

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.

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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 MOTION TO STAY ISSUANCE OF
REMITTITUR**

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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, hereby submits this Motion to Extend Stay of Issuance of the Remittitur in this case.

NRAP 41(b)(3) provides for a stay of the issuance of this Court's remittitur pending the filing of a petition for certiorari in the United States Supreme Court. "A party may file a motion to stay the remittitur pending application to the Supreme Court of the United States for a writ of certiorari." *Id.* The rule contemplates a stay of 120 days unless good cause is shown, or until final disposition by the United States Supreme Court. Based upon the Court's order Staying Issuance of Remittitur filed on March 11, 2021, the stay of remittitur shall remain in place until July 6, 2021. Respondents hereby request this Court stay the issuance of remittitur pending the filing and final disposition of a petition for writ of certiorari in the United States Supreme Court.

A. Respondents Satisfy the Procedural Requirements to Obtain a Stay of the Remittitur Pending the Resolution of Their Petition for a Writ of Certiorari.

NRAP 41(b)(3)(B) places a presumptive limit of 120 days on the stay of the remittitur "unless the period is extended for good cause shown" and then through the final disposition of the case in the United States Supreme Court. According to

Supreme Court Rule 13(1) (Review on Certiorari: Time for Petitioning), the normal time to appeal the United States Supreme Court for a petition for certiorari is 90 days from the order denying Respondents' petition for rehearing in this Court, which would fall on May 17, 2021. Thus, a normal stay under NRAP 41(b)(3)(B) would begin on May 17, 2021 and continue through the final disposition of the United States Supreme Court. Essentially, this Court allows a party petitioning to the United States Supreme Court for a writ of certiorari to have a 30-day stay beyond the normal time to file the petition. This buffer period allows the United States Supreme Court to notify this Court of the filing of the certiorari petition, after which the stay of the remittitur remains in place until the final disposition of United States Supreme Court case.

With the onset of the COVID-19 pandemic in March 2020, the United States Supreme Court automatically extended the 90-day deadline to file a certiorari petition to 150 days. See Order (dated Thursday, March 19, 2020), attached as **Exhibit 1**. In November 2020, the United States Supreme Court reconfirmed the extended 150-day deadline to file a petition for a writ of certiorari. See Guidance Concerning Clerk's Office Operations (dated November 13, 2020), attached as **Exhibit 2**. Thus, under the extended 150-day deadline, Respondents will have until July 16, 2021 to file their petition for a writ of certiorari. Accordingly, for this good cause demonstrated, the Court should extend the stay of the remittitur under NRAP

41(b)(3)(B) until August 16, 2021 and through the final disposition of the United States Supreme Court case.

B. Respondents Also Satisfy the Substantive Requirements to Obtain a Stay of the Remittitur Pending the Resolution of Their Petition for a Writ of Certiorari.

According to Supreme Court Rule 10(b) and (c), Respondents can petition the Supreme Court for a writ of certiorari for the following reasons: "(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals; (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." As the Court is aware, its December 10, 2020 opinion is based, in part, upon important federal questions that have been decided by the United States Supreme Court. The importance of these issues is demonstrated by the Court's published opinion. According to this Court's Internal Operating Procedures, Rule 9(a) (amended Feb. 2020), "[a]n opinion shall be prepared if the case presents a novel question of law, an issue of public importance, or sets a new legal precedent." NRAP 36(c) reaches the same conclusion.

As most recently outlined in their petition for rehearing, Respondents challenge this Court's interpretation and application of 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.

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. There is no common liability for which Appellant can recover beyond its own equitable share. In summary, Respondents respectfully requests that this Court grant this motion and

extend the stay of the remittitur under NRAP 41(b)(3)(B) until August 16, 2021 and through the final disposition of Respondents' petition for writ of certiorari and the United States Supreme Court case.

<p>DATED this 27th day of May, 2021.</p> <p>McBRIDE HALL</p> <p><i>/s/Heather S. Hall</i></p> <hr/> <p>ROBERT C. McBRIDE, ESQ. Nevada Bar No.: 007082 HEATHER S. HALL, ESQ. Nevada Bar No.: 010608 <i>Attorneys for Respondents</i></p>	<p>DATED this 27th day of May, 2021.</p> <p>JOHN W. MUIJE & ASSOCIATES</p> <p><i>/s/John W. Muije</i></p> <hr/> <p>JOHN W. MUIJE, ESQ. Nevada Bar No.: 002419 <i>Attorneys for Respondents</i></p>
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of May, 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 MOTION TO STAY ISSUANCE OF REMITTITUR** was served electronically to all parties of interest through the Court's CM/ECF system as follows:

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