IN THE SUPREME COURT OF THE STATE OF NEVADA

REPUBLIC SILVER STATE DISPOSAL, INC., A NEVADA CORPORATION

Appellant/Cross-Respondent,

vs.

ANDREW M. CASH, M.D.; ANDREW M. CASH, M.D., P.C. aka ANDREW MILLER CASH, M.D., P.C.; AND DESERT INSTITUTE OF SPINE CARE, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Respondents/Cross-Appellants.

Supreme Court Case No.: 78572

District Court Case No.: A738123

RESPONDENTS/CROSS-APPELLANTS, 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 ANSWERING BRIEF ON APPEAL AND OPENING BRIEF ON CROSS-APPEAL

ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 007082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 010608
McBRIDE HALL
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Phone: (702) 792-5855
Attorneys for Respondents/Cross-Appellants

NRAP 26.1 DISCLOSURE

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

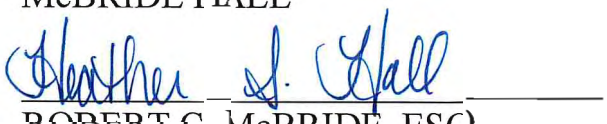
Respondent/Cross-Appellant Andrew M. Cash, M.D. is an individual. Respondents/Cross-Appellants Andrew M. Cash, M.D., P.C. aka Andrew Miller Cash, M.D., P.C. and Desert Institute of Spine Care, LLC are entities. There are no parent corporations or publicly owned companies owning more than ten percent of the stock in these entities.

LAW FIRMS APPEARING FOR RESPONDENTS IN THE CASE OR EXPECTED TO APPEAR IN THIS COURT:

Robert C. McBride, Esq. and Heather S. Hall, Esq. of the law firm of McBride Hall represent Respondents/Cross-Appellants.

Dated this 20th of April, 2020.

McBRIDE HALL



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Nevada Bar No.: 007082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 010608
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Respondents/Cross-Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I.

JURISDICTIONAL STATEMENT

This is an appeal from an Order granting summary judgment in favor of these Respondents/Cross-Appellants (hereinafter referred to collectively as "Respondents") and a cross-appeal of an Order ruling that NRS 42.021 and NRS 41A.035 do not apply to this contribution claim arising out of allegations of medical malpractice. This Court has jurisdiction over this appeal pursuant to NRAP 3A(b)(1).

II.

ROUTING STATEMENT

This matter does not fall within any of the categories presumptively assigned to the Court of Appeals pursuant to Nevada Rule of Appellate Procedure 17(b).

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(11) because it raises as a principal issue a question of first impression in compliance with NRAP 17(a)(11). Whether contribution actions requiring a showing of professional negligence are subject to NRS 41A.035, NRS 41A.045 and NRS 42.021 has never been decided by the Nevada Supreme Court.

With regard to the remaining issue raised in this matter, whether successive tortfeasors give rise to an action for contribution is a matter of statewide public importance in compliance with NRAP 17(a)(12).

This appeal/cross-appeal concerns issues which are of the utmost importance to medical providers in the State of Nevada, including these Respondents. As such, jurisdiction over this matter is retained by the Nevada Supreme Court.

III.

ISSUES PRESENTED

1. Did the district court correctly enter summary judgment in favor of Respondents on the contribution claim because there was no joint tortfeasor relationship alleged?

2. Did the district court err in ruling that NRS 42.021 and NRS 41A.035 do not apply to this contribution claim premised upon a showing of medical malpractice?

IV.

STATEMENT OF THE CASE

This is an appeal of an order granting summary judgment in favor of Respondents and a cross-appeal from an order determining that NRS 41A and NRS 42.021 are inapplicable to this contribution action based on allegations of medical negligence.

V.

STATEMENT OF THE FACTS

This is a contribution action arising out of a motor vehicle accident between

Marie Gonzales and a commercial garbage truck owned and operated by Republic Silver State Disposal, Inc. that occurred in January 2012. *See* Joint Appendix, Volume 1, 42-83. In Republic's Complaint they allege that "[a]s a direct and proximate result of Defendants' negligence, . . . Gonzalez suffered new and different injuries from those allegedly suffered in the motor vehicle accident of January 14, 2012." *See* Joint Appendix, Volume 1, 1-41, para. 56.

