

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of

THE WILLIAM J. RAGGIO FAMILY TRUST.

DALE CHECKET RAGGIO, individually and as Trustee of The Marital Deduction Portion and Credit Share of the William J. Raggio Family Trust,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE; AND THE HONORABLE DAVID A. HARDY,

Respondents,
and

LESLIE RAGGIO RIGHETTI and TRACY RAGGIO CHEW, Co-Trustees of the William J. Raggio and Dorothy B. Raggio Trust under agreement dated January 27, 1998 as decanted and Vested Remaindermen of the Marital Deduction Trust portion of The William J. Raggio Family Trust,
Real Parties in Interest.

No. _____

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District Court Consolidated Case
Elizabeth A. Brown
Clerk of Supreme Court
No. PR13-00624

**PETITIONER'S APPENDIX TO
PETITION FOR WRIT OF
PROHIBITION OR,
ALTERNATIVELY,
MANDAMUS - VOLUME IV**

Concerning The District Court,
Department 15 (Hon. David A.
Hardy), Second Judicial District

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APPENDIX

DATE	DOCUMENT	VOL.	PAGE NOS.
7/2/2015	First Amended Complaint	I	PA-0001-PA-0009
7/2/2015	NRS 153.031 Petition Concerning Affairs of Trust	I	PA-0010-PA-0022
7/23/2015	Response to NRS 153.031 Petition Concerning Affairs of Trust	I	PA-0023-PA-0043
9/16/2015	Order Consolidating Matters	I	PA-0044-PA-0046
12/16/2015	Answer to First Amended Complaint	I	PA-0047-PA-0052
7/19/2017	Motion for Partial Summary Judgment	I-II	PA-0053-PA-0266
8/14/2017	Opposition to Motion for Partial Summary Judgment	II	PA-0267-PA-0287
8/24/2017	Reply in Support of Motion for Partial Summary Judgment	II	PA-0288-PA-0324
8/30/2017	Request for Oral Argument	II	PA-0325-PA-0327
9/1/2017	Response to Request for Oral Argument	II	PA-0328-PA-0331
9/5/2017	Motion to Strike Remainder Beneficiaries' Response	II	PA-0332-PA-0334
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9/25/2017	Opposition to Petitioners'/Plaintiffs' Motion to Compel Written Discovery	II-III	PA-0402-PA-0626
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10/3/2017	Request for Submission (Motion to Strike Remainder Beneficiaries' Response)	III	PA-0630-PA-0632
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6/21/2018	Transcript of Proceedings Case Management Conference	IV	PA-0785-PA-0798

CERTIFICATE OF SERVICE

I, Martha Hauser, certify that on August 2, 2018, I electronically filed the foregoing **PETITIONER'S APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR, ALTERNATIVELY, MANDAMUS** with the Clerk of the Nevada Supreme Court via the Court's e-Flex system. Service will be made by e-Flex on all registered participants. Non-eFlex participants will be served by U.S. mail, as noted.

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Code: 1940

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

In the Matter of

CASE NO.: PR13-00624

THE WILLIAM J. RAGGIO
FAMILY TRUST.

DEPT. NO.: PR

Consolidated Case

**COMMISSIONER'S
(1) RECOMMENDATION FOR DENIAL OF
MOTION FOR PARTIAL SUMMARY JUDGMENT, AND
(2) RECOMMENDATION HOLDING MOTION TO
COMPEL WRITTEN DISCOVERY IN ABEYANCE**

A *Motion for Partial Summary Judgment* was filed by Trustee DALE CHECKET RAGGIO ("RAGGIO" or "Trustee") July 19, 2017. Beneficiaries LESLIE RAGGIO RIGHETTI and TRACY RAGGIO CHEW ("RIGHETTI", "CHEW", or "Beneficiaries") filed their *Opposition to Motion for Partial Summary Judgment* on August 14, 2017. The Trustee's *Reply* was filed on August 24, 2017, and the matter has been submitted for decision.

On September 8, 2017, Beneficiaries RIGHETTI and CHEW filed their *Petitioners'/Plaintiffs' Motion to Compel Written Discovery*. On September 25, 2017, Trustee RAGGIO filed her *Opposition* to that Motion, and on October 13, 2017, Beneficiaries filed their *Reply*. That matter is also submitted to this Court for decision.

The Commissioner now FINDS and RECOMMENDS:

Motion for Partial Summary Judgment

The pending action represents a consolidation of two cases previously brought before this Court: the above-numbered case, which started in 2013 with requests

1 from one of the Beneficiaries (CHEW) related to the funding of the Subtrusts by
2 Trustee DALE CHECKET RAGGIO and related accountings, and which were resolved in
3 a Recommendation and Confirming Order eventually filed in 2015.

4 Thereafter, the Beneficiaries filed Case No. CV15-01202, a direct action by the
5 Beneficiaries RIGHETTI and CHEW against DALE CHECKET RAGGIO as Trustee, for
6 breach of fiduciary duties, and the like. Those two cases are now consolidated before
7 the Probate Court by the Order of September 16, 2015.¹

8 The current *Motion for Partial Summary Judgment*, and the *Reply*, assert that
9 this Court has already ruled on the matters of spending limits designed by the Settlor
10 under the Subtrusts and that, therefore, the claims against the Trustee must fail on
11 the grounds of claim preclusion and issue preclusion. However, this Commissioner
12 views the current issues, as shown by the instant *Opposition* of the Beneficiaries, as
13 different: they are brought against DALE CHECKET RAGGIO as Trustee of the
14 Subtrusts for consideration of her actions now, as Trustee, focusing on fiduciary duty
15 to all remainder beneficiaries under all Subtrusts. Where, before, the question
16 focused on the mandates under the Subtrusts to comparably spend down (or not
17 comparably spend down) for the lifetime support of beneficiary DALE CHECKET
18 RAGGIO, the present question is whether the Trustee who does that spending
19 breaches her fiduciary duties when she makes choices under the two Subtrusts –
20 choices that might not have been properly executed when measured under Trust law.

21 This Commissioner has previously found and recommended that the claims
22 brought under the Amended Complaint were viable. *Commissioner's Recommendation*
23 *for Denial of Motion to Dismiss, etc.*, filed on November 9, 2015, and *Confirming*
24 *Order* filed on December 2, 2015. The above analysis is admittedly not crystal clear,
25 and the pleadings do demonstrate the very fine distinctions that can be argued in
26 reference to this pending case in all its aspects, but there are lingering concerns that

27 ¹ There was once an Amended Complaint, or First Amended Complaint, in the CV action, and
28 a series of Petitions in the PR action. The Commissioner will not now make any distinction
between or among the claims that are now pending before this Court, but will instead
discuss the claims before the Court in a general way.

1 have always been present in this Commissioner's mind since the inception of the cases
2 which dovetail with the claims more recently brought by the Beneficiaries, now that
3 they have been served with accountings, and they are now brought into high relief
4 with the current status of this litigation. This remaining *genus* of the litigation on the
5 claims brought by the Beneficiaries makes the entry of Summary Judgment
6 inappropriate, since there are indeed very large, substantive questions of fact to be
7 litigated and resolved by the Court with regard to the Trustee's duties that do not
8 depend, for their viability, on the ruling that was made in 2014.

9 For the foregoing reasons, IT IS RECOMMENDED that the *Motion for Partial*
10 *Summary Judgment* be DENIED.

11 **Motion to Compel Written Discovery**

12 Because many of the Trustee's Objections to the requested Discovery are
13 directly related to her theory of the case, which has now been partly rejected by the
14 above Recommendation regarding Summary Judgment, it is RECOMMENDED that the
15 Discovery should be allowed on the topics that rightfully relate to the spending that
16 has occurred by the Trustee with respect to both Subtrusts:
17

18 *NRCP 26(b)(1): "Parties may obtain discovery regarding any matter, not*
19 *privileged, which is relevant to the subject matter involved in the pending*
20 *action." "Relevant" evidence means evidence "having any tendency to make the*
21 *existence of any fact that is of consequence to the determination of the action more*
22 *or less probable than it would be without the evidence." See NRS*
23 *48.015. Relevance is broadly construed for discovery purposes; our rules are*
24 *designed to afford parties broad access to information. See Palmer v. Pioneer Inn*
Assocs., Ltd., 118 Nev. 943, 952, 59 P.3d 1237, 1243 (2002).

25 With that definition, however, comes the appreciation that the relevance standard is
26 best viewed as an ultimate limit on discoverability, rather than an automatic license to
27 obtain information and documents. In fact, all discovery is subject to the limitations
28 imposed by NRCP 26(b)(2) and NRCP 26(g), which essentially empower the Court to
limit discovery to what is reasonable under the circumstances of the action. Finally, of

1 course, discovery of some information - such as tax records or financial condition - is
2 subject to a heightened standard.

3 The Commissioner finds it inadvisable to review and make recommendations
4 on the voluminous discovery requests at this time, given that a Request for Judicial
5 Review is likely upon entry of this Recommendation. Reviewing and granting or
6 denying Discovery upon the matters touched by that Recommendation should await
7 the determination by the Probate Judge of the soundness of the substantive view of
8 the case espoused herein.

9 For the foregoing reasons, it is RECOMMENDED that the *Motion to Compel*
10 *Written Discovery* be held in abeyance, pending the entry of a Confirming Order to
11 this Recommendation or an Order upon Judicial Review. At that time, Beneficiaries
12 may resubmit their *Motion to Compel*; they may elect to have it heard and decided by
13 the Probate Judge at any juncture in which they appear, whether for argument,
14 settlement, or pretrial activity, or they may request that it be referred to the
15 Discovery Commissioner once the substantive issues are framed.

16 Pursuant to WDCR 57.3(7), this Recommendation will become final ten (10)
17 days after service of the Recommendation upon the parties unless a proper written
18 Request for Judicial Review is filed and served.

19 Dated this 9th day of January, 2018.

20
21 
22 PROBABE COMMISSIONER
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 CASE NO. PR13-00624

3 Pursuant to NRCP5(b), I certify that I am an employee of the SECOND
4 JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on
5 the 9th day of January, 2018, I electronically filed the **COMMISSIONER'S (1)**
6 **RECOMMENDATION FOR DENIAL OF MOTION FOR PARTIAL SUMMARY**
7 **JUDGMENT, AND (2) RECOMMENDATION HOLDING MOTION TO COMPEL**
8 **WRITTEN DISCOVERY IN ABEYANCE** with the Clerk of the Court by using the ECF
9 system.

10
11 I further certify that I transmitted a true and correct copy of the foregoing
12 document by the method(s) noted below:

13
14 **Electronically filed with the Clerk of the Court by using the ECF system which**
15 **will send a notice of electronic filing to the following:**

16
17 TIMOTHY RILEY, ESQ. for DALE RAGGIO
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of

Case No. PR13-00624

THE WILLIAM J. RAGGIO FAMILY
TRUST.

Dept. No. PR

LESLIE RAGGIO RIGHETTI and TRACY
RAGGIO CHEW, Co Trustees of the William
J. Raggio and Dorothy B. Raggio Trust under
agreement dated January 27, 1998 as decanted
and Vested Remaindermen of the Marital
Deduction portion of The William J. Raggio
Family Trust,

Consolidated with:

Case No. CV15-01202

Plaintiffs,

vs.

DALE CHECKET RAGGIO Trustee of The
Marital Deduction Portion and Credit Share of
the William J. Raggio Family Trust; DALE
CHECKET RAGGIO, Individually; DOES II
through X inclusive;

Defendants.

OBJECTION TO RECOMMENDATION

DALE CHECKET RAGGIO, in her capacity as Trustee of The Marital Deduction Portion and Credit Share of the William J. Raggio Family Trust and individually (“Mrs. Raggio”), hereby objects to the *Commissioner’s (1) Recommendation For Denial of Motion for Partial Summary Judgment, and (2) Recommendation Holding Motion To Compel Written Discovery in Abeyance*, entered on January 9, 2018.¹

I. INTRODUCTION

This case concerns breach of fiduciary duty claims, amongst other claims, that two Remainder Beneficiaries (Leslie Righetti and Tracy Chew) have asserted against the trustee of a marital trust. The trustee, Mrs. Raggio, is also the lifetime beneficiary of this marital trust, entitled to the income therefrom as well as distributions for her health, maintenance, and support. There is a separate trust also at play, a credit shelter trust, of which Mrs. Raggio is the lifetime beneficiary and trustee. The remainder beneficiaries of this separate credit shelter trust are not parties to this case. Ms. Righetti and Ms. Chew have no rights, including no right to an accounting, under this separate credit shelter trust.

The Commissioner previously agreed that the Remainder Beneficiaries of the marital trust were not entitled to an accounting of the credit shelter trust and denied Ms. Chew’s petition requesting the same. She further concluded that the marital and credit trusts (referred to collectively as the “Subtrusts”) should not be read “jointly” and that there was no mandate for a comparable spend-down of the two subtrusts.

In pursuing partial summary judgment, Mrs. Raggio merely sought to apply this same construction to the present claims asserted by the Remainder Beneficiaries, thereby limiting their attempts to prove up their claims by comparing and contrasting the distributions between the Subtrusts. The Commissioner, however, concludes that because the present procedural posture of the case is different, such a comparison is permissible. In so doing, the Commissioner suggests that the Remainder Beneficiaries *of the marital trust* are indeed entitled to investigate the

¹Mrs. Raggio does not object to the Commissioner’s Recommendation to hold a decision on the Motion to Compel Written Discovery in abeyance, pending the entry of either a Confirming Order to the Recommendation on the Motion for Partial Summary Judgment or an Order upon Judicial Review.

Trustee's decision-making and spending with respect to *the credit shelter trust*, in pursuing their breach of fiduciary duty claims. The Commissioner thus opens the door to the Remainder Beneficiaries of the marital trust to obtain a *de facto* accounting of the credit shelter trust, a request that she previously properly rejected. Notably, the Commissioner cites to no legal authority for this about face.

Moreover, the Commissioner misconstrues the objective of Mrs. Raggio's motion. Mrs. Raggio merely sought to apply the same construction of the subtrust language to the claims currently asserted by the Remainder Beneficiaries. Applying the same construction does not altogether eliminate those claims. Instead, it narrows and focuses the scope of the claims. To be clear, even if this Court were to grant Mrs. Raggio's summary judgment motion as the Commissioner failed to do, this lawsuit would continue. But the scope of the claims, as well as the discovery needed to support such claims, would proceed in the appropriately narrowed context.

Based on the foregoing, the Recommendation is erroneous. This Court should reverse the Recommendation and enter partial summary judgment in Mrs. Raggio's favor.

II. ARGUMENT

A. The Commissioner Fails To Analyze Claim And Issue Preclusion

The crux of Mrs. Raggio's briefing asserts that either claim or issue preclusion, or both, limit the nature of the Remainder Beneficiaries' current claims for relief. Mrs. Raggio's briefs analyzed the elements of both legal theories, and the opposition brief attempted to rebut those arguments. In turn, the Recommendation includes no analysis of either claim or issue preclusion. Instead, the Recommendation implies that neither theory applies because the claims or issues presented are somehow distinct from those originally pursued by Ms. Chew. At a minimum, the District Court should re-evaluate whether claim or issue preclusion applies, and expressly set forth its analysis in an order.

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B. The Commissioner Fails To Articulate The Basis In Nevada Trust Law For The Denial Of Partial Summary Judgment

Despite previously construing the Subtrusts as not imposing any “comparable spend down” mandate and rejecting any “joint reading” of the Subtrusts, the Commissioner now concludes that the Remainder Beneficiaries of the marital trust are nevertheless entitled to investigate the nature of the spend down from *both* Subtrusts, and assess one against the other, in order to establish a possible breach of fiduciary duty by the Trustee. The Recommendation frames the dispute this way: “the present question is whether the Trustee who does that spending breaches her fiduciary duties when she makes choices under the two Subtrusts – choices that might not have been properly executed *when measured under Trust law*.” (emphasis added). And yet, the Commissioner fails to identify the applicable “Trust law” she relies upon in reaching her decision.²

The Recommendation thus supports the proposition that, even in the absence of binding Nevada legal authority on point, a trustee owes *equal duties* to two *different sets* of beneficiaries of two distinct trusts.³ But Mrs. Raggio, as Trustee of two distinct Subtrusts, does not have equivalent obligations to two distinct sets of remainder beneficiaries of two separate trusts. Nor should the extent and nature of distributions Mrs. Raggio may have made from the Credit Shelter Trust be considered or weighed in determining the reasonableness of the Marital Trust distributions. Ultimately, the Court should not weigh Mrs. Raggio’s actions as trustee of the Marital Trust against her actions as trustee of the Credit Shelter Trust for purposes of determining whether Mrs. Raggio has breached any duties to Righetti and Chew.

Finally, the Commissioner acknowledges that “[t]he above analysis is admittedly not

²For example, the Commissioner does not address, or attempt to distinguish, statutory authority directly on point, specifically NRS 163.4175, which provides that “[e]xcept as otherwise provided in the trust instrument, the trustee is not required to consider a beneficiary’s assets or resources in determining whether to make a distribution of trust assets.”

