

**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.

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Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX

VOLUME VII

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

The Honorable Jerry A. Wiese II

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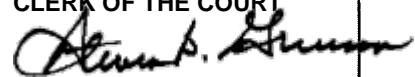
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Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035	03/14/2018	VI	1093-1095

DESCRIPTION	DATE	VOL	PAGES
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Joinder to Las Vegas Radiology's Motion in Limine to Permit Collateral Source Payment Evidence per NRS 42.021	03/20/2018	VI	1096-1098
Plaintiff's Opposition to Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035 and Joinders	03/21/2018	VI	1099-1134
Reply in Support of Defendant Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035	03/28/2018	VI	1135-1144
Plaintiff Republic Silver State Disposal, Inc.'s Opposition to Defendant Las Vegas Radiology's Motion in Limine to Permit Collateral Source Payment Evidence per NRS 42.021	04/02/2018	VI	1145-1152
Reply in Support of Defendant Las Vegas Radiology's Motion in Limine to Permit Collateral Source Payment Evidence per NRS 42.021	04/10/2018	VI	1153-1158
Order Granting Defendant Las Vegas Radiology's Motion to "Cap" Non-Economic Damages per NRS 41A.035 and Joinders to Same	05/14/2018	VI	1159-1164
Notice of Entry of Order	05/15/2018	VI	1165-1173
Second Amended Complaint & Jury Demand	01/30/2019	VI	1174-1186
Certificate of Service of Second Amended Complaint & Jury Demand	01/31/2019	VI	1187-1202
Plaintiff Republic Silver State Disposal, Inc.'s Counter-Motion in Limine to Limit or Exclude Evidence of Medical Liens	02/01/2019	VI	1203-1215
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 Counter-Motion in	02/13/2019	VI	1216-1256

DESCRIPTION	DATE	VOL	PAGES
Limine to Limit or Exclude Evidence of Medical Liens			
Reply in Support of Countermotion in Limine	02/19/2019	VI	1257-1267
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Answer to Plaintiff's Second Amended Complaint	02/20/2019	VI	1268-1284
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Motion for Summary Judgment on an Order Shortening Time	03/05/2019	VII	1285-1325
Opposition to Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Motion for Summary Judgment	03/07/2019	VII	1326-1333
Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Reply in Support of Motion for Summary Judgment on an Order Shortening Time	03/08/2019	VII	1334-1347
Reporter's Transcript of Proceedings Defendant's Motion for Summary Judgment and Motions in Limine	03/11/2019	VII	1348-1377
Order on Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Motions to Compel and Non-Party Deponents Marie Gonzales' Motion for Protective Order on Order Shortening Time	03/13/2019	VII	1378-1385
Notice of Entry of Order on Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC aka Andrew Miller Cash, MD, PC and Desert Institute of Spine Care, LLC's Motions to Compel and Non-Party Deponents Marie Gonzales' Motion for Protective Order on Order Shortening Time	03/13/2019	VII	1386-1395

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



1 **MSJD**

2 ROBERT C. McBRIDE, ESQ.

3 Nevada Bar No.: 7082

4 HEATHER S. HALL, ESQ.

5 Nevada Bar No.: 10608

6 CARROLL, KELLY, TROTTER,

7 FRANZEN, McBRIDE & PEABODY

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14 Attorneys for Defendants,

15 *Andrew M. Cash, M.D.; Andrew M. Cash,*

16 *M.D., P.C.; Andrew Miller Cash, M.D.,*

17 *P.C.; & Desert Institute of Spine Care, LLC*

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

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

22 Plaintiff,

23 vs.

24 ANDREW M. CASH, M.D.; ANDREW M.
25 CASH, M.D., P.C. aka ANDREW MILLER
26 CASH, M.D., P.C.; DESERT INSTITUTE
27 OF SPINE CARE, LLC, a Nevada Limited
28 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

**DEFENDANTS ANDREW M. CASH,
M.D.; ANDREW M. CASH, M.D., P.C.;
ANDREW MILLER CASH, M.D., P.C.; &
DESERT INSTITUTE OF SPINE CARE,
LLC'S MOTION FOR SUMMARY
JUDGMENT ON AN ORDER
SHORTENING TIME**

DATE OF HEARING: 3/11/19

TIME OF HEARING: 1:00 PM

1 Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., aka
2 ANDREW MILLER CASH, M.D., P.C.; and DESERT INSTITUTE OF SPINE CARE, LLC, by
3 and through their counsel of record, Robert C. McBride, Esq. and Heather S. Hall, Esq. of the
4 law firm of Carroll, Kelly, Trotter, Franzen, McBride & Peabody hereby submit their Motion for
5 Summary Judgment on Order Shortening Time and move this Court for summary judgment
6 pursuant to NRCP 56.
7

8 This Motion is made and based on the attached Memorandum of Points and Authorities,
9 the Affidavit of Heather S. Hall, the exhibits attached hereto, and the pleadings and paper already
10 on file, and any other arguments presented to this Court at or before the hearing on this Motion.

11 DATED this 4th day of March, 2019.

12
13 CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY

14 /s/ Heather S. Hall

15

ROBERT C. McBRIDE, ESQ.

16 Nevada Bar No.: 7082


17 HEATHER S. HALL, ESQ.

Nevada Bar No.: 10608

Attorneys for Defendants

18 *Andrew M. Cash, M.D.; Andrew M. Cash,*
19 *M.D., P.C., aka Andrew Miller Cash, M.D.,*
20 *P.C.; & Desert Institute of Spine Care, LLC*
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A handwritten signature in black ink, appearing to be "J. A." or similar, located at the bottom right of the page.

to the 1st day of MARCH, 2019
and Department. Oppositions to this M
a 3/8/19 by Jpu


D

CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

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Andrew Miller Cash, M.D., P.C.;

& Desert Institute of Spine Care, LLC

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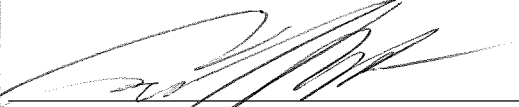
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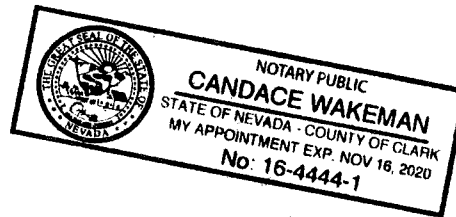
I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NAUGHT.


HEATHER S. HALL, ESQ.

SUBSCRIBED and SWORN to before me
this 4th day of March, 2019.


NOTARY PUBLIC



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 This is a contribution claim filed by Plaintiff, Republic Silver State Disposal, Inc. against
5 Dr. Cash. *See* Pl.'s Second Amd. Compl., attached as **Exhibit "A"**. On September 4, 2013,
6 Marie Gonzales filed suit against Republic for injuries she sustained as a result of a motor
7 vehicle on January 14, 2012. *See* **Exhibit "B"**, Complaint from underlying MVA. Specifically,
8 Ms. Gonzales alleged that she suffered potentially permanent injuries to her neck, back, legs, and
9 arms. *Id.* at ¶18. Ms. Gonzales began treating with Defendant, Andrew M. Cash, M.D. in April
10 2012 for the injuries she suffered as a result of the collision with Republic. On July 6, 2015
11 Plaintiff resolved her claims against Republic for \$2,000,000.00. *See* **Exhibit "A"**, Pl.'s Second
12 Amd. Compl. at ¶55.

13 Plaintiff Republic Silver State Disposal, Inc. filed its Second Amended Complaint on
14 January 30, 2019 asserting a claim for contribution pursuant to Nevada Revised Statute §17.225.
15 *Id.* Republic alleges that as a result of these Defendants' alleged negligence, Ms. Gonzales
16 suffered "new and different injuries from those allegedly suffered in the motor vehicle accident."
17 *See* **Exhibit "A"**, Pl.'s Second Amd. Compl. at ¶56. As a result, Dr. Cash and Republic are not
18 joint tortfeasors and Republic is not entitled to seek contribution from Dr. Cash. As set forth
19 fully below, there are no genuine issues of material fact and summary judgment should be
20 entered in favor of Dr. Cash, Desert Institute of Spine Care, LLC, and Andrew M. Cash, M.D.,
21 P.C.

22 **A. STATEMENT OF UNDISPUTED FACTS**

- 23 1. On September 4, 2013, Marie Gonzales filed a lawsuit against Republic Silver State
24 Disposal arising out of injuries sustained in a January 14, 2012 motor vehicle accident.
25 *See* **Exhibit "B"**.
- 26 2. Ms. Gonzales began treating with Dr. Cash in April 2012 for injuries sustained in the
27 motor vehicle accident. *See* **Exhibit "A"**, Pl.'s Second Amd. Compl. at ¶24.
- 28 3. On July 6, 2015, Ms. Gonzales resolved her claims against Republic for \$2,000,000.00.

1 *Id.* at ¶55.

2 4. Republic filed its Second Amended Complaint on January 30, 2019 asserting a cause of
3 action for contribution against Dr. Cash. *Id.*

4 5. Republic claims that as a result of Dr. Cash's professional negligence, Ms. Gonzales
5 suffered distinct injuries from those sustained as a result of the motor vehicle accident. *Id.*
6 at ¶56.

7 **II.**

8 **LEGAL ARGUMENT**

9 **A. STANDARD FOR SUMMARY JUDGMENT.**

10 Summary judgment is proper if "there is no genuine issue as to any material fact and that
11 the moving party is entitled to judgment as a matter of law." Nev. R. Civ. P. 56(c). A genuine
12 issue of material fact is one that a rational trier of fact could return a verdict for the non-moving
13 party. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). *Busch v.*
14 *Flangas*, 108 Nev. 821, 837 P.2d 438 (1992). Nevada has long recognized that summary
15 judgment is appropriate when, as in this case, "an essential element of a claim for relief is absent,
16 the facts, disputed or otherwise, as to other elements are rendered immaterial and summary
17 judgment is proper." *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588 (1992).
18 Even though the pleadings and proof must be construed in the light most favorable to the non-
19 moving party, the non-moving party must set forth specific facts demonstrating the existence of a
20 genuine issue for trial or have summary judgment entered against the non-moving party. *Collins*
21 *v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983). The
22 nonmoving party bears the burden of showing there is more than "some metaphysical doubt" as
23 to the operative facts in order to avoid summary judgment being entered in the moving party's
24 favor, with more than "gossamer threads of whimsy" needed. *Wood v. Safeway*, 121 Nev. 724,
25 730-31, 121 P.3d 1026 (2005)(Internal citations omitted).

26 Republic cannot establish it is entitled to contribution from Dr. Cash as the parties are not
27 joint tortfeasors. Accordingly, summary judgment is necessary and appropriate.

28 ///

1 **B. REPUBLIC IS NOT ENTITLED TO CONTRIBUTION UNDER NEVADA**
2 **REVISED STATUTE 17.225.**

3 Nevada Revised Statute Section 17.225 governs contribution and provides that:

4 [W]here two or more persons become jointly or severally liable **in tort for the**
5 **same injury** to person or property or for the same wrongful death, there is a right
6 of contribution among them even though judgment has not been recovered against
7 all or any of them.

8 NRS §17.225(1)[emphasis added].

9 Plaintiff alleges that as a result of Dr. Cash's treatment, Ms. Gonzales suffered "new and
10 different injuries" than the injuries she allegedly suffered as a result of the motor vehicle
11 accident. *See* Pl.'s Second Amd. Compl. at ¶56. Accordingly, Dr. Cash cannot be a joint
12 tortfeasor with Republic, a prerequisite to seeking contribution. *See District of Columbia v.*
13 *Washington Hosp. Center*, 722 A.2d 332, 336 (D.C. 1998) (finding that "[a]n essential
14 prerequisite for entitlement to contribution is that the parties be joint tortfeasors in the sense that
15 their negligence concurred in causing the harm.") In *Washington Hospital Center*, a pedestrian
16 was injured by an automobile involved in a high speed chase with police and subsequently filed
17 suit. Before trial, the District settled with the pedestrian and subsequently filed suit against
18 Washington Hospital Center alleging the hospital's negligence exacerbated the pedestrian's
19 injuries. *Id.* at 335. The Court of Appeals held that:

20 [T]he initial tortfeasor and the medical attendant who aggravates the victim's
21 injuries through negligent treatment are not joint tortfeasors, and therefore are not
22 entitled to contribution.

23 *Id.* at 339.

24 Just as in *Washington Hospital Center*, Republic claims that Dr. Cash's allegedly
25 negligent treatment resulted in new and separate injuries than those sustained as a result of the
26 motor vehicle accident. Accordingly, Republic and Dr. Cash are not joint tortfeasors and
27 summary judgment as to Plaintiff's contribution claim is appropriate.

28 **C. REPUBLIC IS LIABLE FOR THE ALLEGEDLY NEGLIGENT TREATMENT**
 RENDERED BY DR. CASH.

 Should this Court disagree that NRS 17.225 is inapplicable here, as an alternative basis
for summary judgment, Republic is legally responsible for all foreseeable harm caused by its

1 negligence and summary judgment is appropriate on that basis. The Restatement 2d of Torts,
2 section 457 states that the damages assessable against an initial negligent actor include not only
3 the injury originally caused by the actor's negligence, but also the harm resulting from medical
4 treatment sought in response to the injury, even if rendered in a negligent manner, it reasonably
5 flows from the initial injury. *See* Rest. 2d Torts § 457. Nevada has approved of this Restatement
6 as demonstrated by Nevada Medical Malpractice jury instruction 9MM.8, which provides:

7 A physician liable for negligent medical treatment or negligence failure to render
8 medical treatment is likewise liable for injury or death resulting from any
9 additional medical treatment to which the patient is exposed as a proximate (legal)
10 result of the original physician's negligence irrespective of whether such
11 subsequent treatment is rendered in a proper or in a negligent manner.

12 The Nevada Supreme Court has recognized that the provisions of Nevada Revised Statute
13 41A apply to contribution claims based on medical malpractice. *See Pack v. Laourette*, 128 Nev.
14 264, 270, 277 P.3d 1246, 1250 (2012) (holding that NRS 41A.071's expert affidavit requirement
15 applies to a contribution claim.) The critical factor in imposing liability where there is alleged
16 subsequent negligent medical treatment is foreseeability. *See Ash v. Mortensen*, 140 P.2d 437,
17 439 (1943); *Blecker v. Wolbart*, 167 Cal. App. 3d 1195, 1201 (Cal. App. 1985); *see also Munoz*
18 *v. Davis*, 141 Cal. App. 3d 420, 190 Cal. Rptr. 400 (1983) ("The important factor in those
19 [medical negligence] cases is that the medical treatment is closely and reasonably associated
20 with the immediate consequences of the defendant's act and forms a normal part of the
21 aftermath.") The Ninth Circuit has long held that "[m]alpractice is a foreseeable result of any
22 medical procedure." *In re Gregely*, 110 F.3d 1448, 1453 (9th Cir. 1997).

23 In this case, Ms. Gonzales was referred to Dr. Cash for treatment due to injuries suffered
24 as a direct result of the motor vehicle accident with plaintiff Republic. Absent the negligence of
25 Plaintiff Republic, Ms. Gonzales would not have been a patient of Dr. Cash's. Low back pain is
26 an inherently foreseeable result of any motor vehicle accident and as such, any treatment
27 rendered by Dr. Cash to treat Ms. Gonzales' low back pain was closely and reasonably
28 associated with the consequences of Republic's actions, for which they are proximately liable.

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1 **D. MS. GONZALES' INJURIES WERE LEGALLY CAUSED BY PLAINTIFF'S**
2 **NEGLIGENCE AND AS SUCH, THEY ARE LIABLE FOR ANY SUBSEQUENT**
3 **ALLEGEDLY NEGLIGENT MEDICAL TREATMENT.**

4 It is a well-settled concept of tort law that an actor is liable for the full extent of injuries
5 he causes that are foreseeable at the time of his action. *See* Rest. 2d Torts § 457. The Court of
6 Appeals of California stated that traditional tort law “holds a tortfeasor liable not only for the
7 victim’s original personal injuries but also for any aggravation caused by subsequent negligent
8 medical treatment, provided the injured party exercised reasonable care in obtaining the medical
9 treatment.” *See Henry v. Superior Court*, 160 Cal. App. 4th, 440, 72 Ca. Rptr. 3d 808 (Cal. App.
10 2008). Ms. Gonzales stated unequivocally in her deposition that there was no doubt in her mind
11 that Mr. Hatcher was at fault for the injuries she suffered as a result of his negligent driving. *See*
12 **Exhibit “C”**, 28:5-11. As a result of back injuries suffered in the motor vehicle accident, Ms.
13 Gonzales was referred to Dr. Cash. *See Exhibit “D”*, 131:16-17. “The law regards the act of the
14 original wrongdoer as a proximate cause of the damages flowing from the subsequent negligent
15 medical treatment and holds [the original tortfeasor] liable therefor.” *See Marina Emergency*
16 *Medical Group v. Superior Court*, 84 Cal. App. 4th 435, 440 (Cal. App. 2000); *citing Ash v.*
17 *Mortensen*, 140 P.2d 437, 439 (1943). As the original tortfeasor in the underlying litigation,
18 Republic is undisputedly liable for the full extent of their negligence, including any subsequent
19 allegedly negligent medical care performed by Dr. Cash in an attempt to remedy the original
20 wrongdoings by Plaintiff.

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III.

CONCLUSION

Based upon the foregoing, Plaintiff Republic is the original tortfeasor and as such, is liable for the full extent of injuries Ms. Gonzales suffered from alleged subsequent negligent medical treatment. Absent the negligence of Republic, Ms. Gonzales would not have been a patient of Dr. Cash and therefore, Defendants respectfully request this Court grant this Motion for Summary Judgment.

DATED this 4th day of March, 2019.

CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY

/s/ Heather S. Hall

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

HEATHER S. HALL, ESQ.

Nevada Bar No.: 10608

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

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 5th day of March, 2019, I served a true and correct
3 copy of the foregoing **DEFENDANTS ANDREW M. CASH, M.D.; ANDREW M. CASH,**
4 **M.D., P.C.; ANDREW MILLER CASH, M.D., P.C.; & DESERT INSTITUTE OF SPINE**
5 **CARE, LLC'S MOTION FOR SUMMARY JUDGMENT ON AN ORDER**
6 **SHORTENING TIME** addressed to the following counsel of record at the following
7 address(es):

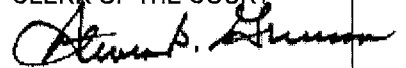
- 8 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of
9 e-service attached to any copy filed with the Court; or
10 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with
11 postage thereon fully prepaid, addressed as indicated on the service list below in the
12 United States mail at Las Vegas, Nevada
13 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number
14 indicated on the service list below.

15 David Barron, Esq.
16 John D. Barron, Esq.
17 BARRON & PRUITT, LLP
18 3890 West Ann Road
19 North Las Vegas, NV 89031
20 *Attorneys for Plaintiff*

21 
22 An Employee of CARROLL, KELLY, TROTTER,
23 FRANZEN, McBRIDE & PEABODY
24
25
26
27
28

EXHIBIT "A"

EXHIBIT "A"



COMJD
DAVID BARRON
Nevada Bar No. 142
JOHN D. BARRON
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jbarron@lvnvlaw.com
Attorneys for Plaintiff
Republic Silver State Disposal, Inc.

DISTRICT COURT
CLARK COUNTY, NEVADA

REPUBLIC SILVER STATE DISPOSAL, INC., Case No.: A-16-738123-C
a Nevada Corporation,

Dept No.: XXX

Plaintiff

vs.

SECOND AMENDED COMPLAINT &
JURY DEMAND

ANDREW M. CASH, M.D.; DESERT
INSTITUTE OF SPINE CARE, LLC, a Nevada
Limited Liability Company; JAMES D.
BALODIMAS, M.D.; 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;
NEUROMONITORING ASSOCIATES; DOES
1-10 inclusive; and ROE CORPORATIONS 1-10
inclusive

Defendants.

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
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,

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

1 Nevada, holding himself out as board certified and specializing in the field of orthopedic and spinal
2 surgery.

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

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

9 5. Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. or
10 ANDREW MILLER CASH, M.D., P.C.; or all of them is a member of Defendant DESERT
11 INSTITUTE OF SPINE CARE, LLC. Moreover Defendants CASH; CASH P.C.; and DESERT
12 INSTITUTE OF SPINE CARE is the agent, partner, joint venturer, employee and alter-ego of the
13 other.

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

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

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

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

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

12. Defendant BRUCE A. KATUNA, M.D. (KATUNA) is and was at times relevant a

1 resident of the state of Colorado. It is further alleged that Defendant KATUNA is and was at times
2 relevant a physician licensed to practice medicine in Nevada as defined by NRS 630.014 and NRS
3 630.020 and that all acts, errors and omissions complained of against Defendant KATUNA occurred
4 in or were directed into the state of Nevada. It is further alleged on information and belief that
5 Defendant KATUNA holds himself out as board certified and a specialist in the field of neurology,
6 and intra-operative neuro-monitoring.

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

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

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

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

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

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

25 19. REPUBLIC is informed, believes, and thereupon alleges that each of the Defendants
26 designated as DOE 1-5 and ROE CORPORATION 1-5, and each of them, is an individual or
27 business entity who is a "health care provider" as defined in NRS 41A.017. Each such fictitiously
28 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

1 damages alleged. Alternatively, DOES 1-5 and ROE CORPORATIONS 1-5 are the owners,
2 operators, employers, employees, joint venturers, alter egos, principals, servants, and/or agents of
3 any or all of the Defendants named herein.

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

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

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

25 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

26 23. All the facts, circumstances, errors and omissions giving rise to the instant lawsuit
27 occurred in Clark County, Nevada.

28 24. On or about April 4, 2012, Gonzalez, began treating with Defendant CASH for

1 injuries to her low back allegedly sustained in the motor vehicle accident of January 14, 2012.

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

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

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

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

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

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

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

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

27 33. Defendant MILLER was retained to perform, or alternatively assigned to perform as
28 the agent Defendant NEUROMONITORING ASSOICATES; DOES 1 and 6, or either of them ;
and/or ROE CORPORATIONS 1 and 6, or either of them, neurophysiological monitoring services

1 in connection with the OLIF procedure described in the preceding paragraphs.

2 34. Defendant MILLER was at all times relevant present in the operating room at Spring
3 Valley Hospital in Clark County, Nevada, providing neurophysiological monitoring services during
4 the described OLIF procedure as it was being performed by Defendant CASH at Spring Valley
5 Hospital on January 29, 2013. Defendant Miller was negligently overseen and supervised in the
6 performance of the described neuromonitoring services by Defendants CASH and KATUNA, or
7 either of them.

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

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

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

1 Emphasis is in the original.

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

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

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

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

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

21 42. A true and correct copy of Defendant LAS VEGAS RADIOLOGY's February 12,
22 2013 report for the CT study of Gonzales' lumbar spine is attached as **EXHIBIT 4**. **EXHIBIT 4**
23 was signed by Defendant BALODIMAS who diagnosed "no evidence of significant mass effect
24 upon the neural foramina by the pedicle screws," and that the "[c]ase was discussed with [Defendant
25 CASH] at time of dictation."

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

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

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

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

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

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

27 47. Notwithstanding the surgery of July 15, 2013, Gonzales suffered lasting injury to the
28 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,

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

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

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

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

- 12 a. Past medical expenses (inclusive of all billings before and after January 29,
13 2013)—\$ 1,108,510.16
- 14 b. Future medical expenses—\$2,980,907.34 to \$3,502,858.34
- 15 c. Loss of future earning capacity—\$297,040.00 to \$549,512.00
- 16 d. Loss of household services—\$431,656.00

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

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

1
2 53. Attached as **EXHIBIT 7** in support of REPUBLIC's allegations is the true and
3 correct declaration under penalty perjury pursuant to NRS 41A.071 of David Seidenwurm, M.D., in
4 which Dr. Seidenwurm states that in his professional opinion Defendant BALODIMAS' treatment
5 of Marie Gonzales was below the standard of care for a radiologist, and gives the reasons therefor.
6 The Seidenwurm declaration is incorporated by reference as if fully set forth herein.

7 54. Attached as **EXHIBIT 8** in support of REPUBLIC's allegations is the true and
8 correct declaration under penalty perjury pursuant to NRS 41A.071 of Gerald Saline, Ph.D., in
9 which Dr. Saline states that in his professional opinion professional and technical neuromonitoring
10 services rendered by Defendants KATUNA and MILLER in the treatment of Marie Gonzales were
11 below the standard of care, and gives the reasons therefor. The Saline declaration is incorporated by
12 reference as if fully set forth herein.

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

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

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

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

28 ///

FIRST CAUSE OF ACTION
(Contribution Against All Defendants)

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

60. 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.

61. Because the Defendants have not paid their equitable share of the common liability, REPUBLIC is damaged in an amount in excess of \$15,000.00.

62. 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.

63. 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
(Misrepresentation of Medical Service and False Billing for Services not Rendered)

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

65. Defendants MILLER and KATUNA claimed to have rendered, in connection with the operative procedure described more fully above, services known as "pedicle screw testing."

66. The purpose of such testing is to identify and detect mal-positioning of surgical instrumentation used in spinal surgery known as "pedicle screws," and to avoid injury to nerve roots which can occur should misplaced pedicle screws enter the neuroforamina.

67. Defendants MILLER and KATUNA each authored reports stating that pedicle screw

1 testing had in fact occurred during the operative procedure described above, and that pedicle screws
2 implanted during the subject procedure were properly positioned. See EXHIBITS 1 & 2.

3 68. REPUBLIC alleges on its best information that such pedicle screw testing services
4 had in fact not been rendered as represented by Defendants MILLER and KATUNA.

5 69. Although such pedicle screw testing had not been performed, Defendants MILLER
6 and KATUNA submitted bills for such services by and through the offices of MILLER's employer,
7 NEUROMONITORING ASSOCIATES, INC. Such bills were based on misrepresentations of fact,
8 and were charges for services not rendered.

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

15 71. Because the Defendants have not paid their equitable share of the common liability,
16 REPUBLIC is damaged in an amount in excess of this Court's jurisdictional minimum.

17 72. It has become necessary for REPUBLIC to bring this action for contribution, and
18 REPUBLIC is therefore entitled to recover attorney's fees and costs incurred.

19 JURY DEMAND

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

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

- 23 1. For general damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00);
- 24 2. For special damages in excess of FIFTEEN THOUSAND DOLLARS (\$15,000.00);
- 25 3. For pre-judgment and post-judgment interest;
- 26 4. For reasonable attorney fees;
- 27 5. For costs of suit; and

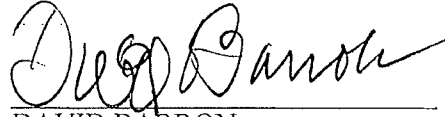
28 ///

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NORTH LAS VEGAS, NEVADA 89031
TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

1 6. For such other and further relief as this Court may deem just and proper.

2 BARRON & PRUITT, LLP

3 

4 DAVID BARRON
5 Nevada Bar No. 142
6 JOHN D. BARRON
7 Nevada Bar No. 14029
8 3890 West Ann Road
9 North Las Vegas, Nevada 89031
10 *Attorneys for Plaintiff*
11 *Republic Silver State Disposal, Inc.*

EXHIBIT "B"

EXHIBIT "B"

CIVIL COVER SHEET

Clark County, Nevada

Case No. _____

(Assigned by Clerk's Office)

A- 13- 687931- C

XX

I. Party Information

Plaintiff(s) (name/address/phone): Marie Gonzalez

Defendant(s) (name/address/phone): Deval Hatcher and Republic Silver State Disposal, Inc.

Attorney (name/address/phone):

Ryan M. Anderson, Esq., Morris Anderson Law, 2001

S. Maryland Pkwy, Las Vegas, NV 89104 (702) 333-1111

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ Arbitration Requested**Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input checked="" type="checkbox"/> Negligence <input checked="" type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

9/4/13

Date

/s/ Ryan M. Anderson

Signature of initiating party or representative


CLERK OF THE COURT

COMP

RYAN M. ANDERSON, ESQ.
Nevada Bar No. 11040
KIMBALL JONES, ESQ.
Nevada Bar No. 12982
MORRIS ANDERSON
2001 S. Maryland Pkwy.
Las Vegas, Nevada 89104
Phone: (702) 333-1111
Fax: (702) 507-0092
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

MARIE GONZALEZ,

Plaintiff,

vs.

DEVAL HATCHER,
REPUBLIC SILVER STATE DISPOSAL,
INC., DOE OWNER, I-V,
DOE DRIVER, I-V, ROE EMPLOYER,
and ROE COMPANIES,

Defendants.

CASE NO:

DEPT. NO:

A- 13 - 687931 - C

XX

COMPLAINT

COMES NOW the Plaintiff, MARIE GONZALEZ, by and through counsel, Ryan M. Anderson, Esq., and Kimball Jones, Esq., of the law firm of MORRIS ANDERSON LAW, and for her causes of action against the Defendants, and each of them, alleges as follows:

1. That Plaintiff, MARIE GONZALEZ (hereinafter referred to as "PLAINTIFF"), was at all times relevant to this action a resident of Clark County, Nevada.
2. Upon information and belief, that at all times relevant to this action, the Defendant, DEVAL HATCHER (hereinafter referred to as "DEFENDANT HATCHER"), is and

1 was a resident of Clark County, Nevada, and was driving the automobile owned by
2 DEFENDANT HATCHER and/or DEFENDANT REPUBLIC SILVER STATE
3 DISPOSAL, INC. and/or DEFENDANT DOE OWNER at the time of the collision.

4 3. That at all times relevant to this action, DEFENDANT REPUBLIC SILVER STATE
5 DISPOSAL, INC. (hereinafter as "DEFENDANT REPUBLIC SILVER STATE"),
6 owned and/or maintained the vehicle driven by DEFENDANT HATCHER and/or
7 DEFENDANT DOE DRIVER described.

9 4. That at all times relevant to this action, DEFENANT DOE DRIVER, was and is a
10 resident of Clark County, Nevada, and was driving the automobile owned by
11 DEFENDANT HATCHER and/or DEFENDANT REPUBLIC SILVER STATE and/or
12 DEFEDANT DOE OWNER at the time of the incident herein described.

14 5. That at all times relevant to this action, DEFENDANT DOE OWNER, was and is a
15 resident of Clark County, Nevada.

16 6. That at all times relevant to this action, DEFENDANT REPUBLIC SILVER STATE
17 and/or DEFENDANT ROE EMPLOYER, was an entity doing business in the State of
18 Nevada and was directing the course and scope of the actions of DEFENDANTS, and
19 each of them, at the time of the incident herein described.

21 7. That at all times relevant to this action, DEFENDANT REPUBLIC SILVER STATE
22 and/or DEFENDANT ROE EMPLOYER was employing DEFENDANTS, and each of
23 them, and each of said DEFENDANTS were acting in the course and scope of said
24 employment at all times relevant to the incident described herein.

26 8. That at all times relevant to this action, DEFENDANT REPUBLIC SILVER STATE
27 and/or DEFENDANT ROE COMPANIES, was an entity doing business in the State of
28

1 Nevada and was directing the course and scope of the actions of DEFENDANTS, and
2 each of them, at the time of the incident herein described.

3 9. That the true names and capacities, whether individual, corporate, partnership, associate
4 or otherwise, of Defendants, DOES I through V and ROES I through V, are unknown to
5 PLAINTIFF, who therefore sues said Defendants by such fictitious names. PLAINTIFF
6 is informed and believe and thereon allege that each of the Defendants designated herein
7 as DOE and ROE are responsible in some manner for the events and happenings referred
8 to and caused damages proximately to PLAINTIFF as herein alleged, and that
9 PLAINTIFF will ask leave of this Court to amend this Complaint to insert the true
10 names and capacities of DOES I through V and ROES I through V, when the same have
11 been ascertained, and to join such Defendants in this action.
12
13

14 10. That upon information and belief, at all times mentioned herein, DEFENDANT
15 HATCHER and/or DEFENDANT DOE DRIVER was the driver of the vehicle owned
16 by DEFENDANT REPUBLIC SILVER STATE and/or DEFENDANT HATCHER
17 and/or DEFENDANT DOE OWNER and was acting in the course and scope of his or
18 her employment with DEFENDANT REPUBLIC SILVER STATE and/or ROE
19 EMPLOYER at the time of the events described herein.
20

21 11. That on or about January 14, 2012, PLAINTIFF was operating and driving a motor
22 vehicle believed to be a 2004 Nissan (hereinafter referred to as "Plaintiff's Vehicle") on
23 the public streets of Clark County, Nevada.
24

25 12. That on or about January 14, 2012, DEFENDANT HATCHER and/or DEFENDANT
26 DOE DRIVER, was operating and driving a motor vehicle believed to be a 2001 Volvo
27
28

1 Trash Compactor Dump Truck (hereinafter referred to as "Defendant's Vehicle") on the
2 public streets of Clark County, Nevada.

