as set forth in NRS ch. 41A, RELEASOR [Ms. Gonzalez] may possess against any of her medical treatment providers for injuries she alleges to have sustained in the described incident of January 14, 2012.

The foregoing is found at page 2 of the Release. Reiterating the intent to preserve contribution rights, it was

> acknowledge[d] this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE represents a good faith settlement of the RELEASORS' claims, and preserves RELEASEES' rights under The Uniform Contribution Among Tortfeasor's Act, NRS 17.225, et seq.

Release at p. 9.

Simply put, the Gonzales-Republic release passes muster under *Russ* since its intention to release Mrs. Gonzales' medical treatment providers, and preserve Republic's rights of contribution are plainly stated. The court, however, has asked how the Gonzales-Republic release compares to the unreported Nevada Supreme Court's decision in *McNulty v. District Court*, 127 Nev. 1159, 373 P.3d 942 (2011). *McNulty* actually supports that the Gonzales-Republic release extinguished the liability of Mrs. Gonzales' treatment providers.

b. Distinguishing McNulty v. District Court

Is simplest terms, *McNulty* involved a settlement agreement that did not release a plaintiff's treatment providers from liability, and as such, the *McNulty* court issued a writ of mandamus that the

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settling defendant could not proceed against the plaintiff's supposedly negligent physicians for contribution.

The settlement agreement was between a passenger and a cab company for accident-related injuries. Several physicians (and their practice) were sued for contribution after the cab company and its insurer paid over $1 million to the passenger-plaintiff. Basis for the cab company's post-settlement contribution claim—and a parallel medical malpractice action also brought by the passenger-plaintiff after settlement—was that the physicians had "performed post-accident back surgery on [the plaintiff]. The surgery allegedly aggravated the injuries [the plaintiff] suffered in the accident and left [the plaintiff] partially paralyzed." *Id.* *1.

While the settlement agreement extinguished the cab company's liability, it scrupulously craved out an exception for a claim of medical malpractice based on a mutual understanding of the settling parties that the accident was not the cause of the back surgery. It did this by stating that the payment in exchange for the release

> is not, nor is it intended to be construed as, an admission of cause of the need for surgery of any kind. The parties to this Release expressly agree that the subject motor vehicle accident did not cause the need for surgery of any kind. Accordingly, the parties stipulate that neither the lumbar surgery nor complications related thereto are proximately or casually related to the subject motor vehicle accident.

Id.

The plaintiff's post-settlement claim against his doctors was his own for medical malpractice; the cab company's claim was for contribution and equitable indemnity. The physician-defendants in the cab company's lawsuit moved for summary judgment. The motion was denied. The physicians petitioned for a writ of mandamus compelling the district court to grant summary judgment. While the Supreme Court found the indemnity claim required factual determinations, it agreed that a writ of mandamus was appropriate for the contribution claim:

> Here, we conclude that McNulty is entitled to a writ of mandamus compelling the district court to dismiss [the cab company's] contribution claim because clear statutory authority requires dismissal. By its terms, the release did not extinguish McNulty's liability to [the passenger-plaintiff]. Under NRS 17.225(3):

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> A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement....
>
> The statute's wording is plain and its application clear: [the cab company] has no contribution claim against McNulty. Accordingly, we grant the petition for a writ of mandamus requiring the district court to dismiss [the cab company's] contribution claim.

Id. *2.

Contrasting the *McNulty* and Gonzales-Republic releases, the plaintiff in *McNulty* wanted to preserve his right to pursue his malpractice action against his physicians; Mrs. Gonzales did not and agreed to extinguish her medical treatment providers' liability as part of the $2 million settlement consideration, knowing that Republic was preserving rights to seek contribution from them.

It is also worth a brief mention that *McNulty* dealt with a post-settlement contribution action. And contrary to previous argument in the Rule 12 motions, nowhere in the Supreme Court's decision is there a suggestion that a contribution action based on medical malpractice must be brought as a third-party action under Rule 19 while the plaintiff's lawsuit is still pending.

c. In determining the appropriate limitations period, the gravamen of the complaint controls.

If the medical malpractice statute of limitation were to apply here—which would be directly contrary to the Nevada Supreme Court' rulings in *Saylor v. Arcotta,* 126 Nev. ___, 225 P.3d 1276 (2012) and *Pack v. LaTourette*, 128 Nev. ___, 277 P.3d 1246 (2012)—the Court has asked for evidence "as to when the statute of limitations expired as it relates to *each* Defendant." Minute Oder, 10/13/16, emphasis added.

Defendants in this matter are fixed on the idea that this is a medical malpractice action for Marie Gonzalez' injures. As was briefed extensively in Plaintiffs' Oppositions to Defendants' Rule 12 Motions, a contribution claim is a stand-alone cause of action. But since the contribution claim is based on allegations of medical errors and omissions, Republic must prove medical malpractice as an element of its claim. *Pack* at 1250 ("to establish a right of contribution, Sun Cab would have to establish that LaTourette committed medical malpractice"). Republic must also comply (and has) with

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the medical expert declaration requirement found in NRS 41A.071. *Id.* But neither statutory predicate to a contribution action based on medical malpractice converts the contribution claim *into* a medical malpractice claim, making it subject to NRS Ch. 41A's limitations provisions. Cf. *Aetna Casualty & Surety v. Aztec Plumbing,* 106 Nev. 474, 796 P.2d 227(1990) ("[a] cause of action for indemnity or contribution accrues when payment has been made"). Whether the medical malpractice statute or contribution statute of limitations applies is answered by determining the nature of the action.

State Farm Mutual Automobile Insurance Company v. Wharton, 88 Nev. 183, 495 P.2d 359 (1972) establishes that "one must look to the real purpose of the complaint" in determining which of two or more conflicting limitations periods ought to be applied. *Id.* at 186, 361. There, the Nevada Supreme Court considered competing statutes of limitations—a shorter tort statute and a longer contract statute—to determine if a plaintiff/subrogee insurance company's claim was time-barred. The Court held that "[i]n determining whether an action is on the contract or in tort, we deem it correct to say that it is the nature of the grievance rather than the form of the pleadings that determines the character of the action." *Id.* (citations omitted). In *State Farm* the insurer was subrogating on an underlying bodily injury, and the court found the 2-year statute was therefore applicable. The rule upon which it relied is that "it is the object of the action, rather than the theory upon which recovery is sought (,) that is controlling." *Id.*, quoting *Automobile Ins. Co. v. Union Oil Co.*, 193 P.2d 48, 50-51 (Cal. App. 1948).

Looking at the Amended Complaint, the object of the action is clear: it is for contribution to ensure that Republic paid no more than its equitable share of a common liability. The Amended Complaint does this by raising claims for professional negligence/medical malpractice, respondeat superior/vicarious liability, and negligent hiring/retention as torts underlying Republic's contribution claim. (For good measure, the Amended Complaint includes the phrase "It was also necessary for REPULIC to bring this action for contribution" as part of each cause of action.) Not only is the term "contribution," and the *Uniform Contribution Among Tortfeasors Act* mentioned far more often in the Amended Complaint than medical malpractice, Marie Gonzalez' damages are not discussed, alleged or being sought. The only damages claimed are Republic's, and its entitlement to its damages is by proceeding under NRS 17.225 et seq. to assure it has paid not more than its equitable share of the

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common liability. Accordingly the 1-year limitation from the date of the settlement payment for contribution actions is clearly the applicable law. NRS 17.285(4)(b).

As noted, the Nevada Supreme court has held that NRS 41A.097 does not govern contribution actions. The question to be addressed at this Court's request, however, is if the supposedly expired medical malpractice statute of limitations in NRS 41A.097 applies, how would it effect each defendant?

3. Even if NRS 41A.097 did apply when the statute was triggered presents questions of fact.

Defendant Danielle Miller has recently field a supplemental brief that NRS 41A.097(2) would bar Republic's claim (even though it would not have even arisen by then under *Aztec Plumbing*) no later when Dr. Kaplan performed his revision on the Cash operation on July 15, 2013. The practical consequence is that Republic needed to have brought is claim by July 15, 2014 at the latest. Naturally Republic disagrees.

NRS 41A.097(2) is the limitation for injuries or death after October 1, 2002 arising from medical malpractice. It reads in pertinent part:

> Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first[.]

NRS 41A.097(3) is a tolling provision providing "[t]his time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to the provider of health care."

Subsections 2 and 3 of NRS 41A.097 raise three pertinent questions: First, what is the "date of injury" triggering the 3-year limitations period? Second, using the "knew or should have known" standard, when should Mrs. Gonzales have reasonably discovered the injury triggering the statute's 1-year limitation period? And third, was there concealment by any health care provider who either knew, or through reasonable diligence should have known of the injury? All these inquiries are fact-intensive.

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1) Date of injury

Beginning with the "date of injury," the common presumption has been that the injury was incurred on January 29, 2013; that was when the pedicle screws were improperly placed; *ergo*, January 29, 2013 is the earliest time point for a date of injury. This, however, ignores the progressive nature of the harm.

When Dr. Kaplan was deposed in *Gonzales* he declined to criticize Dr. Cash's misplacement of the pedicle screws on January 29, 2013. Indeed, Dr. Kaplan testified that he himself has overshot the mark and put pedicle screws through a patient's neuroforamen. But to avoid lasting nerve injury, such as that suffered by Mrs. Gonzales, Dr. Kaplan also testified it is imperative that the surgical complication be addressed promptly. So to be perfectly clear, the pedicle screws penetrating Ms. Gonzalez' neuroforamina, while a surgical complication, was "fixable" had it been surgically addressed in time.

Defendant Cash's professional negligence was not just improper placement of the screws. It was that he failed to order a work up when Ms. Gonzalez awoke in the recovery room in excruciating pain, and his ongoing inability—or refusal—to recognize the need for a surgical revision thereafter. We know he waited 2 weeks to order a CT scan. And then he and Dr. Balodimas conferred about what the CT scan showed. Although the CT study demonstrated an obvious breach of the pedicle screws, both Drs. Cash and Balodimas agreed that it showed nothing of requiring immediate intervention—apparently a joint conclusion, memorialized in Defendant Balodimas' radiology report (which did little other than reinforce Defendant Cash's erroneous conclusion that Ms. Gonzalez was experiencing nothing but postoperative pain).

Instead of accurately assessing Mrs. Gonzales' progressively deteriorating condition caused directly by the pedicle screws' irritation of her affected nerve roots, Dr. Cash perpetuated his poor professional judgment by referring Mrs. Gonzales to a "pain management" specialist, Dr. Alain Coppel. Between February 11 and June 1, 2013, Mrs. Gonzales underwent three rounds of epidural steroid injections, and a "trial" spinal cord stimulator, with no significant improvement. By then Mrs. Gonzales had reached her limit and effectively "fired" Dr. Cash and sought help from Dr. Stuart Kaplan.

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Dr. Kaplan's complete revision of the Cash operation was on July 15, 2013. But by then the permanent damage had been done; she was now suffering from chronic radiculopathy that eventually necessitated Dr. Kaplan's implantation of a permanent spinal cord stimulator in early 2015.

2) "Inquiry" notice

Using July 15, 2013 as the rational date of injury—after all, that was the date when the surgical option was proven to have been exercised too late—what "inquiry" notice was there that Dr. Cash, or any other named defendant for that matter, had committed malpractice? Again, this a fact-based inquiry.

The only physician Mrs. Gonzales could have relied upon to tell her that her post-operative suffering was the result of malpractice, and not just an unfortunate (though not uncommon) surgical complication, was Dr. Kaplan. Yet as late as his deposition in December 2014, Dr. Kaplan declined to typify Dr. Cash's performance as malpractice. And it's also worth noting that when Mrs. Gonzales presented to Dr. Kaplan in mid-2013 it was not that that she suspected malpractice had been committed—after all, she saw Kaplan to treat her, not assess Dr. Cash's work. And even after Dr. Kaplan completely revised the Cash surgery, there is no indication that Mrs. Gonzales was aware that her surgical complication rose to the level of professional negligence. Certainly Dr. Kaplan never told her so. Inquiry notice under these facts regarding Dr. Cash simply is not present as a forgone conclusion. And there's no indication Mrs. Gonzales was even aware of the three neuromonitoring defendants, or whether her injury could have been attributable—as Dr. Cash was quick to contend—to Dr. Balodimas' misreading the post-operative CT scan.

The next question is whether these defendants were forthcoming in their respective roles in Mrs. Gonzales' treatment, or whether there was concealment of errors in Gonzales' treatment "which [were] known or through the use of reasonable diligence should have been known to the provider[s] of health care." NRS 41A.097(3).

3) Tolling due to concealment

We don't know what Dr. Balodimas and Dr. Cash said to one another as they discussed the post-operative CT. But Dr. Cash's testimony that Dr. Balodimas was the one actively at fault raises suspicion about whether the intent of the Balodimas CT report all along was to provide plausible cover for concealing the surgical complication. If Dr. Balodimas is deposed, will he take the blame for failing

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to properly read the CT study, and concede that Dr. Cash was reasonably relying on his mistake as a radiologist? Or did Dr. Balodimas shade his CT report at Dr. Cash's behest? Whether the pedicle breach was concealed—and if so, why—are fact questions implicating the tolling aspects of NRS 41A.097(3) as to both Drs. Cash and Balodimas.

Nor were the neuromonitoring defendants candid in disclosing their records and intraoperative data. Republic conducted extensive discovery in the course of the underlying case and obtained a HIPPA compliant release from Mrs. Gonzalez to acquire her medical records. Republic played by the rules, and that authorization and the court's process were used in gathering the Gonzales treatment records. It was not until after the Gonzales-Republic settlement it became clear that the records received from the neuromonitoring defendants were woefully incomplete.

a) The Katuna/Rocky Mountain Neuromonitoring records

A records request to Defendant Katuna/Rocky Mountain Neurodiagnostics yielded a single page "report" signed by Defendant Katuna, dated March 6, 2013. This report stated that "[m]onitored responses showed no significant changes throughout the procedure and the surgeon was so informed. Pedicle screw testing demonstrated thresholds suggesting low likelihood of pedicle breach." A copy of the Records Request and Intraoperative Neurophysiologic Monitoring Report is attached as **Exhibit 4**.

Defendant Katuna produced no intraoperative neuromonitoring data, which is required to be retained under Nevada's medical record keeping statute. Importantly, these records are the only objective means by which his report could be verified. Notably, Dr. Katuna himself signed the Affidavit of Authenticity of Records dated May 18, 2015, but gave no explanation for the absence of the intraoperative data, or even a hint of their existence. Also, Dr. Katuna's report does not appear in Defendant Cash's records, nor are any documents from Dr. Katuna in any other provider's records produced during *Gonzales*.

Republic first became aware of the existence of the Katuna report as an exhibit to a settlement demand dated December 13, 2013, about 3 months after suit was filed. It is, of course, the only document ever produced by Dr. Katuna and Rocky Mountain Neurodiagnostics. It is plainly insufficient to have placed Mrs. Gonzales on notice that the intraoperative neuromonitoring in her case

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was below the standard of care, and prompts the question of whether these records were innocently or deliberately withheld.

b) The Neuromonitoring Associates/Danielle Miller records

A pair of requests dated February 14, 2014 and May 14, 2014 to Defendant Neuromonitoring Associates yielded *no* records for the January 29, 2013 procedure; the only records produced pertained to the July 15, 2013 revision surgery performed by Dr. Kaplan. The requests and records received from Neuromonitoring Associates are attached as **EXHIBIT 5.**

Like Defendant Katuna's conclusory report, Republic first became aware of Neuromonitoring Associates' and Danielle Miller's involvements in Ms. Gonzalez' treatment from the December 2013 settlement demand. Included was a single page "Neuromonitoring Report," which lacked the signature page. Interestingly, the "Neuromonitoring Report" listed Defendant Miller as an "anesthesia technician"; no intraoperative neuromonitoring technician is even identified.

The Neuromonitoring Report is attached as **EXHIBIT 5**, and raises questions of fact and law. What, for example, was the precise scope of Defendant Miller's role in the January 29, 2013 surgery? From the face of this document, can Mrs. Gonzales have been on reasonable notice of Defendant Miller even had a role in the intraoperative neuromonitoring? Or even read to have placed Mrs. Gonzales on "inquiry" notice that the low amperage passing through the pedicles screws during the Cash surgery in fact indicated a pedicle screw breach? Moreover, that is no indication Defendant Miller was properly credentialed as Certified in Neurophysiological Intraoperative Monitoring (CNIM).

Clearly, Defendant Katuna did not produce the full extent of the records he ought to have retained, and Defendants Miller and Neuromonitoring Associates failed to disclose *any* records pertaining to the January 29, 2013 procedure. This gives rise to at least a question of fact as to whether the failure to produce pertinent records was an innocent oversight or volitional concealment. If that were found to be the case, the statute of limitations would in fact be tolled under NRS 41A.097(3) as to each of these neuromonitoring defendants. But unquestionably, the failure to produce pertinent records kept Mrs. Gonzales from learning that the intraoperative neuromonitoring was improperly performed.

///

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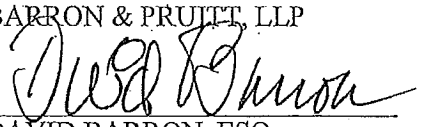
CONCLUSION

The consequence of the preceding discussion is that *even if this were Ms. Gonzalez' medical malpractice claim*—which it is most certainly not—there is a trove of disputed facts about the viability of such a suit. Accordingly, dismissal of this action as time-barred by NRS 41A.097 would be doubly inappropriate, first because it is not Ms. Gonzalez' medical malpractice claim; and second, even if it were, the facts show that all Defendants were amenable to suit under NRS Ch. 41A.097(2) for at least three years after the "date of injury," or no later than July 15, 2016. See *Libby v. District Court*, 130 Nev. ___, 325 P.3d 1276, 1277 (2014) ("NRS 41A.097(2)'s three-year limitation period begins to run when a plaintiff suffers appreciable harm, regardless of whether the plaintiff is aware of the injury's cause"). Of course, Republic's complaint was filed several weeks before the three-year anniversary of Dr. Kaplan's operation. And it was only then that Mrs. Gonzales' "appreciable harm"—in the form chronic radiculopathy resulting from leaving the pedicle screws in her neuroforamina for several months—was learned.

Based on the foregoing, and previous briefing, all Rule 12 motions should be denied.

BARRON & PRUITT, LLP



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of November, 2016, I served the foregoing as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the address(es) set forth below.

☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set forth below.

