

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ATHANASIOS SKARPELOS, AN  
INDIVIDUAL,

Appellant,

vs.

WEISER ASSET MANAGEMENT,  
LTD., A BAHAMAS COMPANY, AND  
WEISER (BAHAMAS) LTD., A  
BAHAMAS COMPANY.

Respondents.

Supreme Court Case No. 79425

District Court Case No. CY15-02259

Electronically Filed  
Aug 21 2019 11:29 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**DOCKETING STATEMENT  
CIVIL APPEALS**

**GENERAL INFORMATION**

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and information and indentifying parties and their counsel.

**WARNING**

This statement must be completely fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

Judicial District: Second  
Judge: Elliott Sattler

Department: 10 County: Washoe  
District Ct. Docket No.: CV15-02259

**1. Attorney filing this docket statement:**

Attorney: Dane W. Anderson and Seth J. Adams  
Telephone: (775) 688-3000  
Firm: Woodburn and Wedge  
Address: 6100 Neil Rd., Ste. 500, Reno, NV 89511  
Client(s): Athanasios Skarpelos, an individual

**If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.**

**2. Attorney(s) representing respondent(s):**

Attorney: Jeremy J. Nork, Esq. and Frank Z. LaForge, Esq.  
Telephone: (775) 327-3000  
Firm: Holland and Hart, LLP  
Address: 5441 Kietzke Lane, Second Floor, Reno, NV 89511  
Client(s): Weiser Asset Management, Ltd and Weiser (Bahamas), Ltd.

(List additional counsel on separate sheet if necessary)

**3. Nature of disposition below (check all that apply):**

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal                                      |
| <input type="checkbox"/> Judgment after jury verdict           | <input type="checkbox"/> Lack of jurisdiction                           |
| <input type="checkbox"/> Summary judgment                      | <input type="checkbox"/> Failure to state a claim                       |
| <input type="checkbox"/> Default judgment                      | <input type="checkbox"/> Failure to prosecute                           |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief     | <input type="checkbox"/> Other (specify) _____                          |
| <input type="checkbox"/> Grant/Denial of injunction            | <input type="checkbox"/> Divorce decree:                                |
| <input type="checkbox"/> Grant/Denial of declaratory relief    | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination        | <input type="checkbox"/> Other disposition (specify):<br>_____          |

**5. Does this appeal raise issues concerning any of the following:**

- ☐ Child custody

- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

**8. Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action, pleaded and the result below:

The action below was an interpleader action involving competing claims to ownership of stock. The District Court found that Appellant was the owner of the stock at issue, but awarded Respondent Weiser Asset Management, Ltd. \$245,464.64 in restitution citing its equitable powers. Appellant challenges the restitution award.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal:

Whether the district court erred in awarding Weiser Asset Management, Ltd. \$245,464.64.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party

to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain: \_\_\_\_\_

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first-impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

☐ Divorce decree:

If so, explain: \_\_\_\_\_

**13. Assignment to the Court of Appeals or retention in the Supreme Court.**

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is neither presumptively retained by the Supreme Court pursuant to NRAP 17(a) nor presumptively assigned to the Court of Appeals pursuant to NRAP 17(b).

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 5

Was it a bench or jury trial? Bench.

**15. Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which

Justice?

No. \_\_\_\_\_

## **TIMELINESS OF NOTICE OF APPEAL**

**16. Date of entry of written judgment or order appealed from:** April 22, 2019  
(Findings of Fact, Conclusions of Law and Judgment) and August 6, 2019  
(Order Denying Motion to Alter or Amend Judgment).

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

\_\_\_\_\_

**17. Date written notice of entry of judgment or order was served:** April 22, 2019  
(Notice of Entry of Judgment (Findings of Fact, Conclusions of Law and Judgment)) and August 6, 2019 (Notice of Entry of Order Denying Motion to Alter or Amend Judgment).

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

☐ NRCP 50(b) Date of filing \_\_\_\_\_

☐ NRCP 52(b) Date of filing \_\_\_\_\_

☒ NRCP 59 Date of filing April 25, 2019

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion: August 6, 2019

(c) Date written notice of entry of order resolving motion was served: August 9, 2019.