3 13. That on or about January 14, 2012, DEFENDANT HATCHER and/or DEFENDANT
4 DOE DRIVER was the operator of Defendant's Vehicle when he or she negligently,
5 recklessly, and carelessly caused the same to collide with Plaintiff's Vehicle.

6
7 14. That upon information and belief, DEFENDANT REPUBLIC SILVER STATE and/or
8 DEFENDANT OWNER negligently entrusted his/her vehicle to Defendants and each of
9 them and/or that DEFENDANT REPUBLIC SILVER STATE and/or DEFENDANT
10 ROE EMPLOYER negligently hired, supervised and/or entrusted a vehicle to
11 Defendants and each of them.

12
13 15. That the collision occurred in Clark County, Nevada.

14 **FIRST CAUSE OF ACTION**

15 16. Plaintiff incorporates by this reference all of the allegations of paragraphs 1 through 15,
16 above, as though completely set forth herein.

17
18 17. That at the time of the accident herein complained of, and immediately prior thereto,
19 Defendants, and each of them, in breaching a duty owed to PLAINTIFF, were negligent
20 and careless, inter alia, in the following particulars:

21 A. In failing to keep Defendant's Vehicle under proper control;

22 B. In operating Defendant's Vehicle without due caution for the rights of the Plaintiff;

23 C. In failing to keep a proper lookout for Plaintiff's Vehicle;

24 D. Negligent entrustment;

25 E. Vicarious liability through the operation of NRS 41.440;

26 F. Respondeat superior;
27
28

1 G. The Defendants, and each of them, violated certain state and local statutes, rules,
2 regulations, codes and ordinances, and PLAINTIFF will pray leave of Court to insert the
3 exact citations at the time of trial.

4 18. By reason of the premises, and as a direct and proximate result of the aforesaid
5 negligence and carelessness of Defendants, and each of them, PLAINTIFF, suffered
6 physical injury and was otherwise injured in and about her neck, back, legs, arms,
7 organs, and systems, and was otherwise injured and caused to suffer great pain of body
8 and mind, and all or some of the same is chronic and may be permanent and disabling,
9 all to her damage in an amount in excess of \$10,000.00.

10 19. By reason of the premises, and as a direct and proximate result of the aforesaid
11 negligence and carelessness of the Defendants, and each of them, PLAINTIFF has been
12 caused to expend monies for medical and miscellaneous expenses, and will in the future
13 be caused to expend additional monies for medical expenses and miscellaneous
14 expenses incidental thereto, in a sum not yet presently ascertainable, and leave of Court
15 will be requested to include said additional damages when the same have been fully
16 determined.

17 20. Prior to the injuries complained of herein, PLAINTIFF was an able-bodied female,
18 capable of being gainfully employed and capable of engaging in all other activities for
19 which PLAINTIFF was otherwise suited. By reason of the motor vehicle accident, and
20 as a direct and proximate result of the negligence of the said Defendants, and each of
21 them, PLAINTIFF was caused to be disabled and limited and restricted in her
22 occupations and activities, which caused PLAINTIFF a loss of wages in an
23 unascertainable amount as of this time, and/or diminution of PLAINTIFF's earning
24
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1 capacity and future loss of wages, all to her damage in a sum not yet presently
2 ascertainable, the allegations of which PLAINTIFF prays leave of Court to insert herein
3 when the same shall be fully determined.

4 21. PLAINTIFF has been required to retain the law firm of MORRIS ANDERSON LAW to
5 prosecute this action, and is entitled to a reasonable attorney's fee.
6

7 WHEREFORE, Plaintiff, expressly reserving the right herein to include all items of
8 damage, demands judgment against the Defendants, and each of them, as follows:

9 FIRST CLAIM FOR RELIEF:

10 1. General damages for Plaintiff, MARIE GONZALEZ, in an amount in excess of
11 \$10,000.00;
12

13 2. Special damages for said Plaintiff's medical and miscellaneous expenses as of this
14 date, plus future medical expenses and the miscellaneous expenses incidental thereto in a
15 presently unascertainable amount;

16 3. Special damages for lost wages in a presently unascertainable amount, and/or
17 diminution of the earning capacity of said Plaintiff, plus possible future loss of earnings and/or
18 diminution of said Plaintiff's earning capacity in a presently unascertainable amount.
19

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1 4. Costs of this suit;

2 5. Attorney's fees; and

3 6. For such other and further relief as to the Court may seem just and proper in the
4 premises.

5 DATED THIS 4th day of September, 2013.
6

7
8 BY /s/ Ryan M. Anderson

9 MORRIS ANDERSON LAW
10 RYAN M. ANDERSON, ESQ.
11 Nevada Bar No. 11040
12 2001 S. Maryland Pkwy.
13 Las Vegas, Nevada 89104
14 Attorneys for Plaintiff
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EXHIBIT "C"

EXHIBIT "C"

In the Matter Of:

Republic Silver State Disposal, Inc. vs Cash, M.D., et al.

MARIE G. GONZALES

January 24, 2019

Job Number: 520840

1 A. That's his opinion.

2 Q. My question was: Were you ever aware of that up
3 until today?

4 A. No.

5 Q. Any doubt in your mind that Republic and its
6 employee Deval Hatcher was responsible for the car
7 accident and the injuries you suffered at the time of
8 the accident?

9 A. Am I in any doubt?

10 Q. Any doubt in your mind?

11 A. No.

12 Q. Okay. So following the accident, I think you
13 testified that you ended up not being able to work and
14 there were periods of time that you didn't have
15 insurance. At any point in time before you filed a
16 District Court complaint against Mr. Hatcher and
17 Republic, did Republic ever offer to pay any of your
18 health care expenses?

19 A. At the time of the accident, I did get a call
20 from them stating that they would be willing to take
21 care of anything that is needed in regards to the
22 accident and my injuries, and that's when I stated that.
23 I said thank you very much, but I have already contacted
24 an attorney so I'm represented. That was the end of
25 that.

EXHIBIT "D"

EXHIBIT "D"



Transcript of the Testimony of
Marie Gonzales

Date Taken: June 19, 2014

Case: Marie Gonzales vs. Deval Hatcher Republic Silver
State Disposal, Inc., et al.

Case No.: A-13-687931-C

Las Vegas Reporting
7583 Salvadora Pl, Las Vegas, Nevada 89113
Phone: 702.509.5001 Fax: 702.974.2242
Email: scheduling@lvreporting.com

1 Services. And I believe I could have went either Monday
2 or Tuesday the following week.

3 Q. In terms of your frequency of treatment, were
4 you going a couple times a week, once a week, what do
5 you recall?

6 A. Three times a week.

7 Q. Was that treatment helping?

8 A. No.

9 Q. Were you getting worse?

10 A. I didn't feel like I was getting better.

11 Q. What happens next then? Did you get referred
12 to anywhere else, to any other doctors?

13 A. Yes.

14 Q. Who was the next doctor? So you're treating
15 with the chiropractor --

16 A. I am seeing Dr. Bernard, and he refers me to
17 Dr. Cash.

18 Q. What is your understanding as to the type of
19 doctor Dr. Cash is?

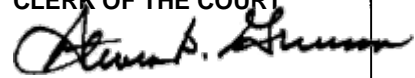
20 A. He's a doctor that works on spinal surgery.

21 Q. Did Dr. Cash refer you anywhere?

22 A. To continue -- yes, he referred me to pain
23 management with Dr. Coppel.

24 Q. What office did you go to for Dr. Coppel?

25 A. The one he has on Charleston.



1 **OPP**
2 **DAVID BARRON, ESQ.**
3 Nevada Bar No. 142
4 **JOHN D. BARRON, ESQ.**
5 Nevada Bar No. 14029
6 **BARRON & PRUITT, LLP**
7 3890 West Ann Road
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12 *Attorneys for Plaintiff*
13 *Republic Silver State Disposal, Inc.*

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 **REPUBLIC SILVER STATE DISPOSAL, INC.,**
11 **a Nevada Corporation,**

12 **Plaintiff**

Case No.: A-16-738123-C

Dept. No.: XXX

13 **vs.**

14 **ANDREW M. CASH, M.D.; ANDREW M.**
15 **CASH, M.D., P.C. aka ANDREW MILLER**
16 **CASH, M.D., P.C.; DESERT INSTITUTE OF**
17 **SPINE CARE, LLC, a Nevada Limited Liability**
18 **Company; JAMES D. BALODIMAS, M.D.;**
19 **JAMES D. BALODIMAS, M.D., P.C.; LAS**
20 **VEGAS RADIOLOGY, LLC, a Nevada Limited**
21 **Liability Company; BRUCE A. KATUNA, M.D.;**
22 **ROCKY MOUNTAIN NEURODIAGNOSTICS,**
23 **LLC, a Colorado Limited Liability Company;**
24 **DANIELLE MILLER aka DANIELLE**
25 **SHOPSHIRE; NEUROMONITORING**
26 **ASSOCIATES, INC., a Nevada Corporation;**
27 **DOES 1-10 inclusive; and ROE**
28 **CORPORATIONS 1-10 inclusive**

Defendants.

OPPOSITION TO DEFENDANTS M.
CASH, M.D., ANDREW M. CASH, M.D.,
P.C., ANDREW MILLER CASH, M.D.,
P.C., AND DESERT INSTITUTE OF
SPINE CARE, LLC'S MOTION FOR
SUMMARY JUDGMENT

Date: March 11, 2019
Time: 2:00 p.m.

22 Plaintiff REPUBLIC SILVER STATE DISPOSAL, INC. (Republic), by and through its
23 counsel BARRON & PRUITT, LLP, hereby submits the following in opposition to Defendant
24 ANDREW CASH, M.D.'S *Motion for Summary Judgment.*

25 //

26 ///

27 //

BARRON & PRUITT, LLP
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TELEPHONE (702) 870-3940
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JA 1326

MEMORANDUM OF POINTS AND AUTHORITIES

The Court is well aware of the facts and legal intricacies this contribution action presents. Facts pertinent to this opposition to the Cash defendants pending motion for summary judgment are:

- Republic Silver State Disposal paid \$2 million to settlement Marie Gonzales' lawsuit against it and its former employee, Deval Hatcher; and
- The release terminating the Gonzales v. Hatcher action contained express verbiage that, in addition to releasing itself and Mr. Hatcher, Republic's \$2 million was also extinguishing any claims Ms. Gonzales had against any of her health care providers arising from treatment for injuries she claimed to have suffered in the January 14, 2012.

This Court over two years ago made the legal determination that the Gonzales/Republic release did indeed extinguish claims against Ms. Gonzales' health care providers for treatment arising from the 2012 traffic accident, thus satisfying the predicate under NRS 17.225(2), that:

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.

See also 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 nor in respect to any amount paid in a settlement which is in excess of what was reasonable.")¹

In this motion for summary judgment the Cash defendants argue in the alternative that either: a) they and Republic are not "jointly and severally liable in tort for the same injury," and therefore Republic's contribution claim is invalid under NRS 17.225(1); or b) Republic's contribution claim under NRS 17.225 is invalid because its liability to Ms. Gonzales was co-extensive with Dr. Cash'

¹ This court also resolved the timeliness of the contribution action by finding that Republic commenced its lawsuit within 1 year of paying the "common liability." NRS 17.285(4)(b). The Nevada Supreme Court refused issuance of an extraordinary writ to the effect that Republic's contribution claim was governed by NRS 17.285(4), and not the "3 years from injury/1 year from discovery" limitations period for medical "professional negligence" found at NRS 41A.097. See Balodimas v. Dist. Ct., 2017 WL 6597149; see also Saylor v. Arcotta, 126 Nev. 92, 225 P.3d 1276 (2010).

1 liability since his medical negligence was reasonably foreseeable. See Restatement (2d) of Torts §457,
2 discussed below.

3 Neither argument supports summary judgment under Rule 56.

4 The core rationale for inapplicability of the Uniform Contribution Among Tortfeasors Act,
5 (UCATA), NRS 17.225, et seq., is that Republic's pleading alleges Ms. Gonzales suffered "new and
6 different injuries" than those suffered in the traffic accident because of Dr. Cash's treatment, therefore
7 "Dr. Cash cannot be a joint tortfeasor with Republic." Motion p. 8. This is sophistry: The "new and
8 different" injury is what bottoms this case—Dr. Cash, in treating injuries supposedly incurred in the
9 January 2012 accident, botched his (arguably unnecessary) surgery by misplacing two pedicle screws
10 that, after almost six months, irreparably damaged Ms. Gonzales' left L5 and S1 nerve roots. So the
11 post-operative, chronic radiculopathy she suffered was "new" in the sense that it was not caused by
12 the accident; and "different" because her post-operative symptomatology was certainly different than
13 what had gone before.

14 That said, the motion cites the District of Columbia Court of Appeals decision of District of
15 Columbia v. Washington Hospital Center, 722 A.2d 332 (1998), to support a dispositive ruling. That
16 case is distinguishable on several levels.

17 There, the plaintiff was carrying her young child when they were injured by a vehicle involved
18 in a high-speed chase with a District of Columbia (the District) police officer. Prior to trial the District
19 settled with the plaintiff and then filed suit against Washington Hospital Center (WHC) contending
20 that the District's settlement also contemplated WHC, and that it was entitled to contribution to extent
21 of WHC's aggravation of the initial injury.

22 The hospital filed a dispositive motion contending contribution under the District's law could
23 only occur among "joint tortfeasors" and that the settlement "made impossible the determination of
24 joint or any other liability." Id., 335. In upholding summary judgment, the D.C. Court of Appeals *en*
25 *banc* held contribution was unavailable because the District "acknowledged it is **not** a joint tortfeasor
26 with WHC 'in the classic' sense'," and that "the injuries allegedly caused [the plaintiff] by WHC's
27 negligence are separate and distinct from those she sustained in the automobile accident." Id., 337;
28 (emphasis added).

1 Unlike Nevada, D.C. had no contribution statute. Rather, its law of contribution was entirely
2 judge-made, and provided only for *pro rata* contribution among the joint tortfeasors. In fact, D.C.'s
3 jurisprudence did not "recognize[] degrees of negligence***[thus] contribution is apportioned equally
4 among all tortfeasors." *Id.*, 336. So simply stated, D.C.'s law of contribution was distinctly different
5 than Nevada's, which is defined by statute; permits distribution of a "common liability" based on
6 "equitable shares" among responsible parties based on their relative liabilities; and is not just a
7 mechanical distribution solely dependent on the number of tortfeasors.²

8 District of Columbia v. Washington Hospital Center's holding for the proposition that an
9 "initial tortfeasor and the medical assistant who aggravates the victim's injuries***are not joint
10 tortfeasors, and therefore not entitled to contribution," see Motion, p.8, is founded in no small part on
11 D.C.'s rule against liability based on relative degrees of fault among defendants, and by extension, the
12 relative fault of the party seeking contribution *vis-a-vis* that of the party from whom it is sought:

13 To the extent that the District's claim is for contribution for only that portion of the
14 damages associated with medical negligence, it appears to seek apportionment of
15 liability based on comparative negligence principles. Apportionment based on
16 comparative negligence is contrary to the contribution rules which have developed
17 through our precedents.

18 Id., 339.³

19 ² When it was first adopted by the State Legislature in 1973, the Uniform Contribution Among Tortfeasors Act also
20 apportioned contribution liability *pro rata*. See 1973 Statutes of Nevada, p.1303. The UCATA was amended in 1979,
21 replacing the arithmetic "pro rata" distribution scheme with division based on "equitable share[s] of the common
22 liability," thus implicating relative degrees of fault when apportioning the loss via contribution. See 1979 Statutes of
23 Nevada, p. 1978. The 1979 "equitable shares" amendment to the UCATA now must be read in multiple defendant cases
24 with the comparative negligence statute, NRS 41.141(4), providing that "each defendant is severally liable to the
25 plaintiff only for that portion of the judgment which represents of negligence attributable to him," and with NRS
26 17.285(5) that the "judgment of the court in determining the liability of the several defendants to the claimant for an
27 injury or wrongful death shall be binding as among such defendants in determining their right to contribution."

28 ³ Nor did District of Columbia v. Washington Hospital Center ever say what injury suffered in the underlying accident
had been aggravated by the hospital's malfeasance. Instead the court simply explained its decision by saying:

Here, Ms. Bringier's cause of action against the District arose out of an automobile accident, while the
hypothetical cause of action of Ms. Bringier against WHC would be grounded upon medical
negligence. Thus, the District and WHC engaged in no concurrent tortious action which caused Ms.
Bringier's injury. **Moreover, their independent torts did not combine to produce a single harm.**
Rather, it was the District's theory in the trial court that the injuries caused Ms. Bringier by WHC's
negligence were separate and distinct from those caused by the automobile accident. Since the District
and WHC are not joint tortfeasors whose tortious conduct concurred in causing an indivisible harm, it
is not entitled to recover under a contribution theory.

Id.; (emphasis added).

1 In contrast, NRS 17.225 requires that the party seeking contribution to have extinguished a
2 “common liability” shared by itself and the contribution defendant.⁴ Was there such a “common
3 liability” here? There certainly was.

4 The Cash defendants’ reliance on Restatement (2d) of Torts §457 (“Additional Harm Resulting
5 from Efforts to Mitigate Harm Caused by Negligence”) as a basis for summary judgment seems
6 entirely misplaced. It provides the well-known rule that:

7 If the negligent actor is liable for another's bodily injury, he is also subject to liability
8 for any additional bodily harm resulting from normal efforts of third persons in
9 rendering aid which the other's injury reasonably requires, **irrespective of whether**
10 **such acts are done in a proper or a negligent manner.**

11 Emphasis added.

12 If Republic had tried Gonzales v. Hatcher it takes no stretch to see that plaintiff’s counsel in
13 that underlying action would have argued—in all likelihood, successfully—Ms. Gonzales’ post-
14 operative chronic radiculopathy was an “additional bodily harm,” id., for which Republic was
15 responsible. And because it became increasingly clear as the Gonzales case progressed that the
16 radiculopathy was caused by the length of time the malpositioned pedicle screws had remained in
17 place, a more crystalline example of a “common liability” shared by a “negligent actor” and a “third[]
18 person rendering aid” (negligently or otherwise), id., is hard to imagine. Said differently, the Cash
19 malpractice was a damage multiplier that Republic’s contribution action is intended to equitably
20 address.⁵

21 ⁴ NRS 17.225(1) states the predicate relationship between the party seeking contribution, and the party from whom
22 contribution can be rightfully sought, as arising where “two or more persons become jointly or severally liable in tort for
23 the same injury to person or property or for the same wrongful death.” See also NRS 17.295 (“In determining the
equitable shares of the tortfeasors in the entire liability...(b) Principles of equity applicable to contribution generally
apply”).

24 ⁵ See Section 457, *comment a*:

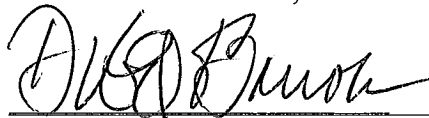
25 *a. Additional harm from hospital or medical treatment.* The situation to which the rule stated in this Section is
26 usually applicable is where the actor's negligence is the legal cause of bodily harm for which, even if nothing
27 more were suffered, the other could recover damages. These injuries require the other to submit to medical,
28 surgical, and hospital services. The services are so rendered as to increase the harm or even to cause harm
which is entirely different from that which the other had previously sustained. In such a case, the
damages assessable against the actor include not only the injury originally caused by the actor's
negligence but also the harm resulting from the manner in which the medical, surgical, or hospital
services are rendered, irrespective of whether they are rendered in a mistaken or negligent manner, so
long as the mistake or negligence is of the sort which is recognized as one of the risks which is inherent in
the human fallibility of those who render such services.

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1 Whether a jury will agree with Republic's position is a fact question. But there definitely is
2 sufficient evidence for a jury to consider whether Republic did indeed pay more than its "equitable
3 share" of the "common liability." The motion for summary judgment should therefore be denied.

4 Respectfully submitted,

BARRON & PRUITT, LLP



David Barron

Nevada Bar No. 142

John D. Barron

Nevada Bar No. 14029

3890 West Ann Road

North Las Vegas, NV 89031

Attorneys for Plaintiff

28 _____
Emphasis added.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of March, 2019, I served the foregoing
**OPPOSITION TO DEFENDANTS M. CASH, M.D., ANDREW M. CASH, M.D., P.C.,
ANDREW MILLER CASH, M.D., P.C., AND DESERT INSTITUTE OF SPINE CARE, LLC'S
MOTION FOR SUMMARY JUDGMENT** 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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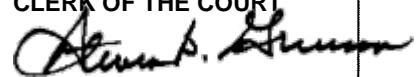
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/s/ MaryAnn Dillard

An Employee of BARRON & PRUITT, LLP



RPLY

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*Andrew M. Cash, M.D.; Andrew M. Cash,
M.D., P.C.; Andrew Miller Cash, M.D.,
P.C.; & Desert Institute of Spine Care, LLC*

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: XXX

**DEFENDANTS ANDREW M. CASH,
M.D.; ANDREW M. CASH, M.D., P.C.;
ANDREW MILLER CASH, M.D., P.C.; &
DESERT INSTITUTE OF SPINE CARE,
LLC'S REPLY IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
ON AN ORDER SHORTENING TIME**

DATE OF HEARING: 3/11/2019

TIME OF HEARING: 2:00 P.M.

JA 1334

1 Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., aka
2 ANDREW MILLER CASH, M.D., P.C.; and DESERT INSTITUTE OF SPINE CARE, LLC, by
3 and through their counsel of record, Robert C. McBride, Esq. and Heather S. Hall, Esq. of the
4 law firm of Carroll, Kelly, Trotter, Franzen, McBride & Peabody hereby submit their Reply in
5 Support of Motion for Summary Judgment on Order Shortening Time and move this Court for
6 summary judgment pursuant to NRCP 56.
7

8 This Reply is made and based upon the papers and pleadings on file herein, the
9 Memorandum of Points and Authorities attached hereto, any other evidence that the Court deems
10 just and proper and any argument of counsel which may be heard at the time of the hearing of the
11 Motion.
12

13 DATED this 8th day of March, 2019.

14 CARROLL, KELLY, TROTTER,
15 FRANZEN, McBRIDE & PEABODY

16 /s/ Heather S. Hall

17 ROBERT C. McBRIDE, ESQ.

18 Nevada Bar No.: 7082

19 HEATHER S. HALL, ESQ.

20 Nevada Bar No.: 10608

21 Attorneys for Defendants

22 *Andrew M. Cash, M.D.; Andrew M. Cash,*

23 *M.D., P.C., aka Andrew Miller Cash, M.D.,*

24 *P.C.; & Desert Institute of Spine Care, LLC*
25
26
27
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 In its Second Amended Complaint filed on January 30, 2019, Republic alleges “[a]s a
5 direct and proximate result of Defendants’ negligence, gross negligence, recklessness, and failure
6 to use due care Gonzalez [sic] suffered new and different injuries from those allegedly suffered
7 in the motor vehicle accident of January 14, 2012.” See Pl.’s Second Amd. Compl. at ¶56.
8 Plaintiff’s Opposition acknowledges its theory in this case, consistent with the allegations
9 asserted in the Second Amended Complaint, is that these Defendants caused new injuries not
10 caused by the motor vehicle accident Ms. Gonzales had with Republic on January 14, 2012. See
11 *Plf’s Opp.*, 3:4 – 13. Plaintiff’s admission that these Defendants are not joint tortfeasors, by
12 definition, renders contribution inapplicable.

13 Plaintiff asks this Court to focus on what would “likely” have occurred had Republic
14 proceeded to trial with Ms. Gonzales. See *Plf’s Opp.*, 5: 11 – 19. This is pure speculation.
15 Plaintiff Republic did not go to trial on Ms. Gonzales’s claims. Whether her counsel would have
16 used the “additional bodily harm” Republic claims was caused by her medical care, to maximize
17 the damages against Republic is unlikely, but more significantly, unknown. Given that the
18 damages Marie Gonzales claimed solely as a result of Republic’s negligence were in excess of
19 \$5 million, the \$2 million dollar settlement compromised the damages against Republic for its
20 own negligence. Speculation on how Ms. Gonzales’s counsel may have maximized her jury
21 verdict against Republic has no bearing on the legal issues before this Court. Had Republic
22 chosen to proceed to trial on Marie Gonzales’s claims rather than enter into a voluntary
23 settlement, many things could have happened, including a verdict in favor of Republic in the
24 underlying personal injury case.

25 This is a contribution claim filed by Plaintiff, Republic Silver State Disposal, Inc. against
26 Dr. Cash. See Pl.’s Second Amd. Compl. On September 4, 2013, Marie Gonzales filed suit
27 against Republic for injuries she sustained as a result of a motor vehicle crash on January 14,
28 2012. See Exhibit “A” to Motion for Summary Judgment. Specifically, Ms. Gonzales alleged

1 that she suffered potentially permanent injuries to her neck, back, legs, and arms. *Id.* at ¶18. Ms.
2 Gonzales began treating with Defendant, Andrew M. Cash, M.D. in April 2012 for the injuries
3 she suffered as a result of the collision with Republic. On July 6, 2015 Plaintiff resolved her
4 claims against Republic for \$2,000,000.00. *See* Pl.’s Second Amd. Compl. at ¶55.

5 Plaintiff Republic Silver State Disposal, Inc. filed its Second Amended Complaint on
6 January 30, 2019 asserting a claim for contribution pursuant to NRS17.225. Republic alleges
7 that, as a result of these moving Defendants’ negligence, Ms. Gonzales suffered “new and
8 different injuries from those allegedly suffered in the motor vehicle accident.” *See* Pl.’s Second
9 Amd. Compl. at ¶56. As a result, Dr. Cash and Republic are not joint tortfeasors and Republic is
10 not entitled to seek contribution from Dr. Cash or his related entities. As set forth fully below,
11 there are no genuine issues of material fact and summary judgment should be entered in favor of
12 Dr. Cash, Desert Institute of Spine Care, LLC, and Andrew M. Cash, M.D., P.C.

13 II.

14 LEGAL ARGUMENT

15 **A. PLAINTIFF CANNOT DEMONSTRATE A GENUINE ISSUE OF MATERIAL** 16 **FACT EXISTS TO DEFEAT SUMMARY JUDGMENT.**

17 Plaintiff’s Opposition asks the Court to violate Nevada Rule of Civil Procedure 56 and
18 rely on inadmissible evidence to overcome summary judgment. Nevada has long recognized that
19 “a trial court may not consider hearsay or other inadmissible evidence when considering
20 summary judgment.” *Russ v. GMC*, 111 Nev. 1431, 1435, 906 P.2d 718, 720 (1995). Plaintiff’s
21 Opposition does not cite to any record, deposition, or other admissible evidence to demonstrate
22 there is a genuine issue of material fact as to whether Defendants are joint tortfeasors, a
23 necessary element of Republic’s contribution claim. Instead, Plaintiff relies on its self-serving
24 and speculative argument of counsel. *Jain v. MacFarland*, 109 Nev. 465, 475, 851 P.2d 450,
25 475-476 (1993) (“Arguments of counsel are not evidence and do not establish the facts of the
26 case.”) Plaintiff now argues that “the Cash malpractice was a damage multiplier.” *See* Pl.’s
27 Opp. at 5:18-19. This statement contradicts the allegations in Plaintiff’s Complaint and said
28 argument is not admissible evidence that can create a genuine issue of material fact under NRC
56. Accordingly, summary judgment must be entered in favor of these Defendants

1 **B. THERE IS NO CLAIM FOR EQUITABLE INDEMNITY.**

2 Plaintiff has not alleged a claim for equitable indemnity. In Nevada, the doctrine of
3 equitable indemnity only allows a party “to seek recovery from other potential tortfeasors” when
4 they have committed no independent wrong, but are nonetheless held liable for the loss another
5 party caused a plaintiff. *Pack v. LaTourette*, 128 Nev. 264, 268, 277 P.3d 1246, 1249 (2012).
6 However, “where a party has committed an ‘independent wrong,’ and is thus actively negligent,
7 that party has no right to indemnity from other tortfeasors.” *Id.*

8 At no time during this contribution action has Republic asserted a claim for equitable
9 indemnity. Further, Republic has never taken the position that it committed no independent
10 wrong. Thus, equitable indemnity is not applicable here and does not give rise to a genuine issue
11 of material fact sufficient to defeat summary judgment.

12 **C. PLAINTIFF’S ONLY REMAINING CLAIM IS FOR CONTRIBUTION AND IT**
13 **FAILS AS A MATTER OF LAW.**

14 “The right of contribution does not arise without a finding that the party seeking
15 contribution is a joint tortfeasor along with the party from whom contribution is sought.”
16 *George Washington University v. Bier*, 946 A.2d 372 375 (D.C. Ct. App. 2008) (finding that a
17 defendant physician and defendant university were not joint tortfeasors so as to enable the
18 university to bring an action for contribution against the physician). Just like in the District of
19 Columbia, in Nevada, an action for contribution only exists “where two or more persons become
20 jointly or severally liable in tort for the same injury to a person. NRS 17.225(1) [emphasis
21 added].

22 “Contribution is a creature of statute” in Nevada. *Doctors Co. v. Vincent*, 120 Nev.
23 644, 650, 98 P.3d 681, 686 (2004). “Under the Nevada statutory formulation, the remedy of
24 contribution allows one tortfeasor to extinguish joint liabilities through payment to the injured
25 party, and then seek partial reimbursement from a joint tortfeasor for sums paid in excess of the
26 settling or discharging tortfeasor's equitable share of the common liability.” *Id.* at 651, 98 P.3d
27 at 686.

28 Plaintiff attempts to distinguish *District of Columbia v. Washington Hosp. Center*, 722
A.2d 332, 336 (D.C. 1998) without success. Republic argues that the District of Columbia’s

1 right of contribution was solely judge-made and not statutory. Illogically, Republic contends
2 that Nevada's statute requiring "common liability" to recover for contribution somehow differs
3 from the District of Columbia's prerequisite that parties be joint tortfeasors in causing the same
4 harm to an injured party before a right of contribution can legally exist. *See Plf's Opp.*, 4:1 – 7.
5 These requirements are exactly the same and the fact that one is created by statute and one is not
6 statutory is no distinction at all. Both require that the parties be joint tortfeasors to seek
7 contribution.

8 *Pack v. LaTourette*, is factually and legally distinguishable from the circumstance in front
9 of this Court. The Supreme Court did not substantively decide whether Plaintiff had a valid
10 contribution claim. Rather, the court was deciding whether a contribution claim premised on
11 medical malpractice was subject to the threshold expert affidavit requirement as set forth in NRS
12 41A.071. Unlike in *Pack*, here Republic does not allege that Defendants' medical care
13 aggravated any injuries suffered by Ms. Gonzales during the January 14, 2012 car crash.
14 Instead, Plaintiff, through its expert Dr. Tung, has alleged that Ms. Gonzales had only some low
15 axial back pain and neck sprain/strain following the crash with Republic. *See Exhibit "A"*,
16 pages 62 – 63.

17 Plaintiff further contends that Dr. Cash's medical care was negligent and caused Ms.
18 Gonzales to suffer new injuries in the form of new findings of radiculopathy and chronic pain
19 following Dr. Cash's January 29, 2013 surgery. *Id.* at 72:3 – 18. Plaintiff does not allege the
20 radiculopathy and chronic pain were caused by the Republic crash and Dr. Cash's care
21 exacerbated these injuries. Plaintiff alleges these were new, independent injuries solely caused
22 by Dr. Cash's negligent medical care. While Defendants deny all allegations of medical
23 malpractice and resultant injury, for purposes of this Motion for Summary Judgment, accepting
24 these allegations as true, they are legally insufficient to state a claim for contribution. Plaintiff
25 does not have a legal right to seek contribution against these Defendants for the new,
26 independent harm allegedly caused by the medical care.

