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. aka ANDREW MILLER CASH, M.D., P.C.; AND DESERT INSTITUTE OF SPINE CARE, LLC, A NEVADA LIMITED LIABILITY COMPANY, Respondents.	Supreme Court Case No.: 78572 District Court Case No.: A738123

RESPONDENTS, 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 PETITION FOR REHEARING

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Respondents, 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, by and through their counsel of record, Robert C. McBride, Esq. and Heather S. Hall, Esq. of the law firm of McBride Hall and John W. Muije of the law firm of John W. Muije & Associates, hereby present this Petition for Rehearing.

Dated this 2nd day of February, 2021.

McBRIDE HALL

/s/ Heather S. Hall

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I. INTRODUCTION

Respondents petition this Court pursuant to NRAP 40 to rehear its opinion issued on December 31, 2020, which is attached as **Exhibit A**. In its opinion, the Court acknowledges that the right of contribution is statutory and arises where a tortfeasor who has paid more than his or her equitable share of the common liability may seek recovery from another tortfeasor for sums paid in excess of that equitable share. *Id.* at 4. However, the Court misapprehends the fact that there can be no common liability between an original tortfeasor and a successive tortfeasor that would give rise to a claim for contribution against the successive tortfeasor. The equitable share of the original tortfeasor contemplates and encompasses incremental damages attributable to the successive tortfeasor. This is especially true in a case arising from allegations of subsequent negligent medical treatment, which has repeatedly been held to be within the contemplated causation of injury attributed to the original tortfeasor. The equitable share of the successive tortfeasor can never eclipse the totality of the liability caused by the original tortfeasor. Respondents urge this Court to review the overlooked facts, and to review the persuasive sister-state case law cited herein. Having done so, the Court should grant rehearing on the basis that a successive tortfeasor cannot be held jointly liable to the original tortfeasor in a claim for contribution.

In the case of *Butzow v. Wausau Memorial Hospital,* 51 Wis. 2d 281, 287, 187 N.W.2d 349, 352 (1971), the Wisconsin Supreme Court held that there can be no right of contribution for an original tortfeasor against a successive tortfeasor because joint liability means that both tortfeasors are equally liable for the full extent of the damages, whereas a successive tortfeasor can never be held liable for the full extent of the damages caused by the original tortfeasor.

Although the Court mentions *Pack v. LaTourette*, 128 Nev. 264, 277 P.3d 1246 (2012), and *Saylor v. Arcotta,* 126 Nev. 92, 225 P.3d 1276 (2010) in its opinion (Op. at 4), the Court overlooked the fact that these cases are factually and legally distinguishable from the circumstances presently before this Court. Upon consideration of the overlooked facts and law on this issue, Respondents ask this Court to grant rehearing because Dr. Cash would be no more than a successive tortfeasor. As such, there is no common liability for which Appellant can recover beyond its own equitable share. At a minimum, the Court should affirm and uphold the District Court's summary judgment order based upon the *Butzow* decision and the arguments made herein.

I. LEGAL ARGUMENT

A. STANDARD FOR REHEARING

NRAP 40(c)(2)(B) provides for rehearing of a panel decision "when the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation

or decision directly controlling a dispositive issue in the case." *See e.g., Ams. Cas. Co. of Reading, Pa. v. Hotel and Rest. Employees and Bartenders Intern. Union Welfare Fund,* 113 Nev. 764, 766 942 P.2d 172, 174 (1997). In the instant case, rehearing is necessary to allow the Court to consider legal issues that the Court has overlooked or misapplied.

B. THIS COURT HAS OVERLOOKED OR MISAPPLIED THE LEGAL HOLDINGS IN NEVADA REGARDING SITUATIONS IN WHICH A CLAIM FOR CONTRIBUTION CAN ARISE.

"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. 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].