On September 3, 2013, Marie Gonzales filed a lawsuit against Republic Silver State Disposal arising out of injuries sustained in a January 14, 2012 motor vehicle accident. *See* Joint Appendix, Volume 1, 1-41, para. 41. On January 29, 2013 Ms. Gonzales underwent spine fusion surgery performed by Dr. Cash and other medical providers for injuries sustained in the January 14, 2012 motor vehicle accident. *See* Joint Appendix, Volume 1, 1-41, para. 18. The damages claimed by Marie Gonzales solely as a result of Republic's negligence were in excess of $5,000,000.00. *See* Joint Appendix, Volume 1, 1-41, para. 42.

In July 2015 Republic entered into a settlement agreement with Ms. Gonzales to resolve her claims for the amount of $2,000,000.00. *See* Joint Appendix, Volume 1, 1-41, para. 44. Pursuant to the settlement agreement in which Ms. Gonzales agreed to release her claims against her medical providers to Republic, Republic filed claims against Ms. Gonzales's various medical providers asserting the following claims: (1) Medical Malpractice and/or Medical

Negligence; (2) Respondeat Superior/Vicarious Liability; (3) Negligent Supervision and Retention; and (4) Contribution. *See* Joint Appendix, Volume 1, 1-41. Republic's contribution claim rested upon the assertion that the allegedly negligent medical care provided by Dr. Cash and the other defendants caused Ms. Gonzales to suffer new, independent injuries from what she suffered from the January 2012 motor vehicle crash with Republic. *See* Joint Appendix, Volume 1, 1-41, para. 56, 80.

Defendants filed a Motion to Dismiss Plaintiff's Complaint on July 13, 2016 arguing that Republic did not have standing to bring a claim for contribution because the statute of limitations for Ms. Gonzalez to have brought a claim against her medical providers had run before Republic filed its Complaint naming the medical providers. *See* Joint Appendix, Volume I, 88-117. In its Order regarding the Motion to Dismiss, the district court held that Republic's claim for contribution was based upon the Defendants' alleged professional negligence. *See* Joint Appendix, Volume III, 560:21-24. The district court accordingly held that Republic did not have standing to bring the claims for professional negligence, respondeat superior and negligent supervision and retention against the Defendants and further held that NRS 41A had limited application to the contribution action, *See* Joint Appendix, Volume III, 559-569.

On May 14, 2018, the district court issued an Order Granting Las Vegas

Radiology's Motion to "Cap" Economic Damages per NRS 41A.035, wherein the court held that Republic was standing the shoes of Ms. Gonzalez and, therefore, subject to the statutory limitations of NRS 41A the patient would have been subject to where she to bring the claim on her own behalf. *See* Joint Appendix, Volume VI, 1159-1164.

On March 4, 2019, the district court heard Defendants' 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. *See* Joint Appendix, Volume VII, 1378-1385. It was during this hearing that the court decided *sua sponte* to reverse its prior ruling and hold that NRS 41A and NRS 42.021 do not apply to this contribution action. *See* Joint Appendix, Volume VII, 1378-1385.

Defendants filed a Motion for Summary Judgment on March 5, 2019. *See* Joint Appendix, Volume VII, 1326-1333. The district court, in granting the Motion for Summary Judgment, held that in order to prove Defendants' liability, Republic would have to show that Ms. Gonzalez suffered a "new and different injury", which inherently means that the parties cannot be joint tortfeasors. *See* Order Granting Def. Motion for Summary Judgment. *See* Joint Appendix, Volume VII, 1396-1399. The court further held that the two alleged acts of negligence

"occurred at different times and places, and allegedly caused 'two separate injuries,' which gave rise to two distinct causes of action. *See* Joint Appendix, Volume VII, 1398:27-1399:1.

VI.

SUMMARY OF ARGUMENT

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

This Court has previously held that the statutory requirements of NRS 41A.071 applies to contribution claims and as such, to prohibit the application of the remaining portions of NRS 41A to a contribution claim effectively denies Respondents the protections of the law while subjecting them to the burdens of it. To allow for this denial would open the floodgate of new litigation in which plaintiffs pursue claims against medical providers under the guise of contribution

simply to avoid the statutory limitations imposed by NRS 41A.