(d) Was service by:

☐ Delivery

☒ Mail/Electronic/Fax

**19. Date notice of appeal filed:** Notice of Appeal was filed August 15, 2019.

If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal: \_\_\_\_\_

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), or other:**

NRAP 4(a)

#### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appeal from:**

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) \_\_\_\_\_

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Appellant appeals a final judgment entered in an action commenced in the court in which the judgment was rendered.

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Athanasios Skarpelos, Weiser Asset Management, Ltd., Weiser (Bahamas) Ltd., Nevada Agency and Transfer Company.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Plaintiff Nevada Agency and Transfer Company was discharged and dismissed from the action in an Order Granting Motion to Discharge on January 23, 2019.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims and the date of disposition of each claim.**

This is an interpleader action. Plaintiff Nevada Agency and Transfer Company filed the action after receiving competing claims to ownership of certain shares of stock for which Plaintiff was the transfer agent. Appellant and Respondents both claimed to be the owner of the stock. The District Court entered its judgment on April 22, 2019, finding Appellant was the rightful owner of the shares. The District Court invoked its equitable jurisdiction to award Respondent Weiser Asset Management \$245,464.64 against Appellant for money the District Court found Respondent credited to Appellant's account. Appellant filed a post-judgment Motion to Alter or Amend Judgment, arguing the Findings of Fact, Conclusions of Law and Judgment should be amended to remove the judgment against Appellant for \$245,464.64. The Court entered its written order denying Appellant's motion on August 6, 2019.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the actions or consolidated actions below:**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below: \_\_\_\_\_

(b) Specify the parties remaining below: \_\_\_\_\_

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

☐ Yes

☐ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, crossclaims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order



## VERIFICATION

**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

Athanasios Skarpelos  
Name of appellant

Dane W. Anderson and Seth J. Adams  
Name of counsel of record

August 21<sup>st</sup>, 2019  
Date

/s/ Dane W. Anderson  
Signature of counsel of record

Nevada (Washoe County)  
State and county where signed

**CERTIFICATE OF SERVICE**

I certify that on the 21<sup>st</sup> day of August, 2019, I served a copy of this completed docketing statement upon all counsel of record:

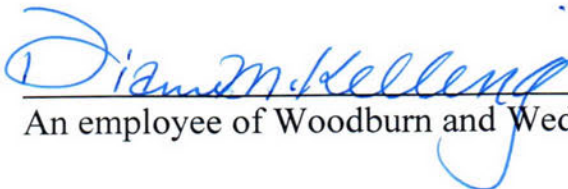
- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Jeremy J. Nork, Esq.  
Frank Z. LaForge, Esq.  
HOLLAND & HART, LLP  
5441 Kietzke Lane, Second Floor  
Reno, NV 89511  
[jnork@hollandhart.com](mailto:jnork@hollandhart.com)  
[fzlaforge@hollandhart.com](mailto:fzlaforge@hollandhart.com)

Lansford W. Levitt  
4230 Christy Way  
Reno, NV 89519  
*Settlement Judge*

*Attorneys for Respondent  
Weiser Asset Management, Ltd.  
Weiser (Bahamas), Ltd.*

DATED this 21<sup>st</sup> day of August, 2019.

By:   
An employee of Woodburn and Wedge

**Index of Attachments**

<b>Tab No.</b>	<b>Attachment Description</b>	<b>Date Filed</b>	<b>No. of pages (including tab divider)</b>
1	Amended Complaint	04.29.16	14
2	Answer to Amended Complaint and Cross-Claim (by Defendant Skarpelos)	05.23.16	13
3	Weiser's Answer and Cross-Claim	05.24.16	14
4	Findings of Fact, Conclusions of Law and Judgment	04.22.19	10
5	Notice of Entry of Findings of Fact, Conclusions of Law and Judgment	04.22.19	15
6	Skarpelos' Motion to Alter or Amend Judgment	04.25.19	67
7	Order Denying Motion to Alter or Amend Judgment	08.06.19	7
8	Notice of Entry of Order (Order Denying Motion to Alter or Amend Judgment)	08.09.19	12