³The Remainder Beneficiaries cited to a single Nevada Supreme Court decision, *Matter of W.N. Connell and Marjorie T. Connell Living Trust*, 393 P.3d 1090, 1094 (Nev. 2017), in their September 8, 2017 Motion to Compel Written Discovery, for the broad proposition that a trustee must treat all beneficiaries equally. In response, Mrs. Raggio distinguished the holding of the case and established that it could not be read as broadly as the Remainder Beneficiaries wished. *See* September 25, 2017 Opposition to Motion to Compel Written Discovery, at 11-12.

1 crystal clear,” and acknowledges the “very fine distinctions that can be argued in reference to
2 this pending case in all its aspects.” Recommendation at 2:23-25. Mrs. Raggio respectfully
3 submits that the summary analysis presented in the Recommendation does not adequately
4 analyze, nor does it recognize, these fine distinctions that Mrs. Raggio intended to raise with her
5 motion. Accordingly, judicial review is warranted.

6 **C. The Commissioner Misapprehends The Scope Of the Requested Relief**

7 The Commissioner’s Recommendation further misapprehends the scope of relief sought
8 by Mrs. Raggio. It appears that the Commissioner understood the motion as seeking an outright
9 dismissal of the Remainder Beneficiaries’ claims. For example, the Commissioner characterizes
10 the relief sought by Mrs. Raggio this way: “The current Motion, assert(s) that this Court has
11 already ruled on the matters of spending limits designed by the Settlor under the Subtrusts and
12 that, therefore, *the claims against the Trustee must fail on the grounds of claim preclusion and*
13 *issue preclusion.*” Recommendation at 2:8-11. The statement that the claims “must fail” is not
14 qualified in any fashion. Subsequently, the Commissioner observes that she previously found and
15 recommended that the claims brought by the Remainder Beneficiaries under their Amended
16 Complaint were viable. *Id.*, at 2:20-21. Both of these statements thus imply that Mrs. Raggio was
17 seeking outright dismissal of the Remainder Beneficiaries’ claims. This is not the case.

18 Mrs. Raggio’s briefing took great pains to clarify that the claims asserted could proceed,
19 but that the Remainder Beneficiaries would have to prove their case by solely examining and
20 weighing Mrs. Raggio’s actions as they relate to the Marital Trust. For example, Mrs. Raggio’s
21 briefing noted:

22 Righetti and Chew also allege that Dale made discretionary distributions to
23 herself (as the beneficiary) from the Marital Trust that were excessive and not for
24 her necessary support, care and maintenance, and that such conduct also supports
25 some of their claims. To the extent Righetti’s and Chew’s claims allege this
26 alternative theory, *such theory is not part of this partial summary judgment*
motion. Rather, this motion seeks to dismiss those claims that are based on the
legal theory that Dale was obligated to consider other resources in determining the
amount necessary for her health, maintenance and support from the Marital Trust.

27 *See* July 19, 2017 Motion for Partial Summary Judgment, at 3, fn. 2 (emphasis added). Similarly,
28 footnote 1 of Mrs. Raggio’s Reply clarified again that:

1 To be clear, Mrs. Raggio's is not seeking wholesale summary judgment. Rather,
2 Remainder Beneficiaries may pursue their claims with respect to the Marital Trust and
Mrs. Raggio's necessity for and use of discretionary distributions from the Marital Trust.

3 See August 24, 2017 Reply at 2, fn. 1. And again at pages 10-11 of the Reply:

4 To be clear, Mrs. Raggio agrees that Remainder Beneficiaries are entitled to an
5 accounting of the Marital Trust (which has been provided three years in a row),
6 and ***they are entitled to investigate whether Mrs. Raggio's discretionary***
7 ***distributions from the Marital Trust were necessary for her health, support, and***
8 ***maintenance***. But they are precluded from arguing that a determination of what is
"necessary" with respect to the Marital Trust distributions hinges upon or should
be weighed in any fashion against discretionary distributions from the Credit
Shelter Trust.

9 (emphasis added).

10 Thus, to the extent the Commissioner denied Mrs. Raggio's summary judgment motion
11 based on a misunderstanding that the Remainder Beneficiaries' claims could not proceed should
12 the motion have been granted, this was error. Rather, granting Mrs. Raggio's summary judgment
13 motion would not terminate this case. Instead, it would appropriately focus the claims for relief
14 on the marital trust alone, and the duties owed to the Remainder Beneficiaries of that trust alone.

15 **III. CONCLUSION**

16 Based on the foregoing, Mrs. Raggio objects to the Recommendation and requests that
17 the District Court review de novo the summary judgment briefing.

18 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding
19 document does not contain the Social Security number of any person.

20 DATED this 22nd day of January 2018

HOLLAND & HART LLP

21 /s/ Tamara Reid

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28 *Attorneys for Dale Raggio*

1 **CERTIFICATE OF SERVICE**

2 I, Liz Ford, declare:

3 I am employed in the City of Reno, County of Washoe, State of Nevada by the law
4 offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor, Reno,
Nevada 89511. I am over the age of 18 years and not a party to this action.

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11 the court's computer system has electronically delivered a copy of the foregoing
document to the following person(s) at the following e-mail addresses:

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15
16 I declare under penalty of perjury under the laws of the United States of America that the
17 foregoing is true and correct, and that this declaration was executed on January 22, 2018.

18 /s/ Liz Ford
19 Liz Ford

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SUNSHINE LITIGATION
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THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

-oOo-

IN THE MATTER OF THE :
WILLIAM J. RAGGIO TRUST :

Case No. PR13-00624
Dept. No. PR

----- :
LESLIE RAGGIO RIGHETTI :
and TRACY RAGGIO CHEW, :
Co Trustees of the :
William J. Raggio and :
Dorothy B. Raggio :
Trust... :

Consolidated With

Plaintiffs, :
vs :

Case No. CV15-01202

DALE CHECKET RAGGIO, :
Trustee of The Marital :
Deduction Portion and :
Credit Share of the :
William J. Raggio Family :
Trust; et al., :
Defendants. :

=====

TRANSCRIPT OF PROCEEDINGS

HEARING ON OBJECTION TO COMMISSIONER'S RECOMMENDATION

TUESDAY, APRIL 3RD, 2018

Reno, Nevada

Reported By:

ERIN T. FERRETTO, RPR, CCR #281

**

SUNSHINE LITIGATION

**

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1 -o0o-

2 RENO, NEVADA, TUESDAY, APRIL 3RD, 2018, 9:00 A.M.

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5
6 THE COURT: Good morning. Thank you, Deputy.
7 Please be seated.

8 Counsel, will you begin with your appearances,
9 please?

10 MR. ECHEVERRIA: John Echeverria appearing for
11 Ms. Raggio, the trustee, and beneficiaries.

12 THE COURT: Good morning.

13 MS. REID: And Tamara Reid for the same parties.

14 THE COURT: Thank you.

15 MR. MOWRY: Bart Mowry, your Honor, on behalf of
16 Leslie Raggio Righetti.

17 MR. SCHAERER: Enrique Schaerer, your Honor, good
18 morning, on behalf of Leslie Raggio Righetti.

19 MR. ROSENAUER: Good morning, your Honor. Mike
20 Rosenauer on behalf of Tracy Raggio Chew.

21 THE COURT: We are here on an objection to the
22 Probate Commissioner's recommendation regarding summary
23 judgment based upon arguments of issuing claim
24 preclusion. Counsel, you may presume accurately that the
25 court has read all file materials and is familiar with

1 the issues.

2 As the challenging party, Ms. Dale Raggio, through
3 counsel, has the opportunity to begin. Would you like to
4 present any arguments, sir?

5 MR. ECHEVERRIA: Yes, your Honor, briefly.

6 If it please the court, we are here on a -- and I
7 think it might help to get some background of some the
8 other issues that have been decided. The Senator died in
9 February of 2012. Thereafter, there's an accumulation of
10 the assets and discussions went on as to what should be
11 put into each of the two trusts, the subtrusts; that was
12 negotiated with Mr. Mowry.

13 There was some unusual twists in there actually
14 that required us to hire one of the authors of the book
15 on estate tax planning, and we eventually arrived at an
16 agreement as to how the allocation should be done. The
17 tax return was filed in July of 2014.

18 Thereafter, Mr. Rosenauer filed a petition seeking
19 an accounting of the gap period between the date of his
20 death and the date of the filing of the return. The
21 return was sent to all the beneficiaries and laid out.

22 The petition argued that, one, the original
23 petition that Judge Wright ruled on and then Judge
24 Stiglich affirmed was an issue as to what extent the
25 beneficiaries of the two trusts -- and it might be

1 helpful if you have a diagram, your Honor, of the two.

2 THE COURT: I've prepared one.

3 MR. ECHEVERRIA: Okay. Good.

4 The issue presented that the original petitioner
5 challenge by Mr. Rosenauer on behalf of Ms. Chew --
6 Ms. Chew was to what extent are the beneficiaries of the
7 marital trust entitled to an accounting of the credit
8 shelter trust. That was argued and the ruling was that
9 the beneficiaries of the marital trust were not entitled
10 to seek an accounting or demand a proportional spend down
11 of the two trusts. Her ruling was that there was nothing
12 in the law or in the trust document itself that supported
13 such a conclusion.

14 We then filed an accounting on behalf of the
15 trustee to set forth what expenditures were made from the
16 marital trust. There was an objection to that, that
17 issue was briefed and set for action hearing, I believe,
18 at the end of July. And, in the meantime, Mr. Rosenauer
19 filed a 153 petition, Mr. Mowry filed a complaint seeking
20 different remedies against Mrs. Raggio personally, not as
21 the trustee.

22 Those issues have been briefed and Judge -- or
23 Commissioner Wright has ruled on some of those, albeit I
24 think passed it on to you for ultimate decision based on
25 your hearing.

1 What is pervading throughout this whole dispute is
2 to what extent one set of beneficiaries on one trust are
3 entitled to get an accounting and understanding of the
4 distributions in another trust, and that's pervasive
5 throughout all these pleadings. In the meantime, after
6 the filing of the motions and the 153 petition, discovery
7 ensued and in the course of discovery the trustee was
8 asked to provide information as to how she determines
9 what to spend from the credit shelter trust.

10 We basically opposed that on the basis of Judge
11 Stiglich's affirmed Commissioner Wright's ruling that the
12 beneficiaries of the marital trust, on this side of the
13 room, were not entitled to seek an accounting or demand a
14 proportional spend down of the credit shelter trust.

15 Based on that, and in order to attempt to get a
16 decision on that issue, because that's the issue that is
17 driving all of these discovery requests and the onerous
18 on what Ms. Raggio must do with respect to the credit
19 shelter trust, which has a completely different set of
20 beneficiaries, it also has a different set of successor
21 trustees, so to look at -- well, what we did then is
22 filed a motion for partial summary judgment not
23 contending that the beneficiaries of the marital trust,
24 Ms. Righetti and Ms. Chew, we didn't contend they're not
25 entitled to get information as to what Mrs. Raggio is

1 spending the money and to what extent and whether it's a
2 necessary. That's wide open. We're not here suggesting
3 that she does not owe an accounting and a determination
4 as to whether or not the spending of the marital trust is
5 appropriate and --

6 THE COURT: How can that be done without reference
7 to -- to her access to other resources if the predicate
8 is her proper support, care and maintenance? How can
9 that evaluation of her discretionary choice to support
10 herself from one trust, how can it be measured without
11 reference to how she's also supported elsewhere?

12 MR. ECHEVERRIA: It's measured by the intent of
13 the settlor, the Senator, in terms of what he directed.
14 In many trusts, I understand, the settlor says, you shall
15 look first to this trust, then to that trust, and directs
16 how it is to go. In this case, the Senator did not
17 express an intent on that. The law does not demand a
18 look at the other source of income.

19 THE COURT: Would you agree that one of his
20 implicit intents was to preserve some trust corpus for
21 the benefit -- for the benefit of his two daughters and
22 not exhaust the bypass trust in favor of preserving the
23 credit shelter trust?

24 MR. ECHEVERRIA: I don't see where that's an
25 expressed intent in the trust itself.

1 THE COURT: Not expressed, but is it embedded in
2 the trust structure, that his daughters would inherit
3 something from the marital deduction trust?

4 MR. ECHEVERRIA: I think that would depend on how
5 long anybody lived, which is difficult to foresee in the
6 future.

7 What his intent was -- we have to look at the
8 terms of the trust itself. The trust itself does not
9 mandate that. It also mandates distributions to the
10 different beneficiaries, so she owes a set of duties to
11 one beneficiary set and a different set of duties to the
12 marital trust beneficiaries. So, potentially, there
13 could be an argument from the other beneficiaries that
14 she is not spending down what she should be spending in
15 the marital trust.

16 THE COURT: Right. She's in a difficult situation
17 because if she spends one trust down, the beneficiaries
18 of that trust complain, and if she spends the credit
19 shelter trust down, her grandchildren complain. It's a
20 precarious situation for her.

21 MR. ECHEVERRIA: Not necessarily precarious in
22 that she's following what the intent of her husband was,
23 and I think the background is important.

24 There was some difficult relationships between the
25 two daughters, one of whom is adopted and the other one

1 is natural. There was some difficult issues there as to
2 what -- what he would desire to be his outcome.

3 In the Dorothy and William Raggio Trust, he
4 provided the same set of beneficiaries in both trusts,
5 that creates an easier situation. But in this trust, and
6 let's bear in mind that Senator Raggio was an attorney,
7 was a trustee of several trusts, was the longest serving
8 legislator in Nevada history, and was the Chairman of the
9 Senate Finance Committee for over a quarter of a century,
10 he knew what he was doing and he knew what the
11 consequences of what his trust documents said. He did
12 not require and easily could have but he did not put in
13 the trust any methodology of ascertainment as to how
14 she's to spend down the other two trusts.

15 The other thing is if the argument is that she has
16 to look at the trust, how so? What is she to do with it?
17 How is she to decide, under their argument, how much is
18 she to spend from each trust? The two trusts are
19 substantially different. One requires a mandatory taking
20 of income and invasion of principal to the extent
21 necessary for her support, care and maintenance, and then
22 she has discretion as to what she can -- she can spend
23 income and principal from the other trust to the extent
24 the first trust doesn't fully satisfy and comport with
25 what her --

1 THE COURT: Is that priority in the trust, that
2 she first should go to the marital -- get the terms
3 right -- that she first go to the marital deduction trust
4 for her support, care and maintenance and then go to the
5 credit shelter trust?

6 MR. ECHEVERRIA: No. That's that what they want
7 it to be rewritten to say, and they're asking you to
8 rewrite the trust to say just that, and we can't do that.

9 THE COURT: Is there a difference, Mr. Echeverria
10 -- and the record doesn't reflect my gesticulations, but
11 if there is not a mandatory reciprocal spending, is that
12 the same -- now I'm swinging and pointing my fingers in
13 the other direction -- is that the same as analyzing the
14 trustee's choices for an irreciprocal spend down?

15 MR. ECHEVERRIA: Help me understand that.

16 THE COURT: Sure. It's clear to me, based upon
17 Commissioner Wright and the un -- and the recommendation
18 that became an order, that there is not a mandatory
19 concurrent spend down of the two trusts.

20 MR. ECHEVERRIA: There's no direction at all.

21 THE COURT: Right. But we have an order that says
22 there's not a mandatory concurrent spend down.

23 MR. ECHEVERRIA: Say that last one again, please.

24 THE COURT: Sure. My understanding from
25 Commissioner Wright's recommendation which Judge Stiglich

1 signed is that there is not a requirement that the
2 marital deduction trust and the credit shelter trust be
3 equally spent down.

4 MR. ECHEVERRIA: I think there's a -- there's a
5 finding that there was no basis in law or in the language
6 of the trust for the conclusion that there should be a
7 proportional spend down.

8 THE COURT: Right. Is that then the same as
9 analyzing the trustee's spend down discretion? One
10 indicates, okay, it's not mandatory, but isn't the
11 trustee still exposed to explain her discretionary
12 choices for why there was a disproportionate spend down?

13 MR. ECHEVERRIA: Under what provision of the trust
14 or under what provision of law? That's what we're having
15 trouble with.

16 THE COURT: I'm thinking about it in terms of
17 issuing claim preclusion, which is what is before me now.
18 Is there a distinction between those two questions?

19 MR. ECHEVERRIA: Not in my mind, because what
20 they're raising is a claim of -- and, as I understand
21 Judge -- or Commissioner Wright's recommendation is that
22 she thought it was confused by the idea that there was a
23 breach of fiduciary duty, but first there has to be a
24 breach of fiduciary duty in order to set up the scenario
25 that is being postulated; in other words, is she mandated

1 to look at other sources? And the law in Nevada says
2 she's not and that -- the law requires that the trustee
3 is not mandated to look to other sources of income from
4 the beneficiaries. And that makes sense because what
5 other sources of income do we look at?

6 They're asking that she has to look at all other
7 resources. In fact, they point to the fact that she gets
8 to keep the family house that she and her husband shared.
9 What else does she have to look at under their scenario?
10 Where do we stop? Does she have to look at what her
11 retirement accounts are? And then if she does, does she
12 have to -- what is the criteria by which she's supposed
13 to exercise this fiduciary duty as between the two
14 trusts? There's no criteria for that even articulated in
15 the law and so, in essence, what they're trying to do,
16 your Honor, is rewrite the terms of the trust.