The Nevada Supreme Court has misapprehended the significance of the distinction of successive tortfeasors as it applies to common liability giving rise to a claim for contribution. The Court's Opinion cites *Pack v. LaTourette,* 128 Nev. 264, 269, 277 P.3d 1246, 1249 (2012), to support the contention that it has previously

permitted contribution claims by original tortfeasors against successive tortfeasors. *See* Opinion, at 4. However, the *Pack* case is factually and legally distinguishable from the circumstances before this Court. In *Pack*, the Supreme Court did not substantively decide whether Plaintiff had a valid contribution claim. Rather, the Court decided that a contribution claim was not premature when brought prior to entry of judgment. *Id.* The Supreme Court further relies on the case of *Saylor v. Arcotta,* 126 Nev. 92, 96, 225 P.3d, 1276, 1279 (2010). However, the *Saylor* case, does not stand for the proposition that an original tortfeasor is permitted to bring a claim for contribution against a successive tortfeasor. Rather, its holding regarding contribution determines when the statute of limitations for a contribution claim begins to run. *Id.*

In the case at hand, Petitioners are not arguing that the contribution claim is premature. Instead, Petitioners are arguing that there is no right to contribution because Dr. Cash cannot be held jointly liable for the full extent of damages which occurred prior to his involvement in Ms. Gonzales's care. Prosser, *Law of Torts* (3d ed.) states "an earlier tortfeasor may be liable for the damages inflicted by a later one, while **the later wrongdoer is not liable for the earlier damage**". The Supreme Court of Wisconsin clarified the proposition succinctly in the case of *Brandner by Brandner v. Allstate Ins. Co.,* by explaining that a plaintiff is permitted to collect his **total damages to which he is entitled** from any one of the joint tortfeasors whose

combined negligence caused his total injury. Under those circumstances the tortfeasor who paid may recover against a **joint tortfeasor** his equitable share of the total damages. 181 Wis.2d 1058, 1072, 512 N.W.2d 753, 760 (1994) [emphasis added]. In this case, Marie Gonzales could never recover the total damages suffered from Dr. Cash because he was not involved in or liable for the accident that occurred prior to him becoming involved in her care. Put succinctly, the Eggshell Thin Skull rule means that one must take a plaintiff in the condition they find them but does not stand to support the notion that one can be held liable for damages accruing before the plaintiff came to them.

C. THE COURT HAS OVERLOOKED OR MISAPPLIED PERSUASIVE LEGAL HOLDINGS THAT SPECIFICALLY ANALYZE WHETHER THE RIGHT TO CONTRIBUTION IS AVAILABLE AGAINST A SUCCESSIVE TORTFEASOR.

As this is an area of law novel to Nevada, we must look to other states for persuasive precedent. In Wisconsin, which also follows the Uniform Contribution Among Joint Tortfeasors Act ("UCATA"), the Wisconsin Supreme Court explicitly held that to establish joint liability, torts must occur at a single point in time to give rise to joint liability upon which contribution can be sought. *See Butzow,* 51 Wis. 2d at 287, 187 N.W.2d at 352 (Wisc. 1971). Furthermore, Wisconsin follows a near identical approach to contribution in circumstances where "joint tortfeasors can be held jointly and severally liable for all a plaintiff's damages." *See Brandner by Brandner v. Allstate Ins. Co.,* 181 Wis.2d 1058, 1065, 512 N.W.2d 753, 757 (1994).