☒ BY ELECTRONIC SERVICE: by electronically serving the document(s) listed above with the Eighth Judicial District Court's WizNet system upon the following:

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Robert C. McBride, Esq. Heather S. Hall, Esq. CARROLL, KELLY, TROTTER, FRANZEN, MC KENNA & PEABODY 8329 West Sunset Road, Suite 260 Las Vegas, NV 89113 Facsimile: (702) 796-5855 Email: rcmcbride@cktfmlaw.com Email: hshall@cktfmlaw.com *Attorneys for Defendants* *Andrew M. Cash, M.D.* *Andrew M. Cash, M.D., P.C. a/k/a* *Andrew Miller Cash, M.D., P.C.; and* *Desert Institute of Spine Care*	James R. Olson, Esq. Max E. Corrick, II, Esq. Stephanie M. Zinna, Esq. OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI 9950 West Cheyenne Avenue Las Vegas, NV 89129 Facsimile: (702) 383-0701 Email: jolson@ocgas.com Email: mcorrick@ocgas.com Email: szinna@ocgas.com *Attorneys for Defendants* *Bruce Katuna, M.D. and* *Rocky Mountain Neurodiagnostics, LLC*
John H. Cotton, Esq. Michael D. Navratil, Esq. JOHN H. COTTON & ASSOCIATES, LTD. 7900 West Sahara Avenue, Suite 200 Las Vegas, NV 89117 Facsimile: (702) 832-5910 Email: jhcotton@jhcottonlaw.com Email: mdnavratil@jhcottonlaw.com *Attorneys for Defendants* *James D. Balodimas, M.D. and* *James D. Balodimas, M.D., P.C.*	James Murphy, Esq. Daniel C. Tetreault, Esq. LAXALT & NOMURA, LTD. 6720 Via Austi Parkway, Suite 430 Las Vegas, NV 89119 Facsimile: (702) 388-1559 Email: jmurphy@laxalt-nomura.com Email: dtetreault@laxalt-normura.com *Attorneys for Defendant Neuromonitoring* *Associates, Inc.*
Kim Irene Mandelbaum, Esq. Marie Ellerton, Esq. MANDELBAUM, ELLERTON & ASSOCIATES 2012 Hamilton Lane Las Vegas, NV 89106 Facsimile: (702) 367-1978 Email: filing@meklaw.net *Attorneys for Defendant* *Las Vegas Radiology, LLC*	Anthony D. Lauria, Esq. LAURIA TOKUNAGA GATES & LINN, LLP 1755 Creekside Oaks Drive, Ste. 240 Sacramento, CA 95833 601 South Seventh Street Las Vegas, NV 89101 Facsimile: (702) 387-8635 Email: alauria@lgtlaw.net *Attorneys for Defendant Danielle Miller a/k/a* *Danielle Shopshire*

/s/ MaryAnn Dillard
An Employee of BARRON & PRUITT, LLP

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Exhibit 1

ELECTRONICALLY SERVED
11/12/2014 03:25:11 PM

SUBP
DAVID BARRON
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E-Mail: dbarron@lvnvlaw.com
Attorneys for Defendants Hatcher & Republic Silver State Disposal

DISTRICT COURT

CLARK COUNTY, NEVADA

***

MARIE GONZALEZ,

Plaintiff,

vs.

DEVAL M. HATCHER, an individual; REPUBLIC SILVER STATE DISPOSAL, INC., a Nevada Corporation; DOE OWNERS I through V, inclusive, DOE DRIVER, ROE EMPLOYER and ROE COMPANIES,

Defendants.

Case No: A-13-687931-C
Dept.: XX

COORDINATED FOR DISCOVERY ONLY

Case No.: A-13-692547-C
Dept.: XVII

AND ALL RELATED ACTIONS

SUBPOENA

☒ Regular Duces Tecum

DATE: DECEMBER 3, 2014

TIME: 4:00 P.M.

THE STATE OF NEVADA SENDS GREETINGS TO:

ANDREW CASH, MD
Desert Institute of Spine Care
9339 W. Sunset Road
Las Vegas, Nevada 89148

YOU ARE HEREBY COMMANDED, that all and singular, business and excuses being set aside, you appear and attend on December 3, 2014, at the hour of 4:00 p.m., at the offices of Desert Institute of Spine Care, 9339 W. Sunset Road, Las Vegas, Nevada 89148,

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for the purpose of taking your deposition. If you fail to attend you will be deemed guilty of contempt of Court and liable to pay all losses and damages caused by your failure to appear and in addition forfeit One Hundred Dollars [$100.00].

You are required to provide testimony regarding your care and treatment of Marie Gonzalez. Please bring with you to the deposition your complete file regarding Marie Gonzalez, including all medical records, diagnostic films, correspondence and any and all other records in your possession regarding Marie Gonzalez.

Please see "Exhibit A" attached hereto for information regarding the rights of the person subject to this Subpoena.

DATED this 12th day of November, 2014.

BARRON & PRUITT, LLP

David Barron
Nevada Bar No. 142
3890 West Ann Road
North Las Vegas, NV 89031
Attorneys for Defendants Hatcher & Republic Silver State Disposal

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EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

[As amended; effective January 1, 2005.]

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

[As amended; effective January 1, 2005.]

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November, 2014, I served the foregoing **SUBPOENA TO ANDREW CASH, M.D.** as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following:

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the address(es) set forth below.

☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set forth below.

☒ BY ELECTRONIC SERVICE: by electronically filing and serving the document(s) listed above with the Eighth Judicial District Court's WizNet system.

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Kimball Jones, Esq.
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Facsimile: (702) 507-0092
Email: info@MorrisAndersonLaw.com
Attorneys for Plaintiff Gonzalez

Courtesy copy:

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Henderson, Nevada 89052
Facsimile: (702) 477-7778
Email: GMRanalli@RanalliLawyers.com
Attorneys for Defendants Ace Cab Inc./Frias Transportation

An Employee of BARRON & PRUITT, LLP

DISC
Desert Institute of Spine Care
9339 W. Sunset Rd. #100
Las Vegas, NV 89148
Phone: (702) 630-3472 Facsimile: (702) 916-5115

GONZALES, MARIE

[redacted]
Cash, Andrew M.
02/20/2013
Follow up

CHIEF COMPLAINT: Back pain 9/10 with intermittent numbness and tingling down the posterior thigh and lateral leg. The patient feels better when lying down, but after she has been immobile for two hours she feels worse. She has been undergoing physical therapy and feels like she is not feeling better and is actually causing worse pain in her leg. The patient is on Lyrica and Percocet.

Past medical history, family history and social history are unchanged since last visit. Tobacco: None. Review of systems is unremarkable. The patient underwent an injection by Dr. Coppel and had some significant temporary relief.

On physical examination, the patient has no chest pain or shortness of breath. The patient has decreased sensation in the left lower extremity with bilateral lumbar spasms and tenderness.

CT scan shows no hardware complication. The patient has a disc protrusion and/or scar tissue at the left foramen at L4-5 and L5-S1.

IMPRESSION:

1. Post lumbar fusion.
2. Lumbar radiculopathy.

RECOMMENDATIONS:

1. The patient is a candidate for repeat transforaminal epidural injections left L4-5 and L5-S1.
2. The patient will hold off on physical therapy at this time.

DISABILITY:

Temporarily, totally disabled.

PROGNOSIS:

Guarded.

CAUSATION:

It is my opinion to a reasonable degree of medical probability that all treatment provided has been and will be reasonable, necessary and directly related to the 1/14/2012 motor vehicle collision unless I have stated otherwise above. The charges are usual, customary and also related. I welcome the opportunity to review any and all medical records regarding past or present treatment of the patient which could possibly reinforce or otherwise affect the above opinions.

Andrew M. Cash, MD/lam

DR: 02/21/13-1233
DT: 02/21/13
#CASH5828

The risks of opioid medications were explained to the patient. The patient understands and agrees to use these medications only as prescribed. The patient agrees to obtain pain medications from this practice only. We have fully discussed the potential side effects of the medication with the patient. These include, but are not limited to, constipation, drowsiness, addiction, nausea, vomiting, impaired judgment and the risk of fatal overdose if not taken as prescribed. We have warned the patient that sharing medications is a felony. We have warned the patient against driving while taking sedating medications.

Electronically signed on 02/22/2013 by A.M.C.,M.D.

Exhibit 2

From:	Ryan Anderson
To:	David Barron
Subject:	Re: Marie Gonzales Settlement
Date:	Friday, June 12, 2015 11:49:12 AM
Attachments:	image001.png

David,

We agree to those conditions. I am nearly certain there are not any Medicare liens, but I'll confirm that.

Again, nice to work with you and I'll look forward to receiving the release and closing documents.

Ryan.

On Fri, Jun 12, 2015 at 11:42 AM, David Barron <DBarron@lvnvlaw.com> wrote:

> Thank you, Ryan. I have advised my principal and sent her your email below. Because we wish to preserve all rights of contribution and equitable indemnification, our form of release will be inclusive of all medical providers, including Dr. Cash and any other potentially responsible health care providers or third parties. So long as that is fully understood I think we can move forward to finalize the settlement. And of course, I'm sure you will be advising CMS to obtain a letter from Medicare/Medicaid that they are asserting no liens on the recovery.
>
> Your call yesterday was appreciated. Please call or write if there are questions.
>
> Regards, Dave
>
> David Barron
> barronpruitt.com | dbarron@lvnvlaw.com
> p 702.870.3940 | f 702.870.3950
>
> 3890 West Ann Road
>
> North Las Vegas NV 89031
> Barron & Pruitt, LLP
> LAWYERS
>
> **From:** Ryan Anderson [mailto:ryan@morrisandersonlaw.com]
> **Sent:** Thursday, June 11, 2015 9:50 PM
> **To:** David Barron
> **Cc:** Jacqueline Bretell; Marie Gonzales 1/14/12; Ashley Atton
> **Subject:** Marie Gonzales Settlement

Exhibit 3

SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE

This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE is made between MARIE GONZALES ("RELEASOR") and DEVAL HATCHER, REPUBLIC SILVER STATE DISPOSAL, INC., REPUBLIC SERVICES, INC., and their insurers, agents, employees heirs, and assigns ("RELEASEES").

This Agreement is made with reference to the following:

WHEREAS, the RELEASOR has asserted certain claims against RELEASEES, as set forth in that certain action pending in District Court, Clark County, Nevada, entitled *Gonzales v. Hatcher, Republic Silver State Disposal et al.*, (Case # A687931; consolidated for discovery with Case #A692547), based upon and arising out of that certain accident, casualty, incident or event that occurred on or about the 14th day of January, 2012, in the County of Clark, State of Nevada, occurring at or near the intersection of Hacienda Boulevard and in North Las Vegas, Nevada;

WHEREAS, RELASEES have denied, defended and disputed the allegations and claims asserted by RELEASOR ("claims");

WHEREAS, the parties desire to avoid further litigation, and to settle and resolve all claims arising from the described event and which have been or could be asserted by the RELEASOR against the RELEASEES in the described litigation or otherwise; and

THEREFORE, for and in consideration of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, covenants and undertakings hereinafter set forth, and for other good and valuable consideration, the RELEASEES AND RELEASOR agree as follows:

1. **Release and Discharge.** In consideration of a total payment in the sum of TWO MILLION DOLLARS ($2,000,000.00), RELEASOR does hereby fully release and forever discharge the RELEASEES, and each of them, their heirs, assigns, affiliates, subsidiaries, franchisees, parent corporations and their respective agents, related entities, present and former directors, officers, executives, employees, predecessors and/or successors in interest, attorneys, and insurers, of all claims known and unknown, actions, causes of action and suits for damages,

at law and in equity, filed or otherwise, including any claim or claims for bodily injury; loss of compensation, profits, interest or use of any property; for services, society, consortium, contribution and support, which they have has or may hereafter acquire; and for damages against RELEASEES for any damage arising from the incident described above. As a part of their settlement and their mutual consideration stated above, this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE shall discharge and extinguish any and all claims or liabilities, including those for "economic" and "noneconomic" damages as set forth in NRS ch. 41A, RELEASOR may possess against any of her medical treatment providers for injuries she alleges to have sustained in the described incident of January 14, 2012.

2. **Taxes.** The RELEASOR under this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE will be responsible for all taxes, if any, that they are legally responsible to pay as a result of such settlement.

3. **Liens.** RELEASOR agrees that if any lien, reimbursement right or interest is asserted by any hospital; ambulance service; pharmacy; physician; hospital, or other medical treatment or service provider; Medicare; Medicaid; any insurance company; health maintenance organization; attorney; lien holder; or any other third-party to this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE against the proceeds of this settlement, and/or against the RELEASEES, or other persons, firms, or corporations making payment on behalf of the RELEASEES, RELEASOR agrees to pay and satisfy such lien, reimbursement right or interest; and to indemnify and hold harmless RELEASEES, their insurers, heirs and assigns from any costs, expenses, attorney fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of any such lien, reimbursement right or interest by any entity having such lien or reimbursement right.

4. **Medicare.** In further consideration for this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, RELEASEES, their attorneys and insurers rely on the following representations and warranties made by RELEASOR and her counsel:

a. RELEASOR and her counsel and RELEASEES agree that all representations and warranties made herein shall survive settlement.

b. Pursuant to 42 U.S.C. 1395y et seq. and 42 C.F.R. §411.10 et seq, the parties acknowledge their duty to adequately consider Medicare's future interest in settlements by not unreasonably shifting the health care burden of claims to Medicare, and that the parties hereto have taken reasonable steps from the beginning of this action to comply with the requirements of 42 U.S.C. § 1395y (b) and the rules and regulations promulgated thereunder (hereinafter collectively "MSP").

c. RELEASOR, MARIE GONZALES, represents and warrants that, as of the date of execution of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, she has not received Medicare or Medicaid benefits for injuries she claims to have suffered in the incident of January 14, 2012, described above, nor is she eligible to receive Medicare benefits under the law, and has not reached the age of 65; she is not a disabled person entitled to receive Social Security Disability, or other benefits from the Social Security system for injuries or damages arising from the described incident; she is not entitled to receive railroad retirement benefits; nor does she have end-stage renal disease.

d. While it is impossible to accurately predict the need for future treatment, this settlement was based upon a good faith determination of the parties in order to resolve a questionable claim or claims. During the course of the litigation In the event Medicare requires reimbursement related to any past or future medical treatment or cost, this will be the sole responsibility of RELEASOR.

e. In addition to and without limiting any other language in this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, RELEASOR agrees to indemnify and hold harmless RELEASEES, their attorneys and insurers

from any and all Medicare Claims that have been or may in the future be related to, arise from, or are in connection with the incident described herein.

f. RELEASOR represents and warrants that she, or her counsel, have notified Medicare and/or its Coordination of Benefits Contractor of the accident, injury, or illness giving rise to this settlement; acknowledges and agrees that it is her responsibility, and not the responsibility of RELEASEES, their attorneys or insurer(s), to reimburse Medicare for conditional payments, if any, made by Medicare. RELEASOR also agrees to provide RELEASEES' counsel with a copy of any correspondence from CMS stating Medicaid/Medicare has no lien or interest in RELEASOR'S recovery.

g. Reliance on Representations and Warranties:

i. In agreeing to this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, RELEASEES, their attorneys and insurers are relying on the representations and warranties of the RELEASOR regarding RELEASOR'S Medicare status, and the actions RELEASOR and her Counsel have represented they have taken and/or will take to satisfy any and all Medicare Claims, liens and interests pertaining to the matters forming the basis of RELEASOR'S claims.

ii. In addition, RELEASOR shall indemnify RELEASEES, their attorneys and/or insurers for any damages, legal fees and costs or expenses for their failure to adhere to the representations and warranties contained herein.

5. **Costs and Fees.** Each party hereto shall bear his, her or its own attorneys' fees and costs incurred arising from or in connection with the described incident of January 12, 2012.

6. **Mutual Non-Admission.** It is also understood and agreed and made a part hereto that: The issuance of such settlement proceeds is not, nor is it intended to be construed as an admission of liability on the part of RELEASEES, or any of them, but is in compromise, settlement,

accord and satisfaction and discharge of loss, damage, claims, actions, causes of action, suits and liability which are each an all uncertain, doubtful and disputed. It is also understood and agreed that nothing herein shall be construed as an admission by RELEASOR or RELEASEES of any wrongdoing, liability or violation of any applicable law, and that nothing in this Release shall be so construed by any other person.

7. **Warranty of Capacity to Execute Release.** RELEASOR represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, except as otherwise set forth herein, and that the RELEASOR has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to herein.

8. **Consultation with Attorney.** The RELEASOR acknowledges that she has a right to consult an attorney and that she has specifically consulted with her attorneys with respect to the terms and conditions of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, and acknowledges that she fully understands its terms and the effect of signing and executing it.

9. **Choice of Law.** This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE shall be deemed to have been executed and delivered within the State of Nevada, and the rights and obligations of the Settling Parties hereto shall be construed and enforced in accordance with and governed by the laws of the State of Nevada.

10. **Modification.** This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE is the entire agreement between the RELEASOR and RELEASEES with respect to any and all claims RELEASOR has or may have against RELEASEES, and supersedes all prior and contemporaneous oral and written agreements and discussions. The terms of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE may not be modified, amended, supplemented, or waived except through a writing signed by the RELEASOR and RELEASEES. RELEASOR and RELEASEES acknowledge and agree that

they will make no claim that this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE has been orally altered or modified in any respect; nor will they claim that this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE has been altered, modified, or otherwise changed by oral communication of any kind or character. It is expressly acknowledged and recognized by the RELEASOR and RELEASEES that there are no oral or written collateral agreements between them in connection with the subject matter of this Agreement.

11. **Severability.** If any term or provision of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE is determined to be illegal, invalid, or otherwise unenforceable through arbitration or through a court of competent jurisdiction, then to the extent necessary to make such provision or this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE legal, valid, or otherwise enforceable, such term or provision will be limited, construed, or severed and deleted, and the remaining portions, if any, shall survive, remain in full force and effect, continue to be binding, and will be interpreted to give effect to the intention of the RELEASOR and RELEASEES hereto insofar as possible.

12. **Waiver:** RELEASOR and RELEASEES hereby waive any and all rights that they may have under the provisions of any rule of law that may be adopted by the State of Nevada that provides that a release does not extend to claims that are unknown or unsuspected at the time of executing the SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, which if known would have materially affected its provisions. RELEASOR and RELEASEES acknowledge and agree that this waiver is an essential and material term and without such waiver the Settlement payments and releases that constitute the consideration for the SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE would not have been made. The delay or failure of any party to exercise any of his or her rights herein shall not be deemed by any other party to constitute a waiver of such rights, unless the party possessing such rights has clearly and expressly given notice in writing to the contrary

to all other parties hereto. The waiver by any party of any breach of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE by another party shall not operate as a waiver of any subsequent breach.

13. **Confidentiality**: Subject to RELEASEES' right to pursue rights of reimbursement and/or contribution against RELEASOR'S medical treatment providers, as set out in ¶ 1, in which case this "Confidentiality" provision may be considered to have been waived by RELEASEES, RELEASOR and RELEASEES agree that they, their attorneys, agents and representatives, will maintain in strict confidence regarding any and all information obtained or disclosed in the course of settlement negotiations; settlement consideration and payments; and any and all information contained in this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE. Furthermore, they will take every reasonable precaution to prevent disclosure of such information to third parties except as necessary to tax preparers, lien holders, accountants, financial advisors and otherwise required by law or court order. In the event that the law requires disclosure of any information, they and/or their attorneys shall notify the other parties to this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE, and/or their attorneys, of the necessity to make such a disclosure. They and/or their attorneys will refrain from making, causing to be made, or participating in the making of any public announcement, press release, written or oral statement to any trial or settlement reporter, legal journal, trial lawyers journal, or the like regarding the subject matter of this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE. This confidentiality provision contemplates both the amount of settlement and the existence of settlement and is an integral part of this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE and cannot be waived, breached or otherwise circumvented without the express prior written permission of all Parties. In the event of any breach of the confidentiality provision of this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE, a damaged party shall be entitled to recover all costs and reasonable attorneys fees from a breaching party or attorney

that are incurred to address any breach of, or to enforce, this SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE and this confidentiality provision. No monetary consideration was paid for confidentiality; rather the parties hereby agree to reciprocal confidentiality as the sole and entire consideration.