17 THE COURT: There is one word that seems important
18 to me, in the trustee's discretion to invade principal of
19 the marital deduction trust, the principal invasion must
20 be necessary. And so understanding that word *necessary*
21 and then measuring the necessary standard against her
22 choice seems to me very important, particularly when
23 there are such exacerbated relationships between trustee
24 and beneficiary. Embedded in those personality conflicts
25 is a risk of making a choice to benefit a trustee to the

1 detriment of the beneficiaries, so it seems to me that
2 everyone should be on greater caution.

3 MR. ECHEVERRIA: And we have no -- we have no
4 question with them looking at how she's spending the
5 money.

6 THE COURT: Well, how can they define the word --
7 how can the court define the word *necessary* without
8 reference to why is it necessary? Does *necessary*
9 include, oh, she also has beneficial rights to another
10 trust, she also has non-trust assets, do those facts
11 eliminate the word *necessary* in her discretionary
12 invasion of principal in the marital deduction trust?

13 MR. ECHEVERRIA: And I submit no, and the reason
14 is Nevada has addressed that issue in NRS 163.4175, I
15 believe it is, that specifically says -- if you'll excuse
16 me --

17 THE COURT: Please, yes, sir.

18 MR. ECHEVERRIA: It's NRS 165 -- 163, my
19 apologies, 4175, which says, quote:

20 A trustee is not required to consider
21 certain factors with regard to
22 distribution of trust assets except as
23 otherwise provided in the trust
24 instrument.

25 And we have no provision.

1 THE COURT: But that's their argument, is that the
2 word *necessary* is the otherwise proscription.

3 MR. ECHEVERRIA: And that's a circular argument.
4 It says if it's necessary under either trust, then they
5 have to look at it -- they claim they're entitled to look
6 at both trusts to determine what is necessary. And, to
7 me, the statute is clear, it says that she is not to
8 consider certain factors with regard to distribution of
9 trust assets.

10 If the argument is that she has to look at other
11 resources, then what other resources are considered? Do
12 we look beyond the credit shelter trust? Do we say that
13 she's not entitled to anything that's necessary because
14 she's got other income from somewhere else? It doesn't
15 say "necessary in addition to other resources," it says
16 "necessary for her spend -- for her health, maintenance
17 and support," for want of a better language.

18 And if the test is is what she is spending from
19 the marital trust necessary for her health, maintenance
20 and support, and that we're fully prepared to litigate,
21 that aspect of the marital trust. What is troublesome
22 here is the fact that they want to invade the privacy of
23 the other set of beneficiaries of which they're not.

24 Now, were they named as a set of beneficiaries
25 under the credit shelter trust? Yes, I think we have an

1 argument, but there's a different set of beneficiaries on
2 the credit shelter trust and so -- and that, I believe,
3 was the Senator's intent. He set it up that way. He set
4 it up so that Ms. Righetti and Ms. Chew are the
5 beneficiaries and successor trustees of the marital
6 trust, but the beneficiaries and the remainder
7 beneficiaries of the credit shelter trust are different
8 and the successor trustee is different; it's John Sande,
9 his law partner. There's a reason why he had to have
10 done that and we can't ignore the Senator's intent, but
11 he has clearly, I think, expressed an intent that he
12 didn't want the two daughters to take -- to be involved
13 in the credit shelter trust which is why he named a
14 different trustee as a successor to Mrs. Raggio.

15 We still find there is no -- we have still have to
16 have a basis in the law for why she must look at the
17 other trust or any other assets or -- in order to
18 determine what is quote "necessary" for her support.
19 What is necessary for her support is what she needs to
20 live on in the manner in which she and her husband lived.

21 THE COURT: I understand the argument. I'm
22 struggling with the ability to understand what is
23 necessary. If there's a mountain of gold behind her but
24 we don't get to see that mountain, how can we understand
25 that her invasion of principal is necessary? It's

1 necessary only because of something.

2 MR. ECHEVERRIA: Then we would have to look at any
3 trust that says the trustee has to determine what is
4 necessary for a beneficiary, and then do we require every
5 trustee to look at what is, as you say, behind the
6 beneficiary's pot of gold? There is no law that supports
7 that proposition that I've been cited to.

8 THE COURT: It seems to me that in this instance
9 we're using language that doesn't fit exactly the facts.
10 This standard of -- we all learned it as HAMS in law
11 school -- housing, education, maintenance and support, is
12 really a -- it's desired to be an ascertainable standard
13 so that there can be some invasion of principal in a
14 qualified trust for estate tax purposes. It isn't
15 designed, the language, to govern competing -- discretion
16 among competing beneficial rights.

17 I see many, many HAMS provisions that don't
18 include the choice of one to the detriment of the other,
19 or the choice of the other to the detriment of the one.
20 That's why this case is a little more complicated for me
21 because if it were just what is necessary for her health,
22 education, maintenance and support, it's broad and her
23 discretion would likely be exercised without attack. But
24 here there's -- there's an influence, her discretion
25 has -- her cause, discretion, has an effect between one

1 set of beneficiaries and another set of beneficiaries and
2 so when we talk about law elsewhere and law governing
3 this particular fact pattern, to me, seems an exception
4 rather than the rule.

5 MR. ECHEVERRIA: And therefore we need to look at
6 the settlor's intent and his knowledge and background of
7 the family situation.

8 I think what is concerning everybody, and
9 particularly the two daughters, is that it seems unfair.
10 That's what seems to be driving --

11 THE COURT: I appreciate your calling that out
12 because that's really the big elephant in the room is
13 that they're afraid she's just spending their money to
14 preserve her grandchild's money. We can wrap it up in
15 legal language but that's their concern.

16 MR. ECHEVERRIA: And the issue is, did he express
17 that intent in the trust? His intent, I think we'll
18 clearly be able to prove, was to do just that.

19 THE COURT: When you say "prove," are you talking
20 about proof through collateral evidence of intent or from
21 the four corners of the instrument itself?

22 MR. ECHEVERRIA: It depends on where we go. If
23 we're going to challenge four corners of the instrument,
24 which does not require her under any circumstance to look
25 at other assets and then what, determine at what

1 percentage she's to spend them down? What is the
2 proportionality? The whole premise of the argument that
3 she has to look at other resources is to then balance
4 what she's taking from this resource. How do we do that?
5 There's no -- there's no direction in the trust to say,
6 okay, now you've looked at the pot of gold that didn't
7 come from anywhere else, but what is she then to
8 determine and what is any trustee to determine how much
9 of that pot of gold do I take in depravation -- or in
10 detriment to the amount for which I'm supposed to take my
11 health, education, maintenance and support?

12 There is no -- there's no standard and no argument
13 by these defendants, okay, so she's ordered to look the
14 other trust or other assets or her IRA account. If she's
15 ordered do that, what she does she then do? What is the
16 direction as to how she's supposed to look at the other
17 trust and make a determination?

18 THE COURT: It's a fair question because it
19 appears to be unresolved in its answer from the trust
20 documents itself.

21 MR. ECHEVERRIA: And therefore we can't impose
22 that requirement in the trust because we're rewriting the
23 trust when we do that.

24 THE COURT: But if she were to have,
25 hypothetically, five-and-a-half million dollars between

1 credit shelter trust and non-trust resources, and access
2 to that money, how does she then say the \$200,000 is
3 necessary from the marital deduction trust?

4 MR. ECHEVERRIA: Because that is supported by how
5 she and her husband spent their time and money and was
6 necessary -- because the necessary part pertains to what
7 the standard of living was before. What may be necessary
8 for me may not be necessary for someone else, so the
9 necessary part focuses on what are the distributions
10 taken and are those distributions necessary to -- for
11 your health, maintenance and support.

12 To require someone to look at other assets is --
13 because I want to take it to the extreme because they're
14 asking that she has to look at all assets -- what other
15 assets is she supposed to look at in addition to the
16 credit shelter trust? Is she only limited to looking
17 what the credit shelter trust is? Or let's suppose she's
18 an heiress to a gold mine in Australia, is she supposed
19 to say, well, despite what my husband said when I took
20 care of him for all these years when the girls were
21 fighting with him, refusing to adhere to his wishes, am I
22 supposed to ignore what he wanted out of his estate and
23 just take my distributions from my gold mine in Australia
24 for my health, education and maintenance?

25 THE COURT: Well, did he want his -- from the four

1 corners itself, did he want or contemplate that his
2 daughters would be beneficiaries of the marital deduction
3 trust?

4 MR. ECHEVERRIA: Well, that's an interesting
5 question. Let's suppose he died in 2010, there would
6 have been nothing in the marital trust because there
7 was -- there was no estate tax at that time. The purpose
8 of the marital trust was to put into the marital trust
9 money that was under the exemption. So if he had died in
10 2010, would somebody be allowed to make these same
11 arguments, that you should have funded something in the
12 marital trust because he wanted to take care of his
13 daughters and it was fair?

14 Fairness isn't the issue here. The issue is what
15 is the intent of the Senator, and to what extent are the
16 remainder beneficiaries of the marital trust arguing that
17 the trust should be rewritten when we're all sitting here
18 speculating as to what is supposed to be done, to what
19 extent does she look at other assets.

20 So this was a pretty brilliant man. He knew what
21 he was doing. He amended the Dorothy credit shelter
22 trust to add his wife as a third beneficiary of the
23 residual. He -- he knew that in 2010, as I believe
24 everybody did -- well, *everybody* is a broad term, but
25 most people knew, at least in this field, that there

1 would be no estate tax and therefore no necessity to fund
2 the marital trust. So if he died in 2010, where would we
3 be? Would we be arguing that he had an intent despite
4 what the tax code was to leave money to his daughters?

5 What his intent was is to put the marital trust
6 exemption -- or the exempt assets into the marital trust
7 and the non-exempt assets into the other trust. He did
8 not declare which one she had to look to first but he did
9 declare that she had to take the mandatory income out of
10 the marital trust and then apply whatever was necessary
11 for her support, care and maintenance.

12 One could view that trust as then saying if that
13 wasn't enough in the marital trust and it was depleted
14 down, now you have that -- now you have to apply that in
15 the credit shelter trust and determine whether or not
16 expenditures from that trust are necessary for your care,
17 maintenance and support.

18 If the issue is -- and it's the elephant in the
19 room and so I'm raising it -- if the issue is what he did
20 seems to be unfair, that's not how we base an
21 interpretation of the trust. We have to base the
22 interpretation of the trust is that the Senator knew what
23 he was doing, did not mandate any kind of proportional
24 spend down, did not mandate whether or not the trustee
25 had to look to other assets to determine what was to be

1 drawn from the marital trust, and to give full force and
2 effect to his intent we cannot rewrite the contract -- or
3 the trust agreement.

4 THE COURT: So while there may not be a standard
5 in law what is fair, there is a standard of fiduciary
6 duty in which the trustee owes loyalty to beneficiaries
7 and is precluded from self-dealing, which is a fancy way
8 of saying she be better be fair.

9 MR. ECHEVERRIA: And fair to both sets of
10 different beneficiaries? And in what respect? There's
11 no question and we've not argued that she does not owe
12 fiduciary duties to the beneficiaries of the marital
13 trust. There is no issue that we argue that she does not
14 owe fiduciary duties to the other set of beneficiaries, a
15 different set of beneficiaries. That was what the
16 Senator created, that's what he did.

17 To the extent that they are now trying to say that
18 her fiduciary duties to these other beneficiaries have to
19 be looked at in relation to what she owes me, and we have
20 no quarrel with them looking at the amount of money, the
21 decisions she's making, the basis for those decisions on
22 the marital trust. But when we get into mandating that
23 she has to provide detailed information invading the
24 privacy of those remainder beneficiaries of the credit
25 shelter trust, that's a different issue. And in order to

1 do that, I think we have to have some legal basis to do
2 so and some indication in the trust that she is required
3 to do so.

4 THE COURT: How would you propose that she defend
5 what is necessary if there can be no inquiry or
6 examination into her rights under the credit shelter
7 bypass trust and her non-trust resources, how do we
8 measure what is necessary?

9 MR. ECHEVERRIA: Exactly in the way they've asked
10 for discovery; and that is, how did you and your husband
11 spend money before, to what extent did you spend it, what
12 are your traveling expenses? We produced somewhere in
13 excess of 2,000 pages of information going back some 10
14 years of their relation -- well, not 10 years of the
15 relationship but 10 years from the day we produced them,
16 I think -- giving bank accounts, how they spent their
17 money, how they traveled, what maintenance they did on
18 the house, how frequently did they buy cars. That, to
19 me, is how you test what is necessary for her health,
20 maintenance and support is by looking at what -- what the
21 Senator and she spent on themselves versus what she is
22 now drawing for those same kind of lifestyles from the
23 marital trust.

24 We're prepared to present them that information
25 and have presented that information and that's fair game.

1 The issue is the burden on them is to establish that what
2 she says she needs to spend her money on is not necessary
3 for her health, maintenance and support as her lifestyle
4 was when she was married to her husband.

5 THE COURT: So it is your position that the
6 lifestyle created during marriage and enjoyed during
7 marriage can be fully funded by her principal incurring
8 rights into the marital deduction trust without any
9 reference to her discretionary principal and income
10 rights to the credit shelter bypass trust?

11 MR. ECHEVERRIA: Absent some direction in the
12 trust itself and absent some legal principle, yes.

13 THE COURT: So let me just make sure I understand
14 my own question.

15 If the lifestyle requires \$300,000 a year, she can
16 draw down discretionary principal of the marital
17 deduction trust \$300,000 a year?

18 MR. ECHEVERRIA: Yes, unless there is something in
19 the -- in the trust agreement that mandates a different
20 position. And if she requires \$300,000 a year and is not
21 drawing that down, then -- then she's not exceeding her
22 necessary expenses.

23 THE COURT: Not drawing it down from what source?

24 MS. REID: From the marital trust. Let's
25 suppose -- right now she's drawing down, and has been

1 since July 2014, roughly \$20,000 a month. I believe that
2 in looking at the records the expenditures that she and
3 her husband made in their lifestyle prior to that
4 exceeded that amount.

5 THE COURT: So your argument then includes a
6 priority between trusts even though -- even though the
7 Commissioner ruled there's no proportionate spend down --
8 from that ruling that there's no proportionate spend down
9 required, your position implies that there's a priority
10 to spend down first from the marital deduction trust
11 because it alone can fund her lifestyle. And if that's
12 the case, then why aren't there discretionary spend down
13 rights within the credit shelter trust? Is that just
14 nugatory and superfluous?

15 MR. ECHEVERRIA: No. The necessary part is to
16 ascertain whether or not the expenditure that is drawn is
17 necessary for the health, maintenance and support. The
18 discretion is to determine what is that amount. If there
19 was no -- the law of the case is there's no law that
20 requires a proportional spend down. That being so, why
21 do we even look at what the trust --

22 THE COURT: Isn't there's a difference between a
23 mandatory spend down and a discretionary spend down
24 according to fiduciary discretion? I see them as
25 different. One requires an equal spend down and one

1 makes the discretionary choice to spend down available
2 for scrutiny.

3 I don't believe the -- I don't believe, from what
4 I've read so far, that the absence of a mandatory spend
5 down provision immunizes the trustee from all inquiry
6 into how she discretionarily spends down.

7 MR. ECHEVERRIA: Isn't the first inquiry whether
8 she's abusing her discretion with respect to the marital
9 trust before we get into the privacy rights of the
10 remainder beneficiaries of the other trust?

11 THE COURT: I don't know the answer to that
12 question at the moment.

13 MR. ECHEVERRIA: Well, that's kind of at the
14 bottom here. We are attempting, under the position of
15 the remainder beneficiaries to the marital trust, to
16 rewrite this trust, in all candor.

17 THE COURT: I'm trying to understand -- I don't
18 want to rewrite it. I want to understand why what is
19 written -- why what is written was written. Why does she
20 have discretionary rights into the credit shelter trust
21 if the marital deduction trust can always support her
22 needs, her necessary health, education and maintenance?

23 MR. ECHEVERRIA: In the event that it couldn't.
24 For example, if he had died in 2010, there would have
25 been nothing in the marital trust, and so therefore it

1 goes to is she exercising her discretion from the credit
2 shelter trust.

3 THE COURT: Right. But if he had died in 2017, it
4 would be dramatically -- not dramatically --
5 incrementally more than it was in 2014, that's just kind
6 of the vagaries of life.

7 MR. ECHEVERRIA: Exactly, and that's their
8 problem. The beneficiaries here are complaining that he
9 didn't put enough to them, that's what the bottom line
10 is, he didn't leave us enough so that we could have a
11 residual what I call devisement of his estate.

12 THE COURT: Is their argument that he didn't leave
13 us enough or what he left us should be depleted with some
14 larger measurable context?

15 MR. ECHEVERRIA: And what is that measurable
16 context? That is not defined in the law or any of their
17 papers.

18 THE COURT: I agree with that, but it seems to be
19 a little uncertain. I know that she has the discretion
20 to draw down credit shelter funds, but it appears that
21 her choices make that discretion uncertain because she's
22 not -- she's not exercising it. She's just --

23 MR. ECHEVERRIA: Well, but that implies that she
24 has to have an equal discretion as to both trusts and
25 that's not stated. That's the problem here. That's a

1 circular argument. In other words, they're arguing that
2 she has to do that and the reason she has to do that is
3 she has to do that, but the trust doesn't say it. The
4 trust is created so that she looks at the marital trust
5 first.