27 It is a fundamental principle of tort law that, in order to be joint tortfeasors, the parties'
28 negligence must have concurred in causing the harm to the injured party. Allowance of

1 contribution is premised upon each tortfeasor being responsible for a single injury. The Nevada
2 Supreme Court has considered the issue of joint tortfeasors and successive tortfeasors in the
3 context of a contribution claim. *Disc. Tire Co. of Nev. v. Fisher Sand & Gravel Co.*, 2017 Nev.
4 Unpub. LEXIS 235, 400 P.3d 244 (holding that two parties were joint tortfeasors, not successive
5 tortfeasors). In *Disc. Tire Co.*, the tire company was sued following a vehicle accident that
6 resulted in the deaths of two adults and injuries to three minor children. *Id.* at *2. Discount Tire
7 then filed suit against the Nevada Department of Transportation and a company doing
8 improvements on the road, Fisher Sand & Gravel Co., alleging they had failed to maintain safety
9 protocols. *Id.* Both parties were granted summary judgment and Discount Tire only appealed
10 the summary judgment as to Fisher Sand & Gravel. *Id.*

11 In considering the argument that the parties were successive, not joint tortfeasors, the
12 Court discussed the definitions of those terms:

13 *Compare Joint Tortfeasors, Black's Law Dictionary* (10th ed. 2014) (defining
14 joint tortfeasors as “[t]wo or more tortfeasors who contributed to the claimant’s
15 injury and who may be joined as defendants in the same lawsuit”), and 74 Am.
16 Jur. 2d Torts § 64 (2012) (providing that “joint tortfeasors act negligently—either
17 in voluntary, intentional concert, or ***separately and independently***—to produce a
18 ***single indivisible injury***” (emphases added)), with *Hansen v. Collett*, 79 Nev.
19 159, 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)).

20 *Id.* at *7.

21 In reaching its holding, the Supreme Court focused on the fact that there was no dispute
22 that there was one, indivisible injury suffered by the family. *Id.* at *8. Thus, the Court concluded
23 the tire company and gravel company were joint tortfeasors causing the same injury. *Id.*

24 Here, the undisputed facts are that Republic does not contend Dr. Cash’s medical care
25 caused the same injury as the crash with Republic. Republic alleges Dr. Cash’s medical care
26 caused a new, independent injury from the injuries Ms. Gonzales suffered during the January 14,
27 2012 car crash. Where each tortfeasor causes a separate and distinct injury to the victim, as
28 Republic alleges here, they are **successive tortfeasors**. In the absence of a joint tortfeasor

1 relationship, there is no legal basis for allowing Republic to recoup a proportionate share from
2 Dr. Cash for harm which he did not contribute to. By its own allegations, Republic does not
3 claim that these Defendants are joint tortfeasors with Republic. Republic cannot establish it is
4 entitled to contribution from Dr. Cash as the parties are not joint tortfeasors. Accordingly,
5 summary judgment is necessary and appropriate.

6 **D. THESE DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT.**

7 Even though the pleadings and proof must be construed in the light most favorable to the
8 non-moving party, the non-moving party must set forth specific facts demonstrating the
9 existence of a genuine issue for trial or have summary judgment entered against him. *Collins v.*
10 *Union Federal Savings and Loan Association*, 99 Nev. 284, 294, 662 P.2d 610, 618-619; See
11 also *Hoopes v. Hammargren*, 102 Nev. 425, 429, 725 P.2d 238, 241 (1986). To defeat
12 Defendants' Motion for Summary Judgment, Plaintiff must demonstrate a genuine issue of
13 material fact that supports its contention that it has a legal right to bring a contribution claim for
14 the new, independent injuries they allege were suffered by Ms. Gonzales as a result of the
15 medical care. They have not done so.

16 In *Nevada Power Co. v. Monsanto Co.*, 891 F. Supp. 1406 (D. Nev. 1995), the Nevada
17 U.S. District Court stated that:

18 Once the moving party has met its burden of demonstrating the absence of
19 any genuine issue of material fact, the nonmoving party must set forth
20 specific facts showing that there is a genuine issue for trial. The opposing
21 party may not defeat a motion for summary judgment in the absence of any
22 significant probative evidence tending to support its legal theory. The
23 nonmoving party cannot stand on its pleadings, nor can it simply assert that
24 it will be able to discredit the movant's evidence at trial. If the nonmoving
25 party fails to assert specific facts, beyond the mere allegations or denials in
26 its response, summary judgment, if appropriate, shall be entered. There is
27 no genuine issue of fact if the opposing party fails to offer *evidence*
28 *sufficient to establish the existence of an element to that party's case.*

891 F. Supp. at 1413. [Internal citations omitted; emphasis added].

Republic has failed to offer any evidence sufficient to establish that Republic and these
Defendants are joint tortfeasors, an essential element of its claim for contribution. Because
Republic asserts Defendants caused new and independent injuries, its contribution claim fails as

1 a matter of law and summary judgment is appropriate. NRS 17.225.

2
3 **III.**

4 **CONCLUSION**

5 Based upon the foregoing, Defendants are entitled to summary judgment on Republic's
6 contribution claim. Republic alleges that these Defendants caused a new and independent harm
7 to Ms. Gonzales, not that these Defendants were jointly responsible for the same injuries as
8 Republic.

9 DATED this 8th day of March, 2019.

CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY

10
11 */s/ Heather S. Hall*

12

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

13 HEATHER S. HALL, ESQ.

Nevada Bar No.: 10608

14 Attorneys for Defendants

15 *Andrew M. Cash, M.D.; Andrew M. Cash,*

16 *M.D., P.C., aka Andrew Miller Cash, M.D.,*

P.C.; & Desert Institute of Spine Care, LLC

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 8th day of March, 2019, I served a true and correct
3 copy of the foregoing **DEFENDANTS ANDREW M. CASH, M.D.; ANDREW M. CASH,**
4 **M.D., P.C.; ANDREW MILLER CASH, M.D., P.C.; & DESERT INSTITUTE OF SPINE**
5 **CARE, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON**
6 **AN ORDER SHORTENING TIME** addressed to the following counsel of record at the
7 following address(es):

- 8 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of
9 e-service attached to any copy filed with the Court; or
10 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with
11 postage thereon fully prepaid, addressed as indicated on the service list below in the
12 United States mail at Las Vegas, Nevada
13 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number
14 indicated on the service list below.

14 David Barron, Esq.
15 John D. Barron, Esq.
16 BARRON & PRUITT, LLP
17 3890 West Ann Road
18 North Las Vegas, NV 89031
19 *Attorneys for Plaintiff*

20 

21 An Employee of CARROLL, KELLY, TROTTER,
22 FRANZEN, McBRIDE & PEABODY
23
24
25
26
27
28

EXHIBIT A

EXHIBIT A

1 gets --

2 Q And not to interrupt you, Doctor, but I just
3 want to make sure you have my question in mind. I'm
4 focusing on the year 2012.

5 So for that period of time, you do recall
6 seeing in Dr. Coppel's notes she had left leg pain
7 extending to the foot; is that correct?

8 A Yes.

9 Q Now, did you consider that information in
10 formulating your opinions in this case?

11 A Yes.

12 Q And you mentioned at the outset that one of
13 the things you were tasked with in this case as part of
14 your retention was to formulate opinions on causation,
15 and part of that included causation from the garbage
16 truck accident, true?

17 A Yes.

18 Q And what opinions did you form regarding
19 injuries suffered by Ms. Gonzales as a result of that
20 car accident?

21 A Well, I think that Ms. Gonzales had primarily
22 axial back pain. I don't believe she had a true
23 radiculopathy, and I think her back pain would have
24 been best treated with medical supportive care.

25 Q Any other injuries you believe Marie Gonzales

1 suffered as a result of the car accident she had with
2 Republic?

3 A Well, I think that there were also some
4 complaints of neck pain initially, and I think that was
5 probably more of a sprain/strain, in my opinion,
6 although she continued to have some complaints of
7 chronic neck pain as well in that same time frame I
8 think you asked me, 2012 time period. I think she also
9 had pain there.

10 Q Any other injuries?

11 A I think it was primarily neck and axial low
12 back pain.

13 In fact, as -- since you pointed out
14 Dr. Coppel's notes, he also agreed it was primarily
15 axial low back pain. He uses it in many of his notes.

16 Q Any other injuries that you believe she
17 suffered as a result of the garbage -- the garbage
18 truck accident?

19 A No.

20 Q You stated all of those to me already?

21 A You asked what my review would have -- I think
22 that my review is different than what is noted in the
23 notes. I think that they went on to diagnose --

24 Q I'm sorry.

25 A You asked me a very open-ended question, so

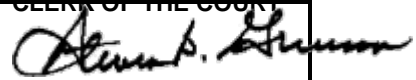
1 of your declaration you talk about the spinal cord --
2 I'll let you get there. I'm sorry. It's Paragraph 10,
3 Page 2. And you talk about that, you know, your
4 opinion that she would not have required placement of a
5 spinal cord stimulator, and then you talk about to
6 which the malpositioned placement of the pedicle screw
7 contributed when you're talking about her chronic pain
8 and radiculopathy.

9 So I just wanted to know do you believe
10 anything else contributed to the chronic pain and
11 radiculopathy you're referring to in this report?

12 A There's nothing really that I can think of
13 that would have contributed significantly. If there
14 are any contributing factors, I believe they would be
15 trivial. I believe that the substantial factor -- when
16 I say contributed to it, I mean it is the substantial
17 contributing factor to her pain and radiculopathy
18 postoperatively.

19 Q The trivial factors that you refer to, what
20 are you referring to?

21 A I can't think of any, but what I want to do is
22 allow for other people and other experts if they have
23 other factors, my belief is that those other factors
24 would be considered trivial relative to what I believe
25 the substantial factor for her new and worsened



DISTRICT COURT
CLARK COUNTY, NEVADA

REPUBLIC SILVER STATE)
DISPOSAL, INC.,)
Plaintiff,) CASE NO. A738123
vs.) DEPT. NO. XXX
ANDREW M. CASH, M.D.,)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND
MOTIONS IN LIMINE
BEFORE THE HONORABLE JERRY A. WIESE, II
MONDAY, MARCH 11, 2019
AT 2:30 P.M.
LAS VEGAS, NEVADA

REPORTED BY: KIMBERLY A. FARKAS, NV CCR No. 741

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2
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25

1 LAS VEGAS, NEVADA, MONDAY, MARCH 11, 2019

2
3 P R O C E E D I N G S

4 * * * * *

5
6 **THE COURT:** A738123. *Republic Silver State*
7 *State v. Cash.* I got a whole bunch of stuff. I just
8 actually got something handed to me as I got back, a
9 motion to intervene from Physicians Casualty Risk
10 Retention Group. That's a little late; right?

11 **MS. ZINNA:** Your Honor, Stephanie Zinna, on
12 behalf of Physicians Casualty Retention Risk Group.
13 Yes, we just got retained by them to come in as
14 coverage counsel. I believe Friday we got the
15 go-ahead. And today was the best day I could do,
16 working over the weekend on it. Your ruling from the
17 6th is what triggered the need for this.

18 **THE COURT:** And if I allow this, you
19 anticipate that that would move our trial date,
20 obviously, that's scheduled for next week?

21 **MS. ZINNA:** The quicker you can hear it, the
22 quicker I can get what I need to get on file, but, yes,
23 we might be having to ask you to push some things out.

24 **THE COURT:** Mr. Barron, what do you think
25 about staying this and letting the Supreme Court give

1 us some guidance?

2 **MR. BARRON:** I think it's a terrible idea.

3 **THE COURT:** I figured.

4 **MR. BARRON:** And I'll tell you -- and I'm
5 only half in jest. Last time we saw you, and I know
6 we're seeing you way too much, you said that this is
7 eventually going to be resolved by the Supreme Court in
8 some fashion. It's an appealable issue. We got a
9 trial coming up next week. It may be obviated. How do
10 I know what's gonna happen in that trial? But, for
11 sure, there's going to be a record. And I think as an
12 appealable issue -- that's what happened to us last
13 time around, frankly. When the writ was taken, the
14 Supreme Court said, look, we've got law on this, and
15 this is something you should probably bring after trial
16 as an appeal if you need to.

17 **THE COURT:** But we don't have law on this
18 issue.

19 **MR. BARRON:** We sure don't. And that was one
20 of the things that I wanted to raise with you. You got
21 an order. And, frankly, I signed off on it, and then I
22 thought, you know what, that's not really the order
23 that I think you gave from the bench.

24 **THE COURT:** I haven't seen it. Did I sign it
25 yet?

1 **MR. BARRON:** No. I hope you haven't because
2 I've got another one I'd like you to look at anyway.
3 And it was pretty clear --

4 **THE COURT:** Give me a second.

5 **MS. HALL:** I have a signed copy, but it's not
6 the original signatures. It's got my signature and
7 David Barrons' signature.

8 **THE COURT:** Let me take a look at it.

9 **MS. HALL:** Sure. May I approach, Your Honor?

10 **THE COURT:** Yeah.

11 **MR. BARRON:** Well, for some reason, I brought
12 the wrong order.

13 **MS. HALL:** So what happened is on Thursday,
14 because I am not trying to delay this trial and this
15 issue any longer than needs to be, I went ahead and
16 prepared a draft order. I sent it over to Mr. Barron
17 on Thursday, I believe, or Wednesday, and he had a
18 change. I made that change. He approved it. He
19 signed off on it.

20 And then when I sent it down for Your Honor's
21 signature, I also served a courtesy copy of my
22 forthcoming motion for a stay on order shortening time
23 on Mr. Barron. And then I received an email some hours
24 later that he no longer believed my order was accurate.

25 **THE COURT:** Could you forward me a copy of

1 this in Word?

2 **MS. HALL:** Yes.

3 **MR. BARRON:** And I have an alternative.

4 **THE COURT:** What's your alternative?

5 **MR. BARRON:** I think you were trying to
6 express something that's not in that order. That was
7 the concern that I had.

8 **THE COURT:** Well, I want to give the Supreme
9 Court a little bit more guidance than what's in this
10 order. Because my real challenge is trying to apply
11 all parts of the professional negligence statutes. And
12 I think, based on the facts and circumstances as they
13 are and because this is a subrogation claim and the
14 injured party is not the plaintiff, I think that
15 precludes me from applying certain portions of certain
16 professional negligence statutes. And if the Supreme
17 Court gives me guidance and says, no, this is how you
18 apply them, I'm fine with that. But I don't see how I
19 can apply, especially the second part of 42.021,
20 because the plaintiff doesn't get any benefit from the
21 42.021 application when the plaintiff is not the party
22 that has benefited from insurance proceeds. That's my
23 biggest concern in applying any of them. Because if I
24 can't apply 42.021, how do I apply 41A.035 and some of
25 the other ones.

1 And I want to make sure that the Supreme
2 Court gives me the guidance that I need. If they
3 remand it back to me and tell me to do the trial, I'm
4 fine with that. They just need to give me some
5 guidance how to apply the statute in the specific facts
6 of this case.

7 So I'm inclined at this point to -- here's
8 the problem. I can't grant the stay until there's a
9 writ filed. And I'll tell you why I don't do that.
10 Because -- and you may or may not have been at the med
11 mal sweep that this happened, but I had a party who
12 asked me at one med mal sweep to stay the litigation
13 because a writ was being filed. And then six months
14 later, the writ had still not been filed and we're that
15 much closer to the three-year rule and the five-year
16 rule expiring. So I kind of made it my policy after
17 that to not grant a stay until there's a writ filed.

18 So what I would probably do in this case
19 would be to reserve ruling on that motion until you
20 notify me that the writ is filed and show me some proof
21 that the writ has been filed. And then I will probably
22 grant the stay. Because I don't think it's fair to
23 either side to make you do anything in the interim
24 while we're waiting for the Supreme Court to tell me
25 how these statutes are going to be applied. And I

1 don't like the idea of continuing a firm med mal trial.

2 **MS. HALL:** But it's not a med mal case.

3 **THE COURT:** I know.

4 **MS. HALL:** Over my wishes, but -- and I say
5 that in all seriousness.

6 **THE COURT:** I know. But I did give you a
7 firm trial date based in part on the fact that I was at
8 least applying 41A.

9 **MS. HALL:** Right. And now, two weeks before
10 trial, and as I said at the hearing last time we were
11 here, I don't fault the Court because, you're right,
12 there is no instruction yet from the Supreme Court on
13 this issue and how this plays out in the context of a
14 contribution claim. But the new issue that has arisen
15 as a result of the changing landscape is 41A.045 and
16 whether I'm going to be permitted to include others on
17 the verdict form if there's evidence of negligence of
18 other medical providers.

19 As Your Honor knows, in that Caruzi
20 (phonetic) case, that was a new issue that was decided
21 by the Supreme Court. And I really think that were we
22 to go to trial without those issues decided, it could
23 potentially be a huge waste of resources on everyone's
24 part.

25 But the other issue is I have the writ. I'd

1 say I need maybe a couple more hours and it's ready to
2 go. I just can't procedurally --

3 **THE COURT:** You need the order?

4 **MS. HALL:** Exactly.

5 **THE COURT:** I know. And I want to make sure
6 that the order contains enough guidance and expresses
7 my frustration based on -- and the issues that I'm
8 dealing with in my head trying to apply the statutes,
9 so that when the Supreme Court remands it, they don't
10 just say, it's remanded because you have adequate
11 remedy of law. That doesn't help us.

12 **MS. HALL:** Right.

13 **THE COURT:** We need some guidance one way or
14 the other.

15 **MR. BARRON:** May I give this to you?

16 **THE COURT:** Sure.

17 **MR. BARRON:** Thank you.

18 **THE COURT:** Have you looked at his proposed
19 order?

20 **MS. HALL:** I did.

21 **MR. BARRON:** She got it on Friday.

22 **THE COURT:** You don't like his?

23 **MS. HALL:** No. It has --

24 **MR. BARRON:** Judge, I'm not sure anybody is
25 going to like anybody's. And I tend to agree with you.

1 If something is going to show up in front of the
2 Supreme Court fairly soon, you know, be clear.

3 **MS. HALL:** I don't have a problem with that.
4 There's just a lot of case law that's mentioned in his
5 order that's never been mentioned in any filing ever in
6 this case.

7 **THE COURT:** I don't know that I went over all
8 of this.

9 **MR. BARRON:** Well, I'm not sure you did
10 either. I'm just trying to get to someplace that I
11 thought you were trying to get to. And, you know,
12 that's one of the frustrations I think we're all
13 dealing with is -- but I did talk about 42.021.

14 **THE COURT:** You did.

15 **MR. BARRON:** I did try and get to that.

16 **THE COURT:** Why don't we do this. If you
17 guys could both email me a copy of your proposed orders
18 in Word. Let me do my own order. I'll let you know
19 when it's ready. I'm going to try to do it like -- if
20 you can get the orders to me right now.

21 **MS. HALL:** My assistant is getting it right
22 now.

23 **MR. BARRON:** If I can get online, I could
24 send it to you.

25 **THE COURT:** I'm going to try to do an order

1 before the end of the day. Because I want an order
2 filed so that you can file your writ so that I can
3 issue the stay. I can't vacate the trial date until
4 there's a stay in place. But I'll do an order granting
5 the stay by minute order. And at that time I'll vacate
6 the trial date as well. Don't get your experts ready.

7 **MR. BARRON:** I've got them all lined up.
8 They've been paid.

9 **THE COURT:** I know. I'm sorry.

10 And as far as the motion to intervene, that
11 may not be necessary if the Supreme Court tells me I
12 was wrong last week. So let's hold off on all of it.

13 **MS. ZINNA:** Your Honor, if I may, we still
14 would like to intervene for the purposes of joining the
15 writ and being able to be a part of all those
16 proceedings because it affects our interest in the
17 matter.

18 **THE COURT:** Do you care if they intervene?

19 **MR. BARRON:** Can I think about it at least
20 overnight? I'd like to talk to Ms. Zinna about it
21 anyway.

22 **THE COURT:** That's fine.

23 **MR. BARRON:** You're putting me on the spot,
24 Judge.

25 **THE COURT:** That's okay.

1 **MR. BARRON:** I'd love to be accommodating.
2 The last time I did that, here I am giving you a
3 different order. I'd just like a moment to think about
4 it.

5 **THE COURT:** That's okay. She's obviously
6 going to take a position that's adverse to your client.
7 Whether she does it now or later, that position is
8 probably going to be asserted. I don't know that it's
9 necessarily a bad thing to get as many issues as we can
10 in front of the Supreme Court as soon as we can. So --

11 **MR. BARRON:** If I could --

12 **THE COURT:** I think you all know me and you
13 know I'm not the kind of judge -- my ego is not in the
14 way here. I need help.

15 **MR. McBRIDE:** I'm sorry, Judge?

16 **MR. BARRON:** My ego is not in the way. I
17 just need some guidance and help from the Supreme
18 Court.

19 **MS. ZINNA:** Your Honor, did you want to sign
20 the OST on that and maybe we can come back tomorrow or
21 the next day, give Mr. Barron some time to think about
22 it. And then that way, I can get it filed? I've
23 already given everybody a copy.

24 **THE COURT:** When do you want to set it for?

25 **MS. ZINNA:** I can come back at any time.

1 **THE COURT:** You're not going to be able to
2 get in on her filing of the writ because that's going
3 to happen before we have a hearing on this anyway. You
4 want to file a joinder?

5 **MS. ZINNA:** I'd like it heard before,
6 obviously, the stay is issued. Then I'm kind of out of
7 luck on that. So if we could possibly do it in the
8 next couple days, that way, when she files the writ, I
9 can join the writ if it's granted.

10 **MR. BARRON:** I'll try to give you a yea or
11 nea very quickly.

12 **THE COURT:** We don't have a calendar on
13 Wednesday.

14 **MR. McBRIDE:** Ms. Hall will not be here then,
15 but I'll be here.

16 **THE COURT:** We don't have calendar then.
17 I've got mock trials all day. You guys okay with me
18 doing it on a chamber calendar?

19 **MR. BARRON:** Sure, Judge. Whatever.

20 **THE COURT:** I'll just do it on briefing.
21 Let's put it on -- I'll put it on for Wednesday,
22 March 13th at 3:00 o'clock a.m.

23 **MR. BARRON:** 3:00 a.m?

24 **THE COURT:** Chambers calendar.

25 **MR. BARRON:** You really don't want to see us.

1 **THE COURT:** If we have a chambers calendar,
2 that's the time that it gets set for.

3 **MR. BARRON:** I think that's smart.

4 **THE COURT:** I'm just putting it on the 18th
5 at 3:00 a.m. on chambers calendar. I'll give you this
6 back.

7 **MS. ZINNA:** May I approach?

8 **THE COURT:** Yep. So you can get that filed.

9 **MR. BARRON:** As soon as you have a moment, if
10 I can get your email address, I'll just send this now.

11 **THE COURT:** I don't have a copy now of that
12 motion to intervene.

13 **MS. ZINNA:** I have a copy for Your Honor.

14 **THE COURT:** You may want to give me that,
15 since we're trying to do this real quick. Email
16 address, wiesej@clarkcountycourts.us.

17 **MR. BARRON:** Very good. Thank you.

18 **THE COURT:** Okay. So I think all of the
19 other pending motions -- the motion for summary
20 judgment is too late. I didn't even read that. It's
21 not timely under the rule for dispositive motions so I
22 didn't even look at that.

23 But I did look at all the motions in limine,
24 but I don't want to rule on those yet.

25 **MS. HALL:** In the order, Your Honor, in

1 January, when we did the joint motion to extend
2 discovery deadlines, that was included in the order.
3 The deadline for dispositive motions was extended to
4 March the 4th.

5 **THE COURT:** Really?

6 **MS. HALL:** Yes. I agree it was a scramble
7 for me to get the motion ready and my 12 motions in
8 limine.

9 **THE COURT:** I looked at the motions in
10 limine. I did not look at the summary judgment motion.

11 **MS. HALL:** It's up to Your Honor.

12 **THE COURT:** Without even looking at it, I can
13 tell you I think there are genuine issues of material
14 fact, but I'll look at it and read it before I rule on
15 it.

16 **MS. HALL:** Okay. I think that might need to
17 be ruled on before the writ because while there might
18 be genuine issues of material fact, with regard to the
19 issue that's raised by the motion for summary judgment,
20 I don't think that there is.

21 **THE COURT:** Tell me what the issue is.

22 **MS. HALL:** It's about joint versus successive
23 tortfeasors. And the allegation from Republic in this
24 case is that Dr. Cash caused a new and independent
25 injury because of his allegedly negligent medical care.

1 That's successive tortfeasors. As a matter of law, you
2 can't have a contribution claim in the context of a
3 successive tortfeasor. You have to be jointly liable
4 for the same injury.

5 And so they say that restatement of torts
6 doesn't apply because the surgery we did had nothing to
7 do with the car accident. Either it wasn't needed at
8 all or it was needed because of other injuries she had
9 experienced throughout her life. It wasn't medical
10 care rendered as a result of the injury caused by
11 Republic. That is insufficient as a matter of law to
12 state a contribution claim. You cannot have
13 contribution under existing Nevada law -- there's
14 actually case law on this issue. You can't have a
15 contribution claim when you are a successive
16 tortfeasor, and that is the allegation here.

17 **THE COURT:** Okay. Mr. Barron, you want to
18 argue that? With the understanding that I haven't read
19 the motion or the opposition yet.

20 **MR. BARRON:** Yeah, and I appreciate it. Just
21 as kind of a preview. Big difference between
22 successive tortfeasors and contribution in this case.
23 The reason that we filed a contribution case is that
24 Dr. Cash, whatever liability he had, we paid for it.
25 And this is very clear in the briefing. Successive

1 liability is -- and this is straight out of the
2 restatement. I wish I put the example as a comment.
3 Under the restatement, if there is an exaggeration or
4 some new injury done by a physician or somebody
5 treating the individual who was injured, the original
6 wrongdoer is on the hook, so many words.

7 One of the examples they give is that the
8 original tortfeasor hurts the plaintiff. Plaintiff
9 goes in for treatment. I can't remember if they were
10 in the OR or something. But the patient is allowed to
11 fall off the gurney. Successive tortfeasor, totally
12 different stuff.

13 Our case is a surgery that went wrong that we
14 wound up paying for in terms of its damage. That's the
15 big difference. You look curious.

16 **THE COURT:** It's an interesting issue. I
17 don't know that I've had it before. Go ahead.

18 **MS. HALL:** I'll try to be brief. What the
19 restatement says, and Mr. Barron quotes this in his
20 opposition, is that the original tortfeasor is on the
21 hook when the negligent medical care is given while
22 rendering aid which the other's injury reasonably
23 requires. Republic, through its many experts in this
24 case, contends that no injury from the crash
25 necessitated Dr. Cash's surgery. Either it wasn't

1 needed at all or it was needed for some other reasons,
2 degenerative issues that she experienced throughout her
3 life.

4 As a result of the Republic crash, their
5 expert says all she had was some low back axial pain
6 and some neck strain. That doesn't require a surgery.
7 So that, right there, takes it out of the restatement
8 situation where you would have the original tortfeasor,
9 Republic, on the hook for any negligent care given by
10 Dr. Cash.

11 **THE COURT:** So based on his argument, you
12 think the restatement doesn't apply? But I'm almost
13 willing to bet that Dr. Cash's records say that the
14 surgery that he did was related to the accident.

15 **MR. BARRON:** You'd win.

16 **MS. HALL:** That might be, but the point is,
17 Your Honor, that taking the evidence in the light most
18 favorable to Republic, they have never contended at any
19 point in this case through any admissible evidence,
20 through experts or any other sort of admissible
21 evidence, that Dr. Cash's surgery exacerbated an injury
22 experienced from the crash. They claim that his
23 surgery wasn't needed because of the crash and it
24 caused new and independent injuries. That's paragraph
25 56 of their second amended complaint. And that's

1 exactly what Dr. Tong, their surgeon expert, testified
2 to when he was deposed on January the 25th. That there
3 was no radiculopathy, there was no chronic pain that
4 she experienced from the injuries from the Republic
5 crash. This was all new findings that were an
6 independent, different injury caused by Dr. Cash.

7 And if you look -- and I have a copy for
8 Your Honor and opposing counsel. But one of the cases
9 that I cite in the motion is this Discount Tire case
10 that's an unpublished 2017 Nevada Supreme Court case.
11 And they talk about what it means to be a joint
12 tortfeasor versus a successive. And they talk about
13 that you are joint if the negligence concurs in causing
14 the same injury. You're a successive tortfeasor if the
15 negligence occurs at different times and causes
16 different injuries. That's exactly what we have.

17 This is a year and some weeks later. This is
18 factually distinguishable from the situation that
19 Mr. Barron described where you get into a car accident,
20 you're immediately taken to the hospital, and you fall
21 off the gurney and you allege that there was an
22 exacerbation or some further injury that is so
23 interchangeable and so intertwined with the original
24 injury.

25 This is a year and a couple weeks after the

1 car accident that was with Republic. This is not a
2 situation where you immediately go and get care that is
3 reasonably required by the original injury from the car
4 accident. It's completely different.

5 **THE COURT:** It's completely different if I
6 buy their argument as opposed to the medical records.

7 **MS. HALL:** Well, I don't think that -- that's
8 what their theory of this case is. This is what
9 Republic has put forth for the last two years,
10 Your Honor. They don't have -- all of their experts
11 say the surgery was unrelated to the car accident.

12 **THE COURT:** Why did your experts all say
13 that?

14 **MR. BARRON:** Sorry. She's wrong. You're
15 right; Dr. Cash did say whatever he did was related to
16 the accident. It's right in his record.

17 **THE COURT:** I'm sure that's what he says.

18 **MR. BARRON:** Absolutely.

19 **THE COURT:** But you don't have anybody that
20 agrees with that; right?

21 **MR. BARRON:** Beg your pardon?

22 **THE COURT:** You don't have anybody that
23 agrees with that?

24 **MR. BARRON:** It's not the issue of whether
25 they agree with it. The issue is did he operate; okay.

1 And the reason he operated was because of the accident.
2 That's clear.

3 **THE COURT:** But she's saying that you allege
4 exactly the opposite of that.

5 **MR. BARRON:** No. May I? Here's what the
6 restatement says: "Situation in this section, usually
7 applicable where actor's negligence is the legal cause
8 of bodily harm for which if nothing more were suffered
9 the other could recover damages." Okay. That's us.

10 "These injuries require, on the other hand --
11 or the other to submit to medical, surgical, and
12 hospital services."

13 Now, here's the hard part, for them, I think,
14 to get over. "Services are so rendered as to increase
15 the harm or even to cause harm which is entirely
16 different from that which the other had previously
17 sustained."

18 That's what happened here. You can't divorce
19 the operation that he did from the fact that he put two
20 pedicle screws where they didn't belong and that she
21 suffered permanent radiculopathy because of it. It's
22 inseparable. You can't take one away from the other.
23 And the reason he did that was, according to him, it
24 was necessitated by the accident.

25 Now, do our guys think that he misdiagnosed

1 it in that sense? Yeah, they think it was a hip
2 injury. Did they think it was below the standard of
3 care for him to operate? Absolutely not. That's not
4 what they testified to.

5 So the issue here is you got additional
6 damage caused by the initial injury. And that, you
7 know, the restatement, this is comment A, it goes on
8 and talks about whether it was done appropriately or
9 negligently. I mean, that's us.

10 **MR. McBRIDE:** Would you like that case?

11 **THE COURT:** Sure. So you're probably not
12 going to get an order today. It's probably going to be
13 tomorrow if you want this incorporated in it.

14 **MS. HALL:** As much as I don't want to delay
15 things any further, I do think it's important -- I want
16 to try and consolidate everything to the extent that
17 that's possible.

18 **THE COURT:** I agree with you. So let me --
19 I'm going to try to issue a ruling on the summary
20 judgment and an order from last week's hearing. Once
21 you get those things, you'll be in a position to file
22 your writ. Once you inform me or show you that you
23 filed the writ, then I'll do an order on the stay.

24 **MR. McBRIDE:** Would you like us to just email
25 a courtesy copy of the writ? I guess you're going to

1 get copied on it anyway when it gets filed.

2 **THE COURT:** I don't know. Just let me know.
3 If I'm not automatically copied on it, just send me a
4 courtesy copy of it so that I know that it's filed.
5 That will prompt me to do something on the stay.

6 I'll just reserve on the stay for today. And
7 I'm going to continue everything else until we know
8 what's going to happen.

9 **MR. McBRIDE:** Okay.

10 **THE COURT:** And I also need to do something
11 on the motion to intervene on Wednesday; right?

12 **MR. McBRIDE:** Yes. In chambers.

13 **THE COURT:** So, Mr. Barron, if you're going
14 to do something in opposition to that, can you get it
15 to me tomorrow?

16 **MR. BARRON:** Sure. Yeah, I'll get it to you.
17 I'm going to have to make some calls, obviously. Would
18 I be safe in saying it doesn't look like we're going on
19 Monday?

20 **THE COURT:** Yep. I think it doesn't make
21 sense to make you guys put on a whole trial and then
22 have the Supreme Court tell me that I needed to apply
23 these rules. Because it's going to have an impact on
24 how evidence is presented and what evidence is
25 presented at the time of trial. So we'd have to do the

1 whole thing over if I'm wrong. So I'd rather know in
2 advance, get some guidance, am I supposed to allow it
3 or not allow it, and how am I supposed to allow it, and
4 how am I going to apply the statutes. I'd like to just
5 do the trial once.