Throughout the course of this litigation Republic has argued "[a]s a direct and proximate result of Defendants' negligence, gross negligence, recklessness, and failure to use due care Gonzalez [sic] **suffered new and different injuries from those allegedly suffered in the motor vehicle accident of January 14, 2020**." *See* Plf. Second Amd. Compl. At ¶56 [emphasis added]. Republic now takes the illogical position that Dr. Cash should be held jointly liable for a subsequent, novel injury that occurred roughly a year after the original injury. The harm caused by the allegedly negligent medical treatment is a new and independent harm, which means that Republic cannot sustain its claim for contribution.

VII.

LEGAL ARGUMENT

A. STANDARD OF REVIEW.

An order on a motion for summary judgment is reviewed de novo. *Pressler v. City of Reno*, 118 Nev. 506, 509, 50 P.3d 1096, 1098 (2002); *Winn v. Sunrise Hosp. & Med. Ctr.*, 128 Nev. 246, 252, 277 P.3d 458, 462 (2012). Statutory interpretation is an issue that is also reviewed de novo. *See Washoe Medical Center v. Second Judicial Dist. Court*, 122 Nev. 1298, 1302, 148 P.3d 790, 792 – 93 (2006); *see also Saylor v. Arcotta*, 126 Nev. 92, 95, 225 P.3d 1276, 1278

(2010).

B. JOINT LIABILITY CANNOT ARISE OUT OF TWO SEPARATE ACTS OF NEGLIGENCE THAT OCCUR IN DIFFERENT PLACES AND TIMES.

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

Republic cites to the case of *Lutz v. Bolt* to support the contention that it is joint liability, rather than joint negligence, that gives rise to a claim for contribution. However, a plain reading of *Lutz* demonstrates it is distinguishable, as it addresses cases that involve joint liability arising out of **one singular incident** involving multiple acts of alleged negligence. *Lutz*, 100 A.2d 647, 648, (Del. Super. Ct. 1953); *see also Patterson v. Tomlinson*, 118 S.W.2d 645 (Tex. Civ. App. 1938). In its analysis of the right to contribution between multiple parties, the court in *Lutz* cited to the Commissioner's notes from the Uniform Contribution and Tortfeasor Act, which states that the Act "permits contribution among all tort-feasors whom the injured person could hold liable jointly and severally **for the**

same damage or injury to his person or property." *See Lutz*, 100 A.2d at 648 [emphasis added]. Republic argues that it extinguished its liability with Ms. Gonzalez for the injuries sustained in the car accident, and now takes the position that it should be allowed to maintain a contribution action based on the "common injury: the permanent nerve root damage that Marie Gonzalez suffered from Dr. Cash's negligent medical treatment." *See* Appellant Opening Brief, pg. 17. There are two very clearly defined different injuries in this case: the original injury from the accident and the subsequent injury suffered from the allegedly negligent medical treatment. Republic cannot sustain a claim for contribution for the allegedly negligent treatment because there is no common injury.

Similarly, *Pack v. LaTourette* is factually and legally distinguishable from the circumstances in front of this Court. The Supreme Court did not substantively decide whether plaintiff had a valid contribution claim. Rather, the court was deciding whether a contribution claim premised on medical malpractice was subject to the threshold expert affidavit requirement as set forth in NRS 41A.071. 128 Nev. 264, 277 P.3d 1246, 1250 (2012). Unlike in *Pack*, here Republic does not allege that the medical care in question aggravated any injuries suffered by Ms. Gonzales during the January 14, 2012 car crash. Instead, Republic, through its expert Dr. Tung, has alleged that Ms. Gonzales had only some low axial back pain and neck sprain/strain following the crash with Republic and Dr. Cash's medical

care, rendered one year later, caused a new, independent injury – nerve injury. While Respondents deny all allegations of medical malpractice and resultant injury, for purposes of this Brief, accepting these allegations as true, they are legally insufficient to state a claim for contribution. Republic does not have a legal right to seek contribution from Dr. Cash for the new, independent harm allegedly caused by the medical care.