6 THE COURT: Did you say "first"?

7 MR. ECHEVERRIA: I believe so. She has the
8 discretion to look at that trust, she has duties to the
9 remainder beneficiaries, she has discretion to look at
10 that trust.

11 Now, if that trust does not have enough money,
12 then she has -- she's still under the restriction that
13 she can only exercise discretion as to the credit shelter
14 trust and her expenditures for her health, maintenance
15 and support.

16 THE COURT: Mr. Echeverria, we don't know each
17 other, while I hope that you'll forgive my constant
18 questions, when I interact a lot with counsel, it's
19 because I'm struggling to understand, and maybe a better
20 judge would just sit here and dispassionately listen but
21 it's --

22 MR. ECHEVERRIA: I prefer these kinds of
23 arguments, your Honor, so that we understand what are the
24 concerns.

25 THE COURT: So let me try again then. Let's say

1 that the standard of living created during Senator
2 Raggio's life cost \$300,000 a year.

3 MR. ECHEVERRIA: Okay.

4 THE COURT: And let's say that outside of the
5 child beneficiaries' knowledge Ms. Raggio is drawing
6 \$300,000 a year from the credit shelter trust, does that
7 make a distribution of the marital deduction trust
8 \$300,000 necessary?

9 I'm struggling, that word *necessary* really
10 confounds me.

11 MR. ECHEVERRIA: Okay. I believe the word
12 *necessary* goes to whether the expenditures are necessary,
13 not whether she has to look at a particular asset as
14 being necessary, and I think that's a distinction. What
15 is necessary for her health, maintenance and support is
16 what the issue is.

17 Is the fact that she spends -- I'm not saying
18 these are facts but assuming -- assuming she spends
19 \$50,000 for a car and they only bought \$20,000 worth of
20 cars, the issue is, is it necessary for her to buy a
21 \$50,000 car or \$100,000 car? The test is, is the -- is
22 the money spent for her health, maintenance and support
23 necessary for her health, maintenance and support?

24 The broader interpretation is that one has to look
25 at whether or not she has to draw anything as necessary.

1 And that requires an analysis, I suppose, of looking at
2 whether or not she's got a gold mine in Texas or
3 Australia or somewhere. And that, I don't think, is read
4 in any law principal or in this trust itself.

5 The concept that one has to look at what is
6 necessary and using that broad definition, that's the
7 hang-up, then all trustees would have to look at what
8 other resources are available to a trustee to determine
9 whether or not any expenditure is necessary, not whether
10 the expenditure is necessary, and I think that's the
11 distinction.

12 There is nothing in the law that requires a
13 determination that one first must determine whether or
14 not one is entitled to draw anything based on other
15 assets or other income. The trust is clear. The Senator
16 wanted and set up two trusts; one, the remainder goes to
17 her grandsons -- or to the remainder beneficiaries, his
18 daughters and then in their death, their grandsons, and
19 he took care of them in his trust. He gave to
20 grandchildren on that side of the family, I think it was
21 a total of \$300,000, \$50,000 each. And so the necessary
22 concept is if *necessary* is used to define whether or not
23 any expenditure has to be made, then we have to look at
24 other resources, and the law in Nevada specifically says
25 you don't do that.

1 The necessary part is whether the \$50,000 check
2 for a Lexus was necessary, whether a gardener that they
3 had to maintain their house was necessary, whether the
4 plumbers had to be called was necessary. That's, to me,
5 where the *necessary* fits in, not whether or not any money
6 is necessary but is what was drawn necessary for that
7 purpose of health, maintenance and support.

8 THE COURT: This has been very helpful, well done,
9 I look forward to also being helped by the opposing side,
10 but before you retire your comments I do have to bring --
11 bring them to the context of this hearing, which is an
12 objection. And under our local rules, we don't provide
13 de novo review, instead, we must persuade the court that
14 Commissioner Wright was clearly erroneous in her
15 conclusion.

16 MR. ECHEVERRIA: I think this one is a little
17 different because she said in her ruling, "I recognize
18 the above analysis is less than clear on its face," or
19 something like that.

20 THE COURT: She said something like that.

21 MR. ECHEVERRIA: And so in all respect, your
22 Honor, I think she punted it up to you to make the
23 decision. She raises the issue that the allegations of a
24 breach of fiduciary duty changed the landscape. That I
25 disagree with. The allegations of the breach of

1 fiduciary duty, we say clearly that they are entitled to
2 explore whether she's breached any fiduciary duty to them
3 as the beneficiary, but to then say that because she owes
4 fiduciary duties to someone else that those fiduciary
5 duties merge, and that's where we have -- we have an
6 issue.

7 I don't think you can say -- let's say she's a
8 trustee of another trust in which -- unrelated to this in
9 which she's the trustee of another trust in which she's
10 allowed to take down that which is necessary for her
11 health, care and maintenance, can we look at that trust
12 to see if she's breaching her fiduciary duties? I don't
13 think so. I think fiduciary duties are between the
14 trustee and the current beneficiary and the remainder
15 beneficiaries, and has she breached any fiduciary duties
16 to any of these beneficiaries? And the issue as to
17 whether or not she's breached fiduciary duties to those
18 beneficiaries is centered, I believe, on the issue of
19 whether or not the precise expenditure was, in fact,
20 necessary for her health, maintenance and support.

21 Otherwise, your Honor, and I think the reason we
22 brought the motion for partial summary judgment is
23 because of Judge -- or Commissioner Wright's and Judge
24 Stiglich's approval and denial of the initial petition
25 that required an accounting. They asked for an

1 accounting also of the credit shelter trust and she
2 denied that. In essence, they're trying to get an
3 accounting of the credit shelter trust.

4 THE COURT: But wasn't that accounting of the
5 allocation and funding decision as opposed to the
6 trustee's year-over-year discretion?

7 MR. ECHEVERRIA: No, your Honor. Initially they
8 said it was an allocation but the petition and the
9 argument itself asked for -- let me get that language.

10 THE COURT: You're looking at your reply where you
11 set them side by side?

12 MR. ECHEVERRIA: Yes.

13 THE COURT: All right.

14 MR. ECHEVERRIA: They asked for an accounting.
15 They said they were entitled to an accounting going
16 forward; she ruled they're not. They asked that there be
17 a comparable spend down in some form, which has not yet
18 been articulated, and she said no, there's nothing in the
19 trust or the law that requires either an accounting of
20 the credit shelter trust of which they are not
21 beneficiaries, remainder beneficiaries, or even remote
22 beneficiaries. So the ruling was they're not entitled to
23 an accounting of that trust and they're not entitled to a
24 proportional spend down under the law or the trust
25 document.

1 And, given that, your Honor, we have no quarrel
2 with them looking at what is she spending the money on
3 out of the marital trust, are those expenditures
4 necessary for her support? And in that we look at each
5 expenditure, not whether or not she has to look at other
6 sources of income.

7 THE COURT: I should lean forward, because I lean
8 back I don't see her and sometimes don't remember that
9 she's writing furiously as I interrupt and as we go speak
10 quickly, so let's just pause for a moment and then I will
11 remember to be slower in my cadence as I hear from the
12 other side of the courtroom.

13 Thank you, sir.

14 MR. ECHEVERRIA: Any other questions?

15 THE COURT: No.

16 MR. ECHEVERRIA: Thank you, your Honor.

17 MR. MOWRY: Good morning, your Honor. Bart Mowry
18 representing Leslie Raggio Righetti. She's the
19 biological child. And she would like to be here, your
20 Honor. Unfortunately, when we set this hearing date, I
21 didn't check with her. And she's a teacher at Manogue, a
22 language teacher, and she's leading 18 students on a
23 mission to build a school in Nicaragua with buildOn, so
24 she's the head person on that and cannot change that.

25 I'd like to address a few of the points that

1 Mr. Echeverria made because we obviously have a different
2 take on the interpretation of this trust agreement.

3 First of all, he seems to focus on the term
4 *necessary*. We believe *necessary* means you have to look
5 to her other resources. What was not stated in the
6 discussion between you and Mr. Echeverria was another
7 term, what is proper? Proper for her support, care and
8 maintenance, the HAMS standard that you referenced
9 earlier. That adjective there means whether the
10 expenditure was proper. Necessary is what are her other
11 resources?

12 And I think NRS 163.4175 is quite clear, except as
13 otherwise provided in the trust instrument you don't take
14 into account other resources. He could very well have
15 written in the document, she can take discretionary
16 principal for health, support and maintenance, period.
17 *Necessary* isn't there, *proper* isn't there, so there, I
18 don't believe, you would have to take into account her
19 other resources.

20 THE COURT: But aren't you bounded somewhat by
21 the -- by the Commissioner's and then Judge Stiglich's
22 application of an order that there need not be
23 proportionate spend down, doesn't that bind you in some
24 way?

25 MR. MOWRY: First of all, we were not present in

1 that proceeding. I recognize that it is an interim
2 proceeding and I recognize Mr. Echeverria's contention
3 that it's the law of the case but, in my opinion, there
4 could not be a proportionate spend down of these two
5 trusts. Why do I say that? Because there's a mandatory
6 distribution from the marital trust of net income. That
7 alone means it can't be proportionate. It's
8 discretionary principal from the marital deduction trust
9 for her proper health, support and maintenance and it's
10 discretionary income and principal from the credit
11 shelter trust.

12 THE COURT: But when we look at an order, we
13 understand it by analyzing the predicate arguments and
14 didn't Ms. Chew argue something slightly different? Did
15 she make the distinction between income as a mandatory
16 portion of the marital deduction trust?

17 I'm confusing myself a little bit.

18 When she urged the court for a proportionate spend
19 down, did she also include your argument that there
20 was -- there could not be proportionate spend down of the
21 income or did she just argue generally that the
22 proportionate be proportionate?

23 MR. MOWRY: I'm unable to answer that, your Honor,
24 because I was not present at any of those proceedings.
25 We did not make an appearance at those proceedings on

1 behalf of Leslie Righetti.

2 THE COURT: Her attorney is here, so I'm sure --

3 MR. MOWRY: May I -- let me make another point
4 here that I think is a fair one -- several to make but
5 one is that if we had an independent trustee, if you had
6 a retail trust company or a bank with trust company
7 powers, there is no way that that trustee is going to be
8 exercising discretion in the way in which Mrs. Raggio is
9 exercising discretion for her own benefit.

10 The credit -- you have only seen one of the
11 accountings. Mr. Echeverria mentioned that she has been
12 drawing down \$20,000 a month from the time these trusts
13 got funded solely from the marital deduction trust. Now,
14 it was the smallest trust when it was funded -- and I
15 believe you have that diagram there; if you don't, I have
16 an extra copy of one I had attached to our papers --
17 delineating what Mrs. Raggio received free of trust,
18 which was \$1.8 million and there were liquid assets in
19 that, including -- and as well as the residence. There
20 was \$2.5 million put in the marital deduction trust and
21 there was 3.9 in the credit shelter trust.

22 Now, I do know one of Mr. Rosenauer's arguments
23 had been at the prior proceeding that all of the
24 appreciation, the run-up in the market from the date of
25 Bill Raggio's death when those securities were valued for

1 purposes of the estate tax return, all of the
2 appreciation inured to the benefit of the credit shelter
3 trust, and that -- that Judge Stiglich and Commissioner
4 Wright indicated that that was proper. It was proper.
5 It was because of the way that the marital deduction
6 formula clause was written.

7 Now, I would tell you that I spoke with the
8 draftsman of this trust, John Sande --

9 MR. ECHEVERRIA: Wait. I'm going to object.
10 Mr. Sande didn't draft this trust.

11 MR. MOWRY: Actually, he said that he did. At the
12 time, if it wasn't him it might have been his secretary,
13 Nancy Hudson, but he didn't even know what Bill Raggio's
14 estate was worth or what the composition of the assets
15 were, and so it's hard -- as an estate planner it's hard
16 for me, how could you possibly do that. But we're stuck
17 with the four corners of the document. I don't believe
18 it's ambiguous. I think that Mr. Echeverria is trying to
19 rewrite it to say that you spend down the marital
20 deduction trust first, and I -- that is -- he's saying
21 we're trying to rewrite it. We're trying to make the
22 trustee act in a fair and impartial manner, and to uphold
23 the fiduciary duties that she owes to all of the
24 remainder beneficiaries.

25 I don't care if there's two different trusts.

1 When she -- she is favoring her grandchildren over Bill
2 Raggio's daughters because --

3 MR. ECHEVERRIA: I'm sorry, your Honor --

4 MR. MOWRY: -- they're drawing it down from
5 there --

6 MR. ECHEVERRIA: Where is the facts to these
7 arguments?

8 MR. MOWRY: Well, if we --

9 THE COURT: Hold on. I'm going to let him argue.
10 He was kind enough to let you argue, too. I understand
11 you'll disagree, but I would like his argument because I
12 think he's responding to the fairness theme.

13 MR. MOWRY: Yes, and a duty of impartiality. She
14 is -- she is favoring herself with respect to the
15 distributions from the marital deduction trust and that
16 disfavors the remainder beneficiaries. Mr. Echeverria is
17 correct, there is -- are some hard feelings between the
18 daughters and Mrs. Raggio and it's my opinion that she's
19 doing nothing more than draining this marital deduction
20 trust.

21 THE COURT: Has she been deposed yet or is it too
22 early in the litigation?

23 MR. MOWRY: I believe it's too early yet, your
24 Honor, because we've had these preliminary skirmishes --

25 THE COURT: You've suggested persuasively, at

1 least intuitively it's pervasive, that if there were a
2 neutral trustee there would likely be a different
3 distribution outcome, but Senator Raggio didn't pick a
4 neutral third party fiduciary company, he picked his
5 wife; how do I contextualize that choice?

6 MR. MOWRY: Because the fiduciary duties that a
7 trustee owes are no different whether it's a surviving
8 spouse or Well Fargo Bank. It's the same standard. And
9 I believe the law does support -- there's -- there has to
10 be more scrutiny in a situation like this, and I would
11 direct the court to the Restatement (Third), Comment 50,
12 I believe it's Example *E*.

13 MR. SCHAERER: It's Section 50 at Comment *E*.

14 MR. MOWRY: Comment *E*, which is our facts, and the
15 Restatement makes that very point. Greater scrutiny is
16 required here because we don't have an independent
17 trustee.

18 Now, I want -- you have only seen one of the
19 accountings. We have an agreement in place preserving
20 our objections, but I will tell you that as of
21 December 31, 2017 -- now, recall, the marital trust
22 started with \$2.5 million, it has now been drained to
23 where there's 1.6 million left, and I am -- I will submit
24 that if we get into and are able to see what payments,
25 distributions Mrs. Raggio has made to herself from the

1 credit shelter trust, that trust is now well north of
2 \$5 million because of the appreciation in the run-up in
3 the market, starting at 3.9, there was a big jump in the
4 market during the 15 months intervening until they funded
5 it, and I believe that's what Mr. Rosenauer was trying to
6 get at at the time.

7 Oh. The other thing that is also causing the
8 drain down is she has paying attorneys approximately
9 somewhere between 40- and \$50,000 per year from the
10 assets of the marital deduction trust, so we've seen it
11 depleted and it will not last her life expectancy. I
12 don't know if the court got that far in -- with all the
13 papers that have been filed.

14 I have never had a trustee fight this hard. My
15 law firm was formed in 1972 and it had never had a Rule
16 11 motion brought against it until this case. And it was
17 difficult for me to go into a shareholders' meeting, I
18 had to tell my partners that we were facing our first
19 Rule 11 motion. That was defeated, and rightly so. And
20 if I seem a little upset about it, I am, so I apologize
21 to the court.

22 If you want to hear on the issue in the claim
23 preclusion, my law partner Enrique Schaerer, actually had
24 researched and wrote most of that, I just slightly edited
25 it, so if the court wants to hear it, I would ask that he

1 address the court on that.

2 THE COURT: Would you add anything other than what
3 he has written in the moving papers, which appear to be
4 thorough upon the court's reading?

5 MR. SCHAERER: Your Honor, I also intend to speak
6 to the standard. With respect to issuing the claim
7 preclusion, I've heard no discussion or analysis despite
8 their request for de novo review, I heard from
9 Mr. Echeverria no argument on those issues. So I would
10 not add anything other than what I said in the papers,
11 which I think is well briefed and I hope it's helpful to
12 the court, but I do not think that we have not had very
13 much discussion in terms of what it means to have a clear
14 error review. Perhaps the court feels very comfortable
15 with that review process given that the court does it
16 quite often, but I would be happy to speak to that.

17 And one thing I did want to note is there's been a
18 discussion where the touchstone is always settlor intent,
19 and as the court is well aware, the Nevada Supreme Court
20 said *Klabacka vs. Nelson* that first and foremost the
21 court looks to the language of the trust to determine
22 what the intent is. And if you look at that language,
23 Mr. Mowry is quite correct that it says "necessary,"
24 which is the first word of limitation, in my opinion,
25 your Honor. The second thing it says, it says "proper,"

1 and then it says, "support, care and maintenance," and
2 those words are also limiting. They're different from
3 the word, for instance, for the comfort of the
4 beneficiaries.

5 And so I would submit there are actually three
6 levels of limitation and that discretionary distribution
7 standard is the same in the marital deduction trust and
8 it's the same in the credit shelter trust with respect to
9 principal, and so I think it's very important for the
10 court not to lose sight of that.