6 **MR. BARRON:** I'd like to get there myself.

7 **THE COURT:** It's a '16 case. We don't really
8 have a five-year rule yet. But I do want to get it
9 tried as quickly as I can. I'm going to hope that the
10 Supreme Court will do something quickly. I don't know
11 that I can encourage that, but --

12 **MS. HALL:** I still think -- I'll look at the
13 rule again. I think I can bring it in as an emergency.
14 That was my intention was to bring it as an emergency
15 petition, but that sometimes doesn't mean anything with
16 the Supreme Court in terms of the timing of getting a
17 ruling.

18 **THE COURT:** And we don't know even if it's
19 going to stay at the Supreme Court or go to the court
20 of Appeals.

21 Anything else you guys want to tell me today?

22 **MR. McBRIDE:** No, Your Honor.

23 **THE COURT:** Okay. Thanks.

24
25 (Proceedings concluded at 2:59 P.M.)

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2 ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
3 PROCEEDINGS.

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6 /S/ Kimberly A. Farkas, RPR, CRR
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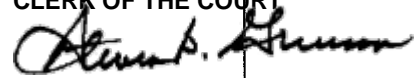
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**DISTRICT COURT
CLARK COUNTY, NEVADA**
-oOo-

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

**ORDER ON DEFENDANTS ANDREW
M. CASH, M.D.; ANDREW M. CASH,
M.D., P.C.; & DESERT INSTITUTE
OF SPINE CARE, LLC'S MOTIONS
TO COMPEL AND NON-PARTY
DEPONENTS MARIE GONZALES'
MOTION FOR
PROTECTIVE ORDER ON ORDER
SHORTENING TIME**

**DATE OF HEARING: 03/04/19
TIME OF HEARING: 9:00 A.M.**

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's
Motion to Compel NRCP 30(b)(6) Deposition of Plaintiff on Order Shortening Time; Motion to
Compel Deposition and Production of Documents on Order Shortening Time and Non-Party
Deponent Marie Gonzales' Motion for Protective Order on Order Shortening Time came on for
hearing on March 4, 2019. The Court, having reviewed the papers and pleadings on file herein
and having heard argument of, hereby finds as follows:

1. On May 14, 2018, this Court issued an order stating that the non-economic
damages in this action were capped at \$350,000 per NRS 41A.035. Considering the issues
raised by the Motions has caused the Court to reconsider its prior ruling that NRS 41A.035

1 applies to this contribution action premised upon allegations of medical malpractice. See Order
2 Granting Defendant Las Vegas Radiology's Motion to "Cap" Non-Economic Damages Per
3 NRS 41A.035 and Joinders to Same.

4
5 2. The prior Order stating, " ... Nevada law obligates a Plaintiff seeking contribution
6 from health care providers, asserting claims for professional negligence, to satisfy the
7 requirements of NRS Chapter 41A" is hereby vacated. Because of its reconsideration of its
8 prior rulings, the Court believes the discussion found below at ¶¶ 3-13 is in order.

9
10 3. The Court finds that NRS Ch. 41A has limited application to this contribution
11 action. The Court has previously recognized that Republic Silver State Disposal's (Republic)
12 cause of action is for contribution under the Uniform Contribution Among Tortfeasors Act,
13 NRS 17.225 et seq., and not one for "professional negligence" against "provider(s) of health
14 care" under the provisions of NRS ch. 41A. See Order re: Cash Defendants' Motion to
15 Dismiss, etc., entered Dec. 13, 2016, p. 2. The referenced Order affirmatively dismissed a
16 cause of action contained in Republic's Amended Complaint for professional negligence, but
17 did so by further recognizing that the contribution claim was "based upon professional
18 negligence" and that the contribution action "subsumed" professional negligence as its basis
19 for liability. Id., pp. 2-3; see also NRS 41A.015 ("Professional negligence means the failure of
20 a provider of health care, in rendering services, to use the reasonable care, skill or knowledge
21 ordinarily used under similar circumstances by similarly trained and experienced providers of
22 health care").

23
24
25 4. NRS 41A.035 imposes a \$350,000 limitation for "noneconomic" damages,"
26 which are in turn defined at NRS 41A.011 as including "damages to compensate for pain,
27 suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary
28 damages."

1 5. The Court finds the parameters of NRS 41A.035, limiting the recovery of
2 “noneconomic damages,” are set by the statute’s own terms:

3 In an action for injury or death against a provider of health care based
4 upon professional negligence, *the injured plaintiff may recover*
5 noneconomic damages, but the amount of noneconomic damages
6 awarded in such an action must not exceed \$350,000, regardless of the
7 number of plaintiffs, defendants or theories upon which liability may be
8 based. (emphasis added)

9 6. The Court believes its prior order imposing the damage limitation in NRS
10 41A.035 here was in error. The statutory definition of “noneconomic damage” at NRS
11 41A.011 contemplates a bodily injury or death, and is integral to an understanding of NRS
12 41A.035’s scope and purpose. The statute further indicates that “the injured plaintiff may
13 recover” certain damages, but Republic is not an “injured plaintiff,” as contemplated by the
14 statute. Republic’s contribution action- is for neither bodily injury nor death; nor does it seek
15 recovery for the injured patient’s “pain, suffering, inconvenience,” etc. resulting from allegedly
16 faulty care. Its claim is brought under a statutory scheme allowing one who has extinguished a
17 “common liability” to seek monetary restitution from another party who is also responsible for
18 causing the loss. This conclusion regarding the nature of Republic’s claim is in conformity
19 with the Court’s Order of Dec. 13, 2016, referenced above.

20 7. Next, Nevada’s contribution statutes impose their own limitation on recovery
21 since the party seeking contribution’s “total recovery is limited to the amount paid by the
22 tortfeasor in excess of his or her equitable share.” NRS 17.225(2). The same provision also has
23 a salutary effect for the party being sued for contribution because “[n]o tortfeasor is compelled
24 to make contribution beyond his or her own equitable share of the entire liability.” Id. The
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1 contribution-defendant also has further protection because the contribution-plaintiff cannot
2 recover “any amount paid in a settlement which is in excess of what was reasonable.” Id. (3).

3
4 8. Finally, the damage limitation in NRS 41A.035 cannot be read harmoniously
5 with the provisions of NRS 17.225. Each statute finds good application within its own statutory
6 scheme, but becomes cumbersome to the point of being unworkable if superimposed
7 elsewhere. This case presents an example of that unworkability: If NRS 41A.035’s “cap” is
8 imposed in Republic’s contribution action, what of the \$2 million settlement can be considered
9 “noneconomic damage” with a monetary ceiling, as opposed to “economic damage,” having no
10 limitation on its full recovery under NRS 41A.007? As a prior practicing attorney in this area
11 of the law, this Court has first-hand knowledge that when settling a personal injury case such
12 as Ms. Gonzales’ case against Silver State, the attorney and the Plaintiff have no incentive or
13 reason to distinguish between economic and non-economic damages. If the settling parties
14 themselves do not make that distinction, how can the Court make such a determination later?
15 Or, without evidence of such an intent being found in the settlement, can the fact-finder ever
16 do more than make a wholly arbitrary determination? The answers seem self-apparent – it is
17 impossible to determine in a case such as this what portion of the settlement was for economic
18 vs. non-economic damages. The Defendant suggests that the determination should be based on
19 how the Plaintiff’s tax liability for the amount received was calculated. This Court does not
20 see that as a realistic option, as tax liabilities can be calculated differently by different CPA’s,
21 and may be based on a variety of tax codes. The Court therefore believes the better choice is to
22 read NRS 41A.035, no less than NRS 17.225 et seq., in context and as written. This is part of
23 the reason this Court finds and concludes that statutes contained in Chapter 41A of the NRS
24 were not intended to apply to a subrogation/contribution type action such as that before this
25 Court.
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1 9. Thus, the Court finds NRS 41A.035's monetary limitation for "noneconomic
2 damages" is specific to "pain, suffering, inconvenience, physical impairment, disfigurement,
3 and other nonpecuniary damages." These damages are suffered by the individual who is
4 personally injured because of the "professional negligence." The Court cannot find a way to
5 apply NRS 41A.035 to the facts of the present case, and consequently, concludes that
6 41A.035's limitation is inapplicable in the present case.
7

8 10. In addition, the Court finds Republic's claim is not a continuation or assumption
9 of Marie Gonzales' personal rights for recovery of any "pain, suffering" etc. resulting from the
10 "professional negligence" alleged, and statements to the contrary in prior rulings are
11 disavowed. Rather, Republic's claim is for contribution, which was statutorily created by the
12 State Legislature with its adoption of the Uniform Contribution Among Torfeasors Act in
13 1973, and later amended during its 1979 legislative session. See 1973 Statutes of Nevada 1303;
14 1979 Statutes of Nevada 1978. But for its statutory creation, Republic would have no legal
15 right of contribution. Reid v. Royal Ins. Co., 80 Nev. 137, 142, 390 P.2d 45, 47 (1964)
16 (following the common law rule that there is "no right of contribution between co-torfeasors").
17 Therefore the Court finds Republic's right of contribution is created and dependent on the
18 provisions of NRS 17.225 et seq., and does not derive from rights personal to Marie Gonzales.
19
20

21 11. The Court also finds that NRS 42.021 has no application to the present action.
22 The foregoing rationale regarding NRS 41A.035 also pertains to NRS 42.021 as it too comes
23 into play "[i]n an action for injury or death against a provider of health care based upon
24 professional negligence." But as seen, Republic's contribution action is statutory, and not
25 derivative of Marie Gonzales' injury, or rights personal to her that arose from it.
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27

28 12. On its face, NRS 42.021 permits a defendant charged with "professional
negligence" (specially defined in sub. (8)(c) as a "negligent act or omission to act by a provider

1 of health care in the rendering of professional services, which act or omission is the proximate
2 cause of a personal injury or wrongful death”) to “elect” to bring into evidence payments from
3 certain defined “collateral” sources which are made “payable as a benefit to the plaintiff as a
4 result of the injury[.]” Id. (1). Should the professional negligence defendant offer such
5 “collateral source” evidence, the plaintiff then has the option of offering his or her own
6 evidence of “any amount that the plaintiff has paid or contributed to secure the plaintiff’s right
7 to any insurance benefits concerning which the defendant has introduced evidence.” Id. (1).
8 Subsection (2) of the statute thereafter cuts off any third party rights of reimbursement against
9 the plaintiff, or subrogation rights against the defendant for any collateral source offered into
10 evidence.
11

12
13 13. NRS 42.021, therefore, favors the medical defendant with the possibility of a
14 “collateral source” offset against a total recovery, while at the same time shielding the NRS
15 42.021 plaintiff and “professional negligence” defendant from later actions by third-party
16 payors. But assuming any such “collateral source” benefits were paid to Ms. Gonzales—which
17 is by no means certain—application of the portions of the statute which would benefit
18 Republic, would be impossible here because 1) it did not receive any collateral source
19 payments (nor can it be charged with their constructive receipt since its rights are not
20 derivative of Ms. Gonzales’); 2) the “professional negligence” defendants would nonetheless
21 get the potential collateral source offset in the event of a recovery against them; and 3) there
22 appears to be no impediment to a subrogation action by third-party payors under sub. (2)(b) for
23 return of the very collateral benefits Republic never received. It violates Equal Protection of
24 the Law to apply only a portion of the statute, which benefits the Defendant, when the portion
25 of the statute which benefits the “injured party” is inapplicable and cannot be applied in favor
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1 of the Plaintiff, Silver State. The Court thus finds NRS 42.021 inapplicable to Republic as a
2 matter of law.

3 14. Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., aka
4 ANDREW MILLER CASH, M.D., P.C.; and DESERT INSTITUTE OF SPINE CARE, LLC's
5 Motion to take NRCP 30(b)(6) Deposition of Plaintiff Republic on Order Shortening Time is
6 **GRANTED IN PART, DENIED IN PART.**

7
8 15. The Motion is granted in so far as Defendant Cash is entitled to depose Plaintiff
9 Republic and question the PMK on the amount of and basis for the settlement in the personal
10 injury action.

11
12 16. The Motion is denied in so far as the defense states that the attorney-client
13 privilege is waived due to the at-issue waiver doctrine. The Court does not find that the
14 attorney-client privilege has been waived by virtue of this contribution claim and specific
15 ruling is reserved for a per question basis.

16
17 17. Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., aka
18 ANDREW MILLER CASH, M.D., P.C.; and DESERT INSTITUTE OF SPINE CARE, LLC's
19 Motion to Compel Deposition and Production of Documents on Order Shortening Time from
20 certain non-parties is **DENIED AS MOOT.**

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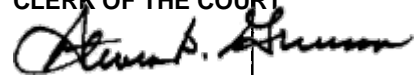
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18. Non-Party Deponents Marie Gonzales, Jacqueline R. Bretell, Esq., and Bighorn Law's Motion for Protective Order on Order Shortening Time is **DENIED AS MOOT**.

IT IS SO ORDERED.

DATED this 12th day of March, 2019.

~~DISTRICT COURT JUDGE~~



**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

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

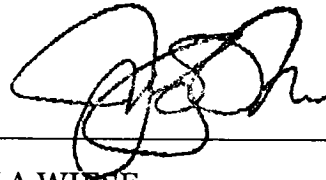
Dept No.: XXX

**NOTICE OF ENTRY OF ORDER:
ORDER ON DEFENDANTS ANDREW
M. CASH, M.D.; ANDREW M. CASH,
M.D., P.C.; & DESERT INSTITUTE
OF SPINE CARE, LLC'S MOTIONS
TO COMPEL AND NON-PARTY
DEPONENTS MARIE GONZALES'
MOTION FOR
PROTECTIVE ORDER ON ORDER
SHORTENING TIME**

**DATE OF HEARING: 03/04/19
TIME OF HEARING: 9:00 A.M.**

You are hereby notified that this Court entered **ORDER ON DEFENDANTS
ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C.; & DESERT
INSTITUTE OF SPINE CARE, LLC'S MOTIONS TO COMPEL AND NON-
PARTY DEPONENTS MARIE GONZALES' MOTION FOR PROTECTIVE
ORDER ON ORDER SHORTENING TIME**, a copy of which is attached hereto.

DATED this 13th day of March 2019.



JERRY A WIESE

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder for:

///

///

///

▣ **Party: Andrew M. Cash, M.D. - Defendant**



Michelle Newquist

mnewquist@cktfmlaw.com



Madeline VanHeuvelen

mvanheuvelen@cktfmlaw.com

▣ **Party: Republic Silver State Disposal, Inc. - Plaintiff**



David Barron

dbarron@lvnvlaw.com



Mary Ann Dillard

mdillard@lvnvlaw.com



Becca Harrell

bharrell@lvnvlaw.com



Luz T Macias

lmacias@lvnvlaw.com

Tatyana Ristic, JEA

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-



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

Plaintiff

vs.

Case No.: A-16-738123-C

Dept No.: XXX

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
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DOES 1-10 inclusive; and ROE
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Defendants.

**ORDER ON DEFENDANTS ANDREW
M. CASH, M.D.; ANDREW M. CASH,
M.D., P.C.; & DESERT INSTITUTE
OF SPINE CARE, LLC'S MOTIONS
TO COMPEL AND NON-PARTY
DEPONENTS MARIE GONZALES'
MOTION FOR
PROTECTIVE ORDER ON ORDER
SHORTENING TIME**

**DATE OF HEARING: 03/04/19
TIME OF HEARING: 9:00 A.M.**

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's
Motion to Compel NRCP 30(b)(6) Deposition of Plaintiff on Order Shortening Time; Motion to
Compel Deposition and Production of Documents on Order Shortening Time and Non-Party
Deponent Marie Gonzales' Motion for Protective Order on Order Shortening Time came on for
hearing on March 4, 2019. The Court, having reviewed the papers and pleadings on file herein
and having heard argument of, hereby finds as follows:

1. On May 14, 2018, this Court issued an order stating that the non-economic
damages in this action were capped at \$350,000 per NRS 41A.035. Considering the issues
raised by the Motions has caused the Court to reconsider its prior ruling that NRS 41A.035

1 applies to this contribution action premised upon allegations of medical malpractice. See Order
2 Granting Defendant Las Vegas Radiology's Motion to "Cap" Non-Economic Damages Per
3 NRS 41A.035 and Joinders to Same.
4

5 2. The prior Order stating, " ... Nevada law obligates a Plaintiff seeking contribution
6 from health care providers, asserting claims for professional negligence, to satisfy the
7 requirements of NRS Chapter 41A" is hereby vacated. Because of its reconsideration of its
8 prior rulings, the Court believes the discussion found below at ¶¶ 3-13 is in order.
9

10 3. The Court finds that NRS Ch. 41A has limited application to this contribution
11 action. The Court has previously recognized that Republic Silver State Disposal's (Republic)
12 cause of action is for contribution under the Uniform Contribution Among Tortfeasors Act,
13 NRS 17.225 et seq., and not one for "professional negligence" against "provider(s) of health
14 care" under the provisions of NRS ch. 41A. See Order re: Cash Defendants' Motion to
15 Dismiss, etc., entered Dec. 13, 2016, p. 2. The referenced Order affirmatively dismissed a
16 cause of action contained in Republic's Amended Complaint for professional negligence, but
17 did so by further recognizing that the contribution claim was "based upon professional
18 negligence" and that the contribution action "subsumed" professional negligence as its basis
19 for liability. Id., pp. 2-3; see also NRS 41A.015 ("Professional negligence means the failure of
20 a provider of health care, in rendering services, to use the reasonable care, skill or knowledge
21 ordinarily used under similar circumstances by similarly trained and experienced providers of
22 health care").
23
24

25 4. NRS 41A.035 imposes a \$350,000 limitation for "noneconomic" damages,"
26 which are in turn defined at NRS 41A.011 as including "damages to compensate for pain,
27 suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary
28 damages."

1 5. The Court finds the parameters of NRS 41A.035, limiting the recovery of
2 “noneconomic damages,” are set by the statute’s own terms:

3 In an action for injury or death against a provider of health care based
4 upon professional negligence, *the injured plaintiff may recover*
5 noneconomic damages, but the amount of noneconomic damages
6 awarded in such an action must not exceed \$350,000, regardless of the
7 number of plaintiffs, defendants or theories upon which liability may be
8 based. (emphasis added)

9 6. The Court believes its prior order imposing the damage limitation in NRS
10 41A.035 here was in error. The statutory definition of “noneconomic damage” at NRS
11 41A.011 contemplates a bodily injury or death, and is integral to an understanding of NRS
12 41A.035’s scope and purpose. The statute further indicates that “the injured plaintiff may
13 recover” certain damages, but Republic is not an “injured plaintiff,” as contemplated by the
14 statute. Republic’s contribution action- is for neither bodily injury nor death; nor does it seek
15 recovery for the injured patient’s “pain, suffering, inconvenience,” etc. resulting from allegedly
16 faulty care. Its claim is brought under a statutory scheme allowing one who has extinguished a
17 “common liability” to seek monetary restitution from another party who is also responsible for
18 causing the loss. This conclusion regarding the nature of Republic’s claim is in conformity
19 with the Court’s Order of Dec. 13, 2016, referenced above.

20 7. Next, Nevada’s contribution statutes impose their own limitation on recovery
21 since the party seeking contribution’s “total recovery is limited to the amount paid by the
22 tortfeasor in excess of his or her equitable share.” NRS 17.225(2). The same provision also has
23 a salutary effect for the party being sued for contribution because “[n]o tortfeasor is compelled
24 to make contribution beyond his or her own equitable share of the entire liability.” Id. The
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1 contribution-defendant also has further protection because the contribution-plaintiff cannot
2 recover "any amount paid in a settlement which is in excess of what was reasonable." Id. (3).

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4 8. Finally, the damage limitation in NRS 41A.035 cannot be read harmoniously
5 with the provisions of NRS 17.225. Each statute finds good application within its own statutory
6 scheme, but becomes cumbersome to the point of being unworkable if superimposed
7 elsewhere. This case presents an example of that unworkability: If NRS 41A.035's "cap" is
8 imposed in Republic's contribution action, what of the \$2 million settlement can be considered
9 "noneconomic damage" with a monetary ceiling, as opposed to "economic damage," having no
10 limitation on its full recovery under NRS 41A.007? As a prior practicing attorney in this area
11 of the law, this Court has first-hand knowledge that when settling a personal injury case such
12 as Ms. Gonzales' case against Silver State, the attorney and the Plaintiff have no incentive or
13 reason to distinguish between economic and non-economic damages. If the settling parties
14 themselves do not make that distinction, how can the Court make such a determination later?
15 Or, without evidence of such an intent being found in the settlement, can the fact-finder ever
16 do more than make a wholly arbitrary determination? The answers seem self-apparent – it is
17 impossible to determine in a case such as this what portion of the settlement was for economic
18 vs. non-economic damages. The Defendant suggests that the determination should be based on
19 how the Plaintiff's tax liability for the amount received was calculated. This Court does not
20 see that as a realistic option, as tax liabilities can be calculated differently by different CPA's,
21 and may be based on a variety of tax codes. The Court therefore believes the better choice is to
22 read NRS 41A.035, no less than NRS 17.225 et seq., in context and as written. This is part of
23 the reason this Court finds and concludes that statutes contained in Chapter 41A of the NRS
24 were not intended to apply to a subrogation/contribution type action such as that before this
25 Court.
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1 9. Thus, the Court finds NRS 41A.035's monetary limitation for "noneconomic
2 damages" is specific to "pain, suffering, inconvenience, physical impairment, disfigurement,
3 and other nonpecuniary damages." These damages are suffered by the individual who is
4 personally injured because of the "professional negligence." The Court cannot find a way to
5 apply NRS 41A.035 to the facts of the present case, and consequently, concludes that
6 41A.035's limitation is inapplicable in the present case.
7

8 10. In addition, the Court finds Republic's claim is not a continuation or assumption
9 of Marie Gonzales' personal rights for recovery of any "pain, suffering" etc. resulting from the
10 "professional negligence" alleged, and statements to the contrary in prior rulings are
11 disavowed. Rather, Republic's claim is for contribution, which was statutorily created by the
12 State Legislature with its adoption of the Uniform Contribution Among Torfeasors Act in
13 1973, and later amended during its 1979 legislative session. See 1973 Statutes of Nevada 1303;
14 1979 Statutes of Nevada 1978. But for its statutory creation, Republic would have no legal
15 right of contribution. Reid v. Royal Ins. Co., 80 Nev. 137, 142, 390 P.2d 45, 47 (1964)
16 (following the common law rule that there is "no right of contribution between co-torfeasors").
17 Therefore the Court finds Republic's right of contribution is created and dependent on the
18 provisions of NRS 17.225 et seq., and does not derive from rights personal to Marie Gonzales.
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22 11. The Court also finds that NRS 42.021 has no application to the present action.
23 The foregoing rationale regarding NRS 41A.035 also pertains to NRS 42.021 as it too comes
24 into play "[i]n an action for injury or death against a provider of health care based upon
25 professional negligence." But as seen, Republic's contribution action is statutory, and not
26 derivative of Marie Gonzales' injury, or rights personal to her that arose from it.
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28 12. On its face, NRS 42.021 permits a defendant charged with "professional
negligence" (specially defined in sub. (8)(c) as a "negligent act or omission to act by a provider

1 of health care in the rendering of professional services, which act or omission is the proximate
2 cause of a personal injury or wrongful death”) to “elect” to bring into evidence payments from
3 certain defined “collateral” sources which are made “payable as a benefit to the plaintiff as a
4 result of the injury[.]” Id. (1). Should the professional negligence defendant offer such
5 “collateral source” evidence, the plaintiff then has the option of offering his or her own
6 evidence of “any amount that the plaintiff has paid or contributed to secure the plaintiff’s right
7 to any insurance benefits concerning which the defendant has introduced evidence.” Id. (1).
8 Subsection (2) of the statute thereafter cuts off any third party rights of reimbursement against
9 the plaintiff, or subrogation rights against the defendant for any collateral source offered into
10 evidence.
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13 13. NRS 42.021, therefore, favors the medical defendant with the possibility of a
14 “collateral source” offset against a total recovery, while at the same time shielding the NRS
15 42.021 plaintiff and “professional negligence” defendant from later actions by third-party
16 payors. But assuming any such “collateral source” benefits were paid to Ms. Gonzales—which
17 is by no means certain—application of the portions of the statute which would benefit
18 Republic, would be impossible here because 1) it did not receive any collateral source
19 payments (nor can it be charged with their constructive receipt since its rights are not
20 derivative of Ms. Gonzales’); 2) the “professional negligence” defendants would nonetheless
21 get the potential collateral source offset in the event of a recovery against them; and 3) there
22 appears to be no impediment to a subrogation action by third-party payors under sub. (2)(b) for
23 return of the very collateral benefits Republic never received. It violates Equal Protection of
24 the Law to apply only a portion of the statute, which benefits the Defendant, when the portion
25 of the statute which benefits the “injured party” is inapplicable and cannot be applied in favor
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1 of the Plaintiff, Silver State. The Court thus finds NRS 42.021 inapplicable to Republic as a
2 matter of law.

3 14. Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., aka
4 ANDREW MILLER CASH, M.D., P.C.; and DESERT INSTITUTE OF SPINE CARE, LLC's
5 Motion to take NRCP 30(b)(6) Deposition of Plaintiff Republic on Order Shortening Time is
6 **GRANTED IN PART, DENIED IN PART.**

7
8 15. The Motion is granted in so far as Defendant Cash is entitled to depose Plaintiff
9 Republic and question the PMK on the amount of and basis for the settlement in the personal
10 injury action.

11
12 16. The Motion is denied in so far as the defense states that the attorney-client
13 privilege is waived due to the at-issue waiver doctrine. The Court does not find that the
14 attorney-client privilege has been waived by virtue of this contribution claim and specific
15 ruling is reserved for a per question basis.

16
17 17. Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., aka
18 ANDREW MILLER CASH, M.D., P.C.; and DESERT INSTITUTE OF SPINE CARE, LLC's
19 Motion to Compel Deposition and Production of Documents on Order Shortening Time from
20 certain non-parties is **DENIED AS MOOT.**

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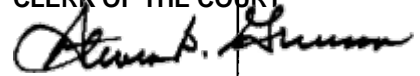
18. Non-Party Deponents Marie Gonzales, Jacqueline R. Bretell, Esq., and Bighorn Law's Motion for Protective Order on Order Shortening Time is **DENIED AS MOOT**.

IT IS SO ORDERED.

DATED this 12th day of March, 2019.

~~DISTRICT COURT JUDGE~~

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-



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,)

Defendants.)

CASE NO.: A-16-738123-C
DEPT. NO.: 30

ORDER RE: DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

Defendant's Motion for Summary Judgment came on for hearing on Monday, March 11, 2019, at 2:00 p.m. The parties were represented by counsel, who submitted briefs, and argued orally on behalf of their clients. The Court took the matter under advisement, and now issues this Order.

Summary Judgment is appropriate only if "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP 56. The pleadings and evidence must be construed in the light most favorable to the non-moving party, but the non-moving party must still set forth specific facts demonstrating the existence of a genuine issue of material fact, in order to defeat Summary Judgment. *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983). The non-moving party must establish a genuine issue of material fact with more than "gossamer threads of whimsy." *Wood v. Safeway*, 121 Nev. 724, 730-31, 121 P.3d 1026 (2005).

Plaintiff's only remaining claim in this action is for contribution against Dr. Cash and the related Defendants, pursuant to NRS 17.225. Defendants argue that Summary Judgment is appropriate because no cause of action for contribution can exist when Republic and Dr. Cash are not "joint tortfeasors," and did not contribute to the same single injury. In support of their argument, Defendants cite to the Plaintiff's

1 Complaint, in which Plaintiff alleges that, “As a direct and proximate result of
2 Defendants’ negligence, . . . Gonzalez suffered new and different injuries from those
3 allegedly suffered in the motor vehicle accident of January 14, 2012.” (See Complaint
4 at Paragraph 56).

5 NRS 17.225 reads in pertinent part as follows:

6 NRS 17.225 Right to contribution.

7 1. Except as otherwise provided in this section and NRS 17.235 to 17.305,
8 inclusive, where two or more persons become jointly or severally liable in tort
9 **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.

10

11 NRS 17.225 (emphasis added).

12 Defendant suggests that accepting the Plaintiff’s allegations as true, Dr. Cash
13 and Republic are not joint tortfeasors, and no right to contribution exists under NRS
14 17.225.

15 In his Motion for Summary Judgment, Cash cites to the case of *District of*
16 *Columbia v. Washington Hospital Center*, 722 A.2d 332 (1998), but Plaintiff responds
17 that such case is inapplicable because the District of Columbia doesn’t even have a
18 contribution statute. Such a distinction is important and consequently, this Court
19 cannot rely on that case for its decision in this case.

20 Nevada’s contribution cause of action was created by statute. Defendant cites to
21 the unpublished Nevada Supreme Court Case of *Disc. Tire Co. of Nev. V. Fisher Sand &*
22 *Gravel Co.*, 400 P.3d 244 (2017 WL 1397333 (Nev. 2017 Unpub), which states the
following:

23 “Contribution is a creature of statute . . .” *Doctors Co. v. Vincent*, 120 Nev. 644,
24 560, 98 P.3d 681, 686 (204). “Under the Nevada statutory formulation, the
25 remedy of contribution allows one tortfeasor to extinguish joint liabilities
26 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.

27 . . .

28 The Nevada Supreme Court discussed the difference between joint tortfeasors
and successive tortfeasors, as follows:

1 . . . we hold that Discount Tire and Fisher are joint tortfeasors, and not
2 successive tortfeasors. Compare *Joint Tortfeasors*, *Black's Law Dictionary* (10th
3 ed. 2014)(defining joint tortfeasors as “[t]wo or more tortfeasors who
4 contributed to the claimant’s injury and who may be joined as defendants in the
5 same lawsuit”), and 74 *Am.Jur.2d Torts* §64 (2012) (providing that “joint
6 tortfeasors act negligently – either in voluntary, intentional concert, or
7 separately and independently – to produce a **single indivisible injury**”
8 (emphasis added)), with *Hansen v. Collett*, 79 Nev. 159, 167, 380 P.2d 301, 305
9 (1963)(providing that successive tortfeasors must produce acts “differing in
10 time and place of commission as well as in nature, [causing] **two separate**
11 **injuries** [that] gave rise to two distinct causes of action” (emphasis added)),
12 and *Successive Tortfeasors*, *Black's Law Dictionary* (10th ed. 2014)(defining
13 successive tortfeasors as “[t]wo or more tortfeasors whose negligence occurs at
14 different times and causes different injuries to the same third party” (emphasis
15 added)). . . .

16 *Disc. Tire Co. of Nev. V. Fisher Sand & Gravel Co.*, 400 P.3d 244, 2017 WL 1397333
17 (2017 Nev. Unpub)(emphasis added by the Supreme Court).

18 Based on this distinction, this Court needs to determine whether Republic and
19 Cash are “joint tortfeasors” or “successive tortfeasors.” Viewing the evidence in the
20 light most favorable to the non-moving party, Republic, the Court must conclude that
21 the Plaintiff will be able to establish its allegation that as a result of Dr. Cash’s actions,
22 “Gonzalez suffered new and different injuries from those allegedly suffered in the
23 motor vehicle accident of January 14, 2012.” (See Complaint at Paragraph 56).
24 Although the Plaintiff would now have the Court conclude that a contribution claim is
25 valid since there is a single “common liability,” as discussed in NRS 17.225(2),
26 subsection (1) of the same statute indicates that there is a right of contribution when
27 “two or more persons become jointly or severally liable . . . for the **same injury**.”
28 Although the Court assumes that Dr. Cash would testify that his treatment was part of
the overall care of the patient’s injuries resulting from the subject motor vehicle
accident, and that he did not cause any “separate” or “additional” injury, for purposes
of a Motion for Summary Judgment, the Court must assume that the Plaintiff will be
able to prove its allegation that there was a “new and different injury” caused by Dr.
Cash. If there is a “new and different injury,” then the parties cannot be “joint
tortfeasors,” but instead they would be successive tortfeasors. There was not an
“indivisible injury,” but the acts (motor vehicle accident and separate alleged
negligence of Dr. Cash) occurred at different times and places, and allegedly caused

1 “two separate injuries,” which gave rise to two distinct causes of action.¹ Consequently,
2 this Court has no choice but to conclude that Dr. Cash and Republic are “successive”
3 and not “joint tortfeasors.” Because they are “successive” and not “joint tortfeasors,”
4 NRS 17.225 cannot apply, and there can be no claim for contribution, as a matter of
5 law.