**Tab No. “1”**

CODE: 1425  
ALEXANDER H. WALKER III  
Nevada State Bar #8712  
57 West 200 South, Suite 400  
Salt Lake City, Utah 84101  
Telephone: (801) 363-0100  
Email: alex@awalkerlaw.com

CLAY P. BRUST  
Nevada State Bar #5234  
ROBISON, BELAUSTEGUI, SHARP & LOW  
71 Washington Street  
Reno, Nevada 89503  
Telephone: (775) 329-3151  
Email: cbrust@rbsllaw.com  
Attorneys for Plaintiff

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

NEVADA AGENCY AND TRANSFER  
COMPANY, a Nevada corporation,

Plaintiff,

vs.

WEISER ASSET MANAGEMENT, LTD., a  
Bahamas company, WEISER (BAHAMAS)  
LTD, a Bahamas company, ATHANASIOS  
SKARPELOS, an individual, and DOES 1  
through 10,

Defendants.

Case No. CV15 02259

Dept. No. 10

**AMENDED COMPLAINT**

COMES NOW, the above named Plaintiff, Nevada Agency and Transfer Company, by  
and through its attorneys, and hereby alleges as follows:

1. Plaintiff Nevada Agency and Transfer Company ("NATCO") is a Nevada  
corporation with its principal place of business located in Reno, Nevada.

1           2.     Based upon information and belief Plaintiff alleges that Defendant Weiser  
2 Asset Management, Ltd. is a company organized and operated under the laws of the Bahamas.

3           3.     Based upon information and belief, Plaintiff alleges that Defendant Weiser  
4 (Bahamas) Ltd. is a company organized and operated under the laws of the Bahamas, is also  
5 known as, or does business as, Weiser Ltd and has asserted a claim or interest in the subject  
6 matter detailed in this Amended Complaint.

7           4.     Based upon information and belief Plaintiff alleges that Athanasios Skarpelos  
8 is an individual who resides in the nation of Greece.

9           5.     Plaintiff does not know the true names and capacities of Defendants sued  
10 herein as DOES 1 through 10, inclusive, and therefore sues these Defendants by fictitious  
11 names. Plaintiff is informed and believes, and thereon alleges, that each of these fictitiously  
12 named Defendants are responsible in some actionable manner for the damages herein alleged.  
13 Plaintiff requests leave of Court to amend the Complaint to name such Defendants  
14 specifically when their identities become known.  
15

## 16                                   **GENERAL ALLEGATIONS**

### 17           **A.     The Business of Nevada Agency and Transfer Company.**

18           6.     Since 1903, Plaintiff has been engaged in the stock transfer and registrar  
19 business. Plaintiff acts as the stock transfer agent and registrar for numerous corporations.

20           7.     Companies, especially companies that have publicly traded securities, typically  
21 use transfer agents to keep track of the individuals and entities that own their stocks, bonds  
22 and other securities. Most transfer agents generally perform ministerial functions for  
23 corporations such as:

24           a.     Issuing and canceling stock certificates to reflect changes in ownership;  
25

1           b.     Acting as an intermediary for the company for ministerial functions such as  
2 paying cash and stock dividends, or other distributions to stockholders. In addition, transfer  
3 agents act as proxy agent (sending out proxy materials), exchange agent (exchanging a  
4 company's stock in a merger), tender agent (tendering shares in a tender offer), and mailing  
5 agent (mailing the company's quarterly, annual, and other reports); and

6           c.     Handling lost, destroyed, or stolen certificates. Transfer agents help  
7 shareholders when a stock certificate has been lost, destroyed, or stolen.

8           8.     As a transfer agent for public companies, NATCO is registered with the  
9 Securities and Exchange Commission and NATCO operations are regularly inspected and  
10 reviewed by examiners from the Securities and Exchange Commission.

11           **B.     The Skarpelos's Lost Stock Affidavit**

12           9.     During all time relevant to these allegations, NATCO has served as the transfer  
13 agent and registrar for a Nevada corporation named Anavex Life Sciences Corp. ("Anavex").