14. **Miscellaneous Provisions:**

a. Except and unless otherwise provided in this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, nothing herein expressed or implied is intended, nor shall be construed, to confer upon or give any person, other than the RELEASOR and RELEASEES, any rights or remedies, under or by reason of, any term, provision, condition, undertaking, warranty, representation, or agreement herein contained. All rights not expressly resolved herein are reserved to the RELEASOR and RELEASEES.

b. Neither the RELEASOR and RELEASEES, or officer, agent, partner, employee, representative, trustee or attorney of or for any party has made any statement or representation to any other party regarding any fact relied upon in entering into this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE; and each party does not rely upon any statement, representation or promise of any other party or any officer, agent, partner, employee, representative, trustee or attorney for any other party in executing this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, or in making the settlement provided for herein, except as expressly stated herein.

c. In entering into this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, and the settlement provided for herein, both the RELEASOR and RELEASEES assume the risk of any misrepresentation or mistake. This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE is intended to be, and is final and binding between the parties hereto, regardless of any

claims of misrepresentation, promises made without intent to perform, concealment of fact, mistake of fact or law, or of any other circumstance whatsoever.

d. RELEASOR and RELEASEES warrant and represent that (i) this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE in its reduction to final written form is a result of extensive good faith negotiations between the parties through their respective counsel; (ii) said counsel have carefully reviewed and examined this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE for execution by said parties, or any of them; and (iii) any statute or rule of construction which provides that ambiguities are to be resolved against the drafting party shall not be employed in its interpretation.

e. RELEASOR and RELEASEES acknowledge this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE represents a good faith settlement of the RELEASORS' claims, and preserves RELEASEES' rights under The Uniform Contribution Among Tortfeasor's Act, NRS 17.225, et seq.

f. In the event that it becomes necessary for either RELEASOR and RELEASEES, or either's authorized representative, successor, or assign, to institute suit to compel performance of any of the obligations stated herein or to preclude a purported violation of the terms of this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE, the prevailing party in such action shall be entitled to reimbursement from the losing party/parties for reasonable costs, expenses, and attorneys fees incurred by it in preparation for and in connection with such action. The headings contained in this Agreement are solely for convenience and shall not be used to define or construe any of the terms or provisions hereof.

BY SIGNING THIS SETTLEMENT AGREEMENT; RELEASE; and COVENANT NOT TO SUE RELEASE RELEASOR HEREBY ACKNOWLEDGES AND WARRANTS:

This SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE was first carefully read in its entirety by RELEASOR and was and is understood and known to be a

full and final compromise, settlement, release, accord and satisfaction and discharge of all claims, actions, and causes of action and suits, as above stated; was signed and executed voluntarily and without reliance upon any statement or representation of or by any RELEASEES, or any representative, agent or representative of same, concerning the nature, degree and extent of said damages, loss or injuries, or legal liability therefore; and that it contains the entire agreement of and between all of the parties mentioned herein, and all of its terms and provisions are contractual and not a mere recital; moreover RELEASOR is of legal age and capacity and competent to sign and execute this SETTLEMENT AGREEMENT; RELEASE and COVENANT NOT TO SUE and each accepts full responsibility therefor.

READ and SIGNED this 6th day of July

Marie Gonzales
MARIE GONZALES

VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

On the 6 day of July, 2015, before me, a Notary Public in and for said County and State, personally appeared Marie Gonzales, known to me (or proved on the basis of satisfactory evidence) to be the person who executed the above and foregoing instrument, and who acknowledged to me that she did so freely and voluntarily and for the purposes therein mentioned.

ALLAN ATTON
Notary Public-State of Nevada
APPT. NO. 14-15001-1
My App. Expires May 15, 2018

NOTARY PUBLIC

Exhibit 4

ELECTRONICALLY SERVED
06/18/2015 12:23:53 PM

SUBP
DAVID BARRON
Nevada Bar No. 142
BARRON & PRUITT, LLP
3890 West Ann Road
North Las Vegas, Nevada 89031
Telephone: 702-870-3940
Facsimile: 702-870-3950
E-Mail: dbarron@lvnvlaw.com
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

***

MARIE GONZALEZ, Plaintiff, vs. DEVAL M. HATCHER, an individual; REPUBLIC SILVER STATE DISPOSAL, INC., a Nevada Corporation; DOE OWNERS I through V, inclusive, DOE DRIVER, ROE EMPLOYER and ROE COMPANIES, Defendants. AND ALL RELATED ACTIONS	Case No: A-13-687931-C Dept.: XX COORDINATED FOR DISCOVERY ONLY Case No.: A-13-692547-C Dept.: XVII SUBPOENA – CIVIL ☐REGULAR ☒ DUCES TECUM Date: June 8, 2015 Time: 9:00 a.m.

THE STATE OF NEVADA SENDS GREETINGS TO:

Custodian of Records or Other Qualified Person for
Rocky Mountain Neurodiagnostics
2217 Harvard Court
Longmont, CO 80503
303-776-5298

YOU ARE HEREBY COMMANDED, pursuant to Rule 45 of the Nevada Rules of Civil Procedure, to produce and permit inspection and copying of the medical records, documents, or tangible things set forth in the attached Exhibit "A" that are in your possession, custody, or control, by delivering a true, legible, and durable copy of the records to the requesting attorney, by United States mail, or similar delivery service or electronic transmission, no later than 9:00 a.m. on **June 8**, 2015 at the law office of **Barron & Pruitt, LLP**, 3890 West Ann Road, North Las Vegas, Nevada 89031, (702) 870-3940. All documents shall be produced as they are kept in the usual course of

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

business or shall be organized and labeled to correspond with the categories listed. N.R.C.P. 45(d)(1). When feasible, please produce documents on an electronic medium such as flash drive or CD and in Portable Document Format (PDF).

This Subpoena Duces Tecum complies with 45 C.F.R. 164.512(e)(1) which permits disclosure of Protected Health Information pursuant to subpoena or court order under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). In accordance with 45 C.F.R. 164.512(e)(1)(ii)(A) and 164.512(e)(1)(iii), Barron & Pruitt, LLP has served a copy of this Subpoena Duces Tecum upon the attorney of record for Marie Gonzalez as evidenced by the Certificate of Service attached hereto. Ms. Gonzalez must serve any objection to this Subpoena Duces Tecum not later than fourteen (14) days after receiving notice of the same. See N.R.C.P. 45(d)(2)(B). Therefore, if no objection has been served by May 28, 2015, you are required to produce all medical records, documents or tangible things described in Exhibit "A" by the date specified herein. See Humana Inc. v. Eighth Jud. Dist. Ct., 110 Nev 121, 123, 867 P2d 1147, 1148-49 (1994).

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court. N.R.C.P. 45(e). If you fail to obey, you may be liable to pay $100.00, plus all damages caused by your disobedience. Nev. Rev. Stat. § 50.195. Please see the attached Exhibit "B" for information regarding your rights and responsibilities related to this Subpoena Duces Tecum.

YOU ARE FURTHER ORDERED to authenticate the records produced pursuant to Nev. Rev. Stat. § 52.260, and to provide with your production a complete Certificate of Custodian of Records in substantially the form attached as Exhibit "C."

DATED this 18th of May, 2015.

BARRON & PRUITT, LLP

DAVID BARRON
Nevada Bar No. 142
3890 West Ann Road
North Las Vegas, Nevada 89031-4416
Attorneys for Defendants

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

EXHIBIT A

ITEMS TO BE PRODUCED

All records, written, electronic or otherwise, for MARIE GONZALEZ (DOB: [redacted] SSN: [redacted] from 01/01/2005 to the Present, including, but not limited to

1. All medical records;
2. All charts;
3. All notes including those made by or at the direction of a doctor/physician, physician assistant, nurse, orderly, lab technician, or specialist;
4. All test requests and results;
5. All diagnostic films/videos/images/reels and reports;
6. All pharmacy and prescription records;
7. All communication records including email and written correspondence;
8. All billing and payment records;
9. All insurance, Medicaid or Medicare records;
10. All records related to information submitted to insurance, Medicaid or Medicare

Pursuant to Nev. Rev. Stat. § 629.061(4), Barron & Pruitt, LLP will pay the reasonable costs associated with producing the requested records, not to exceed $0.60 per page. No administrative or service fees are permitted. When feasible, please produce documents on an electronic medium such as flash drive or CD and in Portable Document Format (PDF).

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

EXHIBIT B

NEVADA RULES OF CIVIL PROCEDURE – RULE 45

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it
- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena
- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-2940
FACSIMILE (702) 870-3950

EXHIBIT C

AFFIDAVIT OF AUTHENTICITY OF RECORDS

STATE OF _____)
) ss.
COUNTY OF _____)

NOW COMES _____, who after first being duly sworn states:

1. That the Affiant is employed as a _____ with Rocky Mountain Neurodiagnositcs and in that capacity is a custodian of the records of Rocky Mountain Neurodiagnositcs.

2. That on the _____ day of _____, 2015, the Affiant was served with a subpoena in connection with the above entitled cause, calling for production of all records, written, electronic or otherwise, for MARIE GONZALEZ (DOB: [redacted] SSN: [redacted] from 01/01/2005 to the Present, including, but not limited to

11. All medical records;
12. All charts;
13. All notes including those made by or at the direction of a doctor/physician, physician assistant, nurse, orderly, lab technician, or specialist;
14. All test requests and results;
15. All diagnostic films/videos/images/reels and reports;
16. All pharmacy and prescription records;
17. All communication records including email and written correspondence;
18. All billing and payment records;
19. All insurance, Medicaid or Medicare records;
20. All records related to information submitted to insurance, Medicaid or Medicare

3. That Affiant:

☐ (a) has made a diligent search of the records of Rocky Mountain Neurodiagnositcs and found no records responsive to the Subpoena Duces Tecum.

OR

☐ (b) has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

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4. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the Affiant or Rocky Mountain Neurodiagnositcs.

_____

Signature

_____

Print

Subscribed and sworn before me, a Notary Public, on this _____ day of _____ 2015.

_____

NOTARY PUBLIC

My commission expires: _____

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ANN ROAD
NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of May, 2015, I served the foregoing SUBPOENA DUCES TECUM TO ROCKY MOUNTAIN NEURODIAGNOSTICS as follows:

☐ US MAIL: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the United States Mail at Las Vegas, Nevada, addressed to the following.

☐ BY FAX: by transmitting the document(s) listed above via facsimile transmission to the fax number(s) set forth below.

☐ BY HAND-DELIVERY: by hand-delivering the document(s) listed above to the address(es) set forth below.

☐ BY EMAIL: by emailing the document(s) listed above to the email address(es) set forth below.

☒ BY ELECTRONIC SERVICE: by electronically filing and serving the document(s) listed above with the Eighth Judicial District Court's WizNet system.

Ryan M. Anderson, Esq.
Kimball Jones, Esq.
MORRIS ANDERSON LAW
2001 S. Maryland Pkwy.
Las Vegas, NV 89104
Facsimile: (702) 507-0092
E-Mail: info@MorrisAndersonLaw.com
Attorneys for Plaintiff Gonzalez

/s/ MaryAnn Dillard
An Employee of BARRON & PRUITT, LLP

RETURN OF SERVICE

STATE OF COLORADO
COUNTY OF BOULDER

I declare under oath that I served this: Subpoena To Produce on Rocky Mountain Neurodiagnostics

in Boulder county on May 21st, 2015, at 08:14 am/pm, at the following location: 1511 Onyx Ct. Longmont, Co.

by the following manner of service: Handed to Brian Katzen M.D. a Person By Hand Personally.

X I am over the age of 18 years and am not interested in nor a party to this case.

Date: 5-21-2015
Sign:
Print: Kirk Torres

Signed under oath before me on 5.21.15

Notary Public: Katie Hobbs
My commission expires on: 2/18/2019

KATELYNN HOBBS
NOTARY PUBLIC | STATE OF COLORADO
Notary Identification #20184008802
My Commission Expires 2/18/2019

EXHIBIT C

AFFIDAVIT OF AUTHENTICITY OF RECORDS

STATE OF Colorado)
) ss.
COUNTY OF Boulder)

NOW COMES Bruce Katzna, who after first being duly sworn states:

1. That the Affiant is employed as a physician with Rocky Mountain Neurodiagnostics and in that capacity is a custodian of the records of Rocky Mountain Neurodiagnostics.

2. That on the 18th day of May, 2015, the Affiant was served with a subpoena in connection with the above entitled cause, calling for production of all records, written, electronic or otherwise, for MARIE GONZALEZ (DOB: [redacted] SSN: [redacted] from 01/01/2005 to the Present, including, but not limited to

11. All medical records;
12. All charts;
13. All notes including those made by or at the direction of a doctor/physician, physician assistant, nurse, orderly, lab technician, or specialist;
14. All test requests and results;
15. All diagnostic films/videos/images/reels and reports;
16. All pharmacy and prescription records;
17. All communication records including email and written correspondence;
18. All billing and payment records;
19. All insurance, Medicaid or Medicare records;
20. All records related to information submitted to insurance, Medicaid or Medicare.

3. That Affiant:

☐ (a) has made a diligent search of the records of Rocky Mountain Neurodiagnostics and found no records responsive to the Subpoena Duces Tecum.

OR

☑ (b) has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

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4. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the Affiant or Rocky Mountain Neurodiagnostics.

Signature

Bruce A. Katnan

Print

Subscribed and sworn before me, a Notary Public, on this 20 day of May, 2015.

NOTARY PUBLIC

My commission expires: 1.14.18

MICHELLE L. BERNARDONI
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20114001666
MY COMMISSION EXPIRES JANUARY 14, 2018

BARRON & PRUITT, LLP
ATTORNEYS AT LAW
3890 WEST ALEXANT ROAD
NORTH LAS VEGAS, NEVADA 89032
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

Rocky Mountain Neurodiagnostics

Bruce Katuna, M.D. 2217 Harvard Ct. Longmont, CO 80503 (303) 776-6298

INTRAOPERATIVE NEUROPHYSIOLOGIC MONITORING REPORT

Patient Name:	Marla Gonzales
Medical Record #:	904944162-85294396
Surgeon:	Dr. Cash
Technician:	Danielle Miller
Date of Monitoring:	January 29, 2013
Beginning Time:	0758
Ending Time:	0956
Date of Report:	March 6, 2013

On January 29, 2013 intraoperative monitoring of the central and peripheral nervous system of Marla Gonzales was performed during an OLIF of L4-S1.

Real-time neurophysiologist oversight was provided. Tested modalities included upper and lower extremity somatosensory evoked potentials (SSEPs), and free-running electromyography (FR-EMG).

Baseline responses were interpreted and were within normal limits.

Monitored responses showed no significant changes throughout the procedure, and the surgeon was so informed. Pedicle screw testing demonstrated thresholds suggesting low likelihood of pedicle breach.

Impression: Normal intraoperative neurophysiologic monitoring study.

Bruce A. Katuna, M.D.
Board Certified in Neurology (American Board of Psychiatry and Neurology, 1993)
Board Certified in Clinical Neurophysiology (American Board of Psychiatry and Neurology, 1996, 2010)

Exhibit 5

Barron & Pruitt, LLP
LAWYERS

DAVID BARRON*
WILLIAM H. PRUITT†
PETER MAZZEO‡
CHELSEA P. PYABETSKYY°
JOSHUA A. SLIKER†
Also admitted to the State Bar of
*California
‡New York
°Oregon
†Utah

February 14, 2014

Neuromonitoring Associates
9811 W. Charleston Blvd, #2-641
Las Vegas, NV 89117

Re: Republic Services adv. Gonzales, Marie
Patient: Marie Gonzales
Date of Birth: [redacted]
SSN:
Our File No.: 638.06

Dear Custodian of Records:

Pursuant to NRS 629.061 and the enclosed medical consent form executed by the above-named patient, we are requesting copies of any and all medical records, including:

1. The patient's complete chart,
2. Billing history,
3. Diagnostic reports, and
4. List of Films and/or X-rays.

This request is for records currently available and no additional report is solicited at this time. If you will enclose your bill for the cost of the reproduction of the documents when you forward us these records, along with the Affidavit of Authenticity of Records, we will promptly remit payment to you. If the cost of the records exceeds $100, please send us a pre-bill indicating the number and cost of the records and we will determine the necessity of the records. Thank you for your cooperation and assistance in this matter.

Very truly yours,

Tarah Easley
Paralegal
Barron & Pruitt, LLP

:te
Enclosure

MORRIS ANDERSON
2001 S. Maryland Pkwy., Las Vegas, NV 89104 ph: (702) 333-1111 fax: (702) 507-0092

AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION (PHI)*

This document authorizes Neuromonitoring Associates to release to Barron & Pruitt, LLP, or its representatives at their request, for the purpose of investigating a claim I have made, all medical records and Protected Health Information ("PHI") from 01/14/12 to present, including but not limited to, medical history & physicals, consultation reports, operative reports, lab reports, imaging/radiology reports and films, cardiac studies, face sheets, nursing notes, medication records, progress notes, physician orders, and/or the like. I acknowledge, and hereby consent to such, that the released information may contain alcohol, drug abuse, psychiatric, HIV testing, HIV results and/or AIDS information and genetic testing records. Uses and disclosures of PHI will be consistent with Nevada and Federal law concerning the privacy of PHI. Failure to provide all information requested will delay action on this Authorization.

This authorization does NOT authorize the bearer to discuss my care with you, and is expressly given for the release of written records only. I have fully read and understand what information will be disclosed and affirm that Barron & Pruitt, LLP is NOT authorized by me to use or disclose my PHI for a purpose other than treatment, payment or health care operations.

I understand that I can revoke this authorization by writing a letter to the above-named healthcare provider or by completing and submitting a Revoke Authorization Form to the Privacy Services Department of the above named facility. The letter must state that I want to revoke my authorization to disclose the patient's healthcare information. The letter must include the name or other specific identification of the person(s) that I no longer want to receive information. I (or my authorized representative for healthcare) must sign and date the letter or form. The information used or disclosed pursuant to the authorization may be subject to redisclosure by the recipient and no longer protected. Fees/charges will comply with all laws and regulations applicable to release of information (i.e. 60 cents per page except for continuing care requests). A photocopy of this authorization will have the same force and effect as the original.

I understand that I may refuse to sign this Authorization. I understand that my refusal will not affect my ability to obtain treatment, payment, or eligibility for benefits. I understand that I have the right to receive a copy of this authorization. I may inspect or obtain a copy of the health information that I am being asked to use or disclose.

This authorization is given on the condition that Barron & Pruitt, LLP, or its representatives, must forward: (1) a copy of any request for medical records or PHI using this authorization at the time of the request and (2) a copy of any medical records or PHI received using this authorization within 1 week of receipt to MORRIS ANDERSON at 2001 S. Maryland Parkway, Las Vegas, NV 89104.

This authorization shall expire upon this expiration date or event: 12/01/14

DATED 02/12/2014

Client Signature

Date of Loss: 01/14/12

Name Printed

[redacted]

SSN DOB

(1). *This authorization is made in compliance with the Health Insurance Portability and Accountability Act (HIPAA).

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF NV)
) ss.
COUNTY OF _____)

Affiant, being first duly sworn, deposes and says:

1. That affiant is the Custodian of Records, and in such capacity, is the Custodian of Records of Neuromonitoring Associates.

2. That on the 27 day of Feb, 2014, the affiant was served with a request for records pertaining to MARIE GONZALES.

3. That affiant has examined the original of those records and has made true and exact copies of them and that the reproduction of them attached hereto is true and complete.

4. That the original of those records was made at or near the time of the acts, events, condition or opinions recited therein by or from information transmitted by a person with knowledge in the course of a regularly conducted activity of affiant or the office or institution in which affiant is engaged.

5. _____ No records found on this patient. _____ Initials

Further Affiant sayeth not.