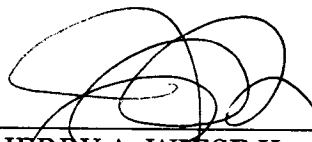
6 Based upon the foregoing, and good cause appearing, the Defendant’s Motion
7 for Summary Judgment is hereby **GRANTED**.²

8 As a result of this decision, the Jury Trial set for 3/18/2019 is hereby
9 **VACATED**.

10 The Defendants’ Motion for Stay Pending Decision on Emergency Petition for
11 Writ of Mandamus was not actually calendared, but is now **VACATED AS MOOT**.

12 The Motion to Intervene on behalf of Physicians Casualty Risk Retention Group
13 is **VACATED AS MOOT**.

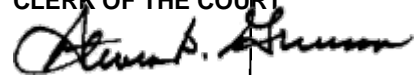
14 Dated this 14th day of March, 2019.

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JERRY A. WIESE II
DISTRICT COURT JUDGE
EIGHTH JUDICIAL DISTRICT COURT
DEPARTMENT XXX

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28
¹ Unfortunately for the Plaintiff, the Court’s ruling will eliminate the Plaintiff’s cause of action for contribution, and consequently, one may ask “what are the two distinct causes of action?” This Court struggles with this question, but concludes that the original Plaintiff, Gonzalez, would have two distinct causes of action if she had chosen to bring them. She would have one negligence claim against Republic, and a separate claim for alleged professional negligence, against Dr. Cash. Although Restatement 2d Torts §457 and Nev. Med Mal Jury Inst. 9MM.8 would allow Gonzalez to have recovered all damages from Republic, it doesn’t mean that she would not have had a distinct cause of action against Dr. Cash if she had wanted to assert it.

² The Court notes that although Dr. Cash’s counsel was preparing a Writ with regard to the Court’s prior decisions, this decision will obviously eliminate the need for that Writ. If Plaintiff’s counsel instead files an Appeal, this Court suggests and/or requests that the parties brief and request that the Supreme Court also address and give guidance with regard to the applicability of NRS 41A.035, NRS 42.021, and other related professional negligence statutes to the facts and circumstances of this case, and how such statutes could be applied to a claim for contribution, when the Plaintiff is not the injured party.



**DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-**

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

Plaintiff

vs.

Case No.: A-16-738123-C

Dept No.: XXX


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.

**NOTICE OF ENTRY OF ORDER:
ORDER RE: DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

You are hereby notified that this Court entered **Order re: Defendant's Motion for Summary Judgment**, a copy of which is attached hereto.

DATED this 15 day of March 2019.



JERRY A WIESE

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of this Order was electronically served

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☐ by placing a copy in the attorney's folder located in the Regional Justice Center to:

Steven L. Venit
2912 W. Catalpa
Chicago, IL 60630-0000



DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

Steven D. Grierson

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,)

Defendants.)

CASE NO.: A-16-738123-C
DEPT. NO.: 30

ORDER RE: DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

Defendant's Motion for Summary Judgment came on for hearing on Monday, March 11, 2019, at 2:00 p.m. The parties were represented by counsel, who submitted briefs, and argued orally on behalf of their clients. The Court took the matter under advisement, and now issues this Order.

Summary Judgment is appropriate only if "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRC 56. The pleadings and evidence must be construed in the light most favorable to the non-moving party, but the non-moving party must still set forth specific facts demonstrating the existence of a genuine issue of material fact, in order to defeat Summary Judgment. *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983). The non-moving party must establish a genuine issue of material fact with more than "gossamer threads of whimsy." *Wood v. Safeway*, 121 Nev. 724, 730-31, 121 P.3d 1026 (2005).

Plaintiff's only remaining claim in this action is for contribution against Dr. Cash and the related Defendants, pursuant to NRS 17.225. Defendants argue that Summary Judgment is appropriate because no cause of action for contribution can exist when Republic and Dr. Cash are not "joint tortfeasors," and did not contribute to the same single injury. In support of their argument, Defendants cite to the Plaintiff's

1 Complaint, in which Plaintiff alleges that, "As a direct and proximate result of
2 Defendants' negligence, . . . Gonzalez suffered new and different injuries from those
3 allegedly suffered in the motor vehicle accident of January 14, 2012." (See Complaint
4 at Paragraph 56).

5 NRS 17.225 reads in pertinent part as follows:

6 NRS 17.225 Right to contribution.

7 1. Except as otherwise provided in this section and NRS 17.235 to 17.305,
8 inclusive, where two or more persons become jointly or severally liable in tort
9 **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.

10

11 NRS 17.225 (emphasis added).

12 Defendant suggests that accepting the Plaintiff's allegations as true, Dr. Cash
13 and Republic are not joint tortfeasors, and no right to contribution exists under NRS
14 17.225.

15 In his Motion for Summary Judgment, Cash cites to the case of *District of*
16 *Columbia v. Washington Hospital Center*, 722 A.2d 332 (1998), but Plaintiff responds
17 that such case is inapplicable because the District of Columbia doesn't even have a
18 contribution statute. Such a distinction is important and consequently, this Court
19 cannot rely on that case for its decision in this case.

20 Nevada's contribution cause of action was created by statute. Defendant cites to
21 the unpublished Nevada Supreme Court Case of *Disc. Tire Co. of Nev. V. Fisher Sand &*
22 *Gravel Co.*, 400 P.3d 244 (2017 WL 1397333 (Nev. 2017 Unpub), which states the
following:

23 "Contribution is a creature of statute . . ." *Doctors Co. v. Vincent*, 120 Nev. 644,
24 560, 98 P.3d 681, 686 (204). "Under the Nevada statutory formulation, the
25 remedy of contribution allows one tortfeasor to extinguish joint liabilities
26 through payment to the injured party, and then seek partial reimbursement
27 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.
28 . . .

The Nevada Supreme Court discussed the difference between joint tortfeasors
and successive tortfeasors, as follows:

1 . . . we hold that Discount Tire and Fisher are joint tortfeasors, and not
2 successive tortfeasors. Compare *Joint Tortfeasors*, *Black's Law Dictionary* (10th
3 ed. 2014)(defining joint tortfeasors as “[t]wo or more tortfeasors who
4 contributed to the claimant’s injury and who may be joined as defendants in the
5 same lawsuit”), and 74 *Am.Jur.2d Torts* §64 (2012) (providing that “joint
6 tortfeasors act negligently – either in voluntary, intentional concert, or
7 separately and independently – to produce a **single indivisible injury**”
8 (emphasis added)), with *Hansen v. Collett*, 79 Nev. 159, 167, 380 P.2d 301, 305
9 (1963)(providing that successive tortfeasors must produce acts “differing in
10 time and place of commission as well as in nature, [causing] **two separate**
11 **injuries** [that] gave rise to two distinct causes of action” (emphasis added)),
12 and *Successive Tortfeasors*, *Black's Law Dictionary* (10th ed. 2014)(defining
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18 Based on this distinction, this Court needs to determine whether Republic and
19 Cash are “joint tortfeasors” or “successive tortfeasors.” Viewing the evidence in the
20 light most favorable to the non-moving party, Republic, the Court must conclude that
21 the Plaintiff will be able to establish its allegation that as a result of Dr. Cash’s actions,
22 “Gonzalez suffered new and different injuries from those allegedly suffered in the
23 motor vehicle accident of January 14, 2012.” (See Complaint at Paragraph 56).
24 Although the Plaintiff would now have the Court conclude that a contribution claim is
25 valid since there is a single “common liability,” as discussed in NRS 17.225(2),
26 subsection (1) of the same statute indicates that there is a right of contribution when
27 “two or more persons become jointly or severally liable . . . for the **same injury**.”
28 Although the Court assumes that Dr. Cash would testify that his treatment was part of
the overall care of the patient’s injuries resulting from the subject motor vehicle
accident, and that he did not cause any “separate” or “additional” injury, for purposes
of a Motion for Summary Judgment, the Court must assume that the Plaintiff will be
able to prove its allegation that there was a “new and different injury” caused by Dr.
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tortfeasors,” but instead they would be successive tortfeasors. There was not an
“indivisible injury,” but the acts (motor vehicle accident and separate alleged
negligence of Dr. Cash) occurred at different times and places, and allegedly caused

1 “two separate injuries,” which gave rise to two distinct causes of action.¹ Consequently,
2 this Court has no choice but to conclude that Dr. Cash and Republic are “successive”
3 and not “joint tortfeasors.” Because they are “successive” and not “joint tortfeasors,”
4 NRS 17.225 cannot apply, and there can be no claim for contribution, as a matter of
5 law.

6 Based upon the foregoing, and good cause appearing, the Defendant’s Motion
7 for Summary Judgment is hereby **GRANTED**.²

8 As a result of this decision, the Jury Trial set for 3/18/2019 is hereby
9 **VACATED**.

10 The Defendants’ Motion for Stay Pending Decision on Emergency Petition for
11 Writ of Mandamus was not actually calendared, but is now **VACATED AS MOOT**.

12 The Motion to Intervene on behalf of Physicians Casualty Risk Retention Group
13 is **VACATED AS MOOT**.

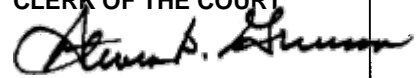
14 Dated this 14th day of March, 2019.



15
16 JERRY A. WIESE II
17 DISTRICT COURT JUDGE
18 EIGHTH JUDICIAL DISTRICT COURT
19 DEPARTMENT XXX
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23 ¹ Unfortunately for the Plaintiff, the Court’s ruling will eliminate the Plaintiff’s cause of action for
24 contribution, and consequently, one may ask “what are the two distinct causes of action?” This Court struggles
25 with this question, but concludes that the original Plaintiff, Gonzalez, would have two distinct causes of action if
26 she had chosen to bring them. She would have one negligence claim against Republic, and a separate claim for
27 alleged professional negligence, against Dr. Cash. Although Restatement 2d Torts §457 and Nev. Med Mal Jury
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² The Court notes that although Dr. Cash’s counsel was preparing a Writ with regard to the Court’s prior
decisions, this decision will obviously eliminate the need for that Writ. If Plaintiff’s counsel instead files an
Appeal, this Court suggests and/or requests that the parties brief and request that the Supreme Court also address
and give guidance with regard to the applicability of NRS 41A.035, NRS 42.021, and other related professional
negligence statutes to the facts and circumstances of this case, and how such statutes could be applied to a claim for
contribution, when the Plaintiff is not the injured party.



1 **MOT**
2 **DAVID BARRON, ESQ.**
3 Nevada Bar No. 142
4 **JOHN D. BARRON, ESQ.**
5 Nevada Bar No. 14029
6 **BARRON & PRUITT, LLP**
7 3890 West Ann Road
8 North Las Vegas, Nevada 89031
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11 Email: dbarron@lvnvlaw.com
12 *Attorneys for Plaintiff*
13 *Republic Silver State Disposal, Inc.*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 *****

17 **REPUBLIC SILVER STATE DISPOSAL, INC.,**
18 a Nevada Corporation,

19 Plaintiff

20 vs.

21 **ANDREW M. CASH, M.D.; ANDREW M.**
22 **CASH, M.D., P.C. aka ANDREW MILLER**
23 **CASH, M.D., P.C.; DESERT INSTITUTE OF**
24 **SPINE CARE, LLC, a Nevada Limited Liability**
25 **Company; JAMES D. BALODIMAS, M.D.;**
26 **JAMES D. BALODIMAS, M.D., P.C.; LAS**
27 **VEGAS RADIOLOGY, LLC, a Nevada Limited**
28 **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 SILVER STATE DISPOSAL,
INC.'S MOTION FOR
RECONSIDERATIO ON ORDER
SHORTENING TIME

Hearing Date:

Hearing Time:

Plaintiff REPUBLIC SILVER STATE DISPOSAL, INC., by and through its counsel
BARRON & PRUITT, LLP, submits its Motion for Reconsideration of the Court's Order of March
15, 2019, granting the motion for summary judgment Defendant Andrew M. Cash, M.D. and Desert
Institute of Spine Care (DISC), and requests that the motion be heard on an Order Shortening Time.

///

///

///

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

DECLARATION OF DAVID BARRON, ESQ.
IN SUPPORT OF ORDER SHORTENING TIME

STATE OF NEVADA)
)
COUNTY OF CLARK)

DAVID BARRON, ESQ., being first duly sworn, deposes and says:

1. I am an attorney duly licensed to practice law in Nevada. I am counsel for Plaintiff Republic Silver State Disposal, Inc. in the above entitled matter and I have personal knowledge of the matters stated herein.

2. 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. filed and served their Motion for Summary Judgment on March 5, 2019, despite a previous Court order specifying that dispositive motions were to be filed no later than the date of the Calendar Call, March 4, 2019. The Defendants' unexplained delay left Plaintiff approximately 48 hours to respond.

3. The Defendants' Motion for Summary Judgment was heard on March 11, 2019.

4. On March 15, 2019, this Court granted Defendants' Motion for Summary Judgment, thereby vacating the Jury Trial set for March 18, 2019.

5. Plaintiff now submits its Motion for Reconsideration of the Court's Order of March 15, 2019 because it believes the Judge relied upon an application of law that is clearly erroneous and abused his discretion in granting Defendants' Motion for Summary Judgment.

6. The filing of this Motion does not stay time for Plaintiff to file its Notice of Appeal, and thus scheduling a hearing on this Motion on an Order Shortening Time is appropriate.

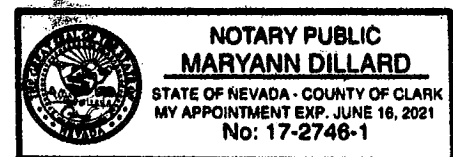
7. Accordingly, Plaintiff Republic Silver State Disposal, Inc. respectfully requests this matter be heard on an Order Shortening Time.



DAVID BARRON, ESQ.

SUBSCRIBED and SWORN to before
me this 21st day of March, 2019.


NOTARY PUBLIC



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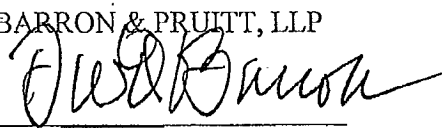
ORDER SHORTENING TIME

GOOD CAUSE APPEARING THEREFOR, it is hereby ORDERED that the time for the hearing of the above Motion shall be shortened to the 30th day of April, 2019, at the hour of 9:00 (a.m.) p.m, in the above-referenced Department. Oppositions to this Motion are due on 3/27/19; Replies are due on 3/29/19.


DISTRICT COURT JUDGE

Respectfully submitted by:

BARRON & PRUITT, LLP


DAVID BARRON, ESQ.
Nevada Bar No. 142
JOHN D. BARRON, ESQ.
Nevada Bar No. 14029
3890 West Ann Road
North Las Vegas, Nevada 89031
Attorneys for Plaintiff
Republic Silver State Disposal, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 *1. Factual summary*

3 The facts upon which this contribution action are based are recounted throughout the record.
4 In brief, on January 14, 2012, Marie Gonzales and Republic Silver State Disposal (Republic)
5 employee, Deval Hatcher, were involved in a traffic accident. Ms. Gonzales sought treatment with Dr.
6 Andrew Cash. Dr. Cash recommended a surgical procedure that entailed implantation of three “pedicle
7 screws” into Ms. Gonzales’ L4, L5 and S1 vertebrae. The screws at L5 and S1 went through bone;
8 entered her neuroforamina; and began to compress Ms. Gonzales’ left L5 and S1 nerve roots.

9 Ms. Gonzales suffered severe post-surgical pain, different in kind and intensity than what she
10 experienced before the operation, suggesting nerve root compression. She eventually developed a
11 foot-drop on the left—another clinical indication that her left L5 or S1 nerve roots were being
12 compressed.

13 On February 12, 2013, Dr. Cash ordered a CT imaging study. He misdiagnosed findings that
14 the L5 and S1 pedicle screws had breached their pedicles, and had gone into the neuroforamina.
15 Republic’s neuroradiology expert, Dr. David Seidenwurm opined that the CT imaging clearly showed
16 the breach. Its spinal surgery expert, Dr. Howard Tung, opined that the CT imaging should have
17 displayed to a reasonably prudent spine surgeon that there was pedicle breaches. And while Dr. Tung
18 did not think Ms. Gonzales was a surgical candidate, his opinion was that it was imperative for the
19 breached pedicles to have been removed promptly to avoid lasting neuropathic injury, and because
20 they were not, she suffered permanent nerve root injuries.

21 In June 2013, Ms. Gonzales severed her relationship with Dr. Cash, and consulted with Dr.
22 Stuart Kaplan. Dr. Kaplan reviewed the same CT imaging Dr. Cash had ordered and immediately
23 concluded Ms. Gonzales needed to have the Cash surgery totally revised; all surgical hardware
24 removed and replaced onto the right side at L4-5 and L5-S1; and most importantly, that the pedicle
25 screws implanted by Dr. Cash be removed since they had compressed her left L5 and S1 nerve roots
26 for so long that she had a permanent nerve injury. In fact, Dr. Kaplan believed the chronic nerve root
27 pain was significant enough that he implanted a spinal cord stimulator during February 2015.

28 During July 2015, Republic settled the lawsuit Ms. Gonzales had brought against it and its
former driver, Mr. Hatcher for \$2 million. In a December 13, 2016 Order denying multiple Rule 12

1 motions brought the defendants, the Court found that Republic's contribution action was timely, and
2 determined a release between Ms. Gonzales and Republic expressly extinguished the liabilities of Ms.
3 Gonzales' care providers for treatment of what she claimed were her accident related injuries. See
4 Discount Tire of Nevada v. Fisher Sand & Gravel Co., 2017 WL 1397333, where the Nevada Supreme
5 Court held in an unreported decision that to preserve rights of contribution against a co-tortfeasor
6 under the Uniform Contribution Among Tortfeasors Act (UCATA), NRS 17.225 et seq., it was
7 necessary to expressly extinguish that party's liability as well as its own.

8 **2. *The Court should reconsider its Order Granting Summary Judgment as it "Clearly***
9 ***Erroneous.***

10 On March 15, 2019 this Court entered its Order Re: Defendants' Motion for Summary,
11 granting an untimely Rule 56 motion, and terminating this action. This motion seeks the Court's
12 reconsideration of that order under EDCR 2.224(a) on the grounds it is "clearly erroneous." Masonry
13 & Tile Contrs. v. Jolly, Urga & Wirth Asss'n., 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) ("a district
14 court may reconsider a previously decided issue if substantially different evidence is subsequently
15 introduced or the decision is clearly erroneous"). The reasons for reconsideration are now discussed.

16 **a. *Because Republic and the Cash Defendants are "liable it tort for the same injury"***
17 ***the Court's holding that contribution action fails under the UCATA because they***
18 ***are "Successive" and not "Joint" Tortfeasors is legally wrong.***

19 Since we believe the Court's reasoning for summary judgment is in error, it is only fair to
20 quote the ruling's substance:

21 [T]his Court needs to determine whether Republic and Cash are "joint
22 tortfeasors" or "successive tortfeasors." Viewing the evidence in the light most
23 favorable to the non-moving party, Republic, the Court must conclude that the
24 Plaintiff will be able to establish its allegation that as a result of Dr. Cash's
25 actions, "Gonzales suffered new and different injuries from those allegedly
26 suffered in the motor vehicle accident of January 14, 2012." (See Complaint at
27 Paragraph 56). Although the Plaintiff would now have the Court conclude that a
28 contribution claim is valid since there is single "common liability," as discussed
in NRS 17.225(2), subsection (1) of the same statute indicates that there is a right

of contribution when “two or more persons become jointly or severally liable...for the *same injury*.” Although the Cort assumes that Dr. Cash would testify that his treatment was part of the overall care of the patient’s injuries resulting from the subject motor vehicle accident, and that he did not cause any “separate” or “additional” injury, for purposes of a Motion for Summary Judgment, the Court must assume that the Plaintiff will be able to prove its allegation that there was a “new and different injury” caused by Dr. Cash. If there is a “new and different injury,” then the parties cannot be “joint tortfeasors,” but instead they would be successive tortfeasors. There was not an “indivisible injury,” but the acts (motor vehicle accident and separate alleged negligence of Dr. Cash) occurred at different times and places, and allegedly caused “two separate injuries,” [see Discount Tire of Nevada v. Fisher Sand & Gravel Co., 2017 WL 1397333 *3] which gave rise to two distinct causes of action. Consequently, this Cort has no choice but to conclude that Dr. Cash and Republic are “successive” and not “joint tortfeasors.” Because they are “successive” and not “joint tortfeasors[”], NRS 17.225 cannot apply, and there can be no claim for contribution, as a matter of law.

Order, pp. 3-4.

Carrying the Court’s ruling to its logical conclusion, it effectively eliminates the possibility that an otherwise perfected contribution action can ever be made against negligent physician (or other health care provider) under Nevada law, and the UCATA becomes a dead letter for contribution against malpracticing medical professionals. This is because the injury caused by the “original tortfeasor” will *invariably* occur before the victim is treated; and should the accident victim be additionally injured because of medical negligence, that treatment-related injury will just as invariably come *after* the original injury, and by definition be a “successive” tort. This is an error at law.

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///

1) *The UCATA does not condition the right of contribution on whether a shared liability is “joint,” nor preclude if the shared liability is predicated on a “successive” tort.*

The *raison d’erte* for the Court’s ruling is that the original injury in the traffic accident preceded a separate occurrence of alleged medical negligence. And because the torts arose at different times, and involved the conduct of different negligent actors, the Court concluded Republic and Dr. Cash are not “joint tortfeasors.” Instead, they are “successive tortfeasors” and so the contribution claim fails. This rationale is wrong for two reasons.

First, nowhere in NRS 17.225 et seq., or the text of the Uniform Contribution Among Tortfeasors Act (1955) upon which the Nevada contribution statutes are entirely based, will one find the terms “joint tortfeasor”¹ or “successive tortfeasor.” Nor does anything in the UCATA prevent the statutory right of contribution just because different torts by different parties have occurred at different times.

Instead, contribution under NRS 17.225(1) is triggered “where two or more persons become jointly or severally *liable in tort for the same injury*.” Emphasis added.² Said differently, under the UCATA, so long as the injury for which the contribution plaintiff and defendant are liable is the “same,” it does not matter if that liability is “joint” or “several”; whether their respective liabilities arose concurrently or at different times; or if their liabilities were the result of different tortious conduct. Is there such a shared liability for the “same injury” here? Absolutely.

2) *An “original” tortfeasor is liable for an accident victim’s subsequent injury due to negligent medical care.*

There were only two injuries in this case—the first from the traffic accident; and the second from what Republic contends was medical negligence the following year. And for obvious reasons, Dr. Cash cannot share tort liability with Republic for the original injury in January 2012—after all, Ms. Gonzales never met him until she started treating with him three months later. So any potential

¹ The UCATA in its original 1939 version defined “joint tortfeasors” to mean “two or more persons jointly and severally liable in tort for the same injury[.]” The Comment to UCATA (rev. 1955) §1, upon which NRS 17.225, 17.255, 17.265 and 17.275 are directly fashioned, states that the definition of “joint tortfeasors and the term itself have been eliminated” since the “term is not indispensable to the Act.” The term “successive” liability has never been part of the UCATA.

² Both the Court’s Order, at p. 3, and Republic’s Opposition, at p. 5, fn. 4, cited the same verbiage, reaching opposite conclusions, about whether Republic and Dr. Cash had become liable for the “same injury.”

1 “joint or several liability in tort for the same injury” has to come out of the medical treatment. But can
2 Republic and the Cash defendants *both* have liability for that “successive” tort? The short answer is,
3 of course they can. Not only that, they *do*.

4 Under the heading “Liability of independent and successive tortfeasors,” 7 Am. Jur.2d Torts
5 §67 states the rule generally espoused in the Court’s Order, that different parties causing different
6 injuries at different times bear their liabilities separately:

7 Where multiple tortfeasors neither act in concert nor contribute concurrently to
8 the same wrong, they are not joint tortfeasors that may be held jointly and
9 severally liable. Similarly, if a plaintiff’s injuries are separable, defendants are not
10 jointly and severally liable for the damages. Thus, the Restatement Second, Torts
11 [§881] provides that if two or more persons, acting independently, tortiously
12 cause distinct harms or a single harm for which there is a reasonable basis for
13 division according to the contribution of each, each is subject to liability only for
14 the portion of the total harm that he or she has himself or herself caused.

15 But the broadly recognized exception to that rule—expressed as a caveat in §67—is the very
16 circumstance presented here:

17 **Caution:**

18 What has been described as “successive liability” may arise when a first injury
19 (such as from a car accident) caused by an original tortfeasor causally leads to a
20 second distinct injury or a distinct enhancement of the first injury (such as when
21 the original injury requires subsequent medical treatment that is negligently
22 administered) caused by a successive tortfeasor. *The original tortfeasor is*
23 *responsible for both injuries because it is foreseeable as a matter of law that the*
24 *original injury may lead to a causally distinct additional injury. However, the*
25 *second (or successive) tortfeasor is only responsible for the second injury or for*
26 *the distinct enhancement of the first injury.*

27 Emphasis added; see also 2 Modern Tort Law: Liability and Litigation § 19:7 (2d ed., 2018) (“Where
28 multiple tortfeasors do not act in concert or contribute concurrently to the same wrong, they are not

1 joint tortfeasors; their wrongs are independent and successive. Under successive and independent
2 liability the first tortfeasor may be liable to the plaintiff or the entire damage and any aggravation of
3 injuries by successive tortfeasors.”)

4 The rule just quoted—that an “original” tortfeasor is liable for both the initial, and “successive”
5 injury—has historically been part of American jurisprudence, including Nevada’s, especially where
6 the “successive injury” is due to negligent medical care. See Hansen v. Collett, 79 Nev. 159, 165, 380
7 P.2d 301, 304 (1963) (“it is well-settled law that the original tortfeasor is liable for the malpractice of
8 the attending physicians”); see also Nev. Civil Jury Instr., 9MM.8. Cases from around the country
9 embracing what has come to be known as the “successive injury” or “original tortfeasor” rule are too
10 numerous to mention here, but a large number are cataloged and discussed in 100 A.L.R.2d 808, Civil
11 liability of one causing personal injury for consequences of negligence, mistake, or lack of skill of
12 physician or surgeon.³

13 Both the Second and Third Restatements of Torts (as well as their “comments” and
14 “illustrations”) also set out the rule of “successive liability” for an “original tortfeasor” where the
15 accident victim suffers an aggravation of either the first injury, or an additional injury because of
16 negligently performed medical care:

17 Restatement (2d) of Torts §457, Additional Harm Resulting from Efforts to
18 Mitigate Harm Caused by Negligence:

19 If the negligent actor is liable for another's bodily injury, he is also subject to
20 liability for any additional bodily harm resulting from normal efforts of third

21 ³ A relatively recent example of the rule and its wide acceptance (to the point of becoming “hornbook” law) comes from
22 the Tennessee Supreme Court’s decision in Banks v. Elks Club Pride of Tennessee, 301 S.W.3d 214, 221-2 (2010):

23 The principles governing liability for successive injuries are settled. They recognize that there are
24 circumstances in which an earlier tortfeasor may be held liable not only for the injury caused by its own
25 negligent conduct but also for later injury caused by the negligent conduct of another tortfeasor. Restatement
26 (Second) of Torts § 433A, cmt. c (1965); *Prosser and Keeton* § 52, at 352. Liability in these circumstances
27 arises when the subsequent negligent conduct is a foreseeable or natural consequence of the original tortfeasor's
28 negligence. 2 Jacob A. Stein, *Stein on Personal Injury Damages* § 11:7 (3d ed.2009) (hereinafter “Stein”); see
also *McClenahan v. Cooley*, 806 S.W.2d 767, 775 (Tenn.1991) (noting that “[a]n intervening act, which is a
normal response created by negligence, is not a superseding, intervening cause so as to relieve the original
wrongdoer of liability, provided the intervening act could have reasonably been foreseen and the conduct was a
substantial factor in bringing about the harm”).[¶] Negligence in subsequent medical treatment of a tortiously
caused injury is the most common invocation of this rule. Lee & Lindahl, at § 6:3; *Prosser and Keeton* § 52, at
352; 2 Stein, at § 11:7.

persons in rendering aid which the other's injury reasonably requires, irrespective of whether such acts are done in a proper or a negligent manner.

Illustrations:

1. A's negligence causes B serious harm. B is taken to a hospital. The surgeon improperly diagnoses his case and performs an unnecessary operation, or, after proper diagnosis, performs a necessary operation carelessly. A's negligence is a legal cause of the additional harm which B sustains.

Restatement (3d) of Torts §35, Enhanced Harm Due to Efforts to Render Medical or Other Aid:

An actor whose tortious conduct is a factual cause of harm to another is subject to liability for any enhanced harm the other suffered due to the efforts of third persons to render aid reasonably required by the other's injury, so long as the enhanced harm arises from a risk that inheres in the effort to rendered aid.

Comment a. *Liability for enhanced harm from the efforts to aid an injured person.* ***The Restatement Second of Torts §457 provided that a negligent actor was liable for enhanced harm caused by third persons in rendering aid reasonably required by the injured person, regardless of whether the third person acted negligently. This section reiterates that rule, which retains virtually unanimous acceptance, and expands it to cover other tortious conduct. *Negligence in medical treatment of a tortiously caused injury is the most common invocation of the rule in this section.*

Emphasis added.

In a footnote, the Court candidly wrote of “struggl[ing]” about Ms. Gonzales apparently having two separate causes of action—one against Republic and the other against the Cash defendants. On the one hand, while “Gonzales [could] have recovered all damages against Republic [under

1 Restatement 2d Torts §457 and Nev. Med Mal Jury Inst. 9MM.8], it doesn't mean that she would not
2 have a distinct cause of action against Dr. Cash if she had wanted to assert it." Order, p. 4 fn. 1. But
3 as the foregoing discussion hopefully clarifies, while she indeed had separate claims, to recover
4 "medical malpractice" damages it was unnecessary for her to sue Dr. Cash since Republic, as a matter
5 of law was already "liable" for that "same [malpractice-related] injury." NRS 17.225(1).

6 3) *Although the "original" tortfeasor bears "successive liability" for later harm,*
7 *it is still necessary to litigate allocation of the loss.*

8 Since the "successive liability" rule relieves the twice-injured victim of the necessity of suing
9 both the "original and "successive" tortfeasors, the next inquiry is whether there is a mechanism to
10 allocate the loss between an "original" and "successive" tortfeasor? This question of "what next?" is
11 also pertinently addressed at Restatement (3d) of Torts §35's Comment b.:

12 ***In the medical-care context, the rule in *this Section obviates the need for*
13 *injured persons to pursue a medical-malpractice claim when a defendant claims*
14 *that some portion of the harm was caused by a health-care provider's negligence.*
15 *Defendants are free to assert contribution claims against medical professionals*
16 *for malpractice in enhancing the plaintiff's injury.* More broadly, the risk of
17 enhanced injury to a person suffering harm due to efforts of others to aid the
18 person is one that should be anticipated as arising from conduct posing risks of
19 harm to others. Indeed, it would be the rare case in which enhanced harm covered
20 by this Section would not be within the scope of the original tortfeasor's
21 liability[.]

21 Emphasis added.

22 As can be seen from the foregoing, for "successive liability" the inquiry is not whether there
23 were separate injuries caused by different tortious conduct, happening at different times. Rather:

24 The successive tortfeasor doctrine imposes joint and several liability on the
25 original tortfeasor for the full extent of injuries caused by the original tortfeasor
26 and the successive tortfeasor. *The doctrine is limited, however, to those cases*

in which the plaintiff can show more than one distinct injury successively caused by more than one tortfeasor. Thus, it has been held that the doctrine applies only when an original injury causes subsequent medical treatment because it is that separate injury that makes the subsequent medical treatment foreseeable; without a separate original injury, there is but one injury caused by the combined negligence of two tortfeasors.

1 Modern Tort Law: Liability and Litigation § 6:8 (2d ed., 2018).

Italics have been supplied above to emphasize the necessity, for “successive liability” to come into play, of proving 1) “more than one distinct injury successively caused by more than one tortfeasor”; and 2) that it was foreseeable that the original injury would lead to “subsequent medical treatment.” These fact questions were entirely foreclosed by the Court’s Order granting summary judgment. No less importantly, the grant of summary judgment also disposed of fact questions about whether the Cash surgery on January 29, 2013, and his failure to diagnose that Ms. Gonzales was suffering from the nerve root compression caused by the breached pedicle screws, was below the standard of care.⁴

If the jury were to have determined that Dr. Cash had committed “professional negligence” the next jury determinations would have addressed damage allocation; in other words, what of the total \$2 million settlement was due to the injury *he* caused? See e.g. Lujan v. Healthsouth Rehabilitation Corp. 902 P.2d 1025, 1029-30 (N.M. 1995) (“the original tortfeasor is responsible for

⁴ When Dr. Kaplan was deposed he was directly asked if there was a compressive injury suffered by Ms. Gonzales’ nerve roots, and if so, whether that was why he operated in July 2013:

Q. ***I am interested in the compressive pathology you removed, and that, of course would be what, the hardware?

A. the hardware.

Q. Okay. Is there –well, that seems to suggest that the pedicle screw at L5, S1 or either of them or both was making some contact and compressing the nerve root.