In the *Butzow* case, a successive tortfeasor aggravated a pre-existing injury caused by the original tortfeasor. The Wisconsin Supreme Court stated "[t]he original tort-feasor and the subsequent negligent doctor, even though his negligence aggravates the original injury, are **not** joint tort-feasors **although they may have a joint liability in part; such joint liability does not give rise to any right of contribution.**" 51 Wis. 2d at 287, 187 N.W.2d at 352 (1971) [emphasis added], *citing Fisher v. Milwaukee Electric Railway & Light Co.*, 173 Wis. 57, 180 N.W. 269 (1920) (holding that that an original tort-feasor was allowed to implead the doctor for the subsequent negligent medical treatment on the theory of subrogation, but not on the theory of contribution); *see also Farmers Mut. Auto. Ins.Co. v. Milwaukee Auto. Ins. Co.*, 8 Wis.2d 512, 519, 99 N.W.2d 746, 750 (1959) ("to recover on the basis of contribution nonintentional negligent tort-feasors must have a common liability to a third person at the time of the accident **created by their concurring negligence.**") [emphasis added]. The Court in *Butzow* reasoned "to establish joint liability, the independent torts must concur in point of time to thereafter inflict a single injury. . . there is one cause of action in which the two tort-feasors liable for the entire damage may be joined." 51 Wis. 2d 281, 288-89 (Wisc. 1971).

In Maryland (which also follow the UCATA), in the case of *Lerman v. Heeman*, 347 Md. 439, 451, 701 A.2d 426, 432 (Md. 1997), the Court of Appeals

stated that joint liability arises when both tort-feasors are liable for the entire judgment. In the case of *Glassman v. Freidel*, 2020 N.J. Super. LEXIS 241, *18, *citing* Restatement (Second) § 433A cmts. b, c, the appellate Court of New Jersey stated that "[u]nlike the joint tortfeasor situation where multiple defendants may be liable for the 'same injury,' a successive tortfeasor is liable generally only for damages proximately caused by the independent tortious conduct succeeding the original event."

Throughout the course of the underlying litigation, Appellant maintained that "[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]. This case does not involve common liability because Appellant and Respondents are not joint tortfeasors. Thus, a claim for contribution cannot be pursued against Respondents as successive tortfeasors.

D. THE COURT HAS OVERLOOKED OR MISAPPLIED THE DEFINITION OF COMMON LIABILITY AS IT APPLIES TO A SUCCESSIVE TORTFEASOR, SUCH THAT THE COURT SHOULD CONCLUDE THAT A CLAIM FOR CONTRIBUTION AGAINST THE SUCCESSOR IS BARRED.

Negligence in medical care is foreseeable. Hence, when a tortfeasor's negligent conduct causes a plaintiff to seek medical care, it is foreseeable that said

medical care may in some circumstances be negligent. Thus, the original tortfeasor is also liable for damages that arise from the negligent medical care. The same cannot be said in a reverse situation, like the instant case, because a medical provider's negligence is not the proximate cause of the underlying injury. On the other hand, but for the negligent conduct of the original tortfeasor, the patient would never have required the medical care allegedly performed negligently.

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. In this lawsuit, Republic is seeking contribution from Dr. Cash for the portion of damages that are beyond Republic's pro rata share. That means Republic is only seeking recovery for the portion of damages for which there is no common liability; the damages for which Dr. Cash is ***severally*** liable. The damages incurred by Dr. Cash's allegedly negligent medical treatment are a component of Republic's liability since they were foreseeable. The original injuries caused by Republic, however, are not contemplated or included as part of Dr. Cash's liability for allegedly negligent treatment. Thus, all the damages Ms. Gonzales originally incurred, including any caused by the alleged negligence of Dr. Cash, are within Republic's equitable share of the common liability. Stated differently, Republic is equitably responsible for all of Ms. Gonzales' damages. Dr. Cash is not.

II. CONCLUSION

In summary, Respondents ask this Court to grant rehearing based upon the following reasons: (1) this Court has overlooked or misapplied the legal holdings in Nevada involving contributions claims amongst successive tortfeasors; (2) this Court has also overlooked or misapplied persuasive holdings from other jurisdictions disallowing statutory contribution actions against a successive tortfeasor; and (3) this Court has overlooked or misapplied the definition of common liability to allow for a contribution claim to proceed against a successive tortfeasor who could never be held jointly liable for the full extent of damages accrued prior to the alleged successive negligence.