Theresa L Castle
(AFFIANT)

SUBSCRIBED and SWORN to before me this
____ day of _____, 2014. Notary not available

NOTARY PUBLIC in and for the
County and State

DEF000552

PT NO 005248704 | PATIENT NAME GONZALES, MARIE G | PT TYPE IP
ADDRESS 6181 MORRIS STREET | COUNTY 001
CITY LAS VEGAS | STATE NV | ZIP 891227042 | PHONE (702)292-1288 | EXT | PATIENT LANGUAGE ENGLISH
AGE 35 Y | SX F | RACE 3 | MS M | PREVIOUS NAME | RELIGION CAT | FIN SUR
ADM DATE 07/16/2013 | TIME 0600 | SRC RA | PT TYPE E | SV R | ACCIDENT REG Y 06/26/2013 1300 | VOLUNTARY ADM
EMPLOYER DISABLED | TELEPHONE | EXT | OCCUPATION DISABLED
EMPLOYER ADDRESS
CITY | STATE | ZIP | RETIREMENT DATE //
NEAREST RELATIVE NAME ABRUZZO, KANDY
RLTN O | ADDRESS 6181 MORRIS STREET
CITY LAS VEGAS | STATE NV | ZIP 891227042 | PHONE (702)401-8523 | EXT
EMERGENCY CONTACT NAME RAMIREZ, RODOLFO
RLTN U | ADDRESS 6181 MORRIS STREET
CITY LAS VEGAS | STATE NV | ZIP 891227042 | PHONE (702)785-2000 | EXT
GUARANTOR NAME GONZALES, MARIE G | RLTN S
ADDRESS 6181 MORRIS STREET | PHONE (702)292-1288
CITY LAS VEGAS | STATE NV | ZIP 891227042 | OCCUPATION DISABLED | EXT
GUARANTOR EMPLOYER DISABLED | PHONE | EXT
ADDRESS
CITY | STATE | ZIP | FC L
INSURANCE NAME DCP SERVICES | PLAN 917 | PHONE (702)491-7016 | POLICY | GROUP | AUTH APPROVAL LETTER
MAILING ADDRESS 10300 W CHARLESTON SUITE 13 348 | CITY LAS VEGAS | STATE NV | ZIP 89135
SUBSCRIBER NAME GONZALES, MARIE G | MAIL TO NAME DCP SERVICES | INS SEX F | DOB 19671226 | ONM
INSURANCE NAME 2 | PLAN | PHONE | POLICY | GROUP | AUTH
MAILING ADDRESS | CITY | STATE | ZIP
SUBSCRIBER NAME | MAIL TO NAME | INS SEX | DOB | ONM
INSURANCE NAME 3 | PLAN | PHONE | POLICY | GROUP | AUTH
MAILING ADDRESS | CITY | STATE | ZIP
SUBSCRIBER NAME | MAIL TO NAME | INS SEX | DOB | ONM
ATTENDING PHYSICIAN KAPLAN STUART | ATTENDING # 107581 | REF GRP | ADM BY FLOREA | PREV ADM DATE | PREVIOUS FACILITY
ADM DIAGNOSIS LUMBAR PAIN 724.2, 724.4 | MED SVC SUR | CODE | ALLERGIES | SURGERY DATE 07/16/2013
ADMITTING PHYSICIAN KAPLAN STUART | ADMITTING # 107581 | AUTHORIZED BY SCANNED INTO DOC IMAGING
PROCEDURE ANTERIOR POSTERIOR L4 S1 FUSIO | CLINICAL COMMENT | MODE OF ARRIVAL / ACCOMPANIED BY
REL OF INFO Y | ADV DIR | LIVING WILL | LOCATION OF WILL / DIRECTIVE | FAMILY DOCTOR NO PCP | FAMILY DOCTOR # 999987 | DXV

VERIFIED BY: DATE:
NAME OF INS CO #1:
GROUP-INDIVIDUAL:
TELEPHONE NO:
NAME OF PERSON GIVING INFO:
PREAUTHORIZED REQ? AUTHORIZATION:
EFF DATE OF INS POLICY: ELIGIBILITY:
WAITING PERIOD:
PRE-EXIST: RE:
BASIC BENEFITS:
SEMI @ ________ WICU ANY @ ________
MAJOR MEDICAL:
DEDUCTIBLE: ________ BALANCE PAID @ ________

VERIFIED BY: DATE:
NAME OF INS CO #2:
GROUP-INDIVIDUAL:
TELEPHONE NO:
NAME OF PERSON GIVING INFO:
PREAUTHORIZED REQ? AUTHORIZATION:
EFF DATE OF INS POLICY: ELIGIBILITY:
WAITING PERIOD:
PRE-EXIST: RE:
BASIC BENEFITS:
SEMI @ ________ WICU ANY @ ________
MAJOR MEDICAL:
DEDUCTIBLE: ________ BALANCE PAID @ ________

Spring Valley Hospital
5400 S Rainbow Blvd
Las Vegas, NV 89118

INSURANCE COPY

Patient Identification:
905248704-35294396
GONZALES, MARIE G
DOB: Y SX: F SUR
MRN: 35294396 ADM/REG DT: 07/16/2013
Spring Valley Hospital

SV0145

DHS-8002
Rev. 12/00

DEF000556

Neuromonitoring Associates

Reader: Morton Hyson, M.D.
Medical Rec. #: 35294396

Insurance Superbill

PID: 84773

Print Time Stamp: 17-07-2013 03:11 PM

Patient Information	Date Of Sugery	Hospital	Surgeon	IONM Technologist
MARIE GONZALES 5151 MORRIS ST	15-Jul-13	Spring Valley Hospital	STUART S KAPLAN,	Melina Lewis, CNIM

	Date Of Birth	Age	Sex	Home	Work Phone	Cell
LAS VEGAS, NV 89122		55	Female	(702) 292-1288		

Procedure: PLIF L4 - S1.

Diagnose: 724.2 724.4

ICD-9	ICD-9	ICD-9	ICD-9	Hookup Time	[illegible]	Post Baseline	Final Trace	Professional Time	Total Tech
724.2		724.4		07:39	[illegible]	10:05	11:00	00:55	03:41

95940 - Intraoperative Neurophysiology Monitoring, Units:14

95938 - Upper and Lower Extremities SSEP, Units:1

95927 - Upper and Lower Extremities SSEP, Units:1

95885 - Lower EMG, Units:1

95909 - Pedicle Stimulation, Units:1

95937 - Neuromuscular Junction Test (TO4), Units:1

A4290 - Probe, Units:1

A4556 - DISK ELECTRODES, Units:8

A4557 - NEEDLE ELECTRODES, Units:22

Supplies Used	Quantity	CPT Code
A4557 NEEDLES	22	A4557
A4556 Stickies	8	A4556
A4290 Probe	1	A4290

DCP SERVICES
10300 W. CHARLESTON BLVD.
LAS VEGAS, NV, 89135
Payer ID:

1500

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC)

PICA

1. MEDICARE (Medicare #) | MEDICAID (Medicaid #) | TRICARE CHAMPUS (Sponsor's SSN) | CHAMPVA (Member ID#) | GROUP HEALTH PLAN (SSN or ID) | FECA BLK LUNG (SSN) | OTHER (ID)

1a. INSURED'S I.D. NUMBER (For Program in Item 1): 690647722

2. PATIENT'S NAME (Last Name, First Name, Middle Initial): GONZALES, MARIE

3. PATIENT'S BIRTH DATE: [redacted] SEX: F

4. INSURED'S NAME (Last Name, First Name, Middle Initial): GONZALES, MARIE

5. PATIENT'S ADDRESS (No., Street): 6181 MORRIS ST

6. PATIENT RELATIONSHIP TO INSURED: Self | Spouse | Child | Other

7. INSURED'S ADDRESS (No., Street): 6181 MORRIS ST

CITY: LAS VEGAS | STATE: NV

8. PATIENT STATUS: Single | Married | Other; Employed | Full-Time Student | Part-Time Student

CITY: LAS VEGAS | STATE: NV

ZIP CODE: 89122 | TELEPHONE (Include Area Code): (702) 292-1286

ZIP CODE: 89122 | TELEPHONE (Include Area Code): (702) 292-1286

9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)

10. IS PATIENT'S CONDITION RELATED TO:

11. INSURED'S POLICY GROUP OR FECA NUMBER

a. OTHER INSURED'S POLICY OR GROUP NUMBER

a. EMPLOYMENT? (Current or Previous): YES | NO

a. INSURED'S DATE OF BIRTH: [redacted] SEX: F

b. OTHER INSURED'S DATE OF BIRTH: MM DD YY SEX: M | F

b. AUTO ACCIDENT? YES | NO | PLACE (State)

b. EMPLOYER'S NAME OR SCHOOL NAME

c. EMPLOYER'S NAME OR SCHOOL NAME

c. OTHER ACCIDENT? YES | NO

c. INSURANCE PLAN NAME OR PROGRAM NAME

d. INSURANCE PLAN NAME OR PROGRAM NAME

10d. RESERVED FOR LOCAL USE

d. IS THERE ANOTHER HEALTH BENEFIT PLAN? YES | NO. If yes, return to and complete item 9 a-d.

READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM.

12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE: I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.

SIGNED: SOF | DATE: 07/16/13

13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE: I authorize payment of medical benefits to the undersigned physician or supplier for services described below.

SIGNED: SOF

14. DATE OF CURRENT: MM DD YY | ILLNESS (First symptom) OR INJURY (Accident) OR PREGNANCY (LMP)

15. IF PATIENT HAS HAD SAME OR SIMILAR ILLNESS, GIVE FIRST DATE: MM DD YY

16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION: MM DD YY FROM TO

17. NAME OF REFERRING PROVIDER OR OTHER SOURCE: STUART S KAPLAN, M.D.

17a.

17b. NPI: 1508823824

18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES: MM DD YY FROM 07 16 2013 TO 07 16 2013

19. RESERVED FOR LOCAL USE: PLIF L4-S1

20. OUTSIDE LAB? YES | NO | $ CHARGES: $ 0.00

21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (Relate Items 1, 2, 3 or 4 to Item 24E by Line)

1. L 724.2

2. L

3. L

4. L 724.4

22. MEDICAID RESUBMISSION CODE | ORIGINAL REF. NO.

23. PRIOR AUTHORIZATION NUMBER

24. A. DATE(S) OF SERVICE From MM DD YY	To MM DD YY	B. PLACE OF SERVICE	C. EMG	D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS	MODIFIER	E. DIAGNOSIS POINTER	F. $ CHARGES	G. DAYS OR UNITS	H. EPSDT Family Plan	I. ID. QUAL.	J. RENDERING PROVIDER ID. #
1	07 15 13 | 07 15 13	21		96941		1	$ 950.00	1		NPI	1710915368
2	07 15 13 | 07 15 13	21		96938	26 59	12	$ 1,200.00	1		NPI	1710915368
3	07 15 13 | 07 15 13	21		96927	26	12	$ 650.00	1		NPI	1710915368
4	07 15 13 | 07 15 13	21		96885	26 59	12	$ 225.00	1		NPI	1710915368
5	07 15 13 | 07 15 13	21		96909	26	12	$ 266.00	1		NPI	1710915368
6	07 15 13 | 07 15 13	21		95937	26	12	$ 296.00	1		NPI	1710915368

25. FEDERAL TAX I.D. NUMBER: 27-1822508 | SSN | EIN

26. PATIENT'S ACCOUNT NO.: 84773

27. ACCEPT ASSIGNMENT? (For govt. claims, see back): YES | NO

28. TOTAL CHARGE: $ 3,678.00

29. AMOUNT PAID: $ 1,252.30

30. BALANCE DUE: $ 2,325.70

31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)

Morton Hyson, M.D. 07/16/2013

SIGNED DATE

32. SERVICE FACILITY LOCATION INFORMATION: Spring Valley Hospital, 5400 S. Rainbow Blvd, Las Vegas, NV, 89118-1000

a. 1346230323 b.

33. BILLING PROVIDER INFO & PH #: (480) 656-3883

Monitoring Associates
101 N. 30th Street #9
Mesa, AZ, 85205

a. 1407187701 b.

PATIENT AND INSURED INFORMATION | PHYSICIAN OR SUPPLIER INFORMATION | CARRIER

NUCC Instruction Manual available at: www.nucc.org PLEASE PRINT OR TYPE APPROVED OMB-093-0999 FORM CMS-1500 (08/05)

DEF000558

INTRAOPERATIVE NEUROPHYSIOLOGY

Print Time Stamp: 07-17-2013 04:11 PM

Surgery Date: 07-16-13 Medical Rec. #: 36294396

Patient: MARIE GONZALES DOB: [redacted] Age: 55 Sex: Female

Surgeon: STUART S KAPLAN, M.D. Post-Baseline Time: 10:05

Final Trace Time: 11:00

Anesthesiologist: Total Professional Time: 00:55

IONM Technologist: Malina Lewis, CNIM

Hospital: Spring Valley Hospital

Diagnosis: 724.2 724.4

Procedure: PLIF L4 - S1.

Conditions of the Recording:

Conditions of the Recording: All studies were performed on the aforementioned patient under real-time physician direct supervision via internet communication allowing continuous or immediate contact between the interpreting neurologist and surgeon. Please see tech notes for details of stimulation and recording.

Description of the Recording:

Somatosensory Evoked Potentials (SSEPs) were performed to monitor the sensory system by stimulating nerves in the upper and lower extremities. Baseline responses were recorded prior to the start of the procedure and subsequent responses were compared to baseline.

Upper SSEP Stim Site(s): Ulnar Nerve.
Lower SSEP Stim Site(s): Posterior Tibial.

Lower extremity Free running Electromyography (EMG) was performed to monitor the integrity of the motor system and for nerve/root irritability. Recording electrodes were placed in muscles appropriate to the site of the procedure.

Lower Muscles: Ext. Hallucis Longus L4-S1, Flexor Hallicus Brevis, Gastroc S1, Tib. Ant. L5, Tibialis Anterior, Vast. Medi L2-L4, Vastus Lateralis L2-L4, Vastus Lateralis/medialis (L3-L4), Vastus Lateralus.

Electrical Stimulation of the pedicle screws were evaluated by using triggered EMG performed by stimulating each screw and recording a compound muscle action potential response in the appropriate muscles. A response to stimulus intensities of 10.0 mA or less in lumbar levels or 6.0 mA or less in thoracic levels raises concern for improper screw placement and potential breach in the pedicle wall. Corresponding thresholds were noted and communicated to the surgeon.

Train-of-Four Neuromuscular Junction (TO4) testing was performed to verify the validity of monitoring procedures dependent upon active motor neuronal firing, such as EMG and MEP monitoring and/or Pedicle stimulation. A response of 2 out of 4 or better is advisable.

Summary:

Description of the Recording: Under direct physician supervision, SSEP latencies were measured during the procedure. The latencies were compared to baseline values. No significant variations were noted by the technician. Free-running EMG was performed during the procedure and is unremarkable. Train-of-Four Neuromuscular Junction testing produced 4 out of 4 stimulus responses. EEG is unremarkable throughout the case.

Impression:

Impression: This intraoperative monitoring study was unremarkable, as described above.

Morton Hyson, M.D.

NOTE: This report was signed via Electronic Signature by Morton Hyson, M.D. on 07/16/2013 09:47 AM

1500

HEALTH INSURANCE CLAIM FORM

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE 08/05

PICA

DCP SERVICES

10300 W. CHARLESTON BLVD.
LAS VEGAS, NV, 89135
Payer ID:

1. MEDICARE (Medicare #)	MEDICAID (Medicaid #)	TRICARE CHAMPUS (Sponsor's SSN)	CHAMPVA (Member ID#)
GROUP HEALTH PLAN (SSN or ID)	FECA BLK LUNG (SSN)	OTHER (ID)	
1a. INSURED'S I.D. NUMBER (For Program in Item 1)			

2. PATIENT'S NAME (Last Name, First Name, Middle Initial)	3. PATIENT'S BIRTH DATE / SEX	4. INSURED'S NAME (Last Name, First Name, Middle Initial)
GONZALES, MARIE	F	GONZALES, MARIE
5. PATIENT'S ADDRESS (No., Street)	6. PATIENT RELATIONSHIP TO INSURED	7. INSURED'S ADDRESS (No., Street)
5161 MORRIS ST	Self / Spouse / Child / Other	5161 MORRIS ST
CITY / STATE	8. PATIENT STATUS	CITY / STATE
LAS VEGAS / NV	Single / Married / Other	LAS VEGAS / NV
ZIP CODE / TELEPHONE (Include Area Code)	Employed / Full-Time Student / Part-Time Student	ZIP CODE / TELEPHONE (Include Area Code)
89122 / (702) 292-1288		89122 / (702) 292-1288

9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)	10. IS PATIENT'S CONDITION RELATED TO:	11. INSURED'S POLICY GROUP OR FECA NUMBER
a. OTHER INSURED'S POLICY OR GROUP NUMBER	a. EMPLOYMENT? (Current or Previous) YES / NO	a. INSURED'S DATE OF BIRTH MM DD YY / SEX [redacted] M / F
b. OTHER INSURED'S DATE OF BIRTH MM DD YY / SEX M / F	b. AUTO ACCIDENT? YES / NO PLACE (State)	b. EMPLOYER'S NAME OR SCHOOL NAME
c. EMPLOYER'S NAME OR SCHOOL NAME	c. OTHER ACCIDENT? YES / NO	c. INSURANCE PLAN NAME OR PROGRAM NAME
d. INSURANCE PLAN NAME OR PROGRAM NAME	10d. RESERVED FOR LOCAL USE	d. IS THERE ANOTHER HEALTH BENEFIT PLAN? YES / NO. If yes, return to and complete item 9 a-d.

READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM.

12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.

SIGNED SOF DATE 07/16/13

13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below.

SIGNED SOF

14. DATE OF CURRENT: ILLNESS (First symptom) OR INJURY (Accident) OR PREGNANCY (LMP) MM DD YY	15. IF PATIENT HAS HAD SAME OR SIMILAR ILLNESS, GIVE FIRST DATE MM DD YY	16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION MM DD YY FROM TO
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE: STUART S KAPLAN, M.D.	17a. 17b. NPI 1508823824	18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES MM DD YY FROM 07 15 2013 TO 07 15 2013
19. RESERVED FOR LOCAL USE: PLF L4 = 81.		20. OUTSIDE LAB? YES / NO $ CHARGES $ 0.00
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY (Relate Items 1, 2, 3 or 4 to Item 24E by Line) 1. L 724 . 2 2. 3. 4. a. 724 4 b. c. d.		22. MEDICAID RESUBMISSION CODE: ORIGINAL REF. NO. 23. PRIOR AUTHORIZATION NUMBER

24. A. DATE(S) OF SERVICE From MM DD YY	To MM DD YY	B. PLACE OF SERVICE	C. EMG	D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) CPT/HCPCS	MODIFIER	E. DIAGNOSIS POINTER	F. $ CHARGES	G. DAYS OR UNITS	H. EPSDT Family Plan	I. ID. QUAL.	J. RENDERING PROVIDER ID. #
1 07 15 13	07 15 13	16		96940		12	$ 3,332.00	14		NPI	1023291754
2 07 15 13	07 15 13	16		96938	TC 59	12	$ 1,200.00	1		NPI	1023291754
3 07 15 13	07 15 13	16		95927	TC	12	$ 650.00	1		NPI	1023291754
4 07 15 13	07 15 13	16		96885	TC 59	12	$ 225.00	1		NPI	1023291754
5 07 15 13	07 15 13	16		96909	TC	12	$ 266.00	1		NPI	1023291754
6 07 15 13	07 15 13	16		96937	TC	12	$ 296.00	1		NPI	1023291754

25. FEDERAL TAX I.D. NUMBER: 51-0661972 SSN / EIN: EIN	26. PATIENT'S ACCOUNT NO.: 84773	27. ACCEPT ASSIGNMENT? (For govt. claims, see back) YES / NO	28. TOTAL CHARGE $ 6,491.20	29. AMOUNT PAID $ 2,271.92	30. BALANCE DUE $ 4,219.28

31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)	32. SERVICE FACILITY LOCATION INFORMATION: Spring Valley Hospital 6400 S. Rainbow Blvd. Las Vegas, NV, 89118-1939	33. BILLING PROVIDER INFO & PH #: (480) 656-3005 Neuromonitoring Associates 103 N. 30th Street #9 Mesa, AZ, 85205
Rebecca Gillan, CNM 07/16/2013	a. 1346230323 b.	a. 191217760 b.
SIGNED DATE		

PATIENT AND INSURED INFORMATION | PHYSICIAN OR SUPPLIER INFORMATION

NUCC Instruction Manual available at: www.nucc.org PLEASE PRINT OR TYPE APPROVED OMB-093-0999 FORM OMB-1500 (08/05)

DEF000561

Neuromonitoring Associates

Technical Report

Medical Rec. #: 36294396

Print Time Stamp: 07/17/13. 04:11 PM

PID: 84773

Patient Information	Date Of Surgery	Hospital	Surgeon	INOM Technologist
MARIE GONZALES	16-Jul-13	Spring Valley Hospital	STUART S KAPLAN, M.D.	Malina Lawla; CNIM

5101 MORRIS ST
LAS VEGAS, NV 89122

Date Of Birth	Age	Sex	Home Phone	Work Phone	Cell
	65	Female	(702) 292-1280		

Procedure: PLIF L4 - S1

Diagnosis: 724.2 724.4

Reader	Anesthesiologist	IONM System
Morton Hyson, M.D.		