A. I was concerned.

Q. Okay.

A. I was concerned based on what she told me, i.e., that her leg pain was worse. I was concerned based upon the CT scan with her clinical description.

Q. So putting it all together, it was your conclusion that there was a compression due to either or both of those screws?

Q. I felt so.

Q. And that’s why you operated?

A. Yes, sir.

Deposition of Dr. Stuart Kaplan, p. 50, attached as EXHIBIT 1.

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1 both the original injury and for the harm caused by negligent medical treatment,” but the negligent
2 medical provider “is only liable for the additional harm caused by the negligent treatment”).

3 Here we come full circle. Republic’s pleading, alleging that the negligent medical treatment
4 caused “new and differ injuries,” was for there a reason: Damages caused by the negligent treatment
5 are the only ones potentially recoverable by Republic in its contribution claim. It’s just that simple.

6 Republic moves for reconsideration because it believes this Court’s Order granting the motion
7 for summary judgment was “clearly erroneous,” and by reconsidering the ruling and its underpinnings
8 the Court may come to a different conclusion.

9 Respectfully submitted,

10 BARRON & PRUITT, LLP

11 

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16 3890 West Ann Road

17 North Las Vegas, Nevada 89031

18 *Attorneys for Plaintiff*

19 *Republic Silver State Disposal, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of March, 2019, I served the foregoing
**PLAINTIFF REPUBLIC SILVER STATE DISPOSAL, INC.'S MOTION FOR
RECONSIDERATION** 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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<p>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 <i>Attorneys for Defendants</i> <i>James D. Balodimas, M.D. and</i> <i>James D. Balodimas, M.D., P.C.</i></p>	<p>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 <i>Attorneys for Defendant Neuromonitoring</i> <i>Associates, Inc.</i></p>
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/s/ MaryAnn Dillard

An Employee of BARRON & PRUITT, LLP

Exhibit 1

Exhibit 1

Exhibit 1

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

4

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

5

Plaintiff,)

6

vs.)

) Case No.: A-16-738123-C

7

) Dept. No.: XXX

8

ANDREW M. CASH, M.D.; ANDREW M.)

9

CASH, M.D., P.C. aka ANDREW)

10

MILLER CASH, M.D., P.C.; DESERT)

11

INSTITUTE OF SPINE CARE, LLC, a)

12

Nevada Limited Liability)

13

Company; et al.,)

14

Defendants.)

15

16

(Complete caption on page 2.)

17

18

19

20

DEPOSITION OF STUART S. KAPLAN, M.D., F.A.C.S.

21

Taken on Friday, January 4, 2019

22

By a Certified Court Reporter

23

At 4:12 p.m.

24

At 2471 Professional Court

25

Las Vegas, Nevada

26

27

28

Reported by: Carla N. Bywaters, CCR 866

29

Job No. 30638

1 A -- don't like -- I think I'm going to -- I just
2 wouldn't have used that word "negate" for the reasons
3 like I have described.

4 Q Sure. I'm with you. However, I am interested
5 in the compressive pathology that you removed, and that,
6 of course, would be what, the hardware?

7 A The hardware.

8 Q Okay. Is there -- well, that seems to suggest
9 that the pedicle screw at S1 L5 or either of them or
10 both was making some contact and compressing the nerve
11 root?

12 A I was concerned.

13 Q Okay.

14 A I was concerned based on what she told me,
15 i.e., that her leg pain was worse. I was concerned
16 based upon the CT scan with her clinical description.

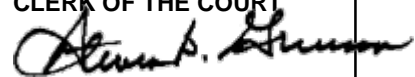
17 Q So putting that all together, it was your
18 conclusion that there was a compression due to either or
19 both of those screws?

20 A I felt so.

21 Q All right. And that's why you operated?

22 A Yes, sir.

23 Q And I don't want to go through it in a lot of
24 detail, because I know other people will probably have
25 questions as well, but you do mention some costs in



OPPM

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Attorneys for Defendants,

Andrew M. Cash, M.D.; Andrew M. Cash,

M.D., P.C.; Andrew Miller Cash, M.D.,

P.C.; & Desert Institute of Spine Care, LLC

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: XXX

**DEFENDANTS ANDREW CASH, M.D.,
ANDREW CASH, M.D., P.C. aka
ANDREW MILLER CASH, M.D., P.C. &
DESERT INSTITUTE OF SPINE CARE,
LLC'S OPPOSITION TO PLAINTIFF'S
MOTION FOR RECONSIDERATION ON
ORDER SHORTENING TIME**

DATE OF HEARING: April 3, 2019

TIME OF HEARING: 9:00 a.m.

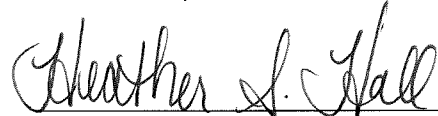
JA1424

1 COME Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., aka
2 ANDREW MILLER CASH, M.D., P.C.; and DESERT INSTITUTE OF SPINE CARE, LLC, by
3 and through their counsel of record, Robert C. McBride, Esq. and Heather S. Hall, Esq. of the
4 law firm of Carroll, Kelly, Trotter, Franzen, McBride & Peabody, and hereby submits their
5 Opposition to Plaintiff's Motion for Reconsideration on Order Shortening Time.
6

7 This Opposition is made and based upon the Points and Authorities attached hereto, the
8 papers and pleadings on file herein, and any such oral argument as may be entertained by the
9 Court at the time and place of the hearing of this Motion for Reconsideration.

10 DATED this 27th day of March, 2019.

11 CARROLL, KELLY, TROTTER,
12 FRANZEN, McBRIDE & PEABODY

13 

14 ROBERT C. McBRIDE, ESQ.

15 Nevada Bar No.: 7082

16 HEATHER S. HALL, ESQ.

Nevada Bar No.: 10608

Attorneys for Defendants

17 *Andrew M. Cash, M.D.; Andrew M. Cash,*
18 *M.D., P.C., aka Andrew Miller Cash, M.D.,*
P.C.; & Desert Institute of Spine Care, LLC

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Plaintiff erroneously contends Defendants' Motion for Summary Judgment filed on an
5 Order Shortening Time was untimely. Plf's Mtn., 5:9-10. To the contrary, the Motion was filed
6 on the deadline for dispositive motions set for this Court. See Order Granting in part and
7 Denying in Part Joint Motion, attached as **Exhibit "A"**, which extended the dispositive motion
8 deadline to March 4, 2019. Further, a defendant may move for summary judgment at any time.
9 *Cummings v. Las Vegas Mun. Corp.*, 88 Nev. 479, 481, 499 P.2d 650, 651 (1972) (citing NRC
10 56(b)). The Motion for Summary Judgment was timely submitted and this Court's ruling

11 Furthermore, this Court's March 14, 2019 Order was not erroneous. Reconsideration is
12 not warranted as this Court's ruling was correct. Defendants' Motion for Summary Judgment
13 did not contend that the settlement agreement entered into by Republic and Marie Gonzales
14 failed to preserve a right to sue medical providers for contribution. Instead, the Motion asserted
15 that, under Nevada law, Republic has no right to contribution because it is not a joint tortfeasor
16 with Dr. Cash. This Court correctly determined that Dr. Cash and Republic are successive
17 tortfeasors and NRS 17.225 does not apply. See Order, 3:25 – 4:5. Plaintiff alleges that Dr.
18 Cash's medical care caused a "new and different injury" and the Court's ruling that this
19 allegation is one of successive tortfeasors is correct. Nevada law is clear that there is no right to
20 contribution among successive tortfeasors. See NRS 17.225. You must be joint tortfeasors for a
21 right to contribution to exist.

22 Plaintiff's Motion for Reconsideration should be denied as Plaintiff has failed to provide
23 any sufficient basis to reconsider this Court's previous Order. Plaintiff's Motion for
24 Reconsideration rehashes the same arguments, theories and facts which have already been
25 decisively ruled upon by the Court. Thus, the instant Motion fails to meet the standard for
26 reconsideration. Merely disagreeing with the decision of this Court does not permit such a filing.
27 This Court appropriately applied the law to the facts contained in the Second Amended
28 Complaint. This Court should deny the Motion for Reconsideration and allow its prior ruling to

stand.

II.

ARGUMENT

A. RECONSIDERATION IS NOT WARRANTED.

Rehearing is appropriate where “substantially different evidence is subsequently introduced or the decision is *clearly wrong*.” *Masonry and Tile Contractors Ass’n of Southern Nevada v. Jolly, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 489 (1997) (citing *Little Earth of United Tribes v. Department of Housing*, 807 F.2d 1433, 1441 (8th Cir. 1986)); *see also*, *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976) (“Only in very rare instances in which *new issues of fact or law* are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.”) [Emphasis added].

Here, Plaintiff provides no basis for the Court to reconsider its Order. “A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is *clearly erroneous*.” *Masonry and Tile v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) [emphasis added]. Plaintiff’s Motion for Reconsideration asks this Court to reconsider its Order granting Defendants’ Motion for Summary Judgment, but has presented no new issues of fact or law to support a ruling contrary to the ruling already reached by this Court. Further, Plaintiff has presented nothing to support its argument that the Court’s prior ruling was clearly erroneous.

B. RECONSIDERATION SHOULD BE DENIED AS THIS COURT APPROPRIATELY DETERMINED THAT PLAINTIFF AND DEFENDANTS ARE SUCCESSIVE TORTFEASORS.

It is a fundamental principle of tort law that, in order to be joint tortfeasors, the parties’ negligence must have concurred in causing the same harm to the injured party. Allowance of contribution is premised upon each tortfeasor being responsible for a single injury. The Nevada Supreme Court has considered the issue of joint tortfeasors and successive tortfeasors in the context of a contribution claim. *Disc. Tire Co. of Nev. v. Fisher Sand & Gravel Co.*, 2017 Nev. Unpub. LEXIS 235, 400 P.3d 244 (holding that two parties were joint tortfeasors, not successive tortfeasors). In *Disc. Tire Co.*, the tire company was sued following a vehicle accident that

1 resulted in the deaths of two adults and injuries to three minor children. *Id.* at *2. Discount Tire
2 then filed suit against the Nevada Department of Transportation and a company doing
3 improvements on the road, Fisher Sand & Gravel Co., alleging they had failed to maintain safety
4 protocols. *Id.* Both parties were granted summary judgment and Discount Tire only appealed
5 the summary judgment as to Fisher Sand & Gravel. *Id.*

6 In considering the argument that the parties were successive, not joint tortfeasors, the
7 Court discussed the definitions of those terms:

8 *Compare Joint Tortfeasors, Black's Law Dictionary* (10th ed. 2014) (defining
9 joint tortfeasors as “[t]wo or more tortfeasors who contributed to the claimant’s
10 injury and who may be joined as defendants in the same lawsuit”), and 74 Am.
11 Jur. 2d Torts § 64 (2012) (providing that “joint tortfeasors act negligently—either
12 in voluntary, intentional concert, or *separately and independently*—to produce a
13 *single indivisible injury*” (emphases added)), with *Hansen v. Collett*, 79 Nev.
14 159, 167, 380 P.2d 301, 305 (1963) (providing that successive tortfeasors must
15 produce acts “differing in time and place of commission as well as in nature,
16 [causing] *two separate injuries* [that] gave rise to two distinct causes of action”
17 (emphasis added)), and *Successive Tortfeasors, Black's Law Dictionary* (10th ed.
18 2014) (defining successive tortfeasors as “[t]wo or more tortfeasors whose
19 negligence occurs at different times and causes different injuries to the same third
20 party” (emphasis added)).

21 *Id.* at *7.

22 In reaching its holding, the Supreme Court focused on the fact that there was no dispute
23 that there was one, indivisible injury suffered by the family. *Id.* at *8. Thus, the Court concluded
24 the tire company and gravel company were joint tortfeasors causing the same injury. *Id.*

25 Here, the undisputed facts in this case are that Dr. Cash and Republic are successive
26 tortfeasors. Republic has never alleged that there was one, indivisible injury suffered by Ms.
27 Gonzales. Republic alleges Dr. Cash’s January 29, 2013 medical care caused a new,
28 independent injury from the injuries Ms. Gonzales suffered during the January 14, 2012 car
crash. Where each tortfeasor causes a separate and distinct injury to the victim, as Republic
alleges here, they are **successive tortfeasors**. In the absence of a joint tortfeasor relationship,
there is no legal basis for allowing Republic to recoup a proportionate share from Dr. Cash for
harm which he did not contribute to. By its own allegations, Republic does not claim that these
Defendants are joint tortfeasors with Republic. Republic cannot establish it is entitled to
contribution from Dr. Cash as the parties are not joint tortfeasors.

1 Thus, this Court's Order finding exactly that – Republic and Dr. Cash are successive
2 tortfeasors – is based on long-standing Nevada law and should not be overturned. Accordingly,
3 this Motion for Reconsideration should be denied.

4 **C. THE COURT'S MARCH 14, 2019 ORDER SHOULD NOT BE DISTURBED.**

5 Plaintiff's Motion for Reconsideration tries to raise additional arguments in opposition to
6 the Motion for Summary Judgment that could have and should have been raised in the original
7 opposition filed by Republic. This is improper. Nevada law is clear that "points or contentions
8 not raised, or passed over in silence on the original hearing, cannot be maintained or considered
9 on petition for rehearing." *Chowdhry v. NLVH, Inc.*, 111 Nev. 560, 562 893 P. 2d 385, 387
10 (1995).

11 Even if this Court were to consider the new arguments, they do not provide a basis for
12 reversing this Court's March 14, 2019 Order. First, Plaintiff asserts that nowhere in NRS 17.225
13 are the terms "joint tortfeasor" and "successive tortfeasor" mentioned. Plf's Mtn., 7:13 – 14.
14 This is semantics. As recognized in this Court's Order, NRS 17.225 only allows for a right of
15 contribution "where two or more persons become jointly or severally liable in tort *for the same*
16 *injury* to person . . ." NRS 17.225 (emphasis added); *Court's Order*, 2:5 – 10. Both in Republic's
17 Second Amended Complaint, as well as in the Motion for Reconsideration, Republic alleges
18 there were two injuries. At paragraph 56 of the Second Amended Complaint, Republic alleges
19 "[a]s a direct and proximate result of Defendants' negligence, gross negligence, recklessness,
20 and failure to use due care Gonzalez [sic] suffered new and different injuries from those
21 allegedly suffered in the motor vehicle accident of January 14, 2012." *See* Pl.'s Second Amd.
22 Compl. at ¶56. In the Motion for Reconsideration, Plaintiff argues "[t]here were only two
23 injuries in this case – the first from the traffic accident; and the second from what Republic
24 contends was medical negligence from the following year." *See* Plf's Mtn., 7:20 -21. Because
25 Plaintiff asserts there were two separate, distinct injuries, NRS 17.225 does not apply. This
26 Court's conclusion that "There was not an 'indivisible injury,' but the acts (motor vehicle
27 accident and separate alleged negligence of Dr. Cash) occurred at different times and placed and
28 allegedly caused 'two separate injuries,' which gave rise to two distinct causes of action" is

1 correct. Order, 3:27 – 4:1.

2 Plaintiff cites to 7 Am. Jur.2d Torts 67 which discusses the definition of successive
3 tortfeasors and in no way supports the argument that Nevada law allows for a right of
4 contribution among successive tortfeasors. There is no right of contribution when the alleged
5 negligence of negligent actors did not cause a single, indivisible injury.

6 Plaintiff correctly quotes the Restatement 2d of Torts, section 457 which states that the
7 damages assessable against an initial negligent actor include not only the injury originally caused
8 by the actor's negligence, but also the harm resulting from medical treatment sought in response
9 to the injury, even if rendered in a negligent manner, it reasonably flows from the initial injury,
10 but ignores the facts of this case. *See* Rest. 2d Torts § 457. Throughout this litigation, Plaintiff
11 Republic has maintained that the January 29, 2013 surgery Dr. Cash performed was **not**
12 necessary because of injuries Ms. Gonzales sustained during the subject car crash over one year
13 earlier. Instead, Plaintiffs have contended that Ms. Gonzales only had some low axial back pain
14 and neck sprain/strain following the accident, which would not have caused the need for Dr.
15 Cash's surgery. Plaintiff cannot now take a contrary position to try and cobble together an
16 argument that this Court should ignore controlling Nevada law on contribution claims in order to
17 save this claim which fails as a matter of law.

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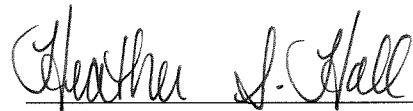
III.

CONCLUSION

Based upon the foregoing, Plaintiff's Motion for Reconsideration on Order Shortening Time should be denied. The decision made by this Court and entry of summary judgment was appropriate and there is no basis to reconsider that ruling.

DATED this 27th day of March, 2019.

CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY



ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

HEATHER S. HALL, ESQ.

Nevada Bar No.: 10608

Attorneys for Defendants

*Andrew M. Cash, M.D.; Andrew M. Cash,
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P.C.; & Desert Institute of Spine Care, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of March, 2019, I served a true and correct copy of the foregoing **DEFENDANTS ANDREW CASH, M.D., ANDREW CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C. & DESERT INSTITUTE OF SPINE CARE, LLC'S OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION ON ORDER SHORTENING TIME** addressed to the following counsel of record at the following address(es):

- ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or
- ☐ **VIA U.S. MAIL:** 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
- ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number indicated on the service list below.

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An Employee of **CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY**

EXHIBIT “A”

EXHIBIT “A”



ORDR

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P.C.; & Desert Institute of Spine Care, LLC

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: XXX

**ORDER ON JOINT DEFENSE MOTION
TO EXTEND DISCOVERY AND
CONTINUE TRIAL ON ORDER
SHORTENING TIME**

DATE OF HEARING: 1/30/19

TIME OF HEARING: 9:00 A.M.

JA1434

1 **ORDER ON JOINT DEFENSE MOTION TO EXTEND DISCOVERY AND CONTINUE**
2 **TRIAL ON ORDER SHORTENING TIME**

3 Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., aka
4 ANDREW MILLER CASH, M.D., P.C.; and DESERT INSTITUTE OF SPINE CARE, LLC;
5 Defendants BRUCE KATUNA, M.D. and ROCKY MOUNTAIN NEURODIAGNOSTICS,
6 LLC; Defendants JAMES D. BALODIMAS, M.D. and JAMES D. BALODIMAS, M.D., P.C.;
7 and Defendant DANIELLE MILLER a/k/a DANIELLE SHOPSHIRE's Joint Defense Motion to
8 Extend Discovery and Continue Trial on Order Shortening Time came on for hearing on January
9 30, 2019. The Court, having considered the Motion, Opposition and Reply, and oral argument of
10 counsel, hereby finds as follows:
11

- 12 1. The Joint Defense Motion to Extend Discovery and Continue Trial on Order
13 Shortening Time is **GRANTED IN PART, DENIED IN PART**.
- 14 2. The Motion is granted in so far as it seeks to extend discovery. The current discovery
15 cut-off of January 31, 2019 is extended. The parties shall have until March 4, 2019 to
16 complete all remaining discovery.
- 17 3. All parties must file dispositive motions by March 4, 2019, the date of the Calendar
18 Call in this matter.
- 19 4. All parties must also file motions in limine by March 4, 2019.
- 20 5. The Motion is denied in so far as it seeks to continue the trial date. The current firm
21 trial date of March 18, 2019 will remain.
- 22 6. The Calendar Call will remain on March 4, 2019 at 9:00 a.m. The Court may revisit
23 the issue of a trial continuance, if necessary, at the time of the Calendar Call.
- 24 7. The parties are encouraged to take all necessary steps to complete discovery in
25 advance of the current trial date. If the parties are unable to satisfactorily complete
26 discovery before the March 4, 2019 discovery cut-off, this Court will entertain a
27
28

1 Motion to Continue Trial.

2 8. If any discovery disputes arise during the remaining discovery period, this Court will
3 hear those matters on an Order Shortening Time, due to the shortened amount of time
4 for additional discovery.

5 **IT IS SO ORDERED.**

6
7 
DISTRICT COURT JUDGE 

8 Respectfully Submitted By:

9 DATED this 12th day of February, 2019.

10 CARROLL, KELLY, TROTTER,
11 FRANZEN, McBRIDE & PEABODY

12 */s/Heather S. Hall*

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18 *aka Andrew Miller Cash, M.D., P.C.; & Desert Institute of Spine Care, LLC*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of February, 2019, I served a true and correct copy of the foregoing **ORDER ON JOINT DEFENSE MOTION TO EXTEND DISCOVERY AND CONTINUE TRIAL ON ORDER SHORTENING TIME** addressed to the following counsel of record at the following address(es):


- ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or
- ☐ **VIA U.S. MAIL:** 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
- ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number indicated on the service list below.

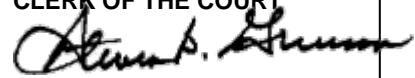
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DISTRICT COURT
CLARK COUNTY, NEVADA

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.: XXX

**REPUBLIC SILVER STATE DISPOSAL,
INC.'S REPLY IN SUPPORT OF
MOTION FOR RECONSIDERATIO ON
ORDER SHORTENING TIME**

Hearing Date: 4/3/19

Hearing Time: 9:00 AM

REPUBLIC SILVER STATE DISPOSAL, INC., by and through its counsel BARRON &
PRUITT, LLP, submits the following Reply in Support of its Motion for Reconsideration of the
Court's Order of March 15, 2019, granting the motion for summary judgment Defendant Andrew M.
Cash, M.D. and Desert Institute of Spine Care (DISC).

///

///

///

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MEMORANDUM OF POINTS AND AUTHORITES

1. Prefatory statement

EDCR 2.24 extends to the district courts in Eighth Judicial District the discretion to reconsider previous rulings upon a timely motion for reconsideration. Cf. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 479, 215 P.3d 709, 716 (2109) (district court had authority to rehear a motion for summary judgment under NRCP 54(b) before entering final judgment as to all parties). Reconsidering a prior ruling is entirely appropriate in determining whether the ruling was "clearly erroneous." Masonry and Tile v. Jolley, Urga & Wirth, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997) (subsequent district judge hearing the same matter could reconsider a ruling by the prior judge under the "clearly erroneous" standard); North Main LLC v. Dist. Ct., 2012 WL 1912173, *2 (2012) (a district court does not abuse its discretion in reconsidering its own previous ruling "if the decision was clearly erroneous"). Republic believes the Court's Order of March 15, 2019 granting the Cash defendants' Motion for Summary Judgment was clearly erroneous, and should be corrected at the trial level.

2. The right of contribution is dependent on "joint or several liability in tort for the same injury."

The Court's manifest error was finding that because Republic alleged that there were two tortious events and differing injuries arising from the January 2012 traffic accident and Dr. Cash's negligent medical care a year later that Republic and the Cash defendants were "successive" and not "joint" tortfeasors, leaving Republic with no right of contribution under the Uniform Contribution Among Tortfeasors Act (UCATA), NRS 17.225 et seq. The crux of this decision is:

If there is a "new and different injury," then the parties cannot be "joint tortfeasors," but instead they would be successive tortfeasors. There was not an "indivisible injury," but the acts (motor vehicle accident and separate alleged negligence of Dr. Cash) occurred at different times and places and allegedly caused "two separate injuries," which gave raise to two distinct causes of action. Consequently this Court has no choice but to conclude that Dr. Cash and Republic are "successive" and not "joint tortfeasors." Because they are "successive" and not "joint tortfeasors["]", NRS 17.225 cannot apply, and there can be no claim for contribution, as a matter of law.

1 Order, pp. 3-4 (footnote omitted).

2 The Cash Opposition to Republic’s motion offers nothing to buttress the Court’s rationale,
3 except the supposedly “fundamental principal of tort law that, in order to be joint tortfeasors, the
4 parties’ negligence must have concurred in causing the same harm to the injured party.” Opposition,
5 p. 4; (emphasis is original). At best, this is an over-statement, or perhaps even a genuine
6 misunderstanding of what’s necessary for multiple parties to be “joint” tortfeasors.¹ Certainly it’s
7 unaccompanied by authority. What is certain however is that further injury due to negligent medical
8 care after an initial injury will always be a “successive” tort, caused by someone other than the original
9 actor. In that sense the Order’s rationale is flawed at best.

10 But participation in a tortious single act or shared omission is entirely unnecessary for joint
11 liability. For example, an employer held vicariously liable under notions of *respondeat superior* will
12 not have acted “concurrently” with the negligent employee. Indeed, employer need not have acted at
13 all since the only predicate for the employer to be “jointly” liable for the employee’s tort is that the
14 employee was in the course of his or her employment. National Convenience Stores v. Fantauzzi, 94
15 Nev. 655, 658, 584 P.2d 689, 691 (1978). And just as Republic’s liability to Ms. Gonzales in her
16 bodily injury action was imposed upon it vicariously, liability for Dr. Cash’s treatment was “jointly”
17 imposed on Republic by operation of law as well.

18 Central to the Court’s decision was that the “successive” nature of the two tortious events ruled
19 out a “single indivisible injury.” This was done while at the same time acknowledging: 1) Ms.
20 Gonzales’ right to recover from Republic damages from the 2012 accident; 2) her separate right to sue
21 Dr. Cash as well for later damages caused by his alleged professional negligence; and 3) even though
22 Ms. Gonzales chose not to sue Dr. Cash (easily in the same suit), Republic was still liable for damages
23 arising from the medical negligence and obligated to make good on them by operation of “Restatement
24 2d of Torts §457 and Nev. Med. Mal Jury Inst. 9MM.8.” Order, p. 4, fn. 1.

25 The Court’s three-part analysis prompts the question: If there was no “single indivisible injury”
26 supporting an otherwise perfected contribution claim²—and instead there were two separate ones—

27 ¹ Even Professor Prosser noted trouble with the concept, believing “joint tortfeasor meant radically different things to
28 different courts, and often to the same court.” Prosser, Joint Torts and Several Liability, 25 Calif. Law Review 413
(1936-37).

² See Order re Motions to Dismiss, December 13, 2016; Order on Defendants’ Motions to Compel, etc., March 13, 2019.

1 why would Republic be liable for both of them? The answer is as we explained it in the motion for
2 reconsideration. First, there were indeed two separate liability-producing events. The first was the
3 original injury from the traffic accident; and the second, was the “successive” injury from what
4 Republic alleges was Dr. Cash’s malpractice. Republic had no recourse against Dr. Cash for the
5 January 2012 accident since his liability arises out of his own treatment. Gagnon v. Lakes Regional
6 Hosp., 465 A.2d 1121, 1223 (N.H. 1983) (“the defendant physicians and hospital are not joint
7 tortfeasors *vis-a-vis* the driver of the automobile who settled with the plaintiff...they are successive or
8 independent wrongdoers who are not liable for the same loss as the driver because their liability arises
9 solely from their alleged negligent conduct which aggravated the plaintiff’s existing injury”). But
10 Republic and Dr. Cash were jointly “liable in tort for the same injury” under NRS 17.225(1) for those
11 injuries caused by Cash’s “professional negligence.”

12 **3. *Original tortfeasors are jointly liable with medical practitioners for negligent***
13 ***treatment after the “original” injury.***

14 Nevada accepts the “well-settled law that the original tortfeasor is liable for the malpractice of
15 the attending physicians.” Hansen v. Collett, 79 Nev. 159, 165, 380 P.2d 301, 304 (1963); see also
16 Morgan v. Cohen, 523 A.2d 1003, 1006 (Md. App. 1987) (“Courts in general have correctly
17 characterized the negligent treatment as a subsequent tort for which the original tortfeasor is jointly
18 liable”). In the motion for reconsideration Republic discussed Restatement (2d) of Torts §457,
19 expressing the same principle in Hansen v. Collett that “If the negligent actor is liable for another’s
20 bodily injury, he is also subject to liability for any additional bodily harm resulting from normal efforts
21 of third persons in rendering aid which the other’s injury reasonably requires, *irrespective of whether*
22 *such acts are done in a proper or negligent manner.*” Emphasis supplied; see also Calif. Civ. Jury
23 Inst. 3929 (“If you decide that [the defendant] is legally responsible for [the plaintiff’s] harm, [the
24 defendant] is also responsible for any additional harm resulting from the acts of others in providing
25 medical treatment or other aid that [the plaintiff’s] injury reasonably required, even if those acts were
26 negligently performed”).

27 The so-called “successive liability rule” was also discussed in the motion for reconsideration.
28 It is essentially that the original negligent actor is liable for subsequent harm because it is “foreseeable
as a matter of law that the original injury may lead to a causally distinct additional injury” if there is

1 later negligent medical care. 7 Am. Jur.2d Torts §67. So the rule is that the original tortfeasor is jointly
2 liable with the malpracticing physician for the latter’s “successive” act of negligence.

3 **4. The UCATA is premised on “joint or several liability,” not “joint and several**
4 **negligence.**

5 Sometimes the concepts of “joint and several negligence” and “joint and several liability” are
6 conflated. But simply put, it is inconsequential under the UCATA if the shared liability of the
7 contribution plaintiff and defendant arises from “joint negligence.” Instead contribution under NRS
8 17.225(1) is triggered “where two or more persons become jointly or severally liable in tort for the
9 same injury to person or property or for the same wrongful death[.]”

10 As shown above, and in the motion for reconsideration, Republic and Cash did “become jointly
11 or severally liable in tort for the same injury”—in this case that injury resulting from Dr. Cash’s
12 medical negligence. And in fact, the necessity of a “common liability”—as opposed to “common
13 negligence”—is exactly how the UCATA has been interpreted in other jurisdictions. See Lutz v. Boltz,
14 100 A.2d 647, 648 (Del. Supr. 1953) (under the UCATA “it is joint or several *liability*, rather than
15 joint or concurring *negligence*, which determines the right of contribution”) (emphasis is original);
16 accord ICI America, Inc. v. Martin-Murietta Corp., 368 F. Supp. 1148, 1151 (D. Del. 1974) (quoting
17 Lutz, that it is indispensable under the Delaware UCATA for there to be “common liability” to the
18 injured party since “it is joint or several *liability*, rather than joint or concurring *negligence*, which
19 determines the right of contribution”). See also Highway Const. Co. v. Moses, 483 F.2d 812, 815 (8th
20 Cir. 1973) (“the Supreme Court of South Dakota has made it clear that the right to contribution is
21 determined by whether there is joint or several *liability* rather than by the presence of joint or
22 concurring negligence [and]...[h]ence there can be no right to contribution unless the injured party
23 has a possible remedy against both tortfeasors”); Kussman v. City and Co. of Denver, 706 P.2d 776,
24 780 (Colo. 1985) (“common liability” giving rise to a right of contribution exists only when tortfeasors
25 are “jointly or severally liable in tort for the same injury”); Vermeer Carolina’s, Inc. v. Wood/Chuck
26 Chipper Corp., 518 S.E.2d 301, 309 (S.C. 1999) (the “basic premise” of contribution under the
27 UCATA is “commonality” and “‘common liability,’ rather than joint negligence, determine[s] the
28 right to contribution”); Parler & Wobber v. Miles & Stockbridge, 756 A.2d 526, 534 (Md. App. 2000)
 (“Courts and commentators have been careful to note a distinction between common liability and joint

1 negligence. Contribution rests on common liability, not on joint negligence or joint tort. Common
2 liability exists when two or more actors are liable to an injured party for the same damages, even
3 though their liability may rest on different grounds”); 1 Speiser, The American Law of Torts §3:21,
4 pp. 456-57 (“it is not ordinarily essential that there be joint negligence in the sense that all the
5 wrongdoers fail in the performance of an identical duty; contribution may be had among independent
6 tortfeasors whose combined negligence, or whose omission of separate acts of care at the same instant,
7 concur and contribute to the same injury”).

8 **5. The UCATA extends the right of contribution to “successive” medical tortfeasors.**

9 “The definition in the [UCATA] making those jointly *or* severally liable for the same injury
10 literally embraces successive wrongdoers liable for the same harm even though one may also be liable
11 to the injured person for additional damages.” Trieschman v. Eaton, 166 A.2d 892, 894 (Md. App.
12 1961); see also Lewis ex rel. Lewis v. Samson, 35 P.3d 972, 984 (N.M. 2001) (“medical malpractice
13 committed while treating an injury caused by an initial tortfeasor and resulting enhanced injury
14 constitutes a successive tort”).