11 THE COURT: But if there's not a requirement in
12 the trust for a proportionate spend down, what standard
13 does exist for the respective spending?

14 MR. SCHAEERER: So the standard, your Honor -- and
15 I think it would be actually helpful for to court if I
16 read it -- is you need to look at both trusts. So one of
17 the things I think is quite interesting, and I want to
18 make sure this is not lost on the court and that I
19 emphasize it, is Mr. Echeverria would have the court read
20 the word *necessary* and *proper* out of the both trusts, so
21 that's number one.

22 Number two, he would have the court read into the
23 trust a requirement, he said it himself, that the trustee
24 look first to the marital deduction trust for
25 discretionary distributions. Those words do not appear

1 in either trust. And if you look at the trust, and I've
2 actually -- I want to make sure that we don't get too far
3 afield of the actual language of the trust -- I believe
4 it's section 5.1 with respect to the marital deduction
5 trust, and that's in the trust agreement which is
6 actually the first exhibit to the motion for partial
7 summary judgment, and the marital deduction trust is
8 discussed at Article 5, section 5.1, and that includes
9 the standard, and the credit shelter trust is discussed
10 at Article 6, Section 6.1.

11 And if you look at that document, your Honor,
12 you'll see that the discretionary distribution standard
13 is exactly the same for both and there is no language
14 that requires a trustee to look at one trust before she
15 looks of the other trust.

16 THE COURT: I understand that.

17 MR. SCHAERER: So what do we have? What we have
18 is we have governing principles of law that apply. Now,
19 Nevada has codified many of those principles but one
20 principle that is well established -- that has not been
21 explicitly codified but is well established and is quoted
22 in the briefs but has not been responded to by the other
23 side, and I think it's because it powerful, is the
24 language of the Third Restatement, Section 50, comment E,
25 and that says:

1 Where a beneficiary is entitled to
2 payments from another trust created by
3 the same settlor --

4 The situation we have here.

5 -- each a non-marital trust like the
6 credit shelter trust --

7 THE COURT: Slow down. Slow down, please.

8 MR. SCHAERER: I'm sorry.

9 -- and the marital deduction trust for
10 a surviving spouse, or as part of a
11 coordinated estate planning with another,
12 such as the settlor's spouse, required
13 distributions from the other trust and
14 the purpose of those both trusts are to
15 be taken into account by the trustee in
16 deciding whether, in what amounts and
17 from which trust discretionary payments
18 are to be made.

19 THE COURT: So I've I read that page, it's in your
20 brief. It's brought together -- it's excerpted just as
21 you've described, but you're asking me today to honor the
22 Commissioner's recommendation, must I not also look at
23 the Commissioner's prior recommendation?

24 MR. SCHAERER: Yes, you must, your Honor.

25 THE COURT: How do I take what the Commissioner

1 previously recommended, subsequently adopted by order,
2 within the context of Comment E? Because you're urging
3 upon the court Comment E which is not part of the
4 Commissioner's first recommended order.

5 MR. SCHEARER: Yes. Well, the first recommended
6 order, your Honor, only says that the spend down must not
7 be proportional, and it doesn't make any reference to net
8 income versus principal, it just speaks generally.
9 That's -- the only context we have is a general context
10 that the spend down need not be proportional, that's all
11 that she decided.

12 And, in fact, Mr. Echeverria, if you read the
13 hearing transcript from the June 3rd, 2014, hearing
14 before the Probate Commissioner, which is Exhibit 6 to
15 the Motion for Partial Summary Judgment, Mr. Echeverria
16 actually characterizes the argument that was before the
17 judge -- before the Probate Commissioner. He says
18 that's -- so he says:

19 What that shows is inevitably to
20 maximize the growth of the credit shelter
21 trust because there's no mandated spend
22 down of income, but there is in the
23 marital trust. That's contrary to the
24 argument of Ms. Chew --

25 THE COURT: You have to show down. When you read,

1 you quicken your pace a lot.

2 MR. SCHAERER: I'll slow down. I'm sorry. I
3 apologize to the reporter.

4 So he says -- and, your Honor, this is page he 47,
5 lines 9 through 14 of the transcript -- what
6 Mr. Echeverria says is he says:

7 His point was contrary to the argument
8 Ms. Chew made here, that we should have
9 not a proportionate spend down and it's
10 got to be equal. So what they were
11 contemplating was a joint reading where
12 distributions would be equal and
13 proportional. We used the word *strict*.
14 I don't think you need to get hung up on
15 that word. When you say "proportional"
16 you're thinking proportionate, relative
17 that there's some proportion, but
18 whenever you have a disproportion or a
19 gross disproportion, that is inevitably
20 going to raise a separate legal issue of
21 a breach of fiduciary duty or breach of
22 trust, and that is the reason why issue
23 and claim preclusion fail and perhaps one
24 the reasons why we're not actually
25 getting into the meat of -- to the meat

1 of it in terms of if you look at the
2 actual factors, those have not been
3 established and I think the brief lays
4 that out very well.

5 Now, another thing that Mr. Echeverria said, and
6 this is with respect to prospective request for
7 accountings from both trusts, Mr. Echeverria said on page
8 47, lines 15 through 20:

9 There was no provision in the trust
10 imposing any duty on the trustee to spend
11 the two trusts proportionally as they
12 seek here, and that being the case
13 there's no basis for a dual accounting to
14 a person that is not even an interested
15 party in the credit shelter trust.

16 And he also said on page 47 at lines 21 and 23:

17 Here's a plain attempt to reform the
18 trust agreement. It's asking this court
19 to write into this trust a proportional
20 spend down provision.

21 Now, we have admitted in our briefing here with
22 respect to the Motion for Partial Summary Judgment and,
23 remember, Leslie Raggio Righetti never made this
24 argument. We forthrightly admit that because net income
25 is mandatory under the marital deduction trust, which was

1 necessary actually for it to qualify as a QTIP trust,
2 that they cannot be proportional, they cannot be equal.
3 And if you read this transcript, your Honor, you'll see
4 the word identical time and time again throughout the
5 discussion, so that was the argument before Judge Wright
6 and that is the only basis she had for making a very
7 generic point about no proportional spend down.

8 And if you actually read what she said, she said
9 that she had doubts about whether Ms. Righetti would
10 bring different arguments or different authority, both of
11 which we think we have here, but she didn't feel like the
12 issue had been fully considered, and she didn't feel like
13 she had enough information to make a final conclusive
14 decision, which i would submit to the court is the reason
15 why she made the order, the recommendation, as one that
16 was without prejudice. And that was what was confirmed
17 by Judge Stiglich, was an order without prejudice. That
18 very clearly does not qualify for preclusive effect.

19 THE COURT: What is the standard of review for me
20 today?

21 MR. SCHEARER: Yes. So the standard of review
22 today is clear error. And I searched, your Honor, to see
23 if I could find any basis for de novo review and I at
24 least was unsuccessful in locating a case in which a
25 court reviewed a probate commissioner's recommendation

1 under a de novo standard. There has been no
2 identification of a matter of law that is erroneous in
3 the Commissioner's recommendation, so the review standard
4 would be clear error, which is a very high standard of
5 review, it's very high burden for the other side to
6 overcome.

7 THE COURT: Mr. Echeverria suggests that the
8 Commissioner essentially punted the issue to the District
9 Court --

10 MR. SCHAERER: Yes.

11 THE COURT: -- when she wrote --

12 MR. SCHAERER: You're looking at the bottom of
13 page two, lines 23 through 25?

14 THE COURT: Yes, sir, I am, talking about the
15 analysis is admittedly not clear.

16 MR. SCHAERER: She says "not crystal clear."

17 THE COURT: "Not crystal clear."

18 MR. SCHEARER: And the pleadings do demonstrate
19 the very fine distinction. So I think that the important
20 thing is and this is the issue, I think, in this debate
21 that we have here today, the colloquy that you had with
22 Mr. Echeverria of the other side seems to want to isolate
23 words and not view them in context, and the court rightly
24 suggested that you need to look when you look at the
25 trust at the language of the trusts and you pointed out

1 *necessary*, you pointed out *proper*, support, care and
2 maintenance is also a limitation, but also the structure
3 of the trusts and how they were part of a coordinated
4 estate planning effort in which Senator Raggio
5 contemplated that his biological daughter and his adopted
6 daughter would have a remainder beneficiary interest in
7 the marital deduction trust. And so I think that's very
8 important.

9 So looking at the Commissioner's recommendation
10 your Honor, don't isolate that term. Go up to the top on
11 page two and I would actually begin reading at line 8, I
12 actually think this whole paragraph is useful.

13 THE COURT: Well, don't read it out loud, I don't
14 need to reporter to write. Let me just look at it real
15 quick.

16 MR. SCHAERER: Sure, your Honor.

17 THE COURT: Okay. I've read it.

18 MR. SCHAERER: So what I'd like to emphasize in
19 that paragraph, your Honor, is that she -- she does
20 qualify what she's discussing as she says, she ruled on
21 matters of spending limits. And, remember, there was a
22 request, as I read the transcript and as I read the prior
23 recommendation from the Commissioner, for prospective
24 relief to insure that in the future all payments, all
25 distributions would be proportional, she denied that --

1 THE COURT: Right.

2 MR. SCHAERER: -- but retrospectively with respect
3 to breaches of fiduciary duties is entirely different
4 claim and issue.

5 THE COURT: But if she denied prospective
6 accountings or proportionality, what is the effect of
7 that upon me today? Because --

8 MR. SCHAERER: I think she told you right here,
9 your Honor, she said that the questions were very
10 different. So if you look at line 13, it's about there,
11 she says that what's now at issue is --

12 THE COURT: The focus on fiduciary duties.

13 MR. SCHAERER: Focusing on fiduciary duties, and
14 she said before it was a comparable spend down. The
15 language she actually used in her recommendation was
16 *proportional spend down* and she's saying that's different
17 from the present question, so she's telling you that what
18 she had in mind at the time was not what is at issue in
19 the 2015 matters.

20 But even, you know, her secret undisclosed intent
21 is informative but we think we are bound by her actually
22 said her order, her recommendation, and all she said in
23 her recommendation is no proportional spend down. But
24 we're discussing the extent of the disproportionality can
25 always -- I mean, that gives rise to the possibility of

1 serious breaches of trust, and the only way to determine
2 that, your Honor, is for discovery with respect to the
3 credit shelter trust as part of a coordinated estate
4 planning effort.

5 And I have said all along, and when I reviewed the
6 motion for partial summary judgment with my law partners
7 Mr. Mowry and Mr. Rosenauer my co-counsel, I said this,
8 to me, looks like a motion for protective order in
9 disguise. And I think there's a reference in the reply
10 in support of our motion to compel which suggests that
11 basically -- they basically admitted this in their
12 opposition to the motion to compel, but they are seeking
13 to shut down discovery on that issue but the problem is
14 they have haven't met, even if you were to look at the
15 merits, which I submit you should not do, but even if you
16 were to use a de novo review standard to look at the
17 merits, they have not met the elements of either claim or
18 issue preclusion, and so they're incapable of meeting
19 that standard and shutting down discovery on that basis.

20 So the road map, your Honor, I would have for the
21 court is that clear error review applies, and I never did
22 actually get around to reading you what that standard is.

23 THE COURT: Just cite it to me, please.

24 MR. SCHEARER: Yes. And I believe -- so this is
25 in the context, your Honor, this is Nevada Supreme Court

1 case, *Russell v. Thompson*, the PIN citation is 96 Nevada
2 830, and it's discussed in a footnote 2 which is a
3 reference to the Nevada Rules of Civil Procedure, Rule 53
4 (e)(2), which reads:

5 In an action to be tried without a
6 jury, the court shall accept the master's
7 findings of facts unless clearly
8 erroneous.

9 So it's very similar to the local rule in this
10 court with respect to a specific type of master, the
11 Probate Commissioner, and the Nevada Supreme Court talks
12 about the limited scope of review and drops a footnote
13 and the footnote cites the federal clear error standard.
14 And the footnote says, and I'll read it slowly:

15 It is only instances such as the
16 following that permit the court to
17 disregard the master's report. The
18 findings are based upon material errors
19 in proceedings or a mistake of law or are
20 unsupported by any substantial evidence
21 or are against the clear weight of the
22 evidence.

23 And I would submit, your Honor, none of that has
24 been shown. In the Nevada Supreme Court in a case called
25 *In Re: Estate of Bethurem*, 129 Nevada 869, cited the way

1 the Nevada Supreme Court judges substantial evidence, and
2 that is evidence that a reasonable mind might accept as
3 adequate to support a conclusion. So as long as a
4 reasonable mind can accept the evidence upon which the
5 Probate Commissioner made her decision, there's no basis
6 to overrule her under the clear error standard.

7 And one of the things I find quite important, your
8 Honor, in that paragraph that you read is that it says --
9 she says:

10 However, this Commissioner views the
11 current issues as shown by the instant
12 opposition of the beneficiaries as
13 different.

14 And then she goes on to explain how they're
15 different. I would submit that she cites and thus
16 incorporates by reference the opposition brief, and so
17 when you look at the arguments the other side has put
18 forth for basically undoing what the Probate Commissioner
19 said, they are -- and I want to make sure I have them
20 here -- their first argument is that it fails to analyze
21 claim and issue preclusion, but she cites and thus
22 incorporates by reference the opposition brief and she
23 also specifies, she draws a contrast between the issues
24 before on the one hand and the issues now on the other
25 hand, so I believe that argument fails and it certainly

1 doesn't meet the clear error standard.

2 The second argument that they make in their
3 objection to recommendation is that the recommendation
4 fails to articulate Nevada trust law, the same argument.
5 She's referencing the Nevada trust law that is referenced
6 in the opposition briefs and that includes the Third
7 Restatement, Section 50, Comment E, and the other
8 provisions, including NRS 163.4175, which includes that
9 prefatory clause *except as otherwise stated in the trust*
10 *instruments*, which is what we have here and that argument
11 has never been addressed by the other side.

12 THE COURT: Got it.

13 MR. SCHEARER: And the third argument, your Honor,
14 in the objection recommendation is that the Probate
15 Commissioner somehow misapprehends the scope of the
16 requested brief and I think that doesn't give the Probate
17 Commissioner enough credit. The motion is styled a
18 motion for partial summary judgment. As opposing counsel
19 said, they took pains to point out that there's this
20 alternative legal theory, which Mr. Echeverria discussed
21 at length today, which is that it's possible that not
22 looking at the credit shelter trust the distributions
23 would be so excessive that they could violate the
24 language of the marital deduction trust by itself in
25 isolation, but I believe that he hasn't met the burden to

1 shut down through issue and claim preclusion the related
2 argument that is very important to the court's
3 disposition of the fiduciary breach claims, which is that
4 you need to look at both trusts and other assets, and
5 those are not issues that the court has to resolve today.
6 The court merely needs to recognize that those issues are
7 distinct, they're unique issues, and they were not before
8 the Probate Commissioner when she made her first
9 recommendation.

10 And unless the court has some other questions, I'm
11 happy to conclude.

12 THE COURT: I need to give Mr. Rosenauer time to
13 offer new argument that hasn't been previously been
14 offered.

15 MR. SCHAERER: Thank you, your Honor.

16 THE COURT: Thank you, counsel, well done to both
17 of you.

18 MR. ROSENAUER: No new argument, your Honor, it
19 was covered here. As far as, Mr. Mowry's reference to
20 the footnote regarding attorney's fees, you know, that
21 was a very hot issue in the *Chiappero* case and the court
22 was very direct with respect to how that got -- how that
23 was solved, and I just would remind the court, because we
24 had the same issue in that case.

25 Other than that, your Honor, I can answer any

1 questions but able counsel certainly put it all before
2 you, your Honor.

3 THE COURT: Well done. You have a chance for
4 rebuttal argument, sir, if you would like.

5 MR. ECHEVERRIA: Just real briefly, your Honor.

6 There seems to be a lot of focus on the
7 Restatement 50, which is not law in Nevada and, in fact,
8 is trumped or is in replace of the 163.4175, which says
9 that we are not to look at other assets. The fact
10 pattern in Comment E is substantially different, I think
11 we pointed that out in our briefing. That fact pattern
12 dealt with when you're dealing with the same
13 beneficiaries across all sets.

14 Also in Judge -- across all trusts -- Commissioner
15 Wright, in her ruling, said that there's -- that the
16 breach of fiduciary duties issue which she saw, she said
17 raised issues as to whether or not there is a breach with
18 respect for all beneficiaries of all subtrusts, and
19 that's not an issue here.

20 The next thing I want to point out is Mr. Mowry
21 made great pains to say he wasn't at the hearing
22 initially. They were copied on virtually every
23 pleading -- not virtually, every pleading, and had a full
24 opportunity to attend and be heard.

25 THE COURT: Is there any distinction between the

1 two daughters' positions between Mr. Rosenauer and Mr.
2 Mowry -- just stand right there, I'm sorry to interrupt.
3 Under the claim at issue, the preclusion analysis, I have
4 to determine if there's privies -- is there any space
5 between two the daughter beneficiaries of the marital
6 deduction trust?

7 MR. MOWRY: No, your Honor, there is not. There
8 was a time when my client was the trustee of the Dorothy
9 credit shelter trust and there was some issues there
10 where I couldn't represent Ms. Chew, my law firm could
11 not because there was too much of a conflict with the
12 other beneficiaries being, to some extent, Mrs. Raggio
13 and the grandchildren and we had issues we had to work
14 out where she needed her own independent counsel.