Hookup Time	Patient In OR	Patient Out OR	Post Baseline	Time Traced	Professional Time	Total Time
07:39 07:39 11:20			10:06 11:00		00:55 03:41	

Introduction

MULTI-MODALITY INTRAOPERATIVE NEUROPHYSIOLOGICAL MONITORING WAS CONTINUOUSLY CARRIED OUT IN AN EFFORT TO SAFEGUARD THE PATIENT, UTILIZING THE MODALITIES LISTED BELOW. AFTER THE PATIENT WAS INTUBATED SUB DERMAL NEEDLE AND STICKY PAD ELECTRODES WERE PLACED, POST INDUCTION, SUBDERMAL NEEDLE ELECTRODES WERE PLACED IN THE SCALP AT FPZ CPZ CP3 CP4 AND C5 FOR SSEP RECORDING. ALL STIMULATION ELECTRODES WERE CONNECTED TO THE STIMULATION BOX, ALL RECORDING ELECTRODES WERE CONNECTED TO THE PRE-AMPLIFIER. IMPEDANCES WERE CHECKED AND FOUND TO BE ACCEPTABLE. MONITORING BEGAN AND BASELINES WERE TAKEN PRIOR TO EXPOSURE.

Upper Somatosensory

95938 Stim Sites: Ulnar Nerve.

Results: BILATERAL ULNAR NERVE SSEP BASELINES WERE REPRODUCIBLE AND RELIABLE. CORTICAL AND SUB-CORTICAL WAVEFORMS WERE RECORDED FORM THE SENSORY AND SUB-THALAMIC GENERATORS. THERE WERE NO SIGNIFICANT CHANGES IN EITHER THE LATENCY (>10%) OR AMPLITUDE (>50%) FROM BASELINES THROUGHOUT THE CASE. DR. WAS INFORMED AND HE ACKNOWLEDGED.

Lower Somatosensory

95938 Stim Sites: Posterior Tibial.

Results: BILATERAL POSTERIOR TIBIAL NERVE SSEP BASELINES WERE REPRODUCIBLE AND RELIABLE. CORTICAL AND SUB-CORTICAL WAVEFORMS WERE RECORDED FORM THE SENSORY AND SUB-THALAMIC GENERATORS. THERE WERE NO SIGNIFICANT CHANGES IN EITHER THE LATENCY (>10%) OR AMPLITUDE (>50%) FROM BASELINES THROUGHOUT THE CASE. DR. WAS INFORMED AND HE ACKNOWLEDGED.

Lower EMG

95885 - Recording Sites: Ext. Hallucis Longus L4-S1, Flexor Hallucis Brevis, Gastroc S1, Tib. Ant. L5, Tibialis Anterior, Vast. Medi L2-L4, Vastus Lateralis L2-L4, Vastus Lateralis/medialis (L3-L4), Vastus Lateralis,

Results: FREE RUNNING LOWER EMG WAS QUIET THROUGHOUT THE PROCEDURE.

Train-of-Four (TO4)

95937 - Neuromuscular Junction Test - Train-of-Four (TO4)

Results: AFTER THE INITIAL SHORT-ACTING INTUBATION MUSCLE RELAXANTS WORE OFF, TRAIN OF FOUR (TO4) NEURO-MUSCULAR JUNCTION TESTING CONSISTENTLY PRODUCED AT LEAST 2 OUT OF 4 RESPONSES WHICH HELPS TO VALIDATE THE SENSITIVITY OF ALL OTHER EMG AND/OR MOTOR FUNCTION MONITORING.

TO4 Response	TO4 TIME	TO4 Reliability
4	10:07	Good

Pedicle Testing Data

ALL SCREW STIMULATION VALUES WERE WNL, SASA. NORMAL STIMULATION THRESHOLDS SUGGEST INTACT PEDICLE WALLS.

Pedicle Level	Left Stim Level	Right Stim Level
L4	20	17
L5	19	16
S1	17	19

Summary:

SSEPS WERE REPEATABLE AND REPRODUCIBLE, EMGS WERE QUIET THROUGHOUT THE CASE, TRAIN OF FOUR RESULTS SHOWED 4 OUT OF 4 TWITCHES. ANY CHANGES THAT OCCURRED THROUGHOUT WERE RELAYED TO THE SURGEON AND ACKNOWLEDGED.

DEF000562

NOTE: This report was signed via Electronic Signature by Malina Lewis, CNIM on 07/16/2013 02:03 PM

DEF000563

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
12/13/2016 06:27:30 AM

CLERK OF THE COURT

REPUBLIC SILVER STATE DISPOSAL, INC., a Nevada Corporation, Plaintiff, vs. ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC., a Nevada Limited Liability Company; JAMES D. BALODIMAS, M.D.; JAMES D. BALODIMAS, M.D., P.C.; LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, a Colorado Limited Liability Company; DANIELLE MILLER aka DANIELLE SHOPSHIRE; NEUROMONITORING ASSOCIATES, INC., a Nevada Corporation; DOES 1-10 inclusive; and ROE CORPORATIONS 1-10 inclusive, Defendants.	CASE NO.: A-16-738123-C DEPT. XXX ORDER RE: THE CASH DEFENDANTS' MOTION TO DISMISS, THE BALODIMAS DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS, AND DANIELLE MILLER'S MOTION TO DISMISS, AND ALL JOINDERS

The above-captioned matter came on for hearing before Judge Jerry A. Wiese II, on Tuesday, October 4, 2016, with regard to the Cash Defendants' Motion to Dismiss, the Balodimas Defendants' Motion for Judgment on the Pleadings, and Danielle Miller's Motion to Dismiss, and all related Joinders. The Court having reviewed the briefs submitted by all parties, entertained oral argument by counsel for all parties. Following oral argument, the Court indicated that it would enter a written decision from chambers. The Court then issued a Minute Order on October 13, 2016, setting an Evidentiary Hearing for November 9, 2016. Various parties submitted supplemental briefing, and an Evidentiary Hearing occurred on November 9, 2016. The Court indicated that an Order would issue, and this Order follows:

This case stems from a motor vehicle accident which occurred on or about January 14, 2012, involving Marie Gonzales and a commercial garbage truck owned

and operated by Republic, and driven by its employee Deval Hatcher. As a result of the accident, Marie Gonzales allegedly suffered personal injuries, and treated with various medical care providers, including those named as Defendants herein. On or about September 3, 2013, Marie Gonzales filed a lawsuit against Republic and its driver, alleging negligence, and seeking compensation for her injuries. On or about July 6, 2015, Republic settled the underlying case with Ms. Gonzales, and paid the amount of $2,000,000.00. Republic thereafter filed a Complaint in this separate litigation, alleging that from January 29, 2013 forward, Ms. Gonzales' damages were the direct result of the professional negligence of the Defendants named herein.

All pending motions and joinders essentially make the same arguments – 1) that the Plaintiff does not have standing to assert a direct claim for medical malpractice or medical negligence (now known in Nevada as "professional negligence"); 2) that the Plaintiff failed to bring its claims for professional negligence, respondeat superior, and negligent supervision and retention, within the applicable statutes of limitations; and 3) that Plaintiff's contribution claim fails pursuant to NRS 17.225(3), as Plaintiff's settlement with Maria Gonzales did not extinguish any liability on the part of the Defendants in this case.

With regard to the first argument, that the Plaintiff does not have standing, even the Plaintiff's Opposition concedes that Plaintiff has "no stand-alone right under NRS Ch.41A to pursue Marie Gonzales' – or anyone else's – claim of medical malpractice." (See Plaintiff's Opposition to the Cash Motion to Dismiss at pg. 7). Plaintiff simply argues that its claim is for contribution, based upon claims for professional negligence, respondeat superior, and negligent supervision and retention. With this understanding, this Court agrees that the Plaintiff does not have standing to bring these claims directly against the Defendants. The Court acknowledges that the Plaintiff's claim for contribution is based upon the Defendants' alleged professional negligence, respondeat superior, and negligent supervision and retention. As noted by the Plaintiff, Nevada law obligates a Plaintiff seeking contribution from health care providers, asserting claims for professional negligence, to satisfy the requirements of NRS Chapter 41A. (See Plaintiff's Opposition to the Cash Motion to Dismiss at pg. 8).

Having concluded that the Plaintiff's claims for professional negligence, respondeat superior, and negligent supervision and retention are all subsumed within

and are part of, and the premise of the Plaintiff's claim for contribution, the more difficult issue is whether the Plaintiff's claim for contribution fails under NRS 17.225(3).

NRS 17.225 reads as follows:

> **NRS 17.225 Right to contribution.**
> 1. Except as otherwise provided in this section and NRS 17.235 to 17.305, inclusive, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.
> 2. The right of contribution exists only in favor of a tortfeasor who has paid more than his or her equitable share of the common liability, and the tortfeasor's total recovery is limited to the amount paid by the tortfeasor in excess of his or her equitable share. No tortfeasor is compelled to make contribution beyond his or her own equitable share of the entire liability.
> 3. ***A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement*** nor in respect to any amount paid in a settlement which is in excess of what was reasonable.
> (Added to NRS by 1973, 1303; A 1979, 1355, emphasis added).

NRS 17.285, also dealing with contribution, reads as follows:

> **NRS 17.285 Enforcement of right of contribution.**
> 1. Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.
> 2. Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.
> 3. If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by the tortfeasor to enforce contribution must be commenced within 1 year after the judgment has become final by lapse of time for appeal or after appellate review.
> 4. If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the tortfeasor's right of contribution is barred unless the tortfeasor has:
> (a) Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him or her and has commenced an action for contribution within 1 year after payment; or
> (b) Agreed while action is pending against him or her to discharge the common liability and has within 1 year after the agreement paid the liability and commenced an action for contribution.
> 5. The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.
> (Added to NRS by 1973, 1304)

The Defendants argue that since the professional negligence statute of limitations set forth in NRS 41A.097, expired prior to the settlement between Maria Gonzales and Republic, there was no liability on the part of the doctors that could have

been extinguished by such settlement, and consequently, pursuant to 17.225(3), the Plaintiff has no claim for contribution.

In order to evaluate the applicable statute of limitations, the Court must briefly analyze each of the Defendants' involvement in the care and treatment of Ms. Gonzales. In Plaintiff's Amended Complaint, filed on 6/27/16, the Plaintiff alleges that Maria Gonzales began treating with Dr. Cash on 4/4/12, who performed an OLIF procedure on or about 1/29/13, which procedure involved the placement of pedicle screws. (See Amended Complaint at ¶23-27). Plaintiff alleges that Katuna and Rocky Mountain Neurodiagnostices and Miller and Neuromonitoring Associates were involved in neurophysiological monitoring prior to the OLIF procedure. (See Amended Complaint ¶28-29). Plaintiff alleges that Defendant Miller was present and providing neurophysiologic monitoring services during the procedure on 1/29/13. (See Amended Complaint ¶33). Ms. Gonzales was apparently discharged from Spring Valley Hospital on 2/2/13. (Id., at ¶38). A CT study was apparently performed by Las Vegas Radiology on 2/12/13. (Id., at ¶40-41). On or about June 7 and July 12, 2013, Gonzales consulted with Drs. Jason Garber and Stuart Kaplan, and on 7/15/13, Dr. Kaplan performed an anterior fusion surgery at Spring Valley Hospital. (Id., at ¶45). Ms. Gonzales allegedly continued to have back problems and on or about 2/10/15, Dr. Kaplan implanted a spinal cord stimulator. (Id., at ¶46-47). On 9/3/13, Gonzales filed her Complaint in *Gonzales v. Hatcher* (Case No.: A687931) against Republic and Hatcher. (Id., at ¶48). On 7/6/15, Republic settled that case with Gonzales for $2,000,000.00. (Id., at ¶51).

Based upon the foregoing chronology, it appears that the medical care providers named as Defendants in the present litigation were involved in the care of Ms. Gonzales from 4/4/12 through approximately 2/12/13. Plaintiff's original Complaint in this matter was filed on 6/8/16. If NRS 41A.097 applies, the statute reads as follows:

> **NRS 41A.097 Limitation of actions; tolling of limitation.**
> 1. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:
> (a) Injury to or the wrongful death of a person occurring before October 1, 2002, based upon alleged professional negligence of the provider of health care;
> (b) Injury to or the wrongful death of a person occurring before October 1, 2002, from professional services rendered without consent; or
> (c) Injury to or the wrongful death of a person occurring before October 1, 2002, from error or omission in practice by the provider of health care.
> 2. Except as otherwise provided in subsection 3, ***an action for injury or death against a provider of health care may not be commenced more than 3***

> ***years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first***, for:
> (a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care;
> (b) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from professional services rendered without consent; or
> (c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care.
> 3. This time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to the provider of health care.
> 4. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1 or 2. If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of the child's disability, except that in the case of:
> (a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.
> (b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury.
> (Added to NRS by 1971, 366; A 1975, 407; 1977, 857, 954, 1082; 1985, 2011; 1989, 424; 1991, 1131; 1993, 2224; 1995, 2350; 1999, 5; 2001, 1107; 2002 Special Session, 8; 2004 initiative petition, Ballot Question No. 3, emphasis added).

Defendants argue that the Plaintiff's claims are barred because the Complaint was filed more than 3 years after the date of injury (date of any treatment), and more than 1 year since the Plaintiff discovered or through the use of reasonable diligence should have discovered the injury. Since the Plaintiff's treatment with the Defendants concluded on or about 2/12/13, and the Plaintiff's Complaint was not filed until 6/8/16, it appears that more than 3 years elapsed since any treatment by any Defendant, and consequently, the statute would have expired.

In a case very similar to the present case, the Nevada Supreme Court has recently held that a claim for contribution carries a fixed limitation period pursuant to NRS 17.285, and arises "[w]here a judgment has been entered in an action against two or more tortfeasors for the same . . . wrongful death."[1]

In *Saylor v. Arcotta*, a motor vehicle accident occurred in which a passenger in a cab was injured. Two weeks after the accident, the passenger was hospitalized for a heart attack and died during surgery. The heirs sued the taxi cab driver and the cab company. Through discovery, the cab company learned that the death may have been

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[1] *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 (2010).

caused by medical negligence, and they subsequently filed a third-party complaint against the passenger's treatment physicians for equitable indemnity and contribution. The doctors moved for summary judgment arguing that the claims were time-barred by the medical malpractice statute of limitations contained in NRS 41A.097. The district court agreed and dismissed the case. On appeal, the Nevada Supreme Court held that "equitable indemnity claims are not governed by the limitations period applicable to the underlying tort." [2] The Court held that "equitable indemnity claims that arise out of medical malpractice allegations are not subject to NRS 41A.097(2)'s limitations period for medical malpractice claims, but are instead subject to NRS 11.190(2)(c)'s limitations period for actions on implied contracts."[3] The Supreme Court's analysis of the "contribution" claim was separate, and in that regard the Court stated the following:

> In Nevada, a claim for contribution is preserved by statute – NRS 17.225 – and carries a fixed limitations period under NRS 17.285. Pursuant to NRS 17.285(2), a contribution claim arises "[w]here a judgment has been entered in an action against two or more tortfeasors for the same ... wrongful death." The contribution claim must be filed "within 1 year after the judgment has become final by lapse of time for appeal or after appellate review." Thus, once a contribution claim arises, it is subject to a one-year statute of limitations.[4]

Two years later, in 2012, the Nevada Supreme Court addressed another similar case, in *Pack v. Latourette*.[5] In that case, David Zinni was injured in a motor vehicle accident and brought an action against a taxi cab driver who caused the accident, and the cab company. The cab company brought a third-party complaint against the doctors who treated Zinni, asserting claims for equitable indemnity and contribution, based on medical malpractice. Dr. LaTourette moved to dismiss the third-party complaint, alleging that it was time-barred by NRS 41A.097. Dr. LaTourette argued alternatively that the Complaint should be dismissed because the cab company failed to attach an expert affidavit as required by NRS 41A.071. The district court concluded that the cab company's claims were time-barred by NRS 41A.097's medical malpractice statute of limitations, and didn't address the alternative arguments.

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[2] *Saylor* at pg. 95, citing to *Reggio v. E.T.I.* 15 So.3d 951, 955 (La. 2008).
[3] *Saylor* at pg. 95.
[4] *Saylor* at pg. 96, citing to *Aetna Casualty & Surety v. Aztec Plumbing*, 106 Nev. 474, 476, 796 P.2d 227, 229, and NRS 17.285(3).
[5] *Pack v. LaTourette*, 128 Nev.Adv.Op. 28, 277 P.3d 1246 (2012).

The Supreme Court noted that while the appeal was pending in the Pack case, the Court decided the Saylor case, and the Court stated:

> In *Saylor*, we clarified that ***"NRS 41A.097(2)'s limitations period does not apply to equitable indemnity and contribution claims,"*** and that such claims are instead subject to the limitations period laid out in NRS 11.190(2)(c) and NRS 17.285, respectively.[6]

Dr. LaTourette argued that because the cab company had not yet "paid" Zinni more than its fair share of liability, the contribution claim was premature. The Supreme Court did not agree. The Court indicated that NRS 17.285 sets forth two methods for enforcing a claim for contribution – "either by a separate action following entry of judgment or 'in the same action in which [the] judgment is entered against two or more tortfeasors.'"[7] The Court further indicated that because the cab company's complaint rested upon the theory that Dr. Lautorette committed medical malpractice, the cab company was required to satisfy the statutory prerequisites in place for malpractice cases before bringing its contribution claim. Because the cab company failed to attach an expert affidavit to its claim for contribution, the complaint in that regard was void ab initio and should have been dismissed without prejudice.[8]

This Court notes that the facts underlying both the *Saylor* and *Pack* cases, are almost identical to the facts underlying the present case. Significantly, however, in neither *Saylor* nor *Pack*, did the Nevada Supreme Court address sub-paragraph (3) of NRS 17.225. In the present case, the Defendants contend that the Plaintiff is not entitled to recover contribution from the doctors, because their liability for the injury to Ms. Gonzales was not extinguished by the settlement, because Ms. Gonzales' statute of limitations for any claims against the doctors had expired prior to the settlement.