It is a fundamental principle of tort law that, in order to be joint tortfeasors, the parties' negligence must have concurred in causing the 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 resulted in the deaths of two adults and injuries to three minor children. *Id.* at *2. Discount Tire then filed suit against the Nevada Department of Transportation and a company doing improvements on the road, Fisher Sand & Gravel Co., alleging they had failed to maintain safety protocols. *Id.* Both parties were granted summary judgment and Discount Tire only appealed the summary judgment as to Fisher Sand & Gravel. *Id.*

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

> *Compare Joint Tortfeasors, Black's Law Dictionary* (10th ed. 2014) (defining joint tortfeasors as "[t]wo or more tortfeasors who contributed to the claimant's injury and who may be joined as defendants in the same lawsuit'), and 74 Am. Jur. 2d Torts § 64 (2012) (providing that "joint tortfeasors act negligently—either in voluntary, intentional concert, or ***separately and independently***—to produce a ***single indivisible injury***" (emphases added)), with *Hansen v. Collett*, 79 Nev. 159, 167, 380 P.2d 301, 305 (1963) (providing that successive tortfeasors must produce acts "differing in time and place of commission as well as in nature, [causing] ***two separate injuries*** [that] gave rise to two distinct causes of action" (emphasis added)), and *Successive Tort feasors, 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)).

Id. at *7.

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

Here, Republic asks this Court to ignore the importance of joint versus successive tortfeasors, arguing that it is only relevant in the analysis of equitable indemnity and does not apply to a contribution action. *See* Appellant Opening Brief, pg. 26. However, the analysis of joint versus successive is critical to determining whether there is a common, indivisible injury, as opposed to separate

injuries. Further underlining the importance of this analysis is the fact that Republic's Opening Brief goes on to cite to cases that support the contention of common liability by analyzing the distinction between joint versus successive tortfeasors. In this case there is not one, indivisible injury but instead there are two separate injuries that occurred at different times. This means that the parties are to be considered successive tortfeasors and Republic cannot sustain a claim for contribution from Dr. Cash because they are not joint tortfeasors responsible for the same injury.

Republic has failed to cite to any controlling case law to support the position that two separate injuries can give rise to a common liability when they are separated by time and space, such as the injuries in this case. The undisputed facts are that Republic does not contend Dr. Cash's medical care caused the same injury as the crash with Republic. Republic alleges Dr. Cash's medical care caused a new, 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 cause or contribute to. By its own allegations, Republic does not claim that Dr. Cash is a joint tortfeasor with Republic. Republic cannot establish it is entitled to

contribution from Dr. Cash because there is no common liability.

1. The Medical Treatment of Ms. Gonzales Is A New Injury, Not Additional Harm Related to the Original Injury Caused by Republic's Negligence.

Republic's Brief does not refute that the medical care caused "new and different injuries" from the ones suffered in the initial accident. Yet, Republic relies on case law that states medical providers are to be held liable only for the aggravation of the initial injury, a factual circumstance that does not exist here. The analysis in *Lujan v. Healthsouth Rehabilitation* for instance, focuses on dividing the harm into separate injuries by looking at the harm suffered prior to the medical treatment and the harm suffered through the care and treatment. 902 P.2d 1025, 1030 (N.M. 1995). However, this analysis does not apply here, where both Republic and the lower court have acknowledged that the injuries suffered by Dr. Cash's allegedly negligent medical treatment are "new and different" than those suffered as a result of the motor vehicle accident. This case does not involve a single injury that was later aggravated; instead, it involves two separate and distinct injuries, the latter of which Republic argues it is entitled to contribution for, despite having no involvement in. Republic further cites to the case of *Morgan v. Cohen* to support its contention that subsequent negligent medical treatment is a harm for which the original tortfeasor is jointly liable. 523 A.2d 1003, 1006 (Md. Ct. Spec. App. 1987). However, a thorough reading of the case reveals that the Maryland court did not hold that the physician was jointly liable,

instead it focused the analysis on whether a release of claims for an incident encompassed subsequent unnamed negligent medical providers. *Id.* at 1011. The court ultimately ruled that whether a contribution claim could proceed rested on this analysis and held that it was a question of fact for the trial court. *Id.*

As stated above, there is no aggravation of an initial injury alleged that can give rise to Appellant's claim for contribution. This case involves two separate and distinct injuries for which each party may be independently liable.