Respondents respectfully request that this Court grant rehearing for the above reasons, either independently or collectively. If the Court orders Appellant to answer this Petition, Respondents request that the Court also grant leave to file a Reply.

Dated this 2nd day of February, 2021.

McBRIDE HALL

/s/ Heather S. Hall

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this petition 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 does not exceed 10 pages.

Dated this 2nd of February, 2021.

McBRIDE HALL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of February, 2021, service of the foregoing **RESPONDENTS, 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 PETITION FOR REHEARING** was served electronically to all parties of interest through the Court's CM/ECF system as follows:

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EXHIBIT "A"

EXHIBIT "A"

136 Nev., Advance Opinion 88

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.

No. 78572

Appeal from a district court summary judgment, certified as final under NRCP 54(b), on a complaint for contribution arising from a tort action. Eighth Judicial District Court, Clark County; Jerry A. Wiese, Judge.

Reversed and remanded.

Barron & Pruitt, LLP, and David Barron and John D. Barron, North Las Vegas; Lewis Roca Rothgerber Christie LLP and Daniel F. Polsenberg, Joel D. Henriod, and Abraham G. Smith, Las Vegas,
for Appellant.

McBride Hall and Robert C. McBride and Heather S. Hall, Las Vegas,
for Respondents.

BEFORE PICKERING, C.J., GIBBONS and STIGLICH, JJ.

20-47000

OPINION

By the Court, STIGLICH, J.:

When a tortfeasor settles with the plaintiff, may the tortfeasor then assert a claim for contribution against a doctor who allegedly caused new injuries in treating the original injury? We hold that the right of contribution exists when two parties are jointly or severally liable for the same injury. Whether the parties are joint or successive tortfeasors is not material, so long as both parties are liable for the injury for which contribution is sought. Because appellant Republic Silver State Disposal and respondent Dr. Andrew Cash were jointly or severally liable for the injuries Cash allegedly caused and Republic settled those claims, Republic may pursue an action for contribution against Cash. That Cash was not a defendant in the original suit that Republic settled does not impair Republic's right to seek contribution. Accordingly, the district court erred when it granted summary judgment on the ground that contribution is not available when the parties are successive tortfeasors, and we reverse.

FACTS AND PROCEDURAL HISTORY

Marie Gonzales was injured in an accident involving a truck driven by Republic's employee. Dr. Cash treated her original injury and allegedly caused further injuries. Although Gonzales sued Republic and its employee, she did not sue Cash or any other medical providers, and Republic did not file a third-party complaint. Gonzales and Republic settled Gonzales's claims for $2 million. The settlement agreement expressly discharged Gonzales's claims against her medical providers and reserved Republic's rights under the Uniform Contribution Among Tortfeasors Act (UCATA), 12 U.L.A. 201 (2008), *see* NRS 17.225-.305.

Within one year of settling the claims, Republic sued Cash, his company, and Desert Institute of Spine Care, LLC, for contribution.[1] Republic alleged that Cash committed malpractice and caused Gonzales new and different injuries from those sustained in the accident. Republic argued that it was entitled to seek contribution from Cash because the settlement discharged Gonzales's claims against him and imposed liabilities on Republic in excess of its equitable share. Cash argued that, pursuant to Republic's allegation of new and different injuries, he was a successive tortfeasor rather than a joint tortfeasor and that no right of contribution exists among successive tortfeasors.

The district court concluded that contribution was not available between successive tortfeasors and granted summary judgment to Cash. The district court also held that the settlement agreement extinguished the defendants' liability. Republic appeals.

DISCUSSION

We review a district court's grant of summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment under NRCP 56(c) was appropriate if the pleadings and other evidence on file, viewed in a light most favorable to Republic, demonstrated that Cash was entitled to judgment as a matter of law and that no genuine issue of material fact remained in dispute. *Id.* We review questions of law de novo. *Saylor v. Arcotta*, 126 Nev. 92, 95, 225 P.3d 1276, 1278 (2010).