In *McNulty v. Eighth Jud. Dist. Ct.*,[9] the Nevada Supreme Court did have an opportunity to consider sub-paragraph (3) of NRS 17.225. That case stemmed from a motor vehicle accident, in which a cab passenger, Michael Cicchini, suffered injuries. Subsequent to the accident, McNulty and others were involved in performing a back

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[6] *Pack* at 1248, citing *Saylor v. Arcotta*, 126 Nev. --, 225 P.3d 1276, 1278-79 (2010), emphasis added.

[7] *Pack* at pg. 1249-1250, citing *Bell & Gossett Co. v. Oak Grove Investors*, 108 Nev. 958, 963, 843 P.2d 351, 354 (1992), ant NRS 17.285(1),(2).

[8] *Pack* at pg. 1250, citing to *Fierle v. Perez*, 125 Nev. 728, 736-38, 219 P.3d 906, 911-12 (2009), and *Washoe Med. Ctr.*, 122 Nev. 1298, 1300, 148 P.3d 790, 792 (2006).

[9] *McNulty v. Eighth Jud. Dist. Ct.*, 127 Nev. 1159, 373 P.3d 942 (unpublished 2011),

surgery on Mr. Cicchini, which allegedly left him partially paralyzed. Cicchini sued the cab company, and settled his claim for $1,150,000.00. Cicchini signed a release, but it did not extinguish McNulty's liability. The release actually included specific language that indicated that the subject accident did not cause the need for surgery, and neither the surgery nor any complications relating to it were caused by the accident. After settling, both Cicchini and the cab company each sued Dr. McNulty. Cicchini's suit sought damages for alleged medical malpractice. The cab company sued for contribution and indemnity, based on the contention that the surgery, not the accident, caused Cicchini's damages. Dr. McNulty moved for dismissal, and the district court denied the motion. McNulty then filed a writ with the Nevada Supreme Court. The Supreme Court concluded that McNulty was entitled to a writ of mandamus compelling the dismissal of the case, based upon the clear statutory language of NRS 17.225(3):

> A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement . . . [10]

The Court held that "the statute's wording is plain and its application clear: VWC [the cab company] has no contribution claim against McNulty."[11]

In *McNulty*, the Nevada Supreme Court held that because McNulty's liability had not been extinguished by the settlement between Cicchini and the cab company, the cab company had no claim for contribution against McNulty. In the present case, Plaintiff's counsel offered during oral argument to make the settlement agreement available, but neither party attached a copy of the settlement agreement to the original pleadings. Following the October 4, 2016, hearing with regard to the foregoing, this Court issued a Minute Order, and scheduled an Evidentiary Hearing, asking the parties to respond to the following two specific issues:

1) Do the terms of the settlement agreement between Gonzales and Republic extinguish the liability of the Defendants named in the present litigation? (See *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v. LaTourette*, 128 Nev.Adv.Op. 25, 277 P.3d 1246 [2012]; and *McNulty v. Eighth Judicial Dist. Ct.*, 127 Nev. 1159, 373 P.3d 942 [2011]).

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[10] McNulty at pg. 2, citing NRS 17.225(3).
[11] Id.

2) If the statute of limitations set forth in NRS 41A.097 applies, is there sufficient evidence to determine, for purposes of the pending Motions, when the statute of limitations expired as it relates to each Defendant?

Prior to the November 9, 2016, Evidentiary Hearing, counsel for the Plaintiff submitted to the Court a copy of the subject Release between Marie Gonzales and Republic Silver State Disposal. The Release specifically includes the following language:

> . . . this SETTLEMENT AGREEMENT, RELEASE and COVENANT NOT TO SUE ***shall discharge and extinguish any and all claims or liabilities***, including those for "economic" and "noneconomic" damages as set forth in NRS ch. 41A, RELEASOR may possess ***against any of her medical treatment providers*** for injuries she alleges to have sustained in the described incident of January 14, 2012.[12]

Although Defense Counsel noted that the Release was not specific as to which "medical treatment providers" liability would be extinguished, this Court finds that the Release is very clear that it was the intent of the parties that the Release would extinguish any claims or liabilities that Ms. Garcia had against her medical treatment providers, relating to the injuries she alleged as a result of the subject accident. Consequently, the Court concludes that the terms of the settlement agreement do extinguish the liability of the Defendants named in the present litigation, pursuant to *Saylor, Pack,* and *McNulty.*[13]

The next issue the Court must address, is whether any of the medical treatment providers (particularly those named as Defendants in the present case) had any liability to Ms. Gonzales that could have been extinguished on July 6, 2015. NRS 41A.079 provides that "an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first."[14] Defendants argue that any claim that Ms. Gonzales had against the treating doctors, expired prior to the July 6, 2015, Release, and consequently, she had no claims against these Defendants which could have been extinguished on that date. Plaintiff argues that the NRS 41A.079 Limitation of Action

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[12] See Exhibit 3 to Plaintiff's Brief Re: Evidentiary Hearing, at pg. 2 of 10 (emphasis added).

[13] *Saylor v. Arcotta,* 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v. LaTourette,* 128 Nev.Adv.Op. 25, 277 P.3d 1246 [2012]; and *McNulty v. Eighth Judicial Dist. Ct.,* 127 Nev. 1159, 373 P.3d 942 [2011]).

[14] NRS 41A.079.

does not apply, because this is a claim for "contribution," and in the *Saylor* and *Pack* cases, the Nevada Supreme Court indicated that the NRS 41A.079 limitation of actions does not apply to a claim for equitable indemnity or contribution.

If this Court were to agree with Defendants, the result would be the following: If the parties to the underlying negligence case "settle" their claims, after the statute of limitations set forth in NRS 41A.079 has expired, then the settling Defendant cannot bring a claim for contribution because pursuant to NRS 17.225(3), there would be no liability from the alleged tortfeasor (doctor) to be extinguished. On the other hand, if the parties to the underlying negligence case do not "settle" their case, but instead go to trial and obtain a "Judgment," against a Defendant, that Defendant can bring a claim for contribution against an alleged tortfeasor (doctor), even if the statute of limitations set forth in NRS 41A.079 has expired, because NRS 17.285(3) would apply instead of NRS 17.225(3). This would seem to provide a disincentive to the parties to settle, and cannot be the intent of the legislature.

The Nevada Supreme Court has made it clear in *Saylor* and *Pack*, that in a claim for contribution, NRS 41A.079 does not apply.[15] This Court finds and concludes that the language in NRS 17.225(3), (***whose liability for the injury or wrongful death is not extinguished by the settlement)***, refers to the need for the parties to extinguish liability in the Settlement Agreement, and that was done in this case. This Court finds and concludes that the liability of the Defendant Doctors was extinguished by the underlying Settlement Agreement, and consequently, pursuant to NRS 17.225 and 17.285, as well as the above-referenced case law, the Plaintiff in this case has preserved

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[15] *Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 [2010]; *Pack v. LaTourette*, 128 Nev.Adv.Op. 25, 277 P.3d 1246 [2012].

its right to assert a claim for contribution, and in that regard, the Defendants' Motions must be Denied.

Based upon the foregoing, the pending Motions are GRANTED, as they relate to all claims other than the claim for Contribution, but they are DENIED as they relate to the Plaintiff's claim for Contribution.

DATED this 2nd day of December, 2016.

JERRY A. WIESE II
DISTRICT COURT JUDGE, DEPT. 30

IN THE SUPREME COURT OF THE STATE OF NEVADA

****

JAMES D. BALODIMAS, M.D., and JAMES D. BALODIMAS, M.D., P.C.,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT of the STATE of NEVADA, in and for CLARK COUNTY, NEVADA, and THE HONORABLE JERRY A. WIESE, District Court Judge,
Respondents,
And
REPUBLIC SILVER STATE DISPOSAL, INC.; ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company; LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, a Colorado Limited Liability Company; DANIELLE MILLER aka DANIELLE SHOPSHIRE; NEUROMONITORING ASSOCIATES, INC.,
Real Parties in Interest

Supreme Ct. Case #: 72123

District Ct. Case #: 16-A738123-C

REPUBLIC SILVER STATE DISPOSAL'S ERRATUM TO ANSWER TO PETITION FOR WRIT OF MANDAMUS, and JOINDERS THERETO

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Republic Silver State Disposal's ANSWER TO PETITION FOR WRIT OF MANDAMUS AND JOINDERS THERETO stated that the PETITION FOR WRIT OF MANDAMUS had not referred to the Nevada Supreme Court's decisions in Saylor v. Arcotta, 126 Nev. 92, 225 P.3d 1276 (2010) and Pack v. LaTorrette, 128 Nev. ___, 277 P.3d 1246 (2012). In fact, the Petition does refer to Saylor at p.11, n.1; no reference is made to Pack.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2017, I served the foregoing **REPUBLIC SILVER STATE DISPOSAL'S ERRATUM TO ANSWER TO PETITION FOR WRIT OF MANDAMUS, and JOINDERS THERETO** upon all counsel of record:

☒ By electronically filing and serving the document(s) listed above with the Nevada Supreme Court: or

☐ By personally serving it upon him/her: or

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IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES D. BALODIMAS, M.D., and JAMES D. BALODIMAS, M.D., P.C.,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and the HONORABLE JERRY A. WIESE, District Court Judge,

Respondents,

and

REPUBLIC SILVER STATE DISPOSAL, INC., ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company; JAMES D. BALODIMAS, M.D.; JAMES D. BALODIMAS, M.D., P.C.; LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, a Foreign Limited Liability Company; DANIELLE MILLER aka DANIELLE SHOPSHIRE; and NEUROMONITORING ASSOCIATES,

Real Parties in Interest.

Supreme Court Case No.: 72123

Dist. Ct. Case No.: A-16-738123-C

PETITIONER'S RESPONSE TO ANSWER TO PETITION FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION

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OTHER AUTHORITIES

I. INTRODUCTION

There is no valid legal basis to allow Republic to pursue a claim for contribution in this case. Nevada law is clear: there is NO claim for contribution by a settling tortfeasor unless the tortfeasor "extinguishes" the liability of the non-settling alleged tortfeasor. Here the fire had already been put out. Republic pouring water over the ashes does not constitute "extinguishing" the claims Ms. Gonzales had against the medical defendants. It was an abuse of discretion for the District Court to find the settlement between Republic and Ms. Gonzales to have "extinguished" any liability as to the Petitioners, and to deny Dr. Balodimas's motion for judgment on the pleadings. Republic has no justifiable claim for contribution in this case and the District Court should be directed to dismiss the baseless claims.

II. DISCUSSION

As a preliminary matter, Republic in its answering brief goes to great lengths to confuse the issue before the Court. The issue is NOT, "Did Republic comply with the statute of limitations on filing its claim for contribution within the time frame for NRS 41A.097." While Petitioners believe that *Saylor* is a misapplication of Nevada law on statutes of limitations for medical malpractice cases, and would welcome this Court to reconsider that issue, the issue here is: "Did Repbulic extinguish any claims through its release/settlement agreement with Marie Gonzales because Ms. Gonzales did not have any claims to release due to the

expiration of the statute of limitations on such claims?" Republic clearly is aware of the weakness of its position as barely any mention is made of this issue in its brief. Instead, Republic spends most of its brief on arguing a "straw man" issue on its own statute of limitations.

A. Republic did not extinguish any claims against Dr. Balodimas and therefore, has no viable claim for contribution against him or his corporation.

Nevada law is clear and unambiguous. There is **no claim** for contribution by a settling tortfeasor against a non-settling tortfeasor **unless** the settling tortfeasor extinguishes the liability of the non-settling tortfeasor **by the settlement**. NRS 17.225(3); *Doctors Company v. Vincent*, 120 Nev. 644, 98 P.3d. 681 (2004) (Emphasis added). When a statute is clear on its face, courts will not look beyond the statute's plain language. *Washoe Med. Center v. Second Judicial Dist. Court*, 122 Nev. 1298, 1302, 148 P.3d. 790, 792-793 (2006). There is nothing ambiguous about the fact that a settling tortfeasor does not have a claim for contribution unless it extinguishes liability of a non-settling tortfeasor by its settlement.

In this case, Republic did not extinguish the liability of the Balodimas Defendants by its settlement because there was no liability to extinguish. The statute of limitations as to Marie Gonzalez's claims against the medical defendants had expired prior to her entering into the agreement with Republic. Therefore, there were no claims to extinguish, because they had already been extinguished by operation of law, not by her settlement with Republic.

NRS 17.285 also presupposes a "common liability." NRS 17.285. In this case, there was no "common liability" between Republic and the medical defendants. It is clear from the language itself that "common liability" to the injured person is required for a contribution claim. *Lutz v. Boltz*, 100 A.2d. 647, 1593 Del. Super. LEXIS 83, 48 Del. 197(1953). There is no right to contribution unless the injured person has a possible remedy against two or more persons. A contrary ruling would render [a contribution defendant] liable indirectly for a claim upon which he may not be held liable directly. Id. The Uniform Contribution Among Tortfeasors Act permits contribution among all tort-feasors whom the injured person could hold liable jointly and severally for the same damage or injury to his person or property. Id. In short, it is joint or several *liability*, rather than joint or concurring *negligence*, which determines the right of contribution. Id. (Emphasis in original).

This is exactly the situation here. At the time of the release/settlement with Republic, the injured Plaintiff had no cause of action or claim available to her against the medical defendants. To hold the medical defendants liable now, after the statute of limitations had run on Ms. Gonzales's claims would be to hold them liable for something for which they could not be held liable directly.

In fact, by its terms, the Republic-Hatcher/Gonzales release did not extinguish the liability of the contribution Defendants:

> "As a part of their settlement and their mutual consideration stated above, this SETTLEMENT AGREEMENT…shall discharge and extinguish all claims or liabilities, including those for 'economic' and 'noneconomic' damages as ***set forth in NRS ch. 41A*** [Marie Gonzales] ***may*** possess against any of her medical treatment providers for injuries she alleges to have sustained in the described incident of January 14, 2012." See Respondents's Response Brief, page 8. (Emphasis Added).

Thus, even by the terms of the agreement itself, Ms. Gonzales was only releasing "claims or liabilities" she ***may*** have had pursuant to NRS 41A. At the time of the release, she did not have any such claims because NRS 41A.097 (which governed the alleged "released claims" in the agreement itself) had already extinguished such claims. The District Court abused its discretion in finding that this release extinguished claims that were already extinguished by operation of law pursuant to NRS 41A.097. There is no question that Ms. Gonzales had no claims pursuant to NRS 41A at the time she entered the release with Republic in July of 2015 and therefore, nothing was extinguished[1] at the time of her settlement with Republic.

B. A settlement agreement is a contract, and Republic could not take more rights than Ms. Gonzales had at the time of the contract.

Because a settlement agreement is a contract, its construction and enforcement are governed by principles of contract. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d. 1254, 1257 (2005). In this case, Ms. Gonzales and Republic

[1] Black's Law Dictionary defines "extinguish" as "To bring or put an end to" Black's Law Dictionary 6th Edition (1991). Here no claim was filed against the medical defendants, and any potential claim by Ms. Gonzales against them was "put to end" by the expiration of the statute of limitations.

entered into a settlement agreement/contract to resolve her claims for injuries relating to Republic Service's truck/employee crashing into her giving rise to the medical care. At the time the settlement agreement was reached, the statute of limitations had expired on Ms. Gonzales's claims against the health care providers for any claims of malpractice. When she agreed to release her claims, Ms. Gonzales had nothing to release or give up as to her claims against the medical providers. Operation of law had already extinguished any claims she may have had.

The settlement agreement between Ms. Gonzales and Republic was reached on July 6, 2015. The alleged date of injury occurred on January 29, 2012 and February 12, 2013 (as to these Petitioners). According to Republic's complaint, Ms. Gonzales was made aware of the alleged malpractice on June 7, 2013 by her subsequent treating doctors. Ms. Gonzales had counsel representing her for the Republic case, and did not file until September 13, 2013. Clearly, she was on inquiry notice of a potential cause of action against the medical providers as of September 13, 2013 (and even earlier as alleged by Republic in the complaint in this matter) when she filed her complaint through counsel.

Had Ms. Gonzales filed a complaint against the medical defendants on July 5, 2015 (the day before she settled with Republic); her complaint would have been dismissed as the case had expired under the statute of limitations. So on July 6, 2015, when she settled with Republic, she had nothing she could release or give up

as to the medical defendants, because she had no claim at that point. It is a pure legal fiction to allow Ms. Gonzales to purportedly "release" claims she did not have in a settlement agreement to allow another party to pursue those same claims, when had she brought the claims herself, they would have been immediately dismissed. Republic should take the claims as it received them in its agreement with Ms. Gonzales.

This is no different than if Republic had tried to convey its ownership interest in the Wynn Hotel in exchange for a dismissal of the claims against it. If Republic had no interest in the Wynn Hotel, it could not convey anything to Ms. Gonzales. Ms. Gonzales had no viable claims against Dr. Balodimas at the time of her settlement with Republic, and therefore, could not "release" her claims as part of a settlement and there was not (nor could there be) any "common liability" between Dr. Balodimas and Republic.

If the Court were to find Republic has a viable contribution claim under these circumstances, Ms. Gonzales could theoretically have revived her extinguished claims for malpractice through her settlement contract with Republic. For example, assume Republic had settled with Ms. Gonzales for $1,750,000 instead of $2,000,000 and also assigned to Ms. Gonzales its contribution rights against the medical Defendants. In such a case, Ms. Gonzales, who started settlement negotiations with no viable claim against the medical defendants

because the statute of limitations had expired, would suddenly have Republic's contribution claims to assert against the providers.

Essentially, if the Court finds Republic to have a valid contribution claim under these circumstances, parties could "resurrect" claims that had already been extinguished by the statute of limitations through an agreement in which the medical defendants were not parties or participants and in a case in which none of them were named as parties. In fact, from the medical providers' perspective in this case, that is exactly what has happened here—claims against them expired under the statute of limitations, and they now have to defend them anyway because of a contract between two unrelated parties in an unrelated case years after the fact[2].

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[2] Again, not only did Republic not extinguish any claims in this matter at the time of its settlement with Ms. Gonzales, but Republic did not file this claim within the statute of repose for Ms. Gonzales's claims against the medical defendants. That issue is not before this Court at this time and has not been briefed. Petitioners reserve all rights to brief that issue and revisit the *Saylor* decision with this Court if necessary.

III. CONCLUSION

For the reasons stated above and for the reasons set forth in the Petition for Writ of Mandamus, this Petition should be granted and the District Court directed to enter an order dismissing all claims against Dr. Balodimas and his corporation.

Dated this 24th day of April 2017.

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this petition, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 24th day of April 2017.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

JAMES D. BALODIMAS, M.D.; JAMES D. BALODIMAS, M.D., PC; LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, a Colorado Limited Liability Company; ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; and DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT, of the State of Nevada, in and for the County of Clark, and the HONORABLE JERRY A. WIESE, District Court Judge,

Respondents

REPUBLIC SILVER STATE DISPOSAL, INC., a Nevada Corporation; JAMES D. BALODIMAS, M.D.; JAMES D. BALODIMAS, M.D., P.C.; DANIELLE MILLER aka DANIELLE SHOPSHIRE; NEUROMONITORING ASSOCIATES, INC.,

Real Parties in Interest.

