

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PETER J. VOGGENTHALER; WILLIAM
MONTERO; BARBARA MONTERO;
CLIFFORD ROGERS; SHARON
ROGERS; HERMANN ROSNER;
MARCUS ROTHKRANZ; DANIEL
SOLDINI; CHARLES WALKER; VERA
WALKER; JACK YENCHECK; OFELIA
YENCHECK; RICHARD MALM; ROGER
ELLSWORTH; JO ANN ELLSWORTH;
MARGARET RUDELICH-HOPPE;
PATRICIA MAHONEY; RICHARD
FALEN; PETER LEARNED; KRISTIAN
MEIER; ELIZA ACOSTA; MIRHA
ELIAS; AIKO BERGE; VICTOR
BECERRA; ARTHUR BODENDORFER;
BRENDA C. CHAFFIN; MICHAEL J.
SOLMI; JASON COWLES; JANE
GAUTHIER; HONORE GAUTHIER;
NIKOLAS KONSTANTINOU; DRAGAN
KURAJICA; KENNETH LOWTHER;
JAMES LUEHMANN; JACQUELINE
LUEHMANN; RUTH MANNHEIMER;
STATE OF NEVADA, on behalf of
Department of Conservation &
Natural Resources, Division of
Environmental Protection,

Plaintiffs-Appellees,

v.

No. 10-17520

D.C. No.
2:08-cv-01618-
RCJ-GWF

2 VOGGENTHALER V. MARYLAND SQUARE

Maryland Square LLC,
Defendant-Appellant,

and

MARYLAND SQUARE SHOPPING
CENTER LLC; HERMAN KISHNER
TRUST, DBA Maryland Square
Shopping Center; IRWIN KISHNER;
JERRY ENGEL; BANK OF AMERICA,
NA, Trustee on behalf of Herman
Kishner Trust; CLARK COUNTY
SCHOOL DISTRICT; MELVIN
SHAPIRO; SHAPIRO BROTHERS
INVESTMENT COMPANY,
Defendants.

PETER J. VOGGENTHALER; WILLIAM
MONTERO; BARBARA MONTERO;
CLIFFORD ROGERS; SHARON
ROGERS; HERMANN ROSNER;
MARCUS ROTHKRAZ; DANIEL
SOLDINI; CHARLES WALKER; VERA
WALKER; JACK YENCHECK; OFELIA
YENCHECK; RICHARD MALM; ROGER
ELLSWORTH; JO ANN ELLSWORTH;
MARGARET RUDELICH-HOPPE;
PATRICIA MAHONEY; RICHARD
FALEN; PETER LEARNED; KRISTIAN
MEIER; ELIZA ACOSTA; MIRHA
ELIAS; AIKO BERGE; VICTOR
BECERRA; ARTHUR BODENDORFER;

No. 11-15174

D.C. Nos.
2:08-cv-01618-
RCJ-GWF
3:09-cv-00231-
RCJ-GWF

VOGGENTHALER V. MARYLAND SQUARE

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BRENDA C. CHAFFIN; MICHAEL J.
SOLMI; JASON COWLES; JANE
GAUTHIER; HONORE GAUTHIER;
NIKOLAS KONSTANTINOU; DRAGAN
KURAJICA; KENNETH LOWTHER;
JAMES LUEHMANN; JACQUELINE
LUEHMANN; RUTH MANNHEIMER,
Plaintiffs-Appellees,

MARYLAND SQUARE SHOPPING
CENTER LLC, Trustee on behalf of
Herman Kishner Trust,
Defendant-Intervenor,

STATE OF NEVADA, on behalf of
Department of Conservation &
Natural Resources, Division of
Environmental Protection,
Plaintiff-Intervenor,

BANK OF AMERICA, NA, Trustee on
behalf of Herman Kishner Trust;
JERRY ENGEL, Trustee on behalf of
Herman Kishner Trust; HERMAN
KISHNER TRUST, Trustee on behalf
of Herman Kishner Trust, DBA
Maryland Square Shopping Center;
IRWIN KISHNER, Trustee on behalf of
Herman Kishner Trust,
Defendants-Intervenors,

v.

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SHAPIRO BROTHERS INVESTMENT
COMPANY,

Defendant-Appellant,

and

CLARK COUNTY SCHOOL DISTRICT;
MELVIN SHAPIRO; MARYLAND
SQUARE LLC, Trustee on behalf of
Herman Kishner Trust,

Defendants.

PETER J. VOGGENTHALER; WILLIAM
MONTERO; BARBARA MONTERO;
CLIFFORD ROGERS; SHARON
ROGERS; HERMANN ROSNER;
MARCUS ROTHKRAZ; DANIEL
SOLDINI; CHARLES WALKER; VERA
WALKER; JACK YENCHECK; OFELIA
YENCHECK; RICHARD MALM; ROGER
ELLSWORTH; JO ANN ELLSWORTH;
MARGARET RUDELICH-HOPPE;
PATRICIA MAHONEY; RICHARD
FALEN; PETER LEARNED; KRISTIAN
MEIER; ELIZA ACOSTA; MIRHA
ELIAS; AIKO BERGE; VICTOR
BECERRA; ARTHUR BODENDORFER;
BRENDA C. CHAFFIN; MICHAEL J.
SOLMI; JASON COWLES; JANE
GAUTHIER; HONORE GAUTHIER;
NIKOLAS KONSTANTINOU; DRAGAN
KURAJICA; KENNETH LOWTHER;

No. 11-15176

D.C. Nos.