[1]Republic raised other claims, which the district court dismissed, and sued other medical providers, who are no longer parties to this appeal.

"Contribution is a creature of statute" under Nevada law. *Doctors Co. v. Vincent*, 120 Nev. 644, 650, 98 P.3d 681, 686 (2004). Nevada has adopted the UCATA. *Russ v. Gen. Motors Corp.*, 111 Nev. 1431, 1436, 906 P.2d 718, 721 (1995). Under the UCATA, "where two or more persons become jointly or severally liable in tort for the same injury[,] . . . there is a right of contribution among them." NRS 17.225(1). Contribution permits "a tortfeasor who has paid more than his or her equitable share of the common liability" to recover the excess from a second tortfeasor, up to the amount of the second tortfeasor's "equitable share of the entire liability." NRS 17.225(2). A tortfeasor who settles with a claimant may recover contribution from another tortfeasor only if the settlement extinguishes the second tortfeasor's liability. NRS 17.225(3). Finally, a settling "tortfeasor's right of contribution is barred unless the tortfeasor has . . . [a]greed while action is pending against him or her to discharge the common liability and has within 1 year after the agreement paid the liability and commenced an action for contribution." NRS 17.285(4)(b).

A right of contribution is present where there is an injury for which two persons are jointly or severally liable, regardless of whether the tortious conduct may be characterized as successive. This court has repeatedly permitted contribution claims by original tortfeasors against doctors who subsequently negligently treat the original injury. *See, e.g.*, *Pack v. LaTourette*, 128 Nev. 264, 269, 277 P.3d 1246, 1249 (2012); *Saylor*, 126 Nev. at 96, 225 P.3d at 1279. Other states have likewise upheld a right of contribution among successive tortfeasors under similar circumstances. *See Lutz v. Boltz*, 100 A.2d 647, 648 (Del. Super. Ct. 1953) ("[I]t is joint or several *liability*, rather than joint or concurring *negligence*, which determines the right of contribution."); *Lujan v. Healthsouth Rehab. Corp.*,

902 P.2d 1025, 1030 (N.M. 1995) ("Negligent treatment is thus a successive tort for which the original tortfeasor is jointly liable . . . . Although an original tortfeasor may be held liable for plaintiff's entire harm, a medical care provider who negligently aggravates the plaintiff's initial injuries is not jointly and severally liable for the entire harm, but is liable only for the additional harm caused by the negligent treatment." (citation omitted)); *Shadden v. Valley View Hosp.*, 915 P.2d 364, 368 (Okla. 1996) ("[T]he physician and original wrongdoer caused a 'single' injury, and were, therefore, jointly liable to the victim. This is so even though the physician can be said to be a successive tortfeasor, rather than a joint or concurrent one." (citation omitted)). While a right of contribution would not be present if a successive tortfeasor produced a *completely* independent injury, such is not the case here. *Cf. Gen. Accident Ins. Co. of Am. v. Schoendorf & Sorgi*, 549 N.W.2d 429, 431-32 (Wis. 1996) (distinguishing successive tortfeasors who were each solely liable for distinct injuries from "more common tort situations, such as a physical injury caused by one party which is then aggravated by a second party (malpractice by a treating doctor, for example)").

Republic argues that Cash was subject to a claim for contribution as a joint tortfeasor. We agree. "[I]t is well-settled law that the original tortfeasor is liable for the malpractice of the attending physicians." *Hansen v. Collett*, 79 Nev. 159, 165, 380 P.2d 301, 304 (1963); *see also* Restatement (Second) of Torts § 457 (Am. Law Inst. 1965). Subsequent medical providers, however, are not relieved of liability thereby for their own actions. Instead, both the original tortfeasor and the physicians are liable for injuries caused by malpractice and are "joint tortfeasors in this regard." *See Pack*, 128 Nev. at 269, 277 P.3d at 1249.