SUPREME COURT CASE NO.: 72123

EIGHTH JUDICIAL DISTRICT COURT CASE NO.: A-16-738123-C

PETITIONERS, ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. AKA ANDREW MILLER CASH, M.D., P.C.; & DESERT INSTITUTE OF SPINE CARE, LLC'S JOINDER TO PETITIONER BALODIMAS' RESPONSE TO ANSWER TO PETITION FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION

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Petitioners, Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C. aka Andrew Miller Cash, M.D., P.C.; & Desert Institute of Spine Care, LLC ("Petitioners") by and through their attorneys of record, ROBERT C. McBRIDE, ESQ. and HEATHER S. HALL, ESQ. of CARROLL, KELLY, TROTTER, FRANZEN, McKENNA & PEABODY, hereby submit this Joinder to Petitioner Balodimas' Response to Answer to Petition for Writ of Mandamus and Writ of Prohibition.

This Joinder is made and based upon the papers and pleadings on file herein and any documentary evidence and oral argument that may be presented at the time of the hearing of this matter. These Petitioners hereby adopt the following as set forth in Petitioners James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Response to Answer to Petition for Writ of Mandamus and Writ of Prohibition: (I) Introduction; (II) Discussion; and (III) Conclusion. These Petitioners expressly adopt all factual and legal arguments contained therein.

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By this Joinder, these Petitioners respectfully request that the Court grant the Petition for Writ of Mandamus.

Dated this 27th day of April, 2017.

CARROLL, KELLY, TROTTER, FRANZEN, McKENNA & PEABODY

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NRAP 28.2 ATTORNEY'S CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32 (a)(6) because:

[X] It has been prepared in proportionally spaced typeface using Word in 14 point Times New Roman Font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[X] Proportionally spaced, has a typeface font of 14 points or more, and contains 235 words.

3. I hereby certify that I have read Petitioners, Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C. aka Andrew Miller Cash, M.D., P.C.; & Desert Institute of Spine Care, LLC Joinder to Petitioner Balodimas' Response to Answer to Petition for Writ of Mandamus and Writ of Prohibition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purposes. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported to a reference to the page of the transcript or appendix where the matter relied on is to

be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements to the Nevada Rules of Appellate Procedure.

Dated this 27th day of April, 2017.

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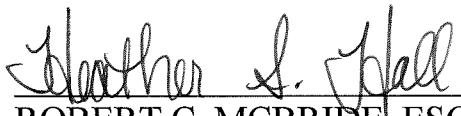

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

JAMES D. BALODIMAS, M.D., and JAMES D. BALODIMAS, M.D., PC,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevda, in and for the County of Clark, and the HONORABLE JERRY A. WIESE, District Court Judge,

Respondents,

and

REPUBLIC SILVER STATE DISPOSAL, INC., ANDREW M CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, a Foreign Limited Liability Company; DANIELLE MILLER

Supreme Court Case No. 72123

District Case No. A-16-738123-C

BRUCE A. KATUNA, M.D. AND ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC'S JOINDER TO JAMES D. BALODIMAS, M.D. AND JAMES D. BALODIMAS, M.D. REPLY TO REPUBLIC SILVER STATE'S DISPOSAL'S ANSWER TO PETITION FOR WRIT OF MANDAMUS

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I. INTRODUCTION

Real Parties in Interest, Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC ("Katuna"), by and through their attorneys of record, OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI, hereby respectfully submit this Joinder to Petitioners James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Response to Answer for Writ of Mandamus.

By way of this Joinder, Katuna wishes to submit a recent unpublished decision to the Court for review that is pertinent to this matter. *Discount Tire Co. of Nevada, Inc. v. Fisher Sand & Gravel, Co.*, No. 69103 (Nev. filed Apr. 17, 2017) (unpublished disposition). APP1-8. This case may be cited for its persuasive value and was published after January 1, 2016. NRAP 36(c)(3). This case distinguishes between joint and successive tortfeasors, which Katuna submits to the Court affects the contribution statutes with regards to medical providers and subsequent alleged malpractice.

II. DISCUSSION

A. Joint vs. Successive Tortfeasors

In *Discount Tire Co. of Nevada, Inc. v. Fisher Sand & Gravel, Co.*, the Court analyzed joint and successive tortfeasors and offered a clear definition for

each term. The case explained the definition of "joint tortfeasors" as "[t]wo or more tortfeasors who contributed to the claimant's injury and who may be joined as defendants in the same lawsuit." *Id.*, citing *Black's Law Dictionary* (10th ed. 2014). The Court further relied upon the explanation that "joint tortfeasors act negligently - either in voluntary, intentional concert, or *separately and independently* - to produce *a single indivisible injury*." *Id.*, citing 74 Am. Jur 2d *Torts* § 64 (2012) (emphasis in original).

On the other hand, "successive tortfeasors must produce acts 'differing in time and place of commission as well as in nature, [causing] *two separate injuries* [that] gave rise to two distinct causes of action'." *Id.*, citing *Hansen v. Collett*, 79 Nev. 159, 167, 380 P.2d 201, 305 (1963) (emphasis in original). The case again relied upon the definition of "successive tortfeasors" as "[t]wo or more tortfeasors whose negligence occurs at different times and causes *different* injuries to the same third party." *Id.*, citing *Black's Law Dictionary* (10th ed. 2014) (emphasis in original).

The unpublished decision discusses contribution among joint tortfeasors and in the context of both contribution and equitable indemnity; however, the definitions of joint and successive tortfeasors are persuasive as to the issues in

this case.

B. There Is No Right to Contribution Among Successive Tortfeasors

The distinction between joint and successive tortfeasors becomes pertinent in the context of contribution claims. Contribution among tortfeasors is a creation of statute. Statutes in derogation of the common law are strictly construed. *Orr Ditch & Water Co. v. Justice Court of Reno Tp., Washoe County*, 64 Nev. 138, 162, 178 P.2d 558, 570 (1947).

NRS 17.225 provides:

> 1. Except as otherwise provided in this section and NRS 17.235 to 17.305, inclusive, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

The statute, by its plain language, comports with the definitions given to joint and successive tortfeasors. That is, the statute only applies to joint tortfeasors, or tortfeasors who have acted negligently to produce a **single, indivisible injury**. This is supported by the statute's language "where two or more persons become jointly or severally liable in tort **for the same injury** to person..." NRS 17.225(1) (emphasis added). Conversely, given the Court's

recent opinion, the statute does not apply to successive tortfeasors, or tortfeasors who cause different injuries at different times to a party. Given that successive tortfeasors cannot, by definition, cause the same injury, the contribution statute simply does not apply.

This is further supported by caselaw interpreting NRS 17.225 where joint and several liability is examined. *See Humphries v. Eighth Jud. Dist. Ct.*, 129 Nev. Adv. Op. 85, 312 P.3d 484 (2013). Joint and several liability only applies to damages caused jointly by multiple tortfeasors. *Id.* at 488. NRS 41.141 altered joint and several liability in derogation of the common law to provide that in a case alleging comparative negligence, each negligent party is severally liable, subject to certain exceptions.[1] The statute is typically interpreted as applying to co-tortfeasors causing the same injury. *Id.*

This is further bolstered by the NRS 41A statutory framework, specifically because NRS 41A.045 abrogates joint and several liability and provides that physicians can only be severally liable for the damages caused by them individually, never jointly. By definition and the current statutory

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[1]There are no exceptions that apply to medical malpractice. It should be noted that health care providers are specifically excluded from the exceptions to joint and several liability in subsection (d) for the concerted acts of defendants.

framework of NRS 17.225, NRS 41.141 and NRS 41A.045, Republic and Katuna were not and are not joint tortfeasors; they could never be held jointly liable for plaintiff's injuries. Indeed, any subsequent alleged malpractice would have caused a separate, distinct, and successive injury, and not the "same injury" required by Nevada's contribution statute.

Based upon this recent clarification offered by the Court, Katuna submits that the Court should examine whether Nevada's contribution statutes even apply to successive tortfeasors, especially in the context of subsequent alleged medical malpractice. By doing so, the Court can conclude that excluding successive tortfeasor physicians, who have allegedly caused a separate and distinct injury, is supported by the common law principle that an initial tortfeasor is liable for the reasonably foreseeable consequences of his tortious act. *Hansen v. Collett*, 79 Nev. 159, 174, 380 P.2d 301, 309. This result is further supported by the principle that a plaintiff has a right to elect the tortfeasor he will proceed against. *Humphries* at 487. Finally, this conclusion is supported by decisions from sister jurisdictions and their interpretation of their own contribution statutes.

For instance, in *City of College Park v. Fortenberry*, 271 Ga.App. 446,

609 S.E.2d 763 (2005), the court examined whether their contribution statute applied to successive treating physician tortfeasors. The court held:

> As a subsequent tortfeasor, of course, Fortenberry would have no right to contribution from the City, since he did not cause the earlier harm to the plaintiff and cannot be held liable for it. *Phillips v. Tellis*, 181 Ga.App. 449, 451, 352 S.E.2d 630 (1987)...[W]e hold that the City has no right of contribution against Fortenberry. *See United States Lines v. United States*, 470 F.2d 487, 491-492 (5th Cir.1972) (barring contribution action against subsequently negligent treating physician on ground that defendants are not joint tortfeasors).

Id. at 450, 766.

Similarly, in *J.B. Hunt Transport, Inc. v. Forrest General Hosp.*, 34 So.3d 1171 (Miss. 2010), the court discussed contribution from a successive treating physician. The court held that the contribution statute only provided for contribution among joint tortfeasors, not among successive and distinct tortfeasors. *Id.* Subsequent malpractice from a treating physician was considered a successive and distinct tort.

Likewise, the court in *Gibson v. City of St. Louis*, 349 S.W.3d 460 (App. Ct. E.D. Mo. 2011), explored this rationale further. It held that "[w]hen 'separate torts result in both an original injury and an aggravation thereof, such as when a physician negligently treats the original injury, the successive tortfeasor, e.g., the physician, is not liable for the underlying injury and is only

responsible for the harm flowing from his own negligence.'" *Id.* at 467, *citing Walihan v. St. Louis–Clayton Orthopedic Grp., Inc.*, 849 S.W.2d 177, 180 (Mo.App.1993). *See also State ex rel. Baldwin v. Gaertner*, 613 S.W.2d 638, 640 (Mo. banc 1981)).

It has been aptly stated that: "An initial tortfeasor and a subsequently negligent physician act independently of each other; their several wrongs were committed at different times; and the tort of each, being several when committed did not become joint [merely] because its consequences united with the consequences of another. *Id.* (internal citations omitted), citing *State ex rel. Normandy Orthopedics, Inc. v. Crandall*, 581 S.W.2d 829, 831 n. 1 (Mo. banc 1979). "[T]he initial tortfeasor and the subsequently negligent physician are not joint tort-feasors." *Id.* In *Gibson*, the City's negligence caused plaintiff's injuries from the accident and the medical malpractice defendants subsequently caused plaintiff's injury from the negligent rotation of the femur. The court determined this was not the "same injury", and the City could not seek contribution from the physician. *Id.*

These sister jurisdictions' definitions of successive tortfeasors and the inapplicability of contribution between initial and successive tortfeasors, the

collective statutory framework of NRS 17.225, NRS 41.141, and NRS 41A.045, and the recent unpublished decision defining joint and successive tortfeasors all lead to the conclusion that subsequent treating physicians are successive tortfeasors in Nevada. Treating physicians are not subject to joint liability. Therefore, in accordance with the common law principle, any subsequent malpractice by a successive tortfeasor is due to the original tortfeasor's actions and would be a separate and distinct injury. Because alleged subsequent malpractice would cause a separate and distinct injury, the injuries the result from that alleged malpractice cannot be considered the same injury as required by NRS 17.225. Therefore, Nevada's contribution statute does not apply.[2]

III. CONCLUSION

Based upon the foregoing, Katuna requests the Court to analyze the recent unpublished decision in *Discount Tire Co. of Nevada v. Fisher Sand &*

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[2]Jurisdictions that have held otherwise either have pure comparative fault statutes, or their contribution statutes expressly apply to joint and successive tortfeasors. *See, e.g., Cramer v. Starr*, 240 Ariz. 4 (2016) (holding that the Uniform Contribution Among Tortfeasors Act allows a jury to apportion fault between the driver causing collision and treating physicians subsequently committing malpractice); *see also Evans v. Tabernacle No. 1 God's Church of Holiness in Christ*, 283 Ill.App.3d 101 (1996) (holding that Illinois' contribution act applies to joint, concurrent and successive tortfeasors).

Katuna submits that the contribution statute must be strictly construed, and based upon that strict construction, excludes successive tortfeasors. Therefore, no action for contribution against Katuna may lie.

DATED this 2 day of May, 2017.

OLSON, CANNON, GORMLEY
ANGULO & STOBERSKI

By _____
JAMES R. OLSON, ESQ.
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Attorneys for Real Parties In Interest
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VERIFICATION

Under penalty of perjury, the undersigned declares that he is the attorney of record for Real Party in Interest Katuna named in the foregoing Petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as such matters he believes them to be true. This verification is made by the undersigned attorney pursuant to NRS 15.010, on the grounds that the matter stated, and relied upon, in the foregoing Petition are all contained in prior pleadings and other records of the District Court, true and correct copies of which have been attached to James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus.

DATED this 2 day of May, 2017.

JAMES R. OLSON

SUBSCRIBED AND SWORN to before me this 2nd day of May, 2017

NOTARY PUBLIC in and for said County and State

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
CHERYL K. HARTLE
Appt. No. 92-0366-1
My Appt. Expires Dec. 3, 2020

CERTIFICATE OF COMPLIANCE

I hereby certify that this Motion for Leave to Join James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Petition for Writ of Mandamus complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because this Motion has been prepared in a proportionally spaced typeface using WordPerfect X4 Times New Roman 14 pt. font. I further certify that this Motion complies with the page or type volume limitations of NRAP 32(a)(7).

I hereby certify that I have read this Motion, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Motion complies with all applicable Nevada Rules of Appellate Procedure, in particular, NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

. . .

. . .

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 2 day of May, 2017.

OLSON, CANNON, GORMLEY
ANGULO & STOBERSKI

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LLC

CERTIFICATE OF SERVICE

On the 2nd day of May, 2017, the undersigned, an employee of Olson, Cannon, Gormley, Angulo & Stoberski, hereby served a true copy of Real Parties In Interest BRUCE A. KATUNA, M.D. and ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC's JOINDER TO JAMES D. BALODIMAS, M.D. AND JAMES D. BALODIMAS, M.D., PC REPLY TO REPUBLIC SERVICE STATE'S DISPOSAL'S ANSWER TO PETITION FOR WRIT OF MANDAMUS, to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order (Administrative Order 14-2) effective June 1, 2014, and or mailed:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

JAMES D. BALODIMAS, M.D., and JAMES D. BALODIMAS, M.D., PC, LAS VEGAS RADIOLOGY, LLC, a Nevada, Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, a Foreign Limited Liability Company; ANDREW M CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevda, in and for the County of Clark, and the HONORABLE JERRY A. WISE, District Court Judge,

Respondents,

and

REPUBLIC SILVER STATE DISPOSAL, INC., DANIELLE MILLER aka DANIELLE SHOPSHIRE; and NEUROMONITORING ASSOCIATES, INC.,

Real Parties in Interest.

Supreme Court Case No. 72123

District Case No. A-16-738123-C

BRUCE A. KATUNA, M.D. AND ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC'S APPENDIX TO JOINDER TO REPLY TO REPUBLIC SILVER STATE'S DISPOSAL'S ANSWER TO PETITION FOR WRIT OF MANDAMUS

JAMES R. OLSON, ESQ.
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MAX E. CORRICK, II
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STEPHANIE M. ZINNA, ESQ.
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Attorneys for Petitioners
Bruce A. Katuna, M.D. and
Rocky Mountain Neurodiagnostics, LLC

NUMBER	DOCUMENT	BATES NUMBER
1	Order of Affirmance	APP1-APP8

DATED this 2 day of May, 2017.

OLSON, CANNON, GORMLEY
ANGULO & STOBERSKI

By _____
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CERTIFICATE OF SERVICE

On the 2nd day of May, 2017, the undersigned, an employee of Olson, Cannon, Gormley, Angulo & Stoberski, hereby served a true copy of Petitioners BRUCE A. KATUNA, M.D. and ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC's APPENDIX TO JOINDER TO REPLY TO REPUBLIC SILVER STATE'S DISPOSAL'S ANSWER TO PETITION FOR WRIT OF MANDAMUS, to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order (Administrative Order 14-2) effective June 1, 2014, and or mailed:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

DISCOUNT TIRE COMPANY OF NEVADA, INC., A NEVADA CORPORATION; AND LIBERTY INSURANCE UNDERWRITERS, INC., AN ILLINOIS INSURANCE COMPANY,
Appellants,
vs.
FISHER SAND & GRAVEL CO., A NORTH DAKOTA CORPORATION,
Respondent.

No. 69103

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting partial summary judgment, certified as final under NRCP 54(b), in an action seeking contribution and equitable indemnity. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

This matter stems from a vehicle accident that resulted in the deaths of two adults and injuries to their three minor children. The administratrix of the adults' estates (the Estate) and the guardian ad litem for the children (subject children) sued appellant Discount Tire Company of Nevada, Inc. (Discount Tire), and Discount Tire filed a separate suit against respondent Fisher Sand & Gravel Co. (Fisher), seeking contribution and equitable indemnity due to a failure to maintain safety protocols. Subsequently, Discount Tire reached a settlement agreement separately with the Estate and the subject children. Following Discount Tire's settlement agreements, Nevada Department of

Transportation, a nonparty to this appeal, filed a motion for summary judgment in this action, and Fisher joined the motion. The district court granted Fisher partial summary judgment.[1] Discount Tire now appeals, arguing that (1) it has perfected its contribution claim against Fisher pursuant to NRS 17.225(3) as a matter of law, and (2) it and Fisher share a special relationship to support its equitable indemnity claim.[2] We reject Discount Tire's arguments and affirm the district court's order granting Fisher partial summary judgment.

Standard of review

"Summary judgment is appropriate . . . when the pleadings and other evidence on file demonstrate that no genuine issue as to any material fact remains and that the moving party is entitled to a judgment as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (internal quotation marks omitted). "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." *Id.* Still, "the nonmoving party . . . bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts," and "is not entitled to build a case on the gossamer

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[1]The parties are familiar with the material facts here; thus, we will not recount them further, except as necessary to reach our disposition.

[2]The district court's order granting Fisher partial summary judgment was certified as final pursuant to NRCP 54(b) by separate order because the district court found that the resolution of the present matter before this court "could result in the complete dismissal of all of the pending proceedings against the parties that did not yet join in nor bring a Motion for Summary Judgment on their own behalf."

threads of whimsy, speculation, and conjecture." *Id.* at 732, 121 P.3d at 1031 (internal quotation marks omitted). This court reviews a district court's order granting summary judgment de novo. *Id.* at 729, 121 P.3d at 1029.

The district court did not err in holding that Discount Tire failed to perfect its contribution claim against Fisher

First, Discount Tire argues that NRS 17.225(3) unambiguously provides that the liability of a party from whom contribution is sought does not need to be extinguished within the four corners of the settlement agreement. We disagree.

This court reviews questions of statutory interpretation de novo. *See Zohar v. Zbiegien*, 130 Nev., Adv. Op. 74, 334 P.3d 402, 405 (2014). This court must first determine whether the disputed statute is ambiguous. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 125 Nev. 449, 456 215 P.3d 697, 702 (200). If the statutory language is "facially clear," this court must give that language its plain meaning. *Id.* Conversely, a statute is ambiguous if "it is susceptible to more than one reasonable interpretation." *Id.* If the statutory language is ambiguous, "this court will construe a statute by considering reason and public policy to determine legislative intent." *Id.* Additionally, this court will construe multiple legislative provisions as a whole. *See id.* at 456-57, 215 P.3d at 702.