14           10.    On October 29, 2009, in the ordinary course of its business as Anavex's  
15 transfer agent, NATCO effected a transfer of Anavex shares which had previously been  
16 issued at the direction of Anavex's board of directors. As part of that transfer, NATCO issued  
17 certificate number 753 registered in the name of Athanasios Skarpelos representing what was  
18 then 6,633,332 shares of Anavex's common stock. Such shares were validly issued and  
19 NATCO placed a restrictive legend on certificate 753 at the direction of Anavex and delivered  
20 the share certificate to the registered owner.

21           11.    On or about March 29, 2013, Defendant Skarpelos executed and delivered to  
22 NATCO documentation, including an Affidavit for Lost Certificate, indicating that certificate  
23 753, along with another Anavex certificate registered in his name, had been lost and requested  
24 that NATCO issue a replacement certificate for the two lost certificates.  
25

1           12.     On that same date, Defendant Skarpelos executed and delivered to NATCO a  
2 Stop Transfer Order under the terms of which Defendant Skarpelos, as the registered owner of  
3 certificate number 753 instructed NATCO to place a “stop transfer order” against certificate  
4 number 753.

5           13.     At the time he requested the lost certificate, Defendant Skarpelos was the only  
6 officer and director of Anavex.

7           14.     As the only officer and director of Anavex, Defendant Skarpelos also executed  
8 and delivered to NATCO a Corporate Indemnity to Nevada Agency and Transfer Company  
9 for Reissuance of Lost Certificate under the terms of which Anavex agreed to “indemnify  
10 Nevada Agency and Transfer Company against an and all costs, damages, actions, expenses,  
11 and attorney’s fees which might result from the issuance of a duplicate certificate to replace”  
12 certificate 753.

13           15.     Based upon the representations of Defendant Skarpelos and Anavex, NATCO  
14 issued a replacement certificate, certificate number 975 (the “Replacement Certificate”), for  
15 the two lost certificates. NATCO also placed stop transfer orders against the two lost  
16 certificates per the representations of Defendant Skarpelos and Anavex.  
17

18           **C. Weiser’s Claim to Shares Represented by Certificate Number 753.**

19           16.     On October 30, 2015, Defendant Weiser, through its attorney Ernesto Alvarez,  
20 delivered an e-mailed letter to NATCO in which Defendant Weiser claimed:

21           a.     on or about July 12, 2013, Defendant Skarpelos sold 3,316,666 shares of  
22 common stock of Anavex, but did not mention to whom Defendant Skarpelos had sold such  
23 shares;

24           b.     Defendant Weiser had delivered to Nevada Agency and Transfer, in its  
25



1 capacity as transfer agent for Anavex, certificate 753, though in fact as of October 30, 2015  
2 Weiser had in fact not delivered certificate number 753 to NATCO;

3 c. Defendant Weiser had delivered to NATCO a stock power executed by  
4 Defendant Skarpelos in favor of Defendant Weiser when Defendant Weiser had in fact not  
5 delivered such a stock power;

6 d. Defendant Skarpelos has obtained the Replacement Certificate under false  
7 pretenses; and,

8 e. that Defendant Weiser was a “protected purchaser” of 3,316,666 of Anavex  
9 stock, though Defendant Weiser offered no documentation to support that claim.

10 17. In its October 30, 2015, letter to NATCO Defendant Weiser demanded  
11 NATCO:

12 a. place a stop transfer restriction on the shares of Anavex represented by the  
13 Replacement Certificate;

14 b. cancel that Replacement Certificate; and,

15 c. register on Anavex’s stock transfer records Weiser’s ownership of 3,316,666  
16 share of Anavex common stock.