15 THE COURT: Okay. Thank you.

16 Excuse me, Mr. Echeverria.

17 MR. ECHEVERRIA: No, that's -- the issue seems to
18 be on how your Honor is to interpret *necessary* and
19 *proper*. It's our position that necessary and proper
20 applies to each distribution, but doesn't then elevate
21 the circumstance that you have to look at everything else
22 to determine whether or not it a particular distribution
23 is necessary in light of everything else and to rule
24 differently I think your Honor is to go afoul of NRS
25 163.4175.

1 There were a couple of notes, I'm not sure how
2 significant they were, but I think we can submit it on
3 this basis.

4 THE COURT: All right, counsel.

5 MR. ECHEVERRIA: The trust speaks for itself, the
6 language is there. What they are intending or wanting to
7 do is to get an accounting of the credit shelter trust of
8 which of they're not beneficiaries and they want and, by
9 necessity, must rewrite the trust in order to accomplish
10 that.

11 The issue is fairness. Senator Raggio knew what
12 he was doing, and the purpose of the marital trust was to
13 create the -- put in the tax exempt portions or the tax
14 deferred portions and then traditional estate planning,
15 one spends down the marital trust, and he knew that. And
16 so to give effect to the Senator's desires and the
17 Senator's wishes, Mr. Mowry made the point that there's
18 animosity between the current wife and the beneficiaries,
19 Ms. Righetti and Ms. Chew, and that's true, and that was
20 existing prior to Mr. Raggio -- Senator Raggio's death
21 and greatly bothered him, and I submit that that's why
22 this trust is the way it is.

23 We need to give intent to the settlor, Senator
24 Raggio, and to adopt the beneficiaries' position in this
25 case -- remainder beneficiaries' position in this case

1 would be to rewrite his intent. I'll submit it, your
2 Honor.

3 THE COURT: Thank you.

4 Hold on, counsel. I'll want your help on
5 something else now.

6 MR. ECHEVERRIA: Okay.

7 THE COURT: Regardless of how the court rules,
8 litigation continues -- we've acknowledged litigation of
9 a different scope and direction, where are we in the
10 overall litigation lifecycle and can the court provide
11 some intervention and assistance?

12 MR. ECHEVERRIA: Yes. We have a petition for
13 approval of the accounting that was filed in, I want to
14 say, April of 2015 that was scheduled for hearing, I
15 believe, initially at the end of May. Then the
16 beneficiaries filed different pleadings, we got
17 consolidated. Mr. Mowry expressed some emotion over the
18 Rule 11 issue, and I recall that was over whether or not
19 he could sue civilly Ms. Raggio as the trustee; that
20 issue was that it should have been in probate, but that's
21 neither here nor there. He eventually dismissed
22 Ms. Raggio, as the trustee, and pursued the civil
23 complaint as her individually, that was the issue that
24 was raised there, among other things.

25 But we do have the initial petition for

1 accounting. There has been, I think, an extension that
2 they have the right to continue to object to subsequent
3 accountings, we have submitted subsequent accountings, so
4 I think we can -- we can get that going.

5 THE COURT: Can that accounting be approved or
6 disapproved in isolation from the other litigation or are
7 they all so integrated they must be resolved at in one
8 step?

9 MR. ECHEVERRIA: We believe that they can be
10 approved separately. The other litigation on breach of
11 fiduciary duties, the accounting sets forth the
12 accounting of the marital trust and where the funds were
13 spent and for what. Under our theory of the case, that
14 can be approved.

15 If the theory of the case is, wait a minute, you
16 got to give us an accounting of the credit shelter trust
17 so that we can determine if -- whatever they want to
18 determine, then it may not be. Maybe that's why we need
19 to do a whole bunch of discovery.

20 But the big issue here, your Honor, is to what
21 extent are all these parties supposed to spend money on a
22 credit shelter trust if they're not entitled to an
23 accounting of it? And so that's -- that's really what is
24 driving it. The issue to be decided is to what extent
25 can we look at the credit shelter trust. I think once

1 that issue is resolved, then we can go on.

2 THE COURT: And by going on, you contemplate what?
3 What is -- what is the pendency of this litigation look
4 like before adjudication?

5 MR. ECHEVERRIA: Is the money that the trustee is
6 withdrawing and spending from the marital trust necessary
7 and proper for her support.

8 THE COURT: Right. I understand. I'm asking --
9 I'm not asking that question.

10 MR. ECHEVERRIA: I misunderstood.

11 THE COURT: So typically we establish a trial date
12 and we work backwards, and I'm trying to understand where
13 we are in that cycle and what I can do to help get us to
14 the trial date.

15 MR. ECHEVERRIA: We don't have the trial date.
16 There is discovery motions pending which -- a motion
17 pending.

18 THE COURT: Which is held in abeyance essentially
19 until this decision?

20 MR. ECHEVERRIA: Yes, your Honor, as I understand.

21 THE COURT: So how long will trial -- well, I know
22 you need to know the scope of the trial and so you've
23 kind of got one eye closed as you answer the question,
24 but worst case scenario everything is tried, how long
25 will trial take and how far in the distance should trial

1 be set?

2 MR. SCHEARER: Your Honor, thank you. I think
3 that this is a five-day trial if it's tried to the bench.
4 Of course, there is no trial date set so the ability to
5 request any type of jury or anything else has not -- that
6 trigger hasn't been pulled yet. I think that -- that the
7 amount of discovery that is -- that would have to be
8 produced, written discovery, if indeed our position is
9 adopted, we would need some time. It's going to be
10 voluminous.

11 Mr. Echeverria had the chance to depose both
12 Ms. Chew and Ms. Righetti already, so that has been taken
13 care of. We still have to make it through the expert
14 hoops, also. So, you know, with that in mind, you know,
15 yes, there's a little bit of a log jamb right now with
16 respect to this decision, the motion to compel that is
17 pending, and then that -- that, again, like you said,
18 defines scope.

19 THE COURT: Please don't infer anything from my
20 question -- okay -- I'm not foreshadowing an answer, but
21 if you were able to look at credit shelter trust details,
22 do you know if accountings have been prepared and
23 distributed to the credit shelter trust beneficiaries,
24 it's just a matter of copying and forwarding them over,
25 or do they have to be created in the first instance?

1 MR. SCHEARER: I do not know, your Honor, if
2 credit shelter accountings has been done, but the court
3 needs to understand there is a distinction.

4 The accountings that are due for -- for trusts on
5 a regular basis look at trust performance and those types
6 of things, and here we're going a little bit deeper
7 because if you look at one side of the ledger for the
8 regular trust-type accounting, you will see \$20,000 a
9 month January, February, March, all the way through, you
10 don't have any chance to look at what happened to that
11 money. Because, again, the trustee has the obligation to
12 insure that the beneficiary is using the money in the
13 manner that is articulated in the trust. So if the trust
14 is for, let's say, transportation and the beneficiary is
15 using it for tuition then, you know, there's a -- there's
16 another set of analysis that has to go on there.

17 THE COURT: Right. I understand. So -- so in the
18 best -- under the worst case scenario for the scope of
19 trial, what is the best case scenario for when trial --
20 when we will be prepared for trial? September, next
21 February? I'm trying to get an idea of --

22 MR. ROSENAUER: If I may, your Honor.

23 THE COURT: -- of trial dates.

24 MR. ROSENAUER: Your Honor, if I look at the track
25 record of this case, I'm thinking a year because there

1 has been no battle that has not been fought in this whole
2 thing, even up to, as Mr. Mowry described, Rule 11 type
3 of battles.

4 THE COURT: So you contemplate a five-day bench
5 trial, and I understand that you reserved the word *jury*
6 but you contemplate a five-day bench trial a year out?

7 MR. ROSENAUER: Yes.

8 THE COURT: Mr. Echeverria, do you agree or
9 disagree, five-day bench trial a year out?

10 MR. ECHEVERRIA: I agree and disagree. I'm not
11 sure that all of the issues are bench tried, I want to
12 look at that. Depending on the amount of discovery,
13 we've done -- first of all, Ms. Chew's deposition has not
14 been finished because she had some physical issues that
15 she felt she couldn't continue that day so -- but that's
16 minor. Ms. Raggio's deposition has not been set. I
17 think a lot of this will depend on the scope of
18 discovery, what are they entitled to inquire into.

19 And if we're going to get into the credit shelter
20 trust, we've already produced something around 2,000
21 pages of documents on the marital trust. I think there
22 are some more to be produced pending the execution of a
23 protective order. I don't know how long they want to
24 take to look at all that stuff, but we have now
25 apparently three years of accountings that we're looking

1 at that have been held in abeyance. We've supplied the
2 accountings annually but they have a running objection to
3 the entire set of accountings.

4 So I think it could likely take two weeks or more.

5 THE COURT: Just based upon my experience this
6 morning, I'm not confident that a five-day reservation of
7 time would be appropriate. I would much rather reserve
8 more time and compress it into fewer days than to expire
9 the days allotted and have to figure it out.

10 Counsel, this is just for my -- this is in no way
11 related to my question on the Commissioner's
12 recommendation, I'm now just exploring what happens after
13 today. Ballpark of the fees that have been spent in
14 their entirety on this dispute, fees always become
15 relevant at some point when trust corpus is the source of
16 the fees, can you ballpark within 30- or \$50,000 how much
17 you've charged your client so far?

18 MR. ECHEVERRIA: No, I cannot. But I'd be happy
19 to look at what the -- the records show and provide that
20 to the court, but I can't do it -- whatever number I
21 would give you today would be a guess.

22 THE COURT: That's all right, I'll accept a guess.
23 Are we talking about \$100,000 or \$500,000?

24 MR. ECHEVERRIA: Closer to a hundred.

25 THE COURT: Okay. All right. The same question

1 I'll ask --

2 MR. ECHEVERRIA: But I'm not sure what Holland &
3 Hart has charged.

4 MS. REID: Probably 200.

5 MR. ECHEVERRIA: They indicate they're in the 200
6 range. I'm not sure.

7 THE COURT: Okay. And to the respective
8 daughters' counsel?

9 MR. MOWRY: I believe we had some other fees from
10 the Dorothy Raggio Credit Shelter Trust and working
11 through some of the issues with Mr. Echeverria on the
12 state tax return when we had to hire Steve Lynn to help
13 us figure out some issues. I'd say we're -- we're not at
14 a hundred for Leslie.

15 THE COURT: You are not?

16 MR. MOWRY: We are not.

17 THE COURT: Okay.

18 MR. ROSENAUER: And I can tell we're not -- we're
19 in the \$50,000 range, as I recall, your Honor.

20 THE COURT: All right. Somewhere probably, in its
21 entirety, \$400,000 or less, in that ballpark roughly
22 somewhere. And fees from here to the last day of trial,
23 another half million dollars?

24 MR. ECHEVERRIA: Probably.

25 THE COURT: Does anybody disagree?

1 MR. MOWRY: No.

2 THE COURT: All right.

3 MR. ROSENAUER: Don't disagree, your Honor.

4 MR. ECHEVERRIA: Perhaps in light of that, your
5 Honor, you might consider sending us all to a settlement
6 conference, and maybe that's what you're contemplating
7 already.

8 THE COURT: I actually enjoy this case. It's a
9 rare privilege to have excellent moving papers and
10 excellent oral arguments and interesting issues that are
11 new, so selfishly I would love this case to continue but
12 I -- I want to be careful of how I -- this is not
13 either -- no attorney -- every attorney here knows how to
14 resolve a case and when to resolve a case. I hadn't
15 thought about sending everybody to settlement conference.

16 I'm trying to figure out, it's going to cost
17 \$500,000 to settle the marital deduction trust, and I can
18 assure you the issues aren't nearly as clear to the court
19 as they are from each one of your advocacy seats.

20 Do you want me to send you to settlement
21 conference? That's not why I was asking. I was actually
22 asking because in trust cases I'm getting pretty stingy
23 about allowing trust corpus to fund exhaustive
24 litigation. I think that the litigation decision-maker
25 must bear some risks for the litigation decisions, that's

1 why I'm asking the question.

2 And Mr. Rosenauer mentioned a case where he, I
3 think, took a \$200,000 client trust account deposit and
4 closed it even though it was trust corpus and the trustee
5 wanted it because that's how I'm looking at things now,
6 that's why I ask.

7 Should I send everybody to settlement conference?

8 MR. MOWRY: I don't know yet, your Honor. Perhaps
9 once we get a ruling on this particular issue, it may be
10 appropriate. And I was going to suggest, unless your
11 Honor wanted to be the settlement judge, which we would
12 have no objection to, of course, would be Judge Simons.

13 THE COURT: I don't want to be the settlement
14 judge. I will be the presiding judge, whether it be
15 bench or jury, and I just don't attempt to settle cases
16 when I'm the presiding judge.

17 MR. MOWRY: Certainly. I understand.

18 THE COURT: Frankly, you should settle, everyone
19 knows that, so my hope that I am invited into dispute is
20 irrelevant. You need to do what is best for your
21 clients. Okay.

22 So just a rough -- so I'm probably going to set
23 this for 10 days a year out and contemplate a million
24 dollars in combined fees, and I'll just use that within
25 my scheduling decisions, not my review of the

1 Commissioner's recommendation.

2 Anything else that I need to resolve this morning?

3 MR. MOWRY: No, your Honor.

4 MR. ECHEVERRIA: Ms. Reid asked a great question.
5 Do you want this case to proceed in front of you on the
6 rest of the matters?

7 THE COURT: I've actually shown my hand. I'm
8 starting to formulate the order in my mind, and there are
9 some things I want to look at and think about as to the
10 substance of the objection, but I've already seen a final
11 sentence where I write, this matter is removed from the
12 Probate Commissioner's office and tendered up to the
13 District Court. I think that with this dispute it's
14 appropriate to bypass that intervening level and we'll
15 just put it onto a litigation track.

16 MR. ECHEVERRIA: Okay.

17 THE COURT: That's my sense of what I'm going to
18 do.

19 MR. ECHEVERRIA: Thank you, your Honor.

20 THE COURT: Very well done. It was welcome.
21 Thank you.

22 Court will stand in recess.

23 (At 10:45 a.m., court adjourned.)

24 * * *

25

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, ERIN T. FERRETTO, an Official Reporter
5 of the Second Judicial District Court of the State of
6 Nevada, in and for the County of Washoe, DO HEREBY
7 CERTIFY:

8 That I was present in Department No. 15 of
9 the above-entitled Court on TUESDAY, APRIL 3RD, 2018, and
10 took verbatim stenotype notes of the proceedings had upon
11 the matter captioned within, and thereafter transcribed
12 them into typewriting as herein appears;

13 That the foregoing transcript is a full,
14 true and correct transcription of my stenotype notes of
15 said proceedings.

16 DATED: This 26th day of June, 2018.

17
18
19 /s/ Erin T. Ferretto

20 _____
 ERIN T. FERRETTO, CCR #281

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of:
THE WILLIAM J. RAGGIO FAMILY
TRUST.

Case No. PR13-00624

LESLIE RAGGIO RIGHETTI and TRACY
RAGGIO CHEW, Co Trustees of the William
J. Raggio and Dorothy B. Raggio Trust under
agreement dated January 27, 1998 as decanted
and Vested Remaindermen of the Marital
Deduction portion of The William J. Raggio
Family Trust,

Dept. No. 15

Plaintiffs,

vs.

DALE CHECKET RAGGIO Trustee of The
Marital Deduction Portion and Credit Share of
the William J. Raggio Family Trust; DALE
CHECKET RAGGIO, Individually; DOES II
through X inclusive;

Defendants.

ORDER CONFIRMING RECOMMENDATION

Before this Court is Trustee Dale Raggio's objection to the probate commissioner's recommendation denying her motion for partial summary judgment. This Court conducted a hearing on April 3, 2018. The hearing was instructive to the extent this Court better understands the scope of issues and depth of the parties' dispute. However, this

1 Court cannot conduct a *de novo* review of the probate commissioner's recommendation.
2 See WDCR 57.3(8). This Court's review is limited to correcting legal errors and clearly
3 erroneous findings of fact. See WDCR 57.3(11). The burden is on the objecting party to
4 demonstrate the recommendation is invalid. WDCR 57.3(10).

5 The legal issue before the probate commissioner was whether settled law or
6 undisputed facts allow summary adjudication because of claim and issue preclusion.
7 NRCP 56. The probate commissioner made no findings of fact, and therefore, the clearly
8 erroneous standard does not apply. Claim preclusion applies when: "(1) the parties or
9 their privies are the same, (2) the final judgment is valid, and (3) the subsequent action is
10 based on the same claims or any part of them that were or could have been brought in the
11 first case. Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008),
12 holding modified by Weddell v. Sharp, 131 Nev. ___, ___, 350 P.3d 80 (2015). Similarly,
13 the following elements compose issue preclusion: "(1) the issue decided in the prior
14 litigation must be identical to the issue presented in the current action; (2) the initial ruling
15 must have been on the merits and have become final; (3) the party against whom the
16 judgment is asserted must have been a party or in privity with a party to the prior
17 litigation; and (4) the issue was actually and necessarily litigated." Id. at 1055, 194 P.3d at
18 713 (internal quotations and citations omitted).