This court has permitted suits to go forward where an allegedly negligent driver, who faced liability both for the original accident and any subsequent medical malpractice, impleaded the doctor who caused the subsequent injuries on a theory of contribution. *Id.*; *Saylor*, 126 Nev. at 96, 225 P.3d at 1279. Here, Republic, as the original tortfeasor, was liable for Cash's malpractice in treating Gonzales's original injury. Cash was liable to Republic to the extent of the common liability in excess of Republic's equitable share of the liability. *See* NRS 17.225(1), (2). Accordingly, the district court erred in concluding that Cash was not subject to a right of contribution because he and Republic were successive tortfeasors.[2]

The disposition of Gonzales's claims by settlement between Republic and Gonzales does not impair the right of contribution in a subsequent suit by Republic against Cash. The UCATA expressly recognizes that a right of contribution can arise from a settlement between the injured plaintiff and one tortfeasor, so long as the settlement extinguishes the other tortfeasor's liability for the original tort. *Doctors Co.*, 120 Nev. at 652, 98 P.3d at 687; *see* NRS 17.225(3). The settlement agreement here plainly stated that it discharged any claims Gonzales may

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[2]Cash's argument that joint liability cannot arise out of injuries that occur at different places and times is similarly mistaken. Cash misplaces his reliance on *Discount Tire Co. of Nevada, Inc. v. Fisher Sand & Gravel Co.*, Docket No. 69103 (Order of Affirmance, Apr. 14, 2017). *Discount Tire* was an unpublished order that noted that its parties were joint and not successive tortfeasors in the context of an equitable indemnity claim. *Cf.* NRAP 36(c)(2) (providing that unpublished dispositions are not controlling in unrelated cases). Equitable indemnity is not at issue here, *see Pack*, 128 Nev. at 268, 277 P.3d at 1249, and *Discount Tire* did not hold that contribution may not lie between successive tortfeasors.

have against a medical provider in this instance and thus extinguished Cash's liability to Gonzales. *See* NRS 17.225(3). Finally, Republic commenced its action for contribution within one year of the settlement. *See* NRS 17.285(4)(b). Viewing the evidence in the light most favorable to Republic, Republic was entitled to seek contribution, and the district court therefore erred in granting summary judgment to Cash on Republic's contribution claim.[3]

CONCLUSION

The district court granted summary judgment on the grounds that Cash and Republic were successive and not joint tortfeasors and that a contribution claim may not lie between successive tortfeasors. This was error. The right of contribution exists when two or more parties are jointly or severally liable for the same injury and one pays more than its equitable share. Whether the tortfeasors are "joint" or "successive" is not material.

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[3]Cash argues that the district court's order may stand because Gonzales equitably subrogated her claims to Republic, such that Republic would be limited by NRS 41A.035 (limiting the amount of noneconomic damages that may be awarded for professional negligence) and NRS 42.021 (governing collateral benefit evidence in professional negligence actions). Even assuming that Gonzales subrogated her claims, Cash does not cogently argue that summary judgment is warranted on this basis. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006). And even if NRS 41A.035 or NRS 42.021 apply, neither supports upholding the order granting summary judgment against Republic. Further, Cash's claims that any damages ought to be limited by NRS 41A.035 and that he ought to be permitted to proffer collateral benefit evidence pursuant to NRS 42.021 are not ripe, since at this stage in the proceedings, no damages have been awarded and no evidence has been excluded. *See Herbst Gaming, Inc. v. Heller*, 122 Nev. 877, 887, 141 P.3d 1224, 1231 (2006) (explaining that a claim is not ripe when the alleged harm is speculative or hypothetical).

Republic may seek contribution from Cash. Accordingly, we reverse and remand for further proceedings consistent with this opinion.

Stiglich, J.
Stiglich

We concur:

Pickering, C.J.
Pickering

Gibbons, J.
Gibbons