2:08-cv-01618-

RCJ-GWF

3:09-cv-00231-

RCJ-GWF

VOGGENTHALER V. MARYLAND SQUARE

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JAMES LUEHMANN; JACQUELINE
LUEHMANN; RUTH MANNHEIMER;
STATE OF NEVADA, on behalf of
Department of Conservation &
Natural Resources, Division of
Environmental Protection,
Plaintiffs,

v.

MARYLAND SQUARE SHOPPING
CENTER LLC; HERMAN KISHNER
TRUST, DBA Maryland Square
Shopping Center; IRWIN KISHNER;
JERRY ENGEL; BANK OF AMERICA,
Trustee on behalf of Herman
Kishner Trust,
Defendants-Appellees,

v.

MELVIN SHAPIRO; SHAPIRO
BROTHERS INVESTMENT COMPANY,
Defendants-Appellants,

and

MARYLAND SQUARE LLC; CLARK
COUNTY SCHOOL DISTRICT,
Defendants.

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PETER J. VOGGENTHALER; WILLIAM MONTERO; BARBARA MONTERO; CLIFFORD ROGERS; SHARON ROGERS; HERMANN ROSNER; MARCUS ROTHKRANZ; DANIEL SOLDINI; CHARLES WALKER; VERNA WALKER; JACK YENCHECK; OFELIA YENCHECK; RICHARD MALM; ROGER ELLSWORTH; JO ANN ELLSWORTH; MARGARET RUDELICH-HOPPE; PATRICIA MAHONEY; RICHARD FALEN; PETER LEARNED; KRISTIAN MEIER; ELIZA ACOSTA; MIRHA ELIAS; AIKO BERGE; VICTOR BECERRA; ARTHUR BODENDORFER; BRENDA C. CHAFFIN; MICHAEL J. SOLMI; JASON COWLES; JANE GAUTHIER; HONORE GAUTHIER; NIKOLAS KONSTANTINOU; DRAGAN KURAJICA; KENNETH LOWTHER; JAMES LUEHMANN; JACQUELINE LUEHMANN; RUTH MANNHEIMER,
Plaintiffs,

and

STATE OF NEVADA, on behalf of
Department of Conservation &
Natural Resources, Division of
Environmental Protection,
Plaintiff-Appellee,

v.

No. 12-16409

D.C. Nos.
2:08-cv-01618-
RCJ-GWF
3:09-cv-00231-
RCJ-GWF

VOGGENTHALER V. MARYLAND SQUARE

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MARYLAND SQUARE LLC;
MARYLAND SQUARE SHOPPING
CENTER LLC; HERMAN KISHNER
TRUST, DBA Maryland Square
Shopping Center; IRWIN KISHNER;
JERRY ENGEL; BANK OF AMERICA,
NA, Trustee on behalf of Herman
Kishner Trust; CLARK COUNTY
SCHOOL DISTRICT; MELVIN
SHAPIRO,
Defendants,

and

SHAPIRO BROTHERS INVESTMENT
COMPANY,
Defendant-Appellant.

PETER J. VOGGENTHALER; WILLIAM
MONTERO; BARBARA MONTERO;
CLIFFORD ROGERS; SHARON
ROGERS; HERMANN ROSNER;
MARCUS ROTHKRAZ; DANIEL
SOLDINI; CHARLES WALKER; VERA
WALKER; JACK YENCHECK; OFELIA
YENCHECK; RICHARD MALM; ROGER
ELLSWORTH; JO ANN ELLSWORTH;
MARGARET RUDELICH-HOPPE;
PATRICIA MAHONEY; RICHARD
FALEN; PETER LEARNED; KRISTIAN
MEIER; ELIZA ACOSTA; MIRHA
ELIAS; AIKO BERGE; VICTOR

No. 12-16412

D.C. No.
2:08-cv-01618-
RCJ-GWF

ORDER
AMENDING
OPINION

8 VOGGENTHALER V. MARYLAND SQUARE

BECERRA; ARTHUR BODENDORFER;
BRENDA C. CHAFFIN; MICHAEL J.
SOLMI; JASON COWLES; JANE
GAUTHIER; HONORE GAUTHIER;
NIKOLAS KONSTANTINOU; DRAGAN
KURAJICA; KENNETH LOWTHER;
JAMES LUEHMANN; JACQUELINE
LUEHMANN; RUTH MANNHEIMER,
Plaintiffs,

and

STATE OF NEVADA, on behalf of
Department of Conservation &
Natural Resources, Division of
Environmental Protection,
Plaintiff-Appellee,

v.

MARYLAND SQUARE LLC,
Defendant-Appellant,

and

MARYLAND SQUARE SHOPPING
CENTER LLC; HERMAN KISHNER
TRUST, DBA Maryland Square
Shopping Center; IRWIN KISHNER;
JERRY ENGEL; BANK OF AMERICA,
NA, Trustee on behalf of Herman
Kishner Trust; CLARK COUNTY
SCHOOL DISTRICT; MELVIN

VOGGENTHALER V. MARYLAND SQUARE

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SHAPIRO; SHAPIRO BROTHERS INVESTMENT COMPANY, <i>Defendants.</i>
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Filed October 4, 2013

Before: Mary M. Schroeder, Sidney R. Thomas,
and Barry G. Silverman, Circuit Judges.

ORDER

The petition for panel rehearing by Appellees' Maryland Square Shopping Center, LLC, et al is **GRANTED**.

The slip opinion is amended as follows:

At slip op. 41, the fourth paragraph, should read:

The judgment for indemnity against SBIC is **AFFIRMED**, and the judgment for indemnity against Melvin Shapiro is **REVERSED** and **REMANDED** (11-15176).