15 In Lujan v. Healthsouth Rehabilitation Corp., 902 P.2d 1025 (N.M. 1995), the Supreme Court
16 of New Mexico considered a traffic accident case where the accident victim received negligent
17 medical treatment, causing additional injury. The Lujan court found the “original” tortfeasor and
18 negligent medical facility were not “concurrent” tortfeasors since their conduct was entirely different.
19 It then analyzed the same issues presented here, of a “successive” tort occasioned by negligent
20 treatment following an initial injury; whether the “original” tortfeasor was also liable for damages
21 arising from the medical tort; the scope of “successive” tortfeasors own liability for the medical
22 negligence; and whether the original tortfeasor had recourse against the successively liable treatment
23 provider:

24 When a person causes an injury to another which requires medical treatment, it is
25 foreseeable that the treatment, whether provided properly or negligently, will
26 cause additional harm.(Citations.) Thus, premised upon the concept that the
27 original tort is a proximate cause of the harm attributable to negligent treatment,
28 courts have held the original tortfeasor liable both for the original injury and for
the harm caused by negligent medical treatment.

1 New Mexico follows the general rule that an original tortfeasor will be held liable
2 for the “concurrent or succeeding negligence of a third person which does not
3 break the sequence of events.” (Citation). Hence, if negligent treatment was the
4 foreseeable result of the January 1990 collision, Jaramillo [the original tortfeasor]
5 could have been held liable for the total harm suffered by Martin Lujan; both the
6 injury she caused in the collision and the aggravation of that injury by
7 Healthsouth. Negligent treatment is thus a successive tort for which the original
8 tortfeasor is jointly liable. (Citation.)

9 Although an original tortfeasor may be held liable for plaintiff's entire harm, a
10 medical care provider who negligently aggravates the plaintiff's initial injuries is
11 not jointly and severally liable for the entire harm, but is liable only for the
12 additional harm caused by the negligent treatment. (Citation.) The medical care
13 provider is liable only for the enhanced injury because the total harm is divisible
14 into separate injuries—that which the patient suffered before being treated by the
15 medical care provider and that which was caused by the medical care provider in
16 the course of treatment. In cases involving successive tortfeasors whose separate
17 causal contributions to the plaintiff's harm can be measured, the doctrine of joint
18 and several liability applies only to the enhanced portion of the injury.

19 Even though the original tortfeasor may be held liable for both the original and
20 the enhanced injury, *the imposition of entire liability is only temporary*. The
21 original tortfeasor, whose duty is of a different character and who is not in *pari*
22 *delicto* with a successive medical care provider with respect to the negligent
23 treatment, can shift through indemnification the responsibility for an enhanced
24 injury. (Citations.) Thus liability for the enhanced injury may be shifted to the
25 successive tortfeasor alone, regardless of who plaintiff chooses to pursue for
26 damages.

27 902 P.2d at 1029-30; (emphasis is original).
28

Conclusion

For the reasons discussed above and in the motion for reconsideration, the Court committed an error by concluding that the case could be disposed of as a matter of law. Certainly the fact that Dr. Cash's alleged negligence was a "successive" tort was insufficient since negligent medical treatment will always come after the initial injury. Nor is the fact that Republic and Dr. Cash's conduct were different in kind of consequence. The injuries from the medical negligence are easily identified as those resulting from the breached pedicle screws, and the extended time that they were compressing the left L5 and S1 nerve roots. Finally, rather than there being no "indivisible single injury" for which Republic and Dr. Cash were jointly "liable in tort," the injuries were those stemming from the medical negligence—a "joint" liability imposed upon Republic as a matter of law. The Order of March 15, 2019 should be vacated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of March, 2019, I served the foregoing **REPLY** as follows:

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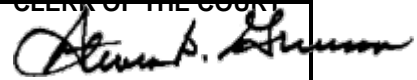
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/s/ MaryAnne Dillard
An Employee of BARRON & PRUITT, LLP



DISTRICT COURT
CLARK COUNTY, NEVADA

REPUBLIC SILVER STATE)
DISPOSAL, INC.,)
)
Plaintiff,) CASE NO. A738123
) DEPT. NO. XXX
vs.)
)
)
ANDREW M. CASH, M.D.,)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
*REPUBLIC SILVER STATE DISPOSAL, INC.'s MOTION FOR
RECONSIDERATION ON ORDER SHORTENING TIME
BEFORE THE HONORABLE JERRY A. WIESE, II
WEDNESDAY, APRIL 3, 2019
AT 10:12 A.M.
LAS VEGAS, NEVADA*

REPORTED BY: KIMBERLY A. FARKAS, NV CCR No. 741

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1 LAS VEGAS, NEVADA, WEDNESDAY, APRIL 3, 2019

2
3 P R O C E E D I N G S

4 * * * * *

5 **THE COURT:** *Republic Silver State v. Cash*,
6 let's do that one next. We got the parties here on
7 that?

8 **MR. BARRON:** We sure do, Your Honor. You
9 must have known that I have a deposition at 11:30.

10 **THE COURT:** I didn't know that, but we're
11 usually done with this calendar by about 10:30.

12 **MS. HALL:** Usually goes really fast.

13 **MR. BARRON:** If I ever had to hire a lawyer,
14 it would be Don Campbell.

15 **THE COURT:** So this is on -- Mr. Barron, this
16 is on for your motion for reconsideration. Let me just
17 kind of make a statement and then I'll let you make
18 your argument if you want. I don't think it's a secret
19 that I don't like to grant motions for summary judgment
20 and motions to dismiss in this department, and I do
21 everything I can to avoid doing that.

22 In this case, I've looked at your motion to
23 reconsider and all of the citations that you raise.
24 The dilemma that I have is I look at the Nevada Supreme
25 Court cases and I look at the statute that we have, and

1 when the complaint alleges that it's a separate and
2 distinct injury and the statute says that there can't
3 be a contribution claim unless there's joint -- unless
4 they're joint tortfeasors, and then the case law
5 defines and explains joint versus successive, I kind of
6 have to follow what the Supreme Court does whether or
7 not I like the outcome. I can tell you in this case I
8 don't like the outcome because I'd rather have the case
9 go to trial.

10 **MR. BARRON:** Sure. You're obviously talking
11 about *Discount Tire*?

12 **THE COURT:** Yeah.

13 **MR. BARRON:** Okay. You know what, I talked
14 about *Discount Tire*. I took it out of the reply. I'll
15 tell you why. That case is not recorded. They're not
16 talking to us. They're talking to the litigants and
17 the lawyers involved.

18 If you take a look at that case, what they
19 said was, as a matter of law, a contribution claim has
20 to be provided for in the release by extinguishing
21 liability. This Court is very familiar with it. There
22 was a second argument. If that didn't work, how about
23 equitable indemnity? And the Court said, wait a
24 minute. You're joint tortfeasors. You both caused the
25 same injury at the same time, I think. And the reason

1 I have to think that is they really don't go into the
2 facts, nor, of course, do we even have the release.

3 Then they contrast a joint tortfeasor from a
4 successive tortfeasor. And the idea that I think they
5 were trying to express was you can have one plaintiff,
6 but if that plaintiff is hurt twice, that's a
7 successive tort. That's the beginning of the analysis
8 here.

9 There clearly was a successive tort. And I
10 cited case after case. I could have kept going. And
11 all of these courts that also have the uniform act say
12 the same thing, don't look at concurrent negligence or
13 joint negligence. You've got to focus on joint
14 liability.

15 And in the case of medical malpractice
16 following an original injury, I don't mean to be
17 facetious, but there's no way short of time travel that
18 Andrew Cash, Dr. Andrew Cash, and Republic could have
19 ever been liable at the same time for the same event
20 happening on July 14, 2012. Just doesn't happen.

21 **THE COURT:** Well, they're both liable to the
22 plaintiff.

23 **MR. BARRON:** Exactly. Now, let me explain to
24 you --

25 **THE COURT:** To the injured plaintiff.

1 **MR. BARRON:** Right. And let me explain to
2 you. And I hope I had explained it but maybe I didn't.

3 The statute talks about joint or several
4 liability. Doesn't say you have to be jointly and
5 severally liable. You've got two events. I think we
6 can agree to that. The first one is a traffic
7 accident. The second is the act of medical negligence.

8 Republic is severally liable for the first
9 one, simple as that. Cash cannot not be. He can only
10 be liable for what he did. And if he committed
11 malpractice, which, by the way, was the fact question
12 ultimately that this Court disposed of, the result, if
13 the Court agreed, would be he's severally liable to her
14 for that.

15 Where the joint liability comes in is that,
16 as a matter of law under *Hansen*, under the restatement,
17 under the third restatement, the liability of the
18 physician or the negligent medical practitioner is
19 imposed on the original act. That's the original
20 tortfeasor rule, successive liability rule, whatever
21 you want to call it.

22 And the reason that's done is, and you see it
23 throughout the cases, it's foreseeable that that
24 original injury is going to require treatment. And if
25 that treatment is negligently performed and enhances an

1 injury or causes an additional injury, that original
2 actor, since it was foreseeable, is also liable for
3 that injury.

4 So you've got out of two events two severally
5 liable defendants, Republic for the first accident,
6 Dr. Cash for his own malpractice, and you've got a
7 joint liability with Republic and Cash because of the
8 restatement. And it's a matter of law that liability
9 is imposed. That's what we extinguish in that release.

10 So, you know, as I looked at the cases, and
11 the one New Jersey case I thought was right on, said
12 don't look at the negligence. You're looking for joint
13 liability. Is there a joint liability here? There has
14 to be.

15 Your Honor, you recognized it. You said,
16 look, this lady could sue Dr. Cash. Pardon me. She
17 could sue Republic. She didn't sue Dr. Cash, but that
18 doesn't make any difference because Republic is already
19 liable for those medical malpractice damages. That's
20 the same injury.

21 So I think, if I could put it very
22 succinctly, forget the first act. If you're
23 concentrating on that, you're looking at the wrong
24 harm. It's the medical malpractice, and then are both
25 Dr. Cash and Republic liable in tort for that same

1 injury. The answer is yes. And that's what you need
2 for contribution.

3 Now, I don't know if I've explained it
4 clearly. I hope I have. It may not be the easiest
5 thing in the world to understand, frankly. I've
6 probably been thinking about this stuff way too long.
7 But that's the mistake the Court made. And, you know
8 what, I looked for cases that backed you up. I
9 couldn't find any.

10 **THE COURT:** Okay. Ms. Hall.

11 **MS. HALL:** Thank you, Your Honor. First I
12 want to point out, which I think the Court is aware of,
13 that they haven't met the standard for reconsideration.
14 They haven't provided any new evidence, any new facts,
15 any new law that support ruling contrary to the Court's
16 decision in March.

17 **THE COURT:** He said I was just wrong. I was
18 clearly erroneous.

19 **MS. HALL:** That is his argument. But these
20 arguments that are raised in the motion to reconsider
21 are the same arguments which were raised in the
22 opposition to my motion for summary judgment with one
23 exception. In the opposition to my motion for summary
24 judgment, plaintiff made the argument that the
25 restatement does not apply because the January 29th,

1 2013 surgery wasn't needed due to bodily harm from the
2 January 14, 2012 car crash.

3 So first, as I've said in the briefing,
4 arguments of counsel are not evidence. But I think
5 it's important to point out that in this motion to
6 reconsider, they're now taking an entirely contrary
7 position to what was taken in opposition to my motion
8 for summary judgment. And now they're claiming, oh,
9 yes, the restatement applies.

10 And the restatement is -- we talked about
11 this briefly at the last hearing. It talks about when
12 you're rendering aid which the other's injury
13 reasonable requires. That's when the *Hansen* decision
14 in Nevada and you become responsible for any alleged
15 malpractice of the physicians who were rendering aid
16 due to the injury caused from the original act.

17 They have always in this case taken the
18 position that we did not cause any injury that needed a
19 surgery. And I cited in the motion for summary
20 judgment briefing the testimony of Republic's own
21 expert who's the primary expert against Dr. Cash, that
22 this surgery wasn't needed because of anything that
23 happened during the car crash. This surgery was either
24 needed because of a degenerative issue or not at all
25 and Dr. Cash committed malpractice because he did an

1 unnecessary surgery. That's the testimony of their
2 expert. The allegation in their amended complaint that
3 was just filed in January says that this was a new and
4 independent injury.

5 So all of the -- first, most of the cases, I
6 think, that are cited in the motion to reconsider are
7 from other jurisdictions. Of the ones that are
8 specific to Nevada, you have that *Discount Tire* case.

9 In that case, as we discussed in the MSJ
10 briefing, that case is distinguishable because it talks
11 about in that particular case there was no dispute that
12 there was one indivisible injury. That's not the
13 circumstance here. I cited that case in the reply
14 brief for the authority and the definitions of joint
15 and successive tortfeasors.

16 And I think, Your Honor, and I don't say that
17 with any facetiousness, I do agree that it's known that
18 it's not easy to get a dispositive motion. And you
19 prefer that cases be heard on the merits. So I know
20 that when Your Honor issued this decision, that you
21 thought through all of these issues, which were all
22 raised in the briefing in the hearing before, and that
23 the decision that was made by this Court was the right
24 decision. Because in Nevada, regardless of what they
25 do in New Jersey, in Nevada, you have to to have joint

1 tortfeasors to have a contribution claim. And they
2 have always in this case through the evidence, the
3 undisputed evidence, they've always taken the position
4 that we are a successive tortfeasor.

5 And even in this motion to reconsider, they
6 haven't pointed you to a single piece of admissible
7 evidence suggesting, even suggesting, that we are
8 somehow joint tortfeasors for the alleged medical
9 malpractice. So I think the Court's decision was the
10 right decision, and it should be upheld, and there's no
11 ground to reconsider it.

12 **MR. BARRON:** I don't know where the idea
13 comes that we didn't think because we didn't think the
14 accident caused what I'll call a surgical lesion
15 excused Dr. Cash from anything. The cases in the
16 restatement and all the law we've cited says the very
17 same thing. The misdiagnosis and a later injury, same
18 thing as a diagnosis that's proper and then a botched
19 surgery. They're indistinguishable, same stuff.

20 What we're looking at here is two pedicle
21 screws that go into a neuro foramen. They show up on a
22 CAT scan. They are looked at by Dr. Cash who says, oh,
23 I don't think there's anything wrong here. And he
24 leaves them there for a good five months until
25 Dr. Stuart Kaplan comes along and he says, we got a

1 problem here.

2 Now, that's plenty of evidence of medical
3 malpractice. As we've explained, the legal
4 ramification of *Hansen v. Collett* and the restatement
5 is we got stuck with it.

6 Now, there's that New Mexico case. And by
7 the way, it is reason it's called the uniform act is
8 everybody's got the same law.

9 So we cited cases from New Mexico, along with
10 others that talked about medical negligence being a
11 successive tort. And that's the *Lujan* case. And I
12 quoted it quite a bit. And what *Lujan* said was, look,
13 we follow the rule that the original tortfeasor will be
14 responsible if there's medical negligence later,
15 enhances an injury, causes additional injury.

16 That being the case, the two actors, the
17 original and the successive actor, the doc, cannot be
18 concurrent tortfeasors. They go ahead and just say
19 that up front.

20 Then they look at it and say, well, that
21 being the case, the plaintiff in this traffic accident
22 could have sued both the original tortfeasor and the
23 doctor. That physician was not sued in that case. And
24 the issue there was could that medical facility -- it
25 was a HealthSouth rehab facility -- could it be sued

1 later. And the New Mexico Supreme Court said, yes,
2 although you're having this liability imposed on you
3 Mr. Original Tortfeasor, it's not going to be there
4 forever because you have a right to go against, in that
5 case HealthSouth. That's exactly what we are doing.
6 The mechanism that we have to do it is the only one
7 that's really available to us and that's contribution.

8 I don't know where -- how you can conclude
9 otherwise that Republic had liability for the Cash
10 injury. I mean, that's just the law.

11 If you have any questions, I hope I can
12 answer them. I'm not sure if I can or not, but I can
13 certainly try.

14 **THE COURT:** I don't know that I have a
15 question that anybody can answer. The Supreme Court is
16 either going to tell me I'm wrong or I'm right. And I
17 don't really care which they tell me because I'm not
18 crazy about the outcome of the case.

19 **MR. BARRON:** Well, reconsider it.

20 **THE COURT:** Here's the problem that I've got.
21 Under NRS 17.225 allows for contribution when two or
22 more parties become jointly or severally liable in tort
23 for the same injury to a person. Based on the
24 pleadings that I have to assume that you can prove
25 everything that's in your pleadings for purposes of a

1 motion to dismiss or summary judgment, it's alleged
2 that they're separate and distinct injuries.

3 If I look at the *Discount Tire* case, whether
4 that's published or not, they're comparing definitions
5 from Blacks Law Dictionary about joint tortfeasors and
6 successive tortfeasors. And we're talking about
7 separate indivisible injuries. In this case I have to
8 assume that they're separate and distinct injuries, and
9 I don't think that there's a right to contribution.

10 Now, I agree with you that an original
11 tortfeasor buys the malpractice that happens as a
12 result of treatment that is related to that initial --
13 that initial accident or liability, but I don't know
14 that I can get from that to the fact that you have a
15 valid contribution claim when there's separate injuries
16 alleged. And that's the dilemma that I have.

17 **MR. BARRON:** How can I help you with that?
18 Because we're telling you there were two different
19 injuries. What we're talking about is a liability
20 that's shared for one of them. That's what we're
21 talking about.

22 **THE COURT:** To the injured plaintiff, yes.

23 **MR. BARRON:** That's what's required under the
24 contribution statute, is that we be liable in tort for
25 the same injury. That injury was the malpractice.

1 **THE COURT:** But it's not the same injury
2 based on your contribution claim.

3 **MR. BARRON:** I'm sorry. I don't understand
4 or how to answer that. I'm not sure what you mean.

5 **THE COURT:** I look at the complaint and I
6 have to do everything in the light most favorable to
7 you, the nonmoving party. In the complaint you don't
8 say it's the same injury. It's a separate and distinct
9 injury.

10 **MR. BARRON:** I had to.

11 **THE COURT:** I get it. I get it.

12 **MR. BARRON:** I had to because it was totally
13 different.

14 **THE COURT:** The Supreme Court has got to fix
15 it. I have to decide the case based on the language of
16 the statute. I don't like it either, Mr. Barron. I
17 have to deny it. Sorry. Take it up.

18 **MR. BARRON:** This was reported? I'd like to
19 get a transcript, please.

20 **THE COURT:** And I'm going to say the same
21 thing on the record this time as I said in the order.
22 When it goes up, because I thought it was going to go
23 up on defendant's part in the past because of my
24 rulings on the application of the medical malpractice
25 statutes, 42.021 and 41.035 and the other ones in 41A,

1 I would hope that the Supreme Court gives us some
2 guidance on the applicability of those if they kick it
3 back to me so it doesn't have to go back up on a writ.

4 **MR. BARRON:** And my intent, Your Honor, is
5 when Republic files their appeal, I plan to
6 cross-appeal just for the sake of efficiency and trying
7 to get all this resolved.

8 **THE COURT:** Make sure it goes in front of
9 them at the same time.

10 **MR. BARRON:** Hopefully, they won't need to
11 get to those issues because it will be denied as mute.

12 **THE COURT:** I wish you both good luck. I
13 don't know. I do the best I can based on how I read
14 the statutes. And there's plenty of times that I make
15 decisions that I don't necessarily like that I think I
16 am compelled to make based on the law that those that
17 sit higher up than me have made.

18 **MR. BARRON:** Thanks, Judge.

19 **THE COURT:** Good luck.

20 **MS. HALL:** Thank you, Your Honor. Did you
21 want me to prepare the order?

22 **THE COURT:** Sure. Just run it by him to
23 approve.

24 (Proceedings concluded at 10:33 A.M.)
25

-o0o-

ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF
PROCEEDINGS.

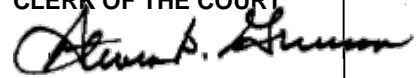

/S/ Kimberly A. Farkas, RPR, CRP

MR. BARRON: [17] 3/7 3/12 4/9 4/12 5/22 5/25 11/11 13/18 14/16 14/22 15/2 15/9 15/11 15/17 16/3 16/9 16/17 MS. HALL: [4] 3/11 8/10 8/18 16/19 THE COURT: [20]	11/14 12/21 14/13 ACCURATE [1] 17/2 act [6] 5/11 6/7 6/19 7/22 9/16 12/7 actor [2] 7/2 12/17 actors [1] 12/16 additional [2] 7/1 12/15 admissible [1] 11/6 after [1] 5/10 against [2] 9/21 13/4 agree [3] 6/6 10/17 14/10 agreed [1] 6/13 ahead [1] 12/18 aid [2] 9/12 9/15 aid [8] 3/23 5/11 9/24 10/5 10/21 10/21 11/16 16/7 allegation [1] 10/2 alleged [4] 9/14 11/8 14/1 14/16 alleges [1] 4/1 allows [1] 13/21 along [2] 11/25 12/9 already [1] 7/18 also [2] 5/11 7/2 although [1] 13/2 always [3] 9/17 11/2 11/3 am [1] 16/16 amended [1] 10/2 analysis [1] 5/7 ANDREW [3] 1/8 5/18 5/18 Ann [1] 2/6 answer [4] 8/1 13/12 13/15 15/4 any [9] 7/18 8/9 8/14 8/14 8/15 9/14 9/18 10/17 13/11 anybody [1] 13/15 anything [3] 9/22 11/15 11/23 appeal [2] 16/5 16/6 APPEARANCES [1] 2/1 applicability [1] 16/2 application [1] 15/24 applies [1] 9/9 apply [1] 8/25 approve [1] 16/23 APRIL [2] 1/16 3/1 are [11] 7/24 8/20 8/21 9/4 10/6 10/6 10/7 11/4 11/7 11/22 13/5 argument [4] 3/18 4/22 8/19 8/24 arguments [3] 8/20 8/21 9/4 as [11] 4/19 6/9 6/16 7/10 9/3 10/9 11/18	12/3 14/11 15/21 16/11 assume [2] 13/24 14/8 ATTEST [1] 17/2 authority [1] 10/14 available [1] 13/7 avoid [1] 3/21 aware [1] 8/12 B back [2] 16/3 16/3 backed [1] 8/8 BARRON [4] 2/5 2/5 3/15 15/16 based [5] 13/23 15/2 15/15 16/13 16/16 be [18] because [17] 4/8 7/7 7/18 8/25 9/22 9/24 9/25 10/10 10/24 11/13 13/4 13/17 14/18 15/12 15/22 15/23 16/11 become [2] 9/14 13/22 been [2] 5/19 8/6 before [2] 1/15 10/22 beginning [1] 5/7 being [3] 12/10 12/16 12/21 best [1] 16/13 bit [1] 12/12 Blacks [1] 14/5 bodily [1] 9/1 botched [1] 11/18 both [5] 4/24 5/21 7/24 12/22 16/12 brief [1] 10/14 briefing [4] 9/3 9/20 10/10 10/22 briefly [1] 9/11 buys [1] 14/11 C calendar [1] 3/11 call [2] 6/21 11/14 called [1] 12/7 Campbell [1] 3/14 can [14] 3/21 4/7 5/5 6/6 6/9 13/8 13/11 13/12 13/12 13/15 13/24 14/14 14/17 16/13 can't [1] 4/2 cannot [2] 6/9 12/17 car [2] 9/2 9/23 care [1] 13/17 Carroll [1] 2/12 case [28] cases [8] 3/25 6/23 7/10 8/8 10/5 10/19 11/15 12/9	CASH [15] 1/8 3/5 5/18 5/18 6/9 7/6 7/7 7/16 7/17 7/25 9/21 9/25 11/15 11/22 13/9 CAT [1] 11/22 cause [1] 9/18 caused [3] 4/24 9/16 11/14 causes [2] 7/1 12/15 CCR [1] 1/23 certainly [1] 13/13 circumstance [1] 10/13 citations [1] 3/23 cited [6] 5/10 9/19 10/6 10/13 11/16 12/9 cktfmlaw.com [1] 2/15 claim [5] 4/3 4/19 11/1 14/15 15/2 claiming [1] 9/8 CLARK [1] 1/2 clearly [3] 5/9 8/4 8/18 Collett [1] 12/4 comes [3] 6/15 11/13 11/25 committed [2] 6/10 9/25 comparing [1] 14/4 compelled [1] 16/16 complaint [4] 4/1 10/2 15/5 15/7 concentrating [1] 7/23 conclude [1] 13/8 concluded [1] 16/24 concurrent [2] 5/12 12/18 contrary [2] 8/15 9/6 contrast [1] 5/3 contribution [10] 4/3 4/19 8/2 11/1 13/7 13/21 14/9 14/15 14/24 15/2 could [8] 5/10 5/18 7/16 7/17 7/21 12/22 12/24 12/25 couldn't [1] 8/9 counsel [1] 9/4 COUNTY [1] 1/2 course [1] 5/2 COURT [14] 1/1 3/25 4/6 4/21 4/23 6/12 6/13 8/7 8/12 10/23 13/1 13/15 15/14 16/1 Court's [2] 8/15 11/9 courts [1] 5/11 crash [2] 9/2 9/23 crazy [1] 13/18 cross [1] 16/6 cross-appeal [1] 16/6	CRR [1] 17/5 D damages [1] 7/19 DAVID [1] 2/5 dbarron [1] 2/7 decide [1] 15/15 decision [7] 8/16 9/13 10/20 10/23 10/24 11/9 11/10 decisions [1] 16/15 Defendant [2] 1/9 2/10 defendant's [1] 15/23 defendants [1] 7/5 defines [1] 4/5 definitions [2] 10/14 14/4 degenerative [1] 9/24 denied [1] 16/11 deny [1] 15/17 department [1] 3/20 deposition [1] 3/9 DEPT [1] 1/6 diagnosis [1] 11/18 Dictionary [1] 14/5 did [4] 6/10 9/18 9/25 16/20 didn't [6] 3/10 4/22 6/2 7/17 11/13 11/13 difference [1] 7/18 different [2] 14/18 15/13 dilemma [2] 3/24 14/16 Discount [4] 4/11 4/14 10/8 14/3 discussed [1] 10/9 dismiss [2] 3/20 14/1 DISPOSAL [2] 1/4 1/13 disposed [1] 6/12 dispositive [1] 10/18 dispute [1] 10/11 distinct [4] 4/2 14/2 14/8 15/8 distinguishable [1] 10/10 DISTRICT [1] 1/1 do [9] 3/6 3/8 3/20 5/2 10/17 10/25 13/6 15/6 16/13 doc [1] 12/17 doctor [1] 12/23 does [2] 4/6 8/25 doesn't [4] 5/20 6/4 7/18 16/3 doing [2] 3/21 13/5 Don [1] 3/14 don't [21] done [2] 3/11 6/22
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Republic Silver State Disposal, Inc.

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

NOTICE OF APPEAL

Notice is hereby given that REPUBLIC SILVER STATE DISPOSAL, INC. ("Plaintiff"), by
and through its attorney, David Barron, Esq. of the law firm of BARRON & PRUITT, LLP, hereby
appeals to the Supreme Court of Nevada from

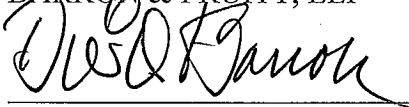
1. All judgments and orders in this case;
2. The Order Granting Defendants Andrew M. Cash, MD; Andrew M. Cash, MD, PC and
Desert Institute of Spine Care, LLC's Motion for Summary Judgment entered on March 15, 2019,
notice of entry of which was served on March 15, 2019 (attached as **Exhibit A**);

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

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3. The ruling on Plaintiff Republic Silver State Disposal, Inc.'s Motion for Reconsideration (*supplement to this notice of appeal to follow upon entry of written order*); and
4. All other rulings and orders made appealable by the foregoing.

BARRON & PRUITT, LLP



DAVID BARRON, ESQ.
Nevada Bar No. 142
JOHN D. BARRON, ESQ.
Nevada Bar No. 14029
3890 West Ann Road
North Las Vegas, Nevada 89031
*Attorneys for Plaintiff
Republic Silver State Disposal, Inc.*

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TELEPHONE (702) 870-3940
FACSIMILE (702) 870-3950

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2019, I served the foregoing **NOTICE OF APPEAL** 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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<p>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: rmcbride@cktfmlaw.com Email: hshall@cktfmlaw.com <i>Attorneys for Defendants</i> <i>Andrew M. Cash, M.D.</i> <i>Andrew M. Cash, M.D., P.C. a/k/a</i> <i>Andrew Miller Cash, M.D., P.C.; and</i> <i>Desert Institute of Spine Care</i></p>	<p>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 <i>Attorneys for Defendants</i> <i>Bruce Katuna, M.D. and</i> <i>Rocky Mountain Neurodiagnostics, LLC</i></p>
<p>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 <i>Attorneys for Defendants</i> <i>James D. Balodimas, M.D. and</i> <i>James D. Balodimas, M.D., P.C.</i></p>	<p>James Murphy, Esq. LEWIS BRISBOIS BISGAARD & SMITH, LLP 6385 South Rainbow Blvd., Suite 600 Las Vegas, NV 89118 Facsimile: (702) 893-3789 Email: James.Murphy@lewisbrisbois.com <i>Attorneys for Defendant Neuromonitoring</i> <i>Associates, Inc.</i></p>
<p>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 <i>Attorneys for Defendant</i> <i>Las Vegas Radiology, LLC</i></p>	<p>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 <i>Attorneys for Defendant Danielle Miller a/k/a</i> <i>Danielle Shopshire</i></p>

/s/ Mary Ann Dillard
An Employee of BARRON & PRUITT, LLP

EXHIBIT A

EXHIBIT A

EXHIBIT A

JA1475

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

Steven D. Grierson

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

Plaintiff

vs.

Case No.: A-16-738123-C

Dept No.: XXX

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.

**NOTICE OF ENTRY OF ORDER:
ORDER RE: DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

You are hereby notified that this Court entered **Order re: Defendant's Motion for
Summary Judgment**, a copy of which is attached hereto.

DATED this 15th day of March 2019.

[Signature]

JERRY A WIESE

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of this Order was electronically served

Steven D. Grierson

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

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,)

Defendants.)

CASE NO.: A-16-738123-C
DEPT. NO.: 30

ORDER RE: DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

Defendant's Motion for Summary Judgment came on for hearing on Monday, March 11, 2019, at 2:00 p.m. The parties were represented by counsel, who submitted briefs, and argued orally on behalf of their clients. The Court took the matter under advisement, and now issues this Order.

Summary Judgment is appropriate only if "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." NRCP 56. The pleadings and evidence must be construed in the light most favorable to the non-moving party, but the non-moving party must still set forth specific facts demonstrating the existence of a genuine issue of material fact, in order to defeat Summary Judgment. *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 294, 662 P.2d 610, 618-619 (1983). The non-moving party must establish a genuine issue of material fact with more than "gossamer threads of whimsy." *Wood v. Safeway*, 121 Nev. 724, 730-31, 121 P.3d 1026 (2005).

Plaintiff's only remaining claim in this action is for contribution against Dr. Cash and the related Defendants, pursuant to NRS 17.225. Defendants argue that Summary Judgment is appropriate because no cause of action for contribution can exist when Republic and Dr. Cash are not "joint tortfeasors," and did not contribute to the same single injury. In support of their argument, Defendants cite to the Plaintiff's

1 Complaint, in which Plaintiff alleges that, "As a direct and proximate result of
2 Defendants' negligence, . . . Gonzalez suffered new and different injuries from those
3 allegedly suffered in the motor vehicle accident of January 14, 2012." (See Complaint
4 at Paragraph 56).

5 NRS 17.225 reads in pertinent part as follows:

6 NRS 17.225 Right to contribution.

7 1. Except as otherwise provided in this section and NRS 17.235 to 17.305,
8 inclusive, where two or more persons become jointly or severally liable in tort
9 **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.

10
11 NRS 17.225 (emphasis added).

12 Defendant suggests that accepting the Plaintiff's allegations as true, Dr. Cash
13 and Republic are not joint tortfeasors, and no right to contribution exists under NRS
14 17.225.

15 In his Motion for Summary Judgment, Cash cites to the case of *District of*
16 *Columbia v. Washington Hospital Center*, 722 A.2d 332 (1998), but Plaintiff responds
17 that such case is inapplicable because the District of Columbia doesn't even have a
18 contribution statute. Such a distinction is important and consequently, this Court
19 cannot rely on that case for its decision in this case.