19 The probate commissioner analyzed the pleadings and moving papers and
20 determined there were subtle distinctions between the 2013 issues presented by Tracy
21 Chew (resolved by recommendation/order dated March 4, 2015) and the present claims
22 brought by Ms. Chew and Leslie Righetti. Specifically, the trustee's discretionary,
23 fiduciary decisions currently in dispute occurred *after* the 2015 recommendation/order
24 was entered and are distinct from the issues previously litigated. Additionally, the 2015
25 recommendation/order was not final for purposes of issue and claim preclusion because it
26 was entered without prejudice.

27 Motions for summary judgment are often filed but rarely granted because the
28 standard is so rigorous. Summary judgment is appropriate where "the pleadings,

1 depositions, answers to interrogatories and admissions on file, together with affidavits . . .
2 show there is no genuine issue as to any material fact and that the moving party is entitled
3 to a judgment as a matter of law.” NRCP 56(c). The pleadings and the record are
4 construed in the light most favorable to the non-moving party. Wood v. Safeway, Inc., 121
5 Nev. 724, 732, 121 P.3d 1026, 1031 (2005).

6 The animating issue in this dispute is the trustee’s fiduciary decisions to spend the
7 marital deduction trust principal, to Ms. Chew and Ms. Righetti’s financial detriment,
8 while preserving the credit shelter trust corpus for the benefit of the trustee’s lineal
9 descendants. The trustee argues it is the law of the case that a proportionate spenddown
10 is not required and fairness is neither a trust standard nor legal issue to litigate. In
11 contrast, Ms. Chew and Ms. Righetti contend that while a proportionate spenddown of the
12 marital deduction and credit shelter trusts is not legally required, a disproportionate
13 spenddown may reveal the trustee’s breach of fiduciary duties.

14 For purposes of this limited review, this Court agrees the issues are distinct. A
15 precisely proportionate spenddown is not required and is not possible because the
16 trustee’s income right in the marital deduction trust will always allow some unequal
17 depletion between the two trusts. However, the 2015 recommendation/order not
18 requiring a proportionate spenddown does not immunize the trustee’s discretionary,
19 fiduciary decisions when invading the principal of the two trusts. Thus, the trustee is not
20 relieved of fiduciary duties by the 2015 recommendation/order, but remains susceptible to
21 analysis and fair argument.

22 The Nevada Supreme Court has repeatedly recognized the efficacy of the
23 Restatements of Law issued by the American Law Institute. Although there are numerous
24 decisional authorities examining a trustee’s duty of loyalty,¹ general statements of treatise

25
26 ¹ See generally Uzyel v. Kadisha, 188 Cal. App. 4th 866, 904, 116 Cal. Rptr. 3d 244, 275 (2010) (analyzing
27 allegations of a trustee’s breach of his duty of loyalty); Birnbaum v. Birnbaum, 539 N.E.2d 574, 576 (N.Y.
28 1989) (stating the “undiluted” duty of loyalty “is a sensitive and ‘inflexible’ rule of fidelity, barring not only
blatant self-dealing, but also requiring avoidance of situations in which a fiduciary’s personal interest
possibly conflicts with the interest of those owed a fiduciary duty”); Bank of Nevada v. Speirs, 95 Nev. 870,
873, 603 P.2d 1074, 1076 (1979) (noting a trustee is a fiduciary who must act in good faith and not place

1 trust law provide clear guidance. It is “virtually inherent in the nature of trusts and
2 trustees’ responsibilities that, in many matters of trust administration, personal interests of
3 a beneficiary-trustee will come into conflict with the interests of other beneficiaries, to
4 whom the trustee owes fiduciary duties.” Restatement (Third) of Trusts § 32 cmt. b (Am.
5 Law Inst. 2003). A trustee has a fundamental duty of loyalty “to administer the trust
6 solely in the interests of the beneficiaries.” Id. § 78. Accordingly, a trustee is “strictly
7 prohibited from engaging in transactions that involve self-dealing or that otherwise
8 involve or create a conflict of interest between the trustee’s fiduciary duties and personal
9 interests.” Id.

10 Integral to the present claims is whether the trustee’s discretionary principal
11 distributions from the marital deduction trust were “necessary” and “proper.” The vested
12 remainder beneficiaries are entitled to examine the need and propriety of the trustee’s
13 decision to withdraw principal from the marital deduction trust by reference to other trust
14 and non-trust resources available for the trustee’s necessary and proper support. It
15 appears possible this Court cannot determine what is necessary and proper without a
16 complete understanding of the trustee’s circumstances, to include standard of living and
17 supportive resources beyond the marital deduction trust.

18 Given the unique factual context of this case, including the estrangement between
19 the trustee and beneficiaries of the marital deduction trust, the identical language
20 authorizing discretionary incursions into the principal of both the marital deduction trust
21 and the credit shelter trust, and the familial affinity between the trustee and the
22 beneficiaries of the credit shelter trust, this Court cannot conclude the probate
23

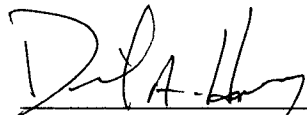
24
25 himself in a position where it would be for his own benefit to violate his duty to the beneficiary.); Riley v.
26 Rockwell, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987) (“The fiduciary obligations of a trustee are great. A
27 trustee should do everything in his power to avoid a conflict of interest.”). See also Matter of W.N. Connell
28 & Marjorie T. Connell Living Tr., 393 P.3d 1090, 1094 (Nev. 2017) (finding trustee breached her fiduciary
duties of impartiality and to avoid conflicts of interest when she unilaterally ceased distributions to
[beneficiaries] without seeking court instructions); George Gleason Bogert et al., Bogert’s Trusts and Trustees
§ 543 (2017); 4 Austin Wakeman Scott, William Franklin Fratcher, Mark L. Ascher, Scott and Ascher on
Trusts § 24.10, at 1707–11 (5th ed. 2007).

1 commissioner erred as a matter of law when recommending that summary judgement be
2 denied. See WDCR 57.3(11).

3 Finding no legal error, this Court hereby confirms, approves, and adopts the
4 probate commissioner's recommendation for order filed January 9, 2018. This matter is
5 removed from the probate commissioner and vested in Department 15 for all further
6 proceedings. Within 10 days from the date of this order, counsel shall schedule a time to
7 appear before the Department 15 Administrative Assistant to set this matter for trial.
8 Within 20 days from the day this matter is set for trial, the parties shall submit a stipulated
9 scheduling order that identifies the date for each pre-trial disclosure and deadline.

10 **IT IS SO ORDERED.**

11 Dated: April 17, 2018.

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13 _____
14 David A. Hardy
15 District Court Judge
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CODE: 2550

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Nevada Bar No. 11706
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Reno, Nevada 89509
Phone: (775) 324-3303
Attorney for Tracy Raggio Chew

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR WASHOE COUNTY

IN THE MATTER OF THE
WILLIAM J. RAGGIO FAMILY TRUST.

Case No.: PR13-00624

Dept. No.: PR

Consolidated With:

Case No.: CV15-01202

LESLIE RAGGIO RIGHETTI and TRACY
RAGGIO CHEW, Co Trustees of the William J. Raggio
and Dorothy B. Raggio Trust under agreement dated
January 27, 1998 as decanted and Vested
Remaindermen of the Marital Deduction portion of
The William J. Raggio Family Trust,

Plaintiffs,

vs.

DALE CHECKET RAGGIO Trustee of The Marital
Deduction Portion and Credit Share of the William J.
Raggio Family Trust; DALE CHECKET RAGGIO,
Individually; DOES II through X inclusive;

Defendants.

NOTICE OF ENTRY OF ORDER CONFIRMING RECOMMENDATION

PLEASE TAKE NOTICE that on the 17th day of April 2018, an Order Confirming Recommendation (the "Order") was entered in the above-captioned matter. A copy of the

1 Order is attached hereto as Exhibit "1".

2
3 **AFFIRMATION: Pursuant to NRS 239B.030**, the undersigned does hereby affirm
4 the preceding document does not contain the Social Security number of any person.

5
6 DATED this 18th day of April 2018

7 MICHAEL A. ROSENAUER LTD.

8 /s/ Michael A. Rosenauer, Esq.
9 Michael A. Rosenauer, Esq.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Michael A. Rosenauer, Ltd., 510 West Plumb Lane, Suite A, Reno, NV 89509, and that on this date I served the foregoing document(s) described as follows:

NOTICE OF ENTRY OF ORDER CONFIRMING RECOMMENDATION

on the party(s) set forth below by:

XXX

Electronic Mailing via Second Judicial District Court
CM/ECF System to all those persons listed on the ECF
Confirmation Sheet.

John Echeverria, Esq.
Echeverria Law Office
9432 Double R Blvd.
Reno, NV 89521

Tamara Reid, Esq.
HOLLAND AND HART
5441 Kietzke Lane, 2nd Floor
Reno, NV 89511

DATED this 18th day of April, 2018.

/s/ Rebecca Squire
REBECCA SQUIRE

IN THE MATTER OF THE
WILLIAM J. RAGGIO FAMILY TRUST.

LESLIE RAGGIO RIGHETTI and TRACY
RAGGIO CHEW, Co Trustees of the William J. Raggio and Dorothy B. Raggio Trust
under agreement dated January 27, 1998 as decanted and Vested Remaindermen of
the Marital Deduction portion of The William J. Raggio Family Trust,
Plaintiffs,

vs.

DALE CHECKET RAGGIO Trustee of The Marital Deduction Portion and Credit
Share of the William J. Raggio Family Trust; DALE CHECKET RAGGIO,
Individually; DOES II through X inclusive;
Defendants.

Case No.: PR13-00624
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Consolidated With:
Case No.: CV15-01202

Exhibit	Description	Pages
1.	Order Confirming Recommendation	5

Exhibit “1”

EXHIBIT “1”

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7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 In the Matter of:
10 THE WILLIAM J. RAGGIO FAMILY
11 TRUST.

Case No. PR13-00624

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14 J. Raggio and Dorothy B. Raggio Trust under
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16 and Vested Remaindermen of the Marital
Deduction portion of The William J. Raggio
Family Trust,

Dept. No. 15

17 Plaintiffs,

18 vs.

19 DALE CHECKET RAGGIO Trustee of The
20 Marital Deduction Portion and Credit Share of
21 the William J. Raggio Family Trust; DALE
22 CHECKET RAGGIO, Individually; DOES II
through X inclusive;

23 Defendants.
24 _____/

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13 decision to withdraw principal from the marital deduction trust by reference to other trust
14 and non-trust resources available for the trustee’s necessary and proper support. It
15 appears possible this Court cannot determine what is necessary and proper without a
16 complete understanding of the trustee’s circumstances, to include standard of living and
17 supportive resources beyond the marital deduction trust.

18 Given the unique factual context of this case, including the estrangement between
19 the trustee and beneficiaries of the marital deduction trust, the identical language
20 authorizing discretionary incursions into the principal of both the marital deduction trust
21 and the credit shelter trust, and the familial affinity between the trustee and the
22 beneficiaries of the credit shelter trust, this Court cannot conclude the probate
23

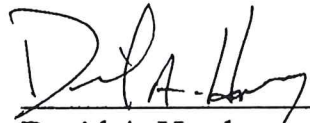
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26 Rockwell, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987) (“The fiduciary obligations of a trustee are great. A
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1 commissioner erred as a matter of law when recommending that summary judgement be
2 denied. See WDCR 57.3(11).

3 Finding no legal error, this Court hereby confirms, approves, and adopts the
4 probate commissioner's recommendation for order filed January 9, 2018. This matter is
5 removed from the probate commissioner and vested in Department 15 for all further
6 proceedings. Within 10 days from the date of this order, counsel shall schedule a time to
7 appear before the Department 15 Administrative Assistant to set this matter for trial.
8 Within 20 days from the day this matter is set for trial, the parties shall submit a stipulated
9 scheduling order that identifies the date for each pre-trial disclosure and deadline.

10 **IT IS SO ORDERED.**

11 Dated: April 17, 2018.

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14 David A. Hardy
15 District Court Judge
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CODE: 3860

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Attorney for Tracy Raggio Chew

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR WASHOE COUNTY

IN THE MATTER OF THE
WILLIAM J. RAGGIO FAMILY TRUST.

Case No.: PR13-00624

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Plaintiffs,

vs.

DALE CHECKET RAGGIO Trustee of The Marital
Deduction Portion and Credit Share of the William J.
Raggio Family Trust; DALE CHECKET RAGGIO,
Individually; DOES II through X inclusive;

Defendants.

PETITIONERS' REQUEST TO RESUBMIT THEIR MOTION TO COMPEL WRITTEN
DISCOVERY

It is requested that Motion to Compel Written Discovery, the Opposition thereto and the

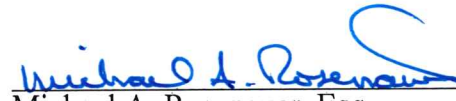
1 associated Reply be resubmitted to the Honorable David Hardy for decision. The Probate
2 Commissioner *sua sponte* held the Motion in abeyance pending the outcome of Respondent's Motion
3 for Partial Summary Judgment. The Respondent's Motion was decided April 17, 2018. This Request
4 to Resubmit the Motion to Compel Written Discovery and its associated briefing is consistent with
5 Probate Commissioner Wright's comments found within her Order of January 9, 2018, 4:11-15 as well
6 as Judge Hardy's comments at the conclusion of the hearing on April 3, 2018 that he would retain
7 jurisdiction over this matter through its conclusion.

8 The undersigned attorney certifies that a copy of this has been mailed to all parties of record.

9 **AFFIRMATION:** Pursuant to NRS 239B.030, the undersigned does hereby affirm the preceding
10 document does not contain the Social Security number of any person.

11 DATED this 25th day of April 2018.

12 MICHAEL A. ROSENAUER LTD.

13 
14 Michael A. Rosenauer, Esq.

15
16 MAUPIN, COX & LeGOY

17 /s/ G. Barton Mowry
18 G. Barton Mowry, Esq.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Michael A. Rosenauer, Ltd., 510 West Plumb Lane, Suite A, Reno, NV 89509, and that on this date I served the foregoing document(s) described as follows:

PETITIONERS' REQUEST TO RESUBMIT THEIR MOTION TO COMPEL WRITTEN DISCOVERY

on the party(s) set forth below by:

XXX

Electronic Mailing via Second Judicial District Court CM/ECF System to all those persons listed on the ECF Confirmation Sheet.

XXX

Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.

addressed as follows:

John Echeverria, Esq.
Echeverria Law Office
9432 Double R Blvd.
Reno, NV 89521

Tamara Reid, Esq.
HOLLAND AND HART
5441 Kietzke Lane, 2nd Floor
Reno, NV 89511

DATED this 25th day of April, 2018.



REBECCA SQUIRE

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
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18 Plaintiffs,

19 vs.

20 DALE CHECKET RAGGIO Trustee of The Marital
21 Deduction Portion and Credit Share of the William J.
22 Raggio Family Trust; DALE CHECKET RAGGIO,
23 Individually; DOES II through X inclusive;

24 Defendants.
25 _____/

26 **ORDER GRANTING MOTION TO COMPEL**

27 This Court has reviewed all moving papers related to the motion to compel, which
28 was re-submitted after this Court's order of April 17, 2018. A lengthy recitation of
procedural history, factual positions, or well-settled law is not required. The question is
not whether Ms. Righetti and Ms. Chew are beneficiaries of the credit shelter trust or
otherwise entitled to accountings pursuant to trust instrument or statute. The question is

1 grounded in NRCP26(b)(1): Is the requested discovery relevant to the subject matter and
2 reasonably calculated to lead to the discovery of admissible evidence? This Court
3 concludes that it is. Accordingly, the motion to compel is granted.¹

4 **IT IS SO ORDERED.**

5 Dated: ~~May~~ 4, 2018.
6 *June*

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8 David A. Hardy
9 District Court Judge
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¹ While this dispute shall remain in Department 15, future discovery disputes may be referred to the Discovery Commissioner for purposes of expediency and efficiency.

CODE: 2550
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR WASHOE COUNTY

IN THE MATTER OF THE
WILLIAM J. RAGGIO FAMILY TRUST.

Case No.: PR13-00624

Dept. No.: PR

LESLIE RAGGIO RIGHETTI and TRACY
RAGGIO CHEW, Co Trustees of the William J. Raggio
and Dorothy B. Raggio Trust under agreement dated
January 27, 1998 as decanted and Vested
Remaindermen of the Marital Deduction portion of
The William J. Raggio Family Trust,

Consolidated With:

Case No.: CV15-01202

Plaintiffs,

vs.

DALE CHECKET RAGGIO Trustee of The Marital
Deduction Portion and Credit Share of the William J.
Raggio Family Trust; DALE CHECKET RAGGIO,
Individually; DOES II through X inclusive;

Defendants.

NOTICE OF ENTRY OF ORDER GRANTING MOTION TO COMPEL

PLEASE TAKE NOTICE that on the 4th day of June 2018, an Order Granting Motion
to Compel (the "Order") was entered in the above-captioned matter. A copy of the Order is

1 attached hereto as Exhibit "1".