C. MS. GONZALES SUBROGATED HER CLAIM TO REPUBLIC AND, AS SUCH, REPUBLIC'S RIGHTS ARE LIMITED TO THE RIGHTS MS. GONZALES WOULD HAVE IF SHE BROUGHT A CLAIM ON HER OWN BEHALF.

The instant contribution claim arises from Ms. Gonzales subrogating her potential rights and claims against her medical providers to Republic as a part of the settlement agreement entered into:

> "... this SETTLEMENT AGREEMENT RELEASE and COVENANT NOT TO SUE, ***shall discharge and extinguish any and all claims or liabilities,*** including those for "economic" and "noneconomic" damages as set forth in NRS ch. 41A, RELEASOR may possess ***against any of her medical treatment providers*** for injuries she alleges to have sustained in the described incident of January 14, 2012." [Emphasis added.]

All rights that Republic has against the medical providers in this action derive solely from this settlement agreement. As such, Republic stands in the shoes of Ms. Gonzales in bringing the claims and is entitled to the rights of Ms. Gonzales but is also subject to the liabilities and limitations that she would be subject to were

she to bring her own claim. *See Cleary Brothers Construction Co. v. Upper Keys Marine Construction, Inc.*, 526 So.2d 116 (Ct. App. Fla. 3rd Dist. 1988). Without Ms. Gonzales subrogating her claim, Republic would have no cause of action against her medical providers. Republic cannot abridge the protections to which Dr. Cash would be entitled to in a medical malpractice claim brought by a patient in bringing a contribution claim premised upon alleged malpractice. If Ms. Gonzales were to bring claim against Dr. Cash directly she would be subject to the cap on non-economic damages set forth in NRS 41A.035 and Dr. Cash would be entitled to present collateral source information pursuant to NRS 42.021. As Republic has no claim without Ms. Gonzales subrogating her rights, Republic stands in the same position as Ms. Gonzales would if she were to bring a claim herself and Republic must also be subject to the same rules and limitations of NRS 41A and 42.021.

In the case of *Reid v. Royal Insurance Co.*, the Nevada Supreme Court discussed the statutory creation of contribution. 80 Nev. 137, 390 P.2d 45 (1960). In *Reid*, the insured homeowner and her insurance carriers who paid for her claim sued the general contractor who made repairs at her home for negligent work. The general contractor impleaded a subcontractor who had been hired by the general contractor to do the actual work. *Id.* The claim against the subcontractor was for contribution and the court stated that "by treating the contractor and subcontractor

as joint defendants in the plaintiffs' case, the court exposed the subcontractor to a liability which it would not otherwise occur." *Id.*

The relationship between Marie Gonzales and Republic can only be described as subrogor and subrogee. Ms. Gonzales is the injured party and subrogor. In the case of *State Farm v. Wharton*, 88 Nev. 183, 495 P.2d 359 (1972), State Farm stood in the shoes of the subrogor and was subject to all of the same limitations and entitled to the same rights only as it subrogor as of the date of the injuries to its subrogor in the collision, so too should Republic.

D. NRS 41A MUST BE APPLIED IN CONTRIBUTION CLAIMS WHICH REQUIRE A SHOWING OF PROFESSIONAL NEGLIGENCE/MEDICAL MALPRACTICE.

Nevada Revised Statute 41A.035 provides:

> In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed $350,000, regardless of the number of plaintiffs, defendants or theories upon which liability may be based.

This Court has previously upheld the legislative intent of protecting physicians that NRS 41A is designed for. In *Pack v. LaTourette*, this Court ruled that the statutory protections applied in a contribution claim to protect doctors from "frivolous claims where a given action requires proof of malpractice before relief may be granted." 128 Nev. 264, 277 P.3d 1246, 1250 (2012); *see also Fierle v. Perez*, 125 Nev. 728, 738, 219 P.3d 906, 912 (2009). Where a contribution action

is based upon a showing of medical malpractice, the requirements of NRS 41A apply to prevent frivolous claims. It follows logically that the application of NRS 41A requirements to a contribution claim includes the application of the protections afforded by NRS 41A.035, as well. However, the district court ignored this precedence by overruling its prior decision and holding that application of NRS 41A and NRS 42.021 would be too challenging in a contribution claim such as this one. Although challenging, application is necessary.