20 Nevada's contribution cause of action was created by statute. Defendant cites to
21 the unpublished Nevada Supreme Court Case of *Disc. Tire Co. of Nev. V. Fisher Sand &*
22 *Gravel Co.*, 400 P.3d 244 (2017 WL 1397333 (Nev. 2017 Unpub), which states the
following:

23 "Contribution is a creature of statute . . ." *Doctors Co. v. Vincent*, 120 Nev. 644,
24 560, 98 P.3d 681, 686 (204). "Under the Nevada statutory formulation, the
25 remedy of contribution allows one tortfeasor to extinguish joint liabilities
26 through payment to the injured party, and then seek partial reimbursement
27 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.
28 . . .

28 The Nevada Supreme Court discussed the difference between joint tortfeasors
and successive tortfeasors, as follows:

1
2 . . . we hold that Discount Tire and Fisher are joint tortfeasors, and not
3 successive tortfeasors. Compare *Joint Tortfeasors*, *Black's Law Dictionary* (10th
4 ed. 2014)(defining joint tortfeasors as "[t]wo or more tortfeasors who
5 contributed to the claimant's injury and who may be joined as defendants in the
6 same lawsuit"), and 74 *Am.Jur.2d Torts* §64 (2012) (providing that "joint
7 tortfeasors act negligently – either in voluntary, intentional concert, or
8 separately and independently – to produce a **single indivisible injury**"
9 (emphasis added)), with *Hansen v. Collett*, 79 Nev. 159, 167, 380 P.2d 301, 305
10 (1963)(providing that successive tortfeasors must produce acts "differing in
11 time and place of commission as well as in nature, [causing] **two separate**
12 **injuries** [that] gave rise to two distinct causes of action" (emphasis added)),
13 and *Successive Tortfeasors*, *Black's Law Dictionary* (10th ed. 2014)(defining
14 successive tortfeasors as "[t]wo or more tortfeasors whose negligence occurs at
15 different times and causes different injuries to the same third party" (emphasis
16 added)). . . .

17 *Disc. Tire Co. of Nev. V. Fisher Sand & Gravel Co.*, 400 P.3d 244, 2017 WL 1397333
18 (2017 Nev. Unpub)(emphasis added by the Supreme Court).

19 Based on this distinction, this Court needs to determine whether Republic and
20 Cash are "joint tortfeasors" or "successive tortfeasors." Viewing the evidence in the
21 light most favorable to the non-moving party, Republic, the Court must conclude that
22 the Plaintiff will be able to establish its allegation that as a result of Dr. Cash's actions,
23 "Gonzalez suffered new and different injuries from those allegedly suffered in the
24 motor vehicle accident of January 14, 2012." (See Complaint at Paragraph 56).
25 Although the Plaintiff would now have the Court conclude that a contribution claim is
26 valid since there is a single "common liability," as discussed in NRS 17.225(2),
27 subsection (1) of the same statute indicates that there is a right of contribution when
28 "two or more persons become jointly or severally liable . . . for the **same injury**."
Although the Court assumes that Dr. Cash would testify that his treatment was part of
the overall care of the patient's injuries resulting from the subject motor vehicle
accident, and that he did not cause any "separate" or "additional" injury, for purposes
of a Motion for Summary Judgment, the Court must assume that the Plaintiff will be
able to prove its allegation that there was a "new and different injury" caused by Dr.
Cash. If there is a "new and different injury," then the parties cannot be "joint
tortfeasors," but instead they would be successive tortfeasors. There was not an
"indivisible injury," but the acts (motor vehicle accident and separate alleged
negligence of Dr. Cash) occurred at different times and places, and allegedly caused

1 "two separate injuries," which gave rise to two distinct causes of action.¹ Consequently,
2 this Court has no choice but to conclude that Dr. Cash and Republic are "successive"
3 and not "joint tortfeasors." Because they are "successive" and not "joint tortfeasors,"
4 NRS 17.225 cannot apply, and there can be no claim for contribution, as a matter of
5 law.


6 Based upon the foregoing, and good cause appearing, the Defendant's Motion
7 for Summary Judgment is hereby **GRANTED**.²

8 As a result of this decision, the Jury Trial set for 3/18/2019 is hereby
9 **VACATED**.

10 The Defendants' Motion for Stay Pending Decision on Emergency Petition for
11 Writ of Mandamus was not actually calendared, but is now **VACATED AS MOOT**.

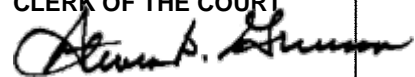
12 The Motion to Intervene on behalf of Physicians Casualty Risk Retention Group
13 is **VACATED AS MOOT**.

14 Dated this 14th day of March, 2019.

15
16 
17 JERRY A. WIESE II
18 DISTRICT COURT JUDGE
19 EIGHTH JUDICIAL DISTRICT COURT
20 DEPARTMENT XXX
21
22

23
24 Unfortunately for the Plaintiff, the Court's ruling will eliminate the Plaintiff's cause of action for
25 contribution, and consequently, one may ask "what are the two distinct causes of action?" This Court struggles
26 with this question, but concludes that the original Plaintiff, Gonzalez, would have two distinct causes of action if
27 she had chosen to bring them. She would have one negligence claim against Republic, and a separate claim for
28 alleged professional negligence, against Dr. Cash. Although Restatement 2d Torts §457 and Nev. Med Mal Jury
Inst. 9MM.8 would allow Gonzalez to have recovered all damages from Republic, it doesn't mean that she would
not have had a distinct cause of action against Dr. Cash if she had wanted to assert it.

² The Court notes that although Dr. Cash's counsel was preparing a Writ with regard to the Court's prior
decisions, this decision will obviously eliminate the need for that Writ. If Plaintiff's counsel instead files an
Appeal, this Court suggests and/or requests that the parties brief and request that the Supreme Court also address
and give guidance with regard to the applicability of NRS 41A.035, NRS 42.021, and other related professional
negligence statutes to the facts and circumstances of this case, and how such statutes could be applied to a claim for
contribution, when the Plaintiff is not the injured party.



NOTC

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

HEATHER S. HALL, ESQ.

Nevada Bar No.: 10608

CARROLL, KELLY, TROTTER,

FRANZEN, McBRIDE & PEABODY

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Las Vegas, Nevada 89113

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Attorneys for Defendants,

Andrew M. Cash, M.D.; Andrew M. Cash,

M.D., P.C.; Andrew Miller Cash, M.D.,

P.C.; & Desert Institute of Spine Care, LLC

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: XXX

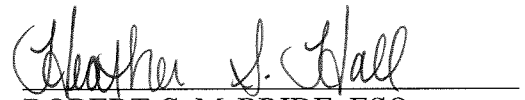
NOTICE OF CROSS APPEAL

1 On April 10, 2019 Plaintiff REPUBLIC SILVER STATE DISPOSAL, INC. filed a
2 Notice of Appeal from the Order Granting Defendants Andrew M. Cash, MD; Andrew M. Cash,
3 MD, PC and Desert Institute of Spine Care, LLC's Motion for Summary Judgment entered on
4 March 15, 2019, as well as the denial of Plaintiff Republic Silver State Disposal, Inc.'s Motion
5 for Reconsideration.
6

7 PLEASE TAKE NOTICE that Defendants/Respondents ANDREW M. CASH, M.D.;
8 ANDREW M. CASH, M.D., P.C., AKA ANDREW MILLER CASH, M.D., P.C.; & DESERT
9 INSTITUTE OF SPINE CARE, LLC hereby appeal to the Supreme Court of Nevada from the
10 District Court's March 13, 2019 Order on Defendants' Motions to Compel and Non-Party
11 Deponents Marie Gonzales' Motion for Protective Order on Order Shortening Time, wherein the
12 District Court held that NRS 41A.035 and NRS 42.021 do not apply to this contribution action
13 based upon allegations of medical malpractice. A copy of the Order is attached hereto as
14 **Exhibit "A"**.
15

16 DATED this 24th day of April, 2019.

17
18 CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY

19
20 

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

HEATHER S. HALL, ESQ.

Nevada Bar No.: 10608

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*

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 24th day of April, 2019, I served a true and correct copy
3 of the foregoing **NOTICE OF CROSS APPEAL** addressed to the following counsel of record
4 at the following address(es):

- 5 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of
6 e-service attached to any copy filed with the Court; or
7 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with
8 postage thereon fully prepaid, addressed as indicated on the service list below in the
9 United States mail at Las Vegas, Nevada
10 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number
indicated on the service list below.

11 David Barron, Esq.
12 John D. Barron, Esq.
13 BARRON & PRUITT, LLP
14 3890 West Ann Road
North Las Vegas, NV 89031
Attorneys for Plaintiff


15
16
17
18 
An Employee of CARROLL, KELLY, TROTTER,
FRANZEN, McBRIDE & PEABODY

EXHIBIT “A”

EXHIBIT “A”

DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

Steven D. Grierson

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

Plaintiff

Case No.: A-16-738123-C

Dept No.: XXX

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.

**NOTICE OF ENTRY OF ORDER:
ORDER ON DEFENDANTS ANDREW
M. CASH, M.D.; ANDREW M. CASH,
M.D., P.C.; & DESERT INSTITUTE
OF SPINE CARE, LLC'S MOTIONS
TO COMPEL AND NON-PARTY
DEPONENTS MARIE GONZALES'
MOTION FOR
PROTECTIVE ORDER ON ORDER
SHORTENING TIME**

**DATE OF HEARING: 03/04/19
TIME OF HEARING: 9:00 A.M.**

You are hereby notified that this Court entered **ORDER ON DEFENDANTS
ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C.; & DESERT
INSTITUTE OF SPINE CARE, LLC'S MOTIONS TO COMPEL AND NON-
PARTY DEPONENTS MARIE GONZALES' MOTION FOR PROTECTIVE
ORDER ON ORDER SHORTENING TIME**, a copy of which is attached hereto.

DATED this 13th day of March 2019.

Jerry A. Wiese

JERRY A WIESE

DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder for:

///

///

///

Party: Andrew M. Cash, M.D. - Defendant



Michelle Newquist

mnewquist@cktfmlaw.com



Madeline VanHeuvelen

mvvanheuvelen@cktfmlaw.com

Party: Republic Silver State Disposal, Inc. - Plaintiff



David Barron

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Mary Ann Dillard

mdillard@lvnvlaw.com



Becca Harrell

bharrell@lvnvlaw.com



Luz T Macias

lmacias@lvnvlaw.com

Tatyana Ristic, JEA



DISTRICT COURT
CLARK COUNTY, NEVADA
-oOo-

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

Plaintiff

vs.

Case No.: A-16-738123-C

Dept No.: XXX

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
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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.

**ORDER ON DEFENDANTS ANDREW
M. CASH, M.D.; ANDREW M. CASH,
M.D., P.C.; & DESERT INSTITUTE
OF SPINE CARE, LLC'S MOTIONS
TO COMPEL AND NON-PARTY
DEPONENTS MARIE GONZALES'
MOTION FOR
PROTECTIVE ORDER ON ORDER
SHORTENING TIME**

**DATE OF HEARING: 03/04/19
TIME OF HEARING: 9:00 A.M.**

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's
Motion to Compel NRCP 30(b)(6) Deposition of Plaintiff on Order Shortening Time; Motion to
Compel Deposition and Production of Documents on Order Shortening Time and Non-Party
Deponent Marie Gonzales' Motion for Protective Order on Order Shortening Time came on for
hearing on March 4, 2019. The Court, having reviewed the papers and pleadings on file herein
and having heard argument of, hereby finds as follows:

1. On May 14, 2018, this Court issued an order stating that the non-economic
damages in this action were capped at \$350,000 per NRS 41A.035. Considering the issues
raised by the Motions has caused the Court to reconsider its prior ruling that NRS 41A.035

1 applies to this contribution action premised upon allegations of medical malpractice. See Order
2 Granting Defendant Las Vegas Radiology's Motion to "Cap" Non-Economic Damages Per
3 NRS 41A.035 and Joinders to Same.
4

5 2. The prior Order stating, " ... Nevada law obligates a Plaintiff seeking contribution
6 from health care providers, asserting claims for professional negligence, to satisfy the
7 requirements of NRS Chapter 41A" is hereby vacated. Because of its reconsideration of its
8 prior rulings, the Court believes the discussion found below at ¶¶ 3-13 is in order.
9

10 3. The Court finds that NRS Ch. 41A has limited application to this contribution
11 action. The Court has previously recognized that Republic Silver State Disposal's (Republic)
12 cause of action is for contribution under the Uniform Contribution Among Tortfeasors Act,
13 NRS 17.225 et seq., and not one for "professional negligence" against "provider(s) of health
14 care" under the provisions of NRS ch. 41A. See Order re: Cash Defendants' Motion to
15 Dismiss, etc., entered Dec. 13, 2016, p. 2. The referenced Order affirmatively dismissed a
16 cause of action contained in Republic's Amended Complaint for professional negligence, but
17 did so by further recognizing that the contribution claim was "based upon professional
18 negligence" and that the contribution action "subsumed" professional negligence as its basis
19 for liability. Id., pp. 2-3; see also NRS 41A.015 ("Professional negligence means the failure of
20 a provider of health care, in rendering services, to use the reasonable care, skill or knowledge
21 ordinarily used under similar circumstances by similarly trained and experienced providers of
22 health care").
23
24

25 4. NRS 41A.035 imposes a \$350,000 limitation for "noneconomic" damages,"
26 which are in turn defined at NRS 41A.011 as including "damages to compensate for pain,
27 suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary
28 damages."

1 5. The Court finds the parameters of NRS 41A.035, limiting the recovery of
2 “noneconomic damages,” are set by the statute’s own terms:

3 In an action for injury or death against a provider of health care based
4 upon professional negligence, *the injured plaintiff may recover*
5 noneconomic damages, but the amount of noneconomic damages
6 awarded in such an action must not exceed \$350,000, regardless of the
7 number of plaintiffs, defendants or theories upon which liability may be
8 based. (emphasis added)

9 6. The Court believes its prior order imposing the damage limitation in NRS
10 41A.035 here was in error. The statutory definition of “noneconomic damage” at NRS
11 41A.011 contemplates a bodily injury or death, and is integral to an understanding of NRS
12 41A.035’s scope and purpose. The statute further indicates that “the injured plaintiff may
13 recover” certain damages, but Republic is not an “injured plaintiff,” as contemplated by the
14 statute. Republic’s contribution action- is for neither bodily injury nor death; nor does it seek
15 recovery for the injured patient’s “pain, suffering, inconvenience,” etc. resulting from allegedly
16 faulty care. Its claim is brought under a statutory scheme allowing one who has extinguished a
17 “common liability” to seek monetary restitution from another party who is also responsible for
18 causing the loss. This conclusion regarding the nature of Republic’s claim is in conformity
19 with the Court’s Order of Dec. 13, 2016, referenced above.

20 7. Next, Nevada’s contribution statutes impose their own limitation on recovery
21 since the party seeking contribution’s “total recovery is limited to the amount paid by the
22 tortfeasor in excess of his or her equitable share.” NRS 17.225(2). The same provision also has
23 a salutary effect for the party being sued for contribution because “[n]o tortfeasor is compelled
24 to make contribution beyond his or her own equitable share of the entire liability.” Id. The
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1 contribution-defendant also has further protection because the contribution-plaintiff cannot
2 recover "any amount paid in a settlement which is in excess of what was reasonable." Id. (3).

3
4 8. Finally, the damage limitation in NRS 41A.035 cannot be read harmoniously
5 with the provisions of NRS 17.225. Each statute finds good application within its own statutory
6 scheme, but becomes cumbersome to the point of being unworkable if superimposed
7 elsewhere. This case presents an example of that unworkability: If NRS 41A.035's "cap" is
8 imposed in Republic's contribution action, what of the \$2 million settlement can be considered
9 "noneconomic damage" with a monetary ceiling, as opposed to "economic damage," having no
10 limitation on its full recovery under NRS 41A.007? As a prior practicing attorney in this area
11 of the law, this Court has first-hand knowledge that when settling a personal injury case such
12 as Ms. Gonzales' case against Silver State, the attorney and the Plaintiff have no incentive or
13 reason to distinguish between economic and non-economic damages. If the settling parties
14 themselves do not make that distinction, how can the Court make such a determination later?
15 Or, without evidence of such an intent being found in the settlement, can the fact-finder ever
16 do more than make a wholly arbitrary determination? The answers seem self-apparent – it is
17 impossible to determine in a case such as this what portion of the settlement was for economic
18 vs. non-economic damages. The Defendant suggests that the determination should be based on
19 how the Plaintiff's tax liability for the amount received was calculated. This Court does not
20 see that as a realistic option, as tax liabilities can be calculated differently by different CPA's,
21 and may be based on a variety of tax codes. The Court therefore believes the better choice is to
22 read NRS 41A.035, no less than NRS 17.225 et seq., in context and as written. This is part of
23 the reason this Court finds and concludes that statutes contained in Chapter 41A of the NRS
24 were not intended to apply to a subrogation/contribution type action such as that before this
25 Court.
26
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1 9. Thus, the Court finds NRS 41A.035's monetary limitation for "noneconomic
2 damages" is specific to "pain, suffering, inconvenience, physical impairment, disfigurement,
3 and other nonpecuniary damages." These damages are suffered by the individual who is
4 personally injured because of the "professional negligence." The Court cannot find a way to
5 apply NRS 41A.035 to the facts of the present case, and consequently, concludes that
6 41A.035's limitation is inapplicable in the present case.
7

8 10. In addition, the Court finds Republic's claim is not a continuation or assumption
9 of Marie Gonzales' personal rights for recovery of any "pain, suffering" etc. resulting from the
10 "professional negligence" alleged, and statements to the contrary in prior rulings are
11 disavowed. Rather, Republic's claim is for contribution, which was statutorily created by the
12 State Legislature with its adoption of the Uniform Contribution Among Torfeasors Act in
13 1973, and later amended during its 1979 legislative session. See 1973 Statutes of Nevada 1303;
14 1979 Statutes of Nevada 1978. But for its statutory creation, Republic would have no legal
15 right of contribution. Reid v. Royal Ins. Co., 80 Nev. 137, 142, 390 P.2d 45, 47 (1964)
16 (following the common law rule that there is "no right of contribution between co-torfeasors").
17 Therefore the Court finds Republic's right of contribution is created and dependent on the
18 provisions of NRS 17.225 et seq., and does not derive from rights personal to Marie Gonzales.
19
20

21 11. The Court also finds that NRS 42.021 has no application to the present action.
22 The foregoing rationale regarding NRS 41A.035 also pertains to NRS 42.021 as it too comes
23 into play "[i]n an action for injury or death against a provider of health care based upon
24 professional negligence." But as seen, Republic's contribution action is statutory, and not
25 derivative of Marie Gonzales' injury, or rights personal to her that arose from it.
26
27

28 12. On its face, NRS 42.021 permits a defendant charged with "professional
negligence" (specially defined in sub. (8)(c) as a "negligent act or omission to act by a provider

1 of health care in the rendering of professional services, which act or omission is the proximate
2 cause of a personal injury or wrongful death”) to “elect” to bring into evidence payments from
3 certain defined “collateral” sources which are made “payable as a benefit to the plaintiff as a
4 result of the injury[.]” Id. (1). Should the professional negligence defendant offer such
5 “collateral source” evidence, the plaintiff then has the option of offering his or her own
6 evidence of “any amount that the plaintiff has paid or contributed to secure the plaintiff’s right
7 to any insurance benefits concerning which the defendant has introduced evidence.” Id. (1).
8 Subsection (2) of the statute thereafter cuts off any third party rights of reimbursement against
9 the plaintiff, or subrogation rights against the defendant for any collateral source offered into
10 evidence.
11

12
13 13. NRS 42.021, therefore, favors the medical defendant with the possibility of a
14 “collateral source” offset against a total recovery, while at the same time shielding the NRS
15 42.021 plaintiff and “professional negligence” defendant from later actions by third-party
16 payors. But assuming any such “collateral source” benefits were paid to Ms. Gonzales—which
17 is by no means certain—application of the portions of the statute which would benefit
18 Republic, would be impossible here because 1) it did not receive any collateral source
19 payments (nor can it be charged with their constructive receipt since its rights are not
20 derivative of Ms. Gonzales’); 2) the “professional negligence” defendants would nonetheless
21 get the potential collateral source offset in the event of a recovery against them; and 3) there
22 appears to be no impediment to a subrogation action by third-party payors under sub. (2)(b) for
23 return of the very collateral benefits Republic never received. It violates Equal Protection of
24 the Law to apply only a portion of the statute, which benefits the Defendant, when the portion
25 of the statute which benefits the “injured party” is inapplicable and cannot be applied in favor
26
27
28

1 of the Plaintiff, Silver State. The Court thus finds NRS 42.021 inapplicable to Republic as a
2 matter of law.

3 14. Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., aka
4 ANDREW MILLER CASH, M.D., P.C.; and DESERT INSTITUTE OF SPINE CARE, LLC's
5 Motion to take NRCP 30(b)(6) Deposition of Plaintiff Republic on Order Shortening Time is
6 **GRANTED IN PART, DENIED IN PART.**

7
8 15. The Motion is granted in so far as Defendant Cash is entitled to depose Plaintiff
9 Republic and question the PMK on the amount of and basis for the settlement in the personal
10 injury action.

11
12 16. The Motion is denied in so far as the defense states that the attorney-client
13 privilege is waived due to the at-issue waiver doctrine. The Court does not find that the
14 attorney-client privilege has been waived by virtue of this contribution claim and specific
15 ruling is reserved for a per question basis.

16
17 17. Defendants ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C., aka
18 ANDREW MILLER CASH, M.D., P.C.; and DESERT INSTITUTE OF SPINE CARE, LLC's
19 Motion to Compel Deposition and Production of Documents on Order Shortening Time from
20 certain non-parties is **DENIED AS MOOT.**

21
22 ///

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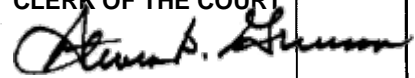
28 ///

1 18. Non-Party Deponents Marie Gonzales, Jacqueline R. Bretell, Esq., and Bighorn
2 Law's Motion for Protective Order on Order Shortening Time is **DENIED AS MOOT.**

3 **IT IS SO ORDERED.**

4 **DATED this 12th day of March, 2019.**

5
6
7 
8 _____
9 DISTRICT COURT JUDGE



1 **ORDR**

2 ROBERT C. McBRIDE, ESQ.
3 Nevada Bar No.: 7082
4 HEATHER S. HALL, ESQ.
5 Nevada Bar No.: 10608
6 CARROLL, KELLY, TROTTER,
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12 E-mail: rcmcbride@cktfmlaw.com
13 E-mail: hshall@cktfmlaw.com
14 Attorneys for Defendants,
15 *Andrew M. Cash, M.D.; Andrew M. Cash,*
16 *M.D., P.C.; Andrew Miller Cash, M.D.,*
17 *P.C.; & Desert Institute of Spine Care, LLC*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

15 Plaintiff,

16 vs.

17 ANDREW M. CASH, M.D.; ANDREW M.
18 CASH, M.D., P.C. aka ANDREW MILLER
19 CASH, M.D., P.C.; DESERT INSTITUTE
20 OF SPINE CARE, LLC, a Nevada Limited
21 Liability Company; JAMES D.
22 BALODIMAS, M.D.; JAMES D.
23 BALODIMAS, M.D., P.C.; LAS VEGAS
24 RADIOLOGY, LLC, a Nevada Limited
25 Liability Company; BRUCE A. KATUNA,
26 M.D.; ROCKY MOUNTAIN
27 NEURODIAGNOSTICS, LLC a Colorado
28 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 DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION OF
THE COURT'S ORDER GRANTING
SUMMARY JUDGMENT FOR
DEFENDANTS**

HEARING DATE: 4/3/19

HEARING TIME: 9:00 AM

1 Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment
2 for Defendants came on for hearing on April 3, 2019 at 9:00 a.m. Plaintiff Republic Silver State
3 Disposal, Inc. was represented by David Barron, Esq. of the law firm Barron & Pruitt, LLP, and
4 Defendants Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C.; Andrew Miller Cash, M.D.,
5 P.C.; & Desert Institute of Spine Care, LLC were represented by Heather Hall, Esq. of the law
6 firm Carroll Kelly Trotter Franzen McBride & Peabody. The Court, having reviewed the papers
7 and pleadings on file herein and having heard argument of counsel, hereby finds as follows:

8 The Court, having reviewed the papers and pleadings on file herein and having heard
9 argument of counsel, hereby finds as follows:

10 1. Plaintiff's prior pleadings allege that the injuries caused by Plaintiff and
11 Defendants are separate and distinct and, therefore, the parties are successive tortfeasors.

12 2. Nevada case law and NRS 17.225 state that there is no contribution claim where
13 the parties are not joint tortfeasors. *See Disc. Tire Co. of Nev. v. Fisher Sand & Gravel Co.*,
14 2017 Nev. Unpub. LEXIS 235, at *3-4.

15 3. Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary
16 Judgment for Defendants is hereby **DENIED**.

17 **IT IS SO ORDERED.**

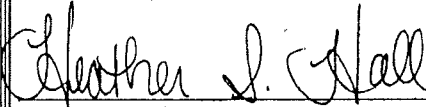
18 *Dated:* 4/25/19


DISTRICT COURT JUDGE

19 DATED this 18th day of April, 2019.

20 Respectfully Submitted By:

21 CARROLL, KELLY, TROTTER,
22 FRANZEN, McBRIDE & PEABODY

23 
24 HEATHER S. HALL, ESQ.

25 Nevada Bar No.: 010608

26 8329 West Sunset Road, Suite 260

27 Las Vegas, NV 89113

28 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*

Approved as to Form and Content by:

BARRON & PRUITT *4/10/19*

By: 
DAVID BARRON, ESQ.

Nevada Bar No.: 142

3890 West Ann Road

North Las Vegas, Nevada 89031

Attorneys for Plaintiff

Resigned
4/17/19

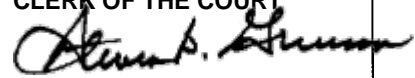
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 25th day of April, 2019, I served a true and correct copy
3 of the foregoing **ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION**
4 **OF THE COURT'S ORDER GRANTING SUMMARY JUDGMENT FOR**
5 **DEFENDANTS** addressed to the following counsel of record at the following address(es):

- 6
- 7 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of
e-service attached to any copy filed with the Court; or
- 8
- 9 ☐ **VIA U.S. MAIL:** 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
10 United States mail at Las Vegas, Nevada
- 11 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number
indicated on the service list below.

12 David Barron, Esq.
13 John D. Barron, Esq.
14 BARRON & PRUITT, LLP
15 3890 West Ann Road
North Las Vegas, NV 89031
16 *Attorneys for Plaintiff*

17 
18
19 An Employee of CARROLL, KELLY, TROTTER,
20 FRANZEN, McBRIDE & PEABODY



1 **DAVID BARRON, ESQ.**
Nevada Bar No. 142
2 **JOHN D. BARRON, ESQ.**
Nevada Bar No. 14029
3 **BARRON & PRUITT, LLP**
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4 North Las Vegas, Nevada 89031
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5 Facsimile: (702) 870-3950
Email: dbarron@lvnvlaw.com
6 *Attorneys for Plaintiff*
Republic Silver State Disposal, Inc.

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 *****

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

11 Plaintiff

12 vs.

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

21 Defendants.

Case No.: A-16-738123-C

Dept No.: XXX

**NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION OF THE COURT'S
ORDER GRANTING SUMMARY
JUDGMENT FOR DEFENDANTS**

22 TO: All Interested Parties Herein
23
24
25
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27
28

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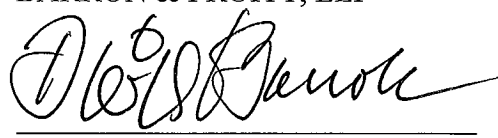
///

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YOU WILL PLEASE TAKE NOTICE that an Order Denying Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment for Defendants was entered in the above-entitled matter on the 25th day of April, 2019, a copy of which is attached hereto.

BARRON & PRUITT, LLP



DAVID BARRON, ESQ.
Nevada Bar No. 142
3890 West Ann Road
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Attorneys for Plaintiff
Republic Silver State Disposal, Inc.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of April, 2019, I served the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF THE COURT'S ORDER GRANTING SUMMARY JUDGMENT FOR DEFENDANTS** 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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 Heather S. Hall, Esq.
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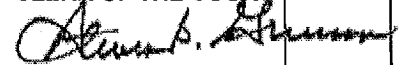
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Attorneys for Defendant Danielle Miller a/k/a
Danielle Shopshire

/s/ Luz T. Macias

An Employee of BARRON & PRUITT, LLP



1 **ORDR**

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3 Nevada Bar No.: 7082

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5 Nevada Bar No.: 10608

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12 E-mail: rcmcbride@cktfmlaw.com

13 E-mail: hshall@cktfmlaw.com

14 Attorneys for Defendants,

15 *Andrew M. Cash, M.D.; Andrew M. Cash,*

16 *M.D., P.C.; Andrew Miller Cash, M.D.,*

17 *P.C.; & Desert Institute of Spine Care, LLC*

18 **DISTRICT COURT**

19 **CLARK COUNTY, NEVADA**

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

22 Plaintiff,

23 vs.

24 ANDREW M. CASH, M.D.; ANDREW M.
25 CASH, M.D., P.C. aka ANDREW MILLER
26 CASH, M.D., P.C.; DESERT INSTITUTE
27 OF SPINE CARE, LLC, a Nevada Limited
28 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 DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION OF
THE COURT'S ORDER GRANTING
SUMMARY JUDGMENT FOR
DEFENDANTS**

HEARING DATE: 4/3/19

HEARING TIME: 9:00 AM

JA1502

1 Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary Judgment
2 for Defendants came on for hearing on April 3, 2019 at 9:00 a.m. Plaintiff Republic Silver State
3 Disposal, Inc. was represented by David Barron, Esq. of the law firm Barron & Pruitt, LLP, and
4 Defendants Andrew M. Cash, M.D.; Andrew M. Cash, M.D., P.C.; Andrew Miller Cash, M.D.,
5 P.C.; & Desert Institute of Spine Care, LLC were represented by Heather Hall, Esq. of the law
6 firm Carroll Kelly Trotter Franzen McBride & Peabody. The Court, having reviewed the papers
7 and pleadings on file herein and having heard argument of counsel, hereby finds as follows:

8 The Court, having reviewed the papers and pleadings on file herein and having heard
9 argument of counsel, hereby finds as follows:

10 1. Plaintiff's prior pleadings allege that the injuries caused by Plaintiff and
11 Defendants are separate and distinct and, therefore, the parties are successive tortfeasors.

12 2. Nevada case law and NRS 17.225 state that there is no contribution claim where
13 the parties are not joint tortfeasors. *See Disc. Tire Co. of Nev. v. Fisher Sand & Gravel Co.*,
14 2017 Nev. Unpub. LEXIS 235, at *3-4.

15 3. Plaintiff's Motion for Reconsideration of the Court's Order Granting Summary
16 Judgment for Defendants is hereby DENIED.

17 IT IS SO ORDERED.

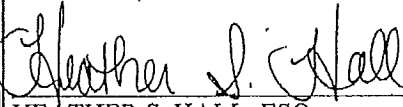
18 Date: 4/25/19


DISTRICT COURT JUDGE

19 DATED this 18th day of April, 2019.

20 Respectfully Submitted By:

21 CARROLL, KELLY, TROTTER,
22 FRANZEN, McBRIDE & PEABODY

23 
24 HEATHER S. HALL, ESQ.

25 Nevada Bar No.: 010608
26 8329 West Sunset Road, Suite 260
27 Las Vegas, NV 89113


28 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

Approved as to Form and Content by:

BARRON & PRUITT 4/10/19

By: 
DAVID BARRON, ESQ.

Nevada Bar No.: 142
3890 West Ann Road
North Las Vegas, Nevada 89031
Attorneys for Plaintiff


4/17/19

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that on the 26th day of April, 2019, I served a true and correct copy
3 of the foregoing ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION
4 OF THE COURT'S ORDER GRANTING SUMMARY JUDGMENT FOR
5 DEFENDANTS addressed to the following counsel of record at the following address(es):

- 6
7 ☒ VIA ELECTRONIC SERVICE: By mandatory electronic service (e-service), proof of
e-service attached to any copy filed with the Court; or
8
9 ☐ VIA U.S. MAIL: 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
10 United States mail at Las Vegas, Nevada
11 ☐ VIA FACSIMILE: By causing a true copy thereof to be telecopied to the number
indicated on the service list below.

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13 John D. Barron, Esq.
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