2 **AFFIRMATION: Pursuant to NRS 239B.030**, the undersigned does hereby affirm
3 the preceding document does not contain the Social Security number of any person.
4

5 DATED this 5th day of June 2018.

6 MICHAEL A. ROSENAUER LTD.

7
8 /s/ Michael A. Rosenauer, Esq.
9 Michael A. Rosenauer, Esq.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Michael A. Rosenauer, Ltd., 510 West Plumb Lane, Suite A, Reno, NV 89509, and that on this date I served the foregoing document(s) described as follows:

NOTICE OF ENTRY OF ORDER GRANTING MOTION TO COMPEL

on the party(s) set forth below by:

XXX

Electronic Mailing via Second Judicial District Court
CM/ECF System to all those persons listed on the ECF
Confirmation Sheet.

John Echeverria, Esq.
Echeverria Law Office
9432 Double R Blvd.
Reno, NV 89521

Tamara Reid, Esq.
HOLLAND AND HART
5441 Kietzke Lane, 2nd Floor
Reno, NV 89511

DATED this 5th day of June, 2018.

/s/ Rebecca Squire
REBECCA SQUIRE

IN THE MATTER OF THE
WILLIAM J. RAGGIO FAMILY TRUST.

LESLIE RAGGIO RIGHETTI and TRACY
RAGGIO CHEW, Co Trustees of the William J. Raggio and Dorothy B. Raggio Trust
under agreement dated January 27, 1998 as decanted and Vested Remaindermen of
the Marital Deduction portion of The William J. Raggio Family Trust,
Plaintiffs,

vs.

DALE CHECKET RAGGIO Trustee of The Marital Deduction Portion and Credit
Share of the William J. Raggio Family Trust; DALE CHECKET RAGGIO,
Individually; DOES II through X inclusive;
Defendants.

Case No.: PR13-00624
Dept. No.: PR

Consolidated With:
Case No.: CV15-01202

Exhibit	Description	Pages
1.	Order Granting Motion to Compel	2

Exhibit “1”

EXHIBIT “1”

1
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5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 In the Matter of:

10 THE WILLIAM J. RAGGIO FAMILY TRUST.

Case No. PR13-00624

11
12 LESLIE RAGGIO RIGHETTI and TRACY RAGGIO
13 CHEW, Co Trustees of the William J. Raggio and
14 Dorothy B. Raggio Trust under agreement dated January
15 27, 1998 as decanted and Vested Remaindermen of the
16 Marital Deduction portion of The William J. Raggio
17 Family Trust,

Dept. No. 15

18
19 Plaintiffs,

20 vs.

21 DALE CHECKET RAGGIO Trustee of The Marital
22 Deduction Portion and Credit Share of the William J.
23 Raggio Family Trust; DALE CHECKET RAGGIO,
24 Individually; DOES II through X inclusive;

25 Defendants.
26
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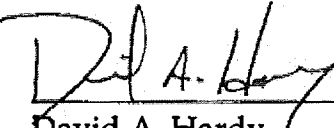
ORDER GRANTING MOTION TO COMPEL

This Court has reviewed all moving papers related to the motion to compel, which was re-submitted after this Court's order of April 17, 2018. A lengthy recitation of procedural history, factual positions, or well-settled law is not required. The question is not whether Ms. Righetti and Ms. Chew are beneficiaries of the credit shelter trust or otherwise entitled to accountings pursuant to trust instrument or statute. The question is

1 grounded in NRCP26(b)(1): Is the requested discovery relevant to the subject matter and
2 reasonably calculated to lead to the discovery of admissible evidence? This Court
3 concludes that it is. Accordingly, the motion to compel is granted.¹

4 **IT IS SO ORDERED.**

5 Dated: May 4, 2018.
6 *June*

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8 David A. Hardy
9 District Court Judge
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28 ¹ While this dispute shall remain in Department 15, future discovery disputes may be referred to the
Discovery Commissioner for purposes of expediency and efficiency.

Code No. 4185
SUNSHINE LITIGATION SERVICES
151 Country Estates Circle
Reno, Nevada 89511

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

HONORABLE DAVID A. HARDY, DISTRICT JUDGE

In the Matter of:
THE WILLIAM J. RAGGIO FAMILY
TRUST.

Case No. PR13-00624

Department No. 15

LESLIE RAGGIO RIGHETTI and TRACY
RAGGIO CHEW, Co-Trustees of the William
J. Raggio and Dorothy B. Raggio Trust under
agreement dated January 27, 1998 as Decanted
and Vested Remaindermen of the Marital
Deduction portion of The William J. Raggio
Family Trust,

Plaintiffs,

vs.

DALE CHECKET RAGGIO, Trustee of The
Marital Deduction Portion and Credit Share of
the William J. Raggio Family Trust; DALE
CHECKET RAGGIO, Individually; DOES II
through X inclusive;

Defendants.

TRANSCRIPT OF PROCEEDINGS

CASE MANAGEMENT CONFERENCE

June 21, 2018

Reno, Nevada

REPORTED BY: DEBORA L. CECERE, NV CCR #324, RPR

JOB # 478208

A P P E A R A N C E S

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FOR WILLIAM J. RAGGIO FAMILY TRUST

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1 JUNE 21, 2018, THURSDAY, 2:57 P.M., RENO, NEVADA

2 -oOo-

3
4 THE COURT: You've taken opposite positions in
5 the courtroom this time.

6 MR. ECHEVERRIA: Well, I'm used to being the
7 plaintiff and sitting next to the jury. In this case I
8 represent the defendant. So.

9 THE COURT: You've relinquished your prime
10 position.

11 MR. ECHEVERRIA: I'm sorry?

12 THE COURT: You've relinquished your prime
13 position in front of the jury.

14 MR. ECHEVERRIA: Yeah, and I probably shouldn't
15 have done that. Rules are rules.

16 THE COURT: That reminds me of the very first
17 time I walked into a courtroom as a lawyer. I had no idea
18 where to sit. And I embarrassed myself.

19 This is PR13-00624 involving the Raggio Family
20 Trust, trustees, and beneficiaries.

21 Counsel, I've entered a series of orders. I
22 noticed that our nonjury trial is scheduled for more than a
23 year away. I typically have these early case conferences,
24 just to ensure that a case conference report is filed with

1 all appropriate deadlines as a scheduling order within the
2 case conference report.

3 And because this began as a trust matter, I
4 haven't followed the normal protocols for ensuring that we
5 have all dates established. So that's the -- my purpose
6 for having this hearing, but I wish to invite counsel to
7 begin by telling me if there's anything the Court needs to
8 know, any intervention I can provide.

9 Mr. Schaerer is present. Mr. Rosenauer is
10 present. And Mr. Echeverria is present.

11 Counsel, is there anything that I need to know
12 that is not disclosed in the file materials?

13 MR. SCHAERER: Your Honor, the only thing I
14 would note is that we have settled at the last hearing on a
15 trial date of July 22nd, 2019.

16 There's been some discussion on our side, and we
17 had a very brief conversation with Mr. Echeverria before
18 the Court took the bench, that that may not be enough time
19 in this case. And the reason I say that -- and I want to
20 note, actually, that the reason why Mr. Mowry is not here
21 today -- he would like to be here -- but his daughter was
22 induced recently. She went beyond full term. She was
23 carrying twins. And she is a convert to Judaism, and I
24 guess on the eighth day after a male child is born, there

1 has to be a bris, which has to do with the covenant -- and
2 I'm not an expert.

3 THE COURT: No, no. It's very interesting to
4 me.

5 MR. SCHAEERER: I think it has to do with the
6 Covenant of Abraham, and he has been given position of
7 honor as the sandek, which I guess is someone who is sort
8 of older -- and he would probably be upset with me if I
9 said this -- but respected, and he gets to hold the baby
10 during the ceremony. So he has to be in New York City
11 today. And he is unable to be here today.

12 But he, he and I have had conversations at
13 length about this case, and we are worried that we may not
14 have enough time to conduct all the discovery we need.

15 Since we are in the posture of plaintiff, we
16 have the burden to put on an affirmative case. The way
17 this litigation has been going, we fear that the other
18 side, with all respect to Mr. Echeverria, is adopting a
19 scorched earth policy, that they will fight us hammer and
20 tong on every discovery that we request.

21 We actually did notice the Court's footnote in
22 your most recent discovery order where I think you
23 encouraged us to submit matters to the discovery
24 commissioner. And we would like to do that. But we fear

1 that every single time we do that, there will be an appeal,
2 and an additional delay in the discovery process.

3 So we would like at least the bench to consider
4 perhaps pushing back the July 2019 trial date to maybe
5 January of 20/20. And then keying all discovery deadlines
6 and dates off of that new trial date.

7 THE COURT: So you are making an oral motion to
8 continue?

9 MR. SCHAERER: Yes, your Honor.

10 THE COURT: Anything else?

11 MR. SCHAERER: Nothing at this time, your Honor.

12 THE COURT: Mr. Rosenauer.

13 MR. ROSENAUER: Nothing, your Honor.

14 THE COURT: Well, that complicates the
15 scheduling order I want to sign because it is predicated --
16 the trial date is the anchor point from which we work
17 backwards.

18 I'll hear from Mr. Echeverria. I think I've
19 become older than I expected, quickly, because all I do is
20 think about prior experiences I've had. I sound like my
21 father. I just talked about the very first time I walked
22 into a courtroom, and I didn't know where to sit.

23 The very first case I ever tried as a judge, I
24 thought I would know something. And so I told the

1 attorneys that their estimation of the trial time was
2 wrong. These were very seasoned attorneys that I
3 respected. It's because I have 14 years. And as it turns
4 out, I was completely wrong, and we ended up trying that
5 case piecemeal, day after day -- it was a bench trial --
6 day after day for another 60 days. We'd find a day here
7 and find a day there.

8 So I want to honor and -- I want to honor a
9 legitimate statement of concern from counsel I respect,
10 Mr. Schaerer and Mr. Mowry.

11 Although, my initial reaction is why are we even
12 talking about a trial date 13 months from now? I would
13 like to see as discovery progresses, as we approach the
14 discovery cutoff date, what has been thwarted, because of
15 the genius of our -- one of the principles of our system,
16 which I consider genius, is the firm trial date. It just
17 makes people move differently.

18 Mr. Echeverria, do you have an opinion about the
19 oral motion to continue?

20 MR. ECHEVERRIA: No, your Honor. But I, I kind
21 of resent the characterizations of the defense. And I
22 would suggest, your Honor, that we keep the trial date. If
23 discovery is an issue, then I think we can address that
24 issue at that time. But I think the trial date could

1 stand, and let's see where we go.

2 THE COURT: Let's -- I'm going to preserve the
3 trial date now. And I'm going to set a hearing in
4 December, Ms. Clerk, to determine if hammer and tong have
5 been used for scorched earth litigation. I think that was
6 the phrase.

7 MR. SCHAERER: Yes.

8 THE COURT: It's too soon for me to move the
9 trial date. But if I, I -- if I do find that there is good
10 cause for continuing discovery because of the undeveloped
11 discovery, it's a decision today without prejudice. So I
12 don't want to continue the trial date to next April, but I
13 also want to give six months of time to see if, if your
14 prediction is accurate or inaccurate.

15 So Ms. Clerk, quick hearing date the end of the
16 day, some time probably the second week of December.

17 MR. SCHAERER: Thank you, your Honor. I think
18 that's a good resolution.

19 I hope that I'm wrong. We'll find out in
20 December, I suppose.

21 THE CLERK: Our status conference will be
22 Wednesday, December 12th at 4:00 p.m.

23 THE COURT: Counsel, will that work for you?
24 It's a couple of weeks before the holidays.

1 MR. ROSENAUER: Rosenauer is fine, your Honor,
2 on the 12th, December 12th at 4:00 o'clock.

3 THE COURT: Yes, sir.

4 MR. SCHAEERER: I appear to be free as well, your
5 Honor.

6 THE COURT: All right.

7 Deputy, if you'd approach for just a moment,
8 please. I'd like to hand out the scheduling order. One to
9 each table, if you would, please.

10 Counsel, this is just a template that my staff
11 prepared before today.

12 If you'll turn to page 2, I'd like you to tell
13 me what information we cannot include today.

14 We now know -- well, we do know the trial date.
15 And so we therefore know when discovery will be completed.
16 We can find a date working backwards for motions to amend.
17 Pleadings or joined parties. That may not be relevant
18 here.

19 Expert disclosures. Rebuttal expert
20 disclosures.

21 I'm not sure that paragraph 5, motions in
22 limine, will have the same meaning because this is a bench
23 trial.

24 Number 6, pretrial motions, including

1 dispositive motions, to be submitted by a certain date.

2 In a bench trial I very much like trial
3 statements. In fact, I regularly ask that they supplant
4 opening statements, and we go right to witnesses in a bench
5 trial. And I very much like oral closing arguments.

6 No jury instructions.

7 And number 9, we have a pretrial set for July
8 12th.

9 Can we fill all this in today, Counsel? I can't
10 see any reason why we wouldn't.

11 MR. SCHAERER: No, your Honor. I believe we
12 can.

13 THE COURT: All right. Mr. Schaerer
14 representing the plaintiff -- Shareer -- (pronunciation) I
15 will have you handwrite all of the entries before you leave
16 the courtroom, working with Mr. Echeverria and
17 Mr. Rosenauer. And then we'll convert the draft
18 handwritten form into a written order, that I'll sign.

19 MR. SCHAERER: Yes, your Honor.

20 THE COURT: Mr. Echeverria?

21 MR. ECHEVERRIA: The only thing I would request
22 there, your Honor, is -- I don't want to get up and tell
23 you sob stories, but Tamara Reid, has also delivered and is
24 not here today, and I'd like to confirm with her, her

1 availability on the prospective dates.

2 I haven't been able to talk to her, quite
3 frankly. And I don't know if I can get a hold of her, but
4 I'm sure I can get a hold of her secretary. And maybe we
5 can agree to submit something on Monday --

6 THE COURT: Oh, yes. Please don't --

7 MR. ECHEVERRIA: Actually, I'm out of town
8 Monday. I apologize.

9 THE COURT: Don't even try to get a hold of her.
10 This is -- Ms. Tamara Reid, just gave birth?

11 MR. ECHEVERRIA: Yes.

12 THE COURT: Oh, give her some time.

13 Why don't I have you just schedule a time today
14 in my presence for the two of you talk to each other.

15 MR. ECHEVERRIA: Perfect.

16 THE COURT: I don't care if that's a week from
17 now. I don't care if that's two weeks from now. And then
18 we'll have you submit --

19 MR. SCHAERER: A final, yes.

20 THE COURT: A final. Yes, sir.

21 MR. SCHAERER: We can do that, your Honor.

22 THE COURT: Yes, sir. And one of my staff will
23 email these to you, if you want, and then you can just
24 insert the dates.

1 So would you look at your calendars and tell me
2 when you're going to talk to each other, and I'll just note
3 that for the minute.

4 MR. ECHEVERRIA: I had a call in to him this
5 morning and I hadn't heard back. So I can, I'll be in
6 Philadelphia on Monday and Tuesday. And I'm back
7 Wednesday. I have to be in San Francisco on Thursday. So
8 Wednesday would be a good time.

9 THE COURT: My biggest concern is Ms. Reid. I
10 actually don't want you bothering her at the moment.

11 MR. ROSENAUER: Should we go into July then,
12 your Honor?

13 THE COURT: I would allow that if she's -- I
14 presume she's taking a little bit of time off.

15 This is ministerial. It just doesn't matter to
16 me as long as it's in.

17 MR. SCHAEERER: Your Honor, I don't know if this
18 is possible, just in the interest of trying to get things
19 done, without inconveniencing Ms. Reid at all, I was
20 wondering if perhaps we could maybe step outside and try to
21 get her assistant on the line and take a look at her
22 calendar and see which day she's available, and which
23 date -- we have all counsel here, and we might as well
24 perhaps try to do that today, and if we need to switch

1 something, perhaps a date later on, we can discuss that,
2 perhaps even at the December status hearing.

3 THE COURT: That's the only reason why I say
4 pick a date to talk in the future, if not today.

5 I'm actually not throwing darts out on either
6 side of the courtroom, but my experience with counsel and
7 the Court is that it's magic when we're together, and then
8 it's missed emails and telephone calls for a month when
9 we're not together.

10 MR. SCHAERER: Yes, your Honor.

11 THE COURT: So let's get it done any way we can.
12 All right. I don't have anything else today.

13 MR. ROSENAUER: Thank you, your Honor.

14 MR. SCHAERER: We'll take a little time. Thank
15 you, your Honor.

16 MR. ECHEVERRIA: Thank you, your Honor.

17 THE COURT: I'll be in chambers if you need me.
18 Thank you.

19 Good day to all of you.

20
21 (Whereupon the proceedings were
22 concluded.)

23 -oOo-
24

1 STATE OF NEVADA)
) ss.
2 WASHOE COUNTY)

3
4 I, DEBORA L. CECERE, an Official Reporter of
5 the State of Nevada, in and for Washoe County, DO HEREBY
6 CERTIFY:

7 That I was present at the times, dates, and
8 places herein set forth, and that I reported in shorthand
9 notes the proceedings had upon the matter captioned within,
10 and thereafter transcribed them into typewriting as herein
11 appears;

12 That the foregoing transcript, consisting of
13 pages 1 through 14, is a full, true and correct
14 transcription of my stenotype notes of said proceedings.

15 DATED: At Reno, Nevada, this 25th day of
16 June, 2018.

17
18
19 /s/ Debora Cecere

20 _____
 DEBORA L. CECERE, CCR #324
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