The district court was correct in its original determination that, where a contribution claim is premised on medical malpractice, then the suing party must comply with the statutory requirements of NRS 41A and the aggrieved party should be awarded the privileges of NRS 42.021. If Ms. Gonzales were to pursue a claim based upon her medical providers' alleged medical malpractice, then Dr. Cash would be entitled to application of the NRS 41A.035 cap on non-economic damages, as well as permitted to introduce collateral source information pertaining to payment of Ms. Gonzales' medical bills. As such, those entitlements should have been afforded to Dr. Cash in this contribution action, as Republic is standing in the shoes of Ms. Gonzales in pursuing this claim against her medical providers.

E. NRS 42.021 APPLIES TO CONTRIBUTION CLAIMS PREMISED UPON PROFESSIONAL NEGLIGENCE/MEDICAL MALPRACTICE.

As explained above, in this contribution action Republic is standing in the

shoes of Ms. Gonzales and as such, is subject to all statutory provisions that Ms. Gonzales would be subject to were she to bring this claim on her own behalf. It is undisputed that Dr. Cash would be entitled to introduce evidence of collateral source information if this were a medical malpractice action on its face. Because this is a contribution action that is contingent upon a showing of medical malpractice, Dr. Cash should be entitled to the same allowance pursuant to NRS 42.021. As stated in *Piroozi v. Eighth Judicial Dist. Court*, NRS 41A was intended to subject medical providers to liability based on the percentage of negligence attributable to that provider. 131 Nev. 1004, 1008 363 P.3d 1168, 1171 (2015). It would be patently unfair to deny medical providers the opportunity to admit collateral source information and subject them to liability beyond what is directly attributable to their alleged negligence simply because the action is styled as a contribution claim based on allegation of malpractice.

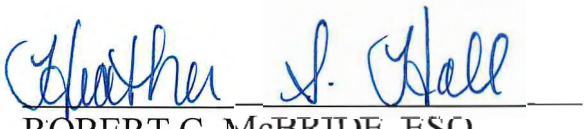
VIII.

CONCLUSION

The District Court did not err in granting summary judgment because the parties are not joint tortfeasors, nor is there joint liability which could give rise to a claim for contribution. Furthermore, the District Court erred in reversing the application of NRS 41A and NRS 42.021 to a contribution claim that is premised upon a showing of medical malpractice.

Dated this 20th of April, 2020.

McBRIDE HALL



ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 007082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 010608
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Respondents/Cross-Appellants

IX.

NRAP 28.2 CERTIFICATE OF COMPLIANCE

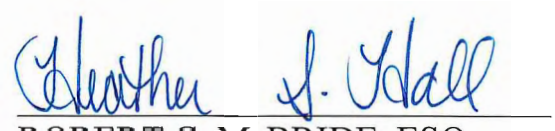
1. I hereby certify that this Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

2. I further certify that this Brief complies with the page- or type-volume limitations of NRAP 32(a)(7), excluding the parts of the brief exempted by NRAP 32(a)(7)(C), because it is proportionally spaced, has a typeface of 14 points or more and contains 4,240 words.

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

Dated this 20th of April, 2020,

McBRIDE HALL



ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 007082
HEATHER S. HALL, ESQ.
Nevada Bar No.: 010608
8329 W. Sunset Road, Suite 260
Las Vegas, Nevada 89113
Attorneys for Respondents/Cross-Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of April 2020, service of the foregoing **RESPONDENTS/CROSS-APPELLANTS, 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 ANSWERING BRIEF ON APPEAL AND OPENING BRIEF ON CROSS-APPEAL** was served electronically to all parties of interest through the Court's CM/ECF system as follows:

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

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

Attorneys for Appellant/Cross-Respondent

Stephanie L

An employee of
McBRIDE HALL