"Contribution is a creature of statute . . . ." *Doctors Co. v. Vincent*, 120 Nev. 644, 650, 98 P.3d 681, 686 (2004). "Under the Nevada statutory formulation, the remedy of contribution allows one tortfeasor to extinguish joint liabilities through payment to the injured party, and then seek partial reimbursement from a joint tortfeasor for sums paid in excess of the settling or discharging tortfeasor's equitable share of the common

liability." *Id.* at 651, 98 P.3d at 686. NRS 17.225(3) provides the right to contribution and states:

> A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor *whose liability for the injury or wrongful death is not extinguished by the settlement* nor in respect to any amount paid in a settlement which is in excess of what was reasonable.

NRS 17.225(3) (emphasis added).

We hold that NRS 17.225(3) is ambiguous as to whether the non-settling tortfeasor's liability must be extinguished (1) as a matter of law, or (2) by explicit terms within the settlement agreement. However, we have previously interpreted NRS 17.225(3) to require an examination of the settlement terms in determining whether a party's liability has been extinguished to perfect a contribution claim.[3] *See Doctors Co.*, 120 Nev. at 652, 98 P.3d at 687 (providing that a settlement between an insurer and insured "*by its terms,* did not extinguish [the agent's] liability," and that "[the] omission [was] fatal to [the insurer's] potential contribution claim as a matter of law" (emphasis added)). Furthermore, this court noted that NRS 17.245(1)(a) supports such a requirement by providing that "a release given in good faith to one of two or more persons liable in tort for the same injury 'does not discharge any of the other tortfeasors from liability . . . *unless its terms so provide.*'" *Id.* at 653 n.16, 98 P.3d at 687 n.16 (quoting NRS 17.245(1)(a)); *see also State, Div. of Ins. v. State Farm*

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[3]We note that NRS 17.225's legislative history does not provide meaningful guidance as to the extinguishment of a non-settling tortfeasor's liability to perfect a contribution claim.

Mut. Auto. Ins. Co., 116 Nev. 290, 295, 995 P.2d 482, 486 (2000) ("[W]hen the legislature enacts a statute, this court presumes that it does so with full knowledge of existing statutes relating to the same subject." (internal quotation marks omitted)). Lastly, because each case presents its own unique set of facts, allowing the liability of a party from whom contribution is sought to be extinguished as a matter of law would create uncertainty when seeking contribution claims. As such, we hold that the liability of a party from whom contribution is sought must be extinguished within the four corners of the settlement agreement.

Here, Discount Tire's settlement agreement with the subject children failed to perfect its contribution claim against Fisher.[4] First, the settlement agreement contained neither specific nor general language relieving Fisher of future claims or liabilities. Second, Discount Tire presented no evidence that the subject children waived any right to pursue Fisher for its alleged negligence due to this incident. Lastly, Discount Tire concedes "that no such express language appears in the settlement documents themselves." Thus, we conclude that no genuine issue of material fact remains regarding Discount Tire's unperfected contribution claim against Fisher, and the district court did not err in concluding that "Discount [Tire] did not properly perfect its contribution claims in order to seek such relief from Fisher."[5]

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[4]Discount Tire argues, and Fisher does not dispute, that the statute of limitations for the Estate's claims against Fisher has run. Thus, any risk of future claims against Fisher would stem from the claims brought on behalf of the subject children.

[5]Both parties also dispute whether (1) Fisher's liability has been extinguished as a matter of law because the statute of limitations for the

continued on next page . . .

The district court did not err in dismissing Discount Tire's equitable indemnity claim

Second, Discount Tire argues that it and Fisher share a special relationship, and thus, the district court erred in dismissing its equitable indemnity claim. We disagree.

"Equitable indemnity, which allows a defendant to seek recovery from other potential tortfeasors, is generally available to remedy the situation in which the defendant, who has committed no independent wrong, is held liable for the loss of a plaintiff caused by another party." *Pack v. LaTourette*, 128 Nev. 264, 268, 277 P.3d 1246, 1248-49 (2012) (internal quotation marks omitted). A claimant seeking equitable indemnity must plead and prove, *inter alia*, that there exists "some nexus or relationship between the indemnitee and indemnitor." *Rodriguez v. Primadonna Co.*, 125 Nev. 578, 590, 216 P.3d 793, 802 (2009). In particular, "there must be a preexisting legal relation between them, or some duty on the part of the primary tortfeasor to protect the secondary tortfeasor." *Pack*, 128 Nev. at 268, 277 P.3d at 1249.

. . . continued

Estate's claim has expired, (2) claim preclusion prevents the subject children from bringing subsequent claims against Fisher, and (3) Discount Tire paid in excess of its equitable share pursuant to NRS 17.225(2). Because we hold that Discount Tire's settlement agreement with the subject children failed to perfect its contribution claim against Fisher, we decline to address these arguments. *See First Nat'l Bank of Nev. v. Ron Rudin Realty Co.*, 97 Nev. 20, 24, 623 P.2d 558, 560 (1981) ("In that our determination of the first issue is dispositive of this case, we do not reach the second issue.").

As an initial matter, we hold that Discount Tire and Fisher are joint tortfeasors, and not successive tortfeasors. *Compare Joint Tortfeasors, Black's Law Dictionary* (10th ed. 2014) (defining joint tortfeasors as "[t]wo or more tortfeasors who contributed to the claimant's injury and who may be joined as defendants in the same lawsuit"), *and* 74 Am. Jur. 2d *Torts* § 64 (2012) (providing that "joint tortfeasors act negligently—either in voluntary, intentional concert, or *separately and independently*—to produce *a single indivisible injury*" (emphases added)), *with Hansen v. Collett*, 79 Nev. 159, 167, 380 P.2d 301, 305 (1963) (providing that successive tortfeasors must produce acts "differing in time and place of commission as well as in nature, [causing] *two separate injuries* [that] gave rise to two distinct causes of action" (emphasis added)), *and Successive Tortfeasors, Black's Law Dictionary* (10th ed. 2014) (defining successive tortfeasors as "[t]wo or more tortfeasors whose negligence occurs at different times and causes *different injuries* to the same third party" (emphasis added)). The parties do not dispute that there was one, indivisible injury suffered by the family. Therefore, Discount Tire must plead and prove that it shared a special relationship with Fisher.

We further hold that Fisher neither had a preexisting legal relationship with Discount Tire, nor a duty to protect Discount Tire's interests. In particular, Discount Tire cites to no authority in support of its proposition that a highway construction company shares a special relationship with everyone who is "relying on the safety of those highways." Thus, we conclude that no genuine issues of material fact exist regarding the district court's conclusion that Discount Tire did not have

privity or a special relationship with Fisher to support an equitable indemnity claim.[6] Therefore we,

ORDER the judgment of the district court AFFIRMED.

_____, J.
Hardesty

_____, J.
Parraguirre

_____, J.
Stiglich

cc: Hon. Rob Bare, District Judge
Craig A. Hoppe, Settlement Judge
Carraway & Associates
Hutchison & Steffen, LLC
Kravitz, Schnitzer & Johnson, Chtd.
Eighth District Court Clerk

---

[6]Discount Tire also argues that (1) even if it and Fisher do not share a special relationship, such a requirement only applies to joint tortfeasors; (2) it and Fisher are successive tortfeasors, not joint tortfeasors; and (3) Nevada caselaw has not applied the equitable indemnification doctrine to successive tortfeasors, and thus, this court should extend the doctrine of equitable indemnity to successive tortfeasors without requiring a special relationship. However, because we hold that Discount Tire and Fisher are joint tortfeasors, and not successive tortfeasors, we need not reach these arguments. *See First Nat'l Bank of Nev.*, 97 Nev. at 24, 623 P.2d at 560.

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

JAMES D. BALODIMAS, M.D., and JAMES D. BALODIMAS, M.D., P.C., LAS VEGAS RADIOLOGY, LLC, a Nevada Limited Liability Company; BRUCE A. KATUNA, M.D.; ROCKYMOUNTAIN NEURODIAGNOSTICS, LLC, a Colorado Limited Liability Company,

Petitioners

vs.

EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark, and the HONORABLE JERRY A. WIESE, District Court Judge,

Respondents,

REPUBLIC SILVER STATE DISPOSAL, INC.; ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, a Nevada Limited Liability Company; JAMES D. BALODIMAS, M.D.; JAMES D. BALODIMAS, M.D., P.C.; DANIELLE MILLER aka DANIELLE SHOPSHIRE; and NEURO-MONITORING ASSOCIATES, INC.,

Real Parties in Interest.

NEVADA SUPREME COURT CASE NO.: 59556

EIGHTH JUDICIAL DISTRICT COURT CASE NO.: A-16-738123-C

PETITIONER LAS VEGAS RADIOLOGY, LLC'S JOINDER TO BRUCE A. KATUNA, M.D. AND ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC'S JOINDER TO JAMES D. BALODIMAS, M.D. AND JAMES D. BALODIMAS, M.D., P.C.'S REPLY TO REPUBLIC SILVER STATE DISPOSAL'S ANSWER TO PETITION FOR WRIT OF MANDAMUS AND TO APPENDIX THERETO

KIM IRENE MANDELBAUM, ESQ.
Nevada Bar No. 318
MARIE ELLERTON, ESQ.
Nevada Bar No. 4581
MANDELBAUM, ELLERTON & ASSOCIATES
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Petitioner/Real Party in Interest
Las Vegas Radiology, LLC

Petitioner Las Vegas Radiology, LLC (Petitioner) by and through its attorneys of record, Kim Irene Mandelbaum, Esq. and Marie Ellerton, Esq., of Mandelbaum, Ellerton & Associates, hereby respectfully submits its Joinder to Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC's Joinder to James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Reply to Republic Silver State Disposal's Answer to Petition for Writ of Mandamus, and Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC's Appendix to Joinder to Reply to Republic Silver State Disposal's Answer to Petition for Writ of Mandamus.

This Joinder is made and based upon the papers and pleadings on file herein submitted with Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC's Joinder to James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Reply to Republic Silver State Disposal's Answer to Petition for Writ of Mandamus and Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC's Appendix to Joinder to Reply to Republic Silver State Disposal's Answer to Petition for Writ of Mandamus, and such other documentary evidence as may be presented and any oral arguments at the time of the hearing of this matter. Petitioner Las Vegas Radiology, LLC hereby adopts the following as set forth in Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC's Joinder to James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Reply to Republic Silver State Disposal's Answer to Petition for Writ of Mandamus, and Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC's Appendix to Joinder to Reply to Republic Silver State Disposal's Answer to Petition for Writ of Mandamus:

I. Introduction;

II. Discussion;

A. Joint vs. Successive Tortfeasors;

B. There is no Right to Contribution Among Successive Tortfeasors;

III. Conclusion, and

Appendix, Order of Affirmance.

Petitioner Las Vegas Radiology, LLC, expressly adopts and incorporates by reference, as if fully set out herein, all of the facts and legal arguments contained therein.

By reason of this joinder, Petitioner Las Vegas Radiology, LLC, requests that the Court grant the Petition for Writ of Mandamus.

DATED this 3rd day of May, 2017

MANDELBAUM, ELLERTON & ASSOCIATES

By: _____
KIM IRENE MANDELBAUM, ESQ.
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MARIE ELLERTON, ESQ.
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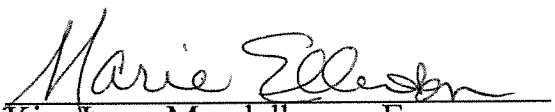
2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Petitioner/Real Party in Interest
Las Vegas Radiology, LLC

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Joinder to Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC's Joinder to James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Reply to Republic Silver State Disposal's Answer to Petition for Writ of Mandamus and to Appendix, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Joinder complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 3rd day of May, 2017.

MANDELBAUM, ELLERTON & ASSOCIATES

By: 

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Marie Ellerton, Esq.
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2012 Hamilton Lane
Las Vegas, Nevada 89106
Attorneys for Petitioner
Las Vegas Radiology, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2017, service of a true and correct copy of the foregoing **Petitioner Las Vegas Radiology, LLC's Joinder to Bruce A. Katuna, M.D. and Rocky Mountain Neurodiagnostics, LLC's Joinder to James D. Balodimas, M.D. and James D. Balodimas, M.D., P.C.'s Reply to Republic Silver State Disposal's Answer to Petition for Writ of Mandamus and to Appendix** was electronically filed and served in accordance with the Master Service List as follows:

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Nevada Department of Justice
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Counsel for Respondent/Real Party in Interest
The Honorable Jerry A. Wiese

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Bruce Katuna, M.D. and Rocky Mountain Neurodiagnostics

Via U.S. Mail
The Honorable Jerry A. Wiese
Eighth Judicial District Court
Department XXX
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
Respondent

Rebecca Oakes
An Employee of *Mandelbaum, Ellerton & Associates*

CLERK OF THE SUPREME COURT
201 SOUTH CARSON STREET
CARSON CITY, NEVADA 89701-4702
(775) 684-1600

JAMES D. BALODIMAS, M.D.; AND JAMES D. BALODIMAS, M.D., P.C., LAS VEGAS RADIOLOGY, LLC, A NEVADA LIMITED LIABILITY COMPANY; BRUCE A. KATUNA, M.D.; AND ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, A FOREIGN LIMITED LIABILITY COMPANY; ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., A/K/A ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
REPUBLIC SILVER STATE DISPOSAL, INC.; DANIELLE MILLER, A/K/A DANIELLE SHOPSHIRE; AND NEUROMONITORING ASSOCIATES,
Real Parties in Interest.

Supreme Court No. 72123
District Court Case No. A738123

NOTICE OF ORAL ARGUMENT SETTING

DATE: September 05, 2017

TO: Lauria Tokunaga Gates & Linn, LLP/Las Vegas \ Anthony D. Lauria
Carroll, Kelly, Trotter, Franzen, McKenna & Peabody \ Robert C McBride
Laxalt & Nomura, Ltd./Las Vegas \ James E. Murphy
Olson, Cannon, Gormley, Angulo & Stoberski \ James R. Olson, Stephanie M. Zinna
Barron & Pruitt, LLP \ David L. Barron
John H. Cotton & Associates, Ltd. \ John H. Cotton, Michael D. Navratil
Mandelbaum, Ellerton & Associates \ Sarah Marie Ellerton

Pursuant to **NRAP 34**, the above-referenced matter is set for oral argument as follows:

Date: October 11, 2017

Time: 11:30 AM

Length: 30 minutes

Location: Las Vegas, NV

BEFORE: Southern Panel 17

Justices Douglas, Gibbons, Pickering

Notification List

Electronic

John H. Cotton & Associates, Ltd. \ John H. Cotton
Barron & Pruitt, LLP \ David L. Barron
Mandelbaum, Ellerton & Associates \ Sarah Marie Ellerton
Lauria Tokunaga Gates & Linn, LLP/Las Vegas \ Anthony D. Lauria
Carroll, Kelly, Trotter, Franzen, McKenna & Peabody \ Robert C McBride
Olson, Cannon, Gormley, Angulo & Stoberski \ James R. Olson
Laxalt & Nomura, Ltd./Las Vegas \ James E. Murphy
Olson, Cannon, Gormley, Angulo & Stoberski \ Stephanie M. Zinna

Paper

John H. Cotton & Associates, Ltd. \ Michael D. Navratil
Hon. Jerry A. Wiese, District Judge

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES D. BALODIMAS, M.D.; AND JAMES D. BALODIMAS, M.D., P.C., LAS VEGAS RADIOLOGY, LLC, A NEVADA LIMITED LIABILITY COMPANY; BRUCE A. KATUNA, M.D.; AND ROCKY MOUNTAIN NEURODIAGNOSTICS, LLC, A FOREIGN LIMITED LIABILITY COMPANY; ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., A/K/A ANDREW MILLER CASH, M.D., P.C.; DESERT INSTITUTE OF SPINE CARE, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE JERRY A. WIESE, DISTRICT JUDGE,
Respondents,
and
REPUBLIC SILVER STATE DISPOSAL, INC.; DANIELLE MILLER, A/K/A DANIELLE SHOPSHIRE; AND NEUROMONITORING ASSOCIATES,
Real Parties in Interest.

No. 72123

FILED

DEC 22 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING PETITION AND DISSOLVING STAY

This is an original petition for a writ of mandamus challenging a district court order denying a motion for summary judgment on the pleadings in a personal injury action involving a claim for contribution.

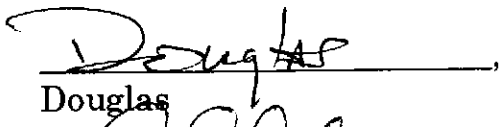
"A writ of mandamus is available to compel the performance of an act that the law requires . . . or to control an arbitrary or capricious exercise of discretion." *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). "[T]he decision to entertain such a petition is addressed to our sole discretion," *Moseley v. Eighth Judicial District Court*, 124 Nev. 654, 658, 188 P.3d 1136, 1140 (2008), and the petitioner bears the burden of demonstrating that extraordinary relief is warranted, *see Manuela H. v. Eighth Judicial District Court*, 132 Nev., Adv. Op. 1, 365 P.3d 497, 501 (2016). Writ relief is not available when there is an adequate and speedy remedy in the ordinary course of the law, and "an appeal from the final judgment typically constitutes an adequate and speedy legal remedy." *Int'l Game Tech.*, 124 Nev. at 197, 179 P.3d at 558; *see also* NRS 34.170.

Petitioners fail to demonstrate that an appeal from the final judgment would not be an adequate remedy.[1] Even if writ relief were available, petitioners do not meet their burden of demonstrating that extraordinary relief is warranted. Petitioners aver that the district court clearly erred by failing to dismiss Republic Silver State Disposal's contribution claim pursuant to NRS 41A.097 and NRS 17.225(3), arguing that any underlying medical malpractice claims against them expired before Republic entered into a settlement agreement extinguishing their liability. However, NRS 17.285(4)(a) provides a one-year statute of limitations for contribution after settlement with a claimant, and this court has held that a contribution claim under NRS 17.285 can be brought

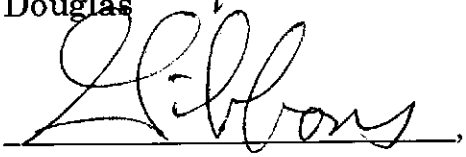
[1]We have also considered Dr. Bruce A. Katuna and Rocky Mountain Neurodiagnostics, LLC's argument regarding joint and successive tortfeasors, and we conclude that extraordinary relief is unwarranted.

notwithstanding the expiration of an underlying medical malpractice claim against the nonsettling tortfeasor under NRS 41A.097. *See Saylor v. Arcotta*, 126 Nev. 92, 96, 225 P.3d 1276, 1279 (2010). Further, while NRS 17.225(3) provides that a settling tortfeasor may not recover contribution if the nonsettling tortfeasor's "liability for the injury . . . is not extinguished by the settlement," this language could be read to only bar contribution recovery if the nonsettling tortfeasor remains liable after the settlement. Because Republic's contribution claim was brought within one year of the settlement agreement, we are not convinced that the district clearly erred by refusing to dismiss Republic's claim. Therefore, we

ORDER the petition DENIED and dissolve the May 31, 2017 stay order.



_____, J.
Douglas



_____, J.
Gibbons

_____, J.
Pickering

cc: Hon. Jerry A. Wiese, District Judge
Olson, Cannon, Gormley, Angulo & Stoberski
John H. Cotton & Associates, Ltd.
Carroll, Kelly, Trotter, Franzen, McKenna & Peabody
Mandelbaum, Ellerton & Associates
Lauria Tokunaga Gates & Linn, LLP/Las Vegas
Barron & Pruitt, LLP
Laxalt & Nomura, Ltd./Las Vegas
Eighth District Court Clerk