17 18. On or about November 3, 2015, NATCO, through its counsel, responded to  
18 Defendant’s Weiser’s October 30, 2015 letter and asked Defendant Weiser to:

19 a. provide NATCO’s counsel with copies of the documents evidencing Defendant  
20 Weiser’s claim that it had presented certificate number 753 to NATCO prior to October 30,  
21 2015;

22 b. provide to NATCO’s counsel copies of certificate 753 and any instruction  
23 Defendant Weiser claimed to have submitted to NATCO prior to October 30, 2015;  
24  
25

1 c. indicate, for purposes of Defendant Weiser's request for stop transfer  
2 instructions, if Defendant Weiser was making a request under section 8-403 that the issuer not  
3 register a transfer.

4 d. identify the facts that support Defendant's Weiser's claim that it was an  
5 "appropriate person" as that term is identified under the applicable provisions of the Uniform  
6 Commercial Code for purposes of requesting a stop transfer order.

7 19. As of the date of this complaint, Defendant Weiser has not:

8 a. provided NATCO's counsel with copies of the documents evidencing  
9 Defendant Weiser's claim that it had presented certificate number 753 to NATCO prior to  
10 October 30, 2015;

11 b. provided to NATCO's counsel copies of any instruction Defendant Weiser  
12 claimed to have submitted to NATCO prior to October 30, 2015;

13 c. indicated, for purposes of Defendant Weiser's request for stop transfer  
14 instructions, if Defendant Weiser was making a request under section 8-403 that the issuer not  
15 register a transfer.

16 d. identified the facts that support Defendant's Weiser's claim that it was an  
17 "appropriate person" as that term is identified under the applicable provisions of the Uniform  
18 Commercial Code for purposes of requesting a stop transfer order in connection with the  
19 Replacement Certificate.  
20

21 20. On or about November 13, 2015, Defendant Weiser delivered an emailed letter  
22 to counsel for NATCO which indicated that;

23 a. Anavex had delivered and was in the process of delivering to NATCO  
24 certificate number 753 together with a stock power executed by Defendant Skarpelos in favor  
25

1 of Defendant Weiser;

2 b. Defendant Weiser was providing to NATCO under separate letter instructions  
3 for the transfer of 3,316,666 shares into the name of Defendant Weiser;

4 c. Defendant Weiser was a “protected purchaser” as that term is defined under  
5 Nevada Revised Statute Section 104.8403 because Defendant Weiser had purchased a  
6 certificated Security for value without notice of any adverse claim to the security at the time  
7 of such purchase and thereafter obtained control of the certificated security.

8 21. As of the date of this complaint, Defendant Weiser has not provided  
9 documentation that it had purchased shares represented by certificate 753 or the Replacement  
10 Certificate.

11 22. On November 16, 2015, NATCO received certificate number 753 which  
12 appeared to have been forwarded to NATCO by an entity known as Primoris Group. With  
13 certificate number 753 NATCO received a stock power, or a copy of a stock power (the  
14 “Stock Power”), which purports to be signed by the registered owner of certificate number  
15 753 in blank, that is, while the stock power bears a signature, it does not contain instructions  
16 regarding any transferee.

17 23. The signature on the Stock Power is not Medallion Guaranteed.

18 24. Certificate number 753 bears a restrictive legend which states, “[t]he shares  
19 represented by this certificate have not been registered under the Securities Act of 1933, and  
20 may not be sold, transferred or otherwise disposed unless in the opinion of counsel  
21 satisfactory to the issuer, the transfer qualifies for an exemption from or exemption to the  
22 registration provisions thereof.”

23 25. Defendant Weiser did not submit an opinion of counsel with its request to  
24  
25

1 transfer the shares represented by certificate number 753.

2 26. Defendant Weiser has not tendered any transfer fee to NATCO.

3 27. Defendant Weiser claims it will be damaged if NATCO does not immediately  
4 transfer 3,316,666 shares of Anavex common stock to Defendant Weiser in the manner  
5 Defendant Weiser has demanded.

6 **D. Defendant Skarpelos's Claim to Certificate Number 753.**

7 28. On November 2, 2015, NATCO forwarded a copy of Defendant Weiser's  
8 October 30, 2015 letter to Defendant Skarpelos.

9 29. On or about November 12, 2015, Defendant Skarpelos, through his attorney,  
10 informed NATCO and Defendant Weiser of Defendant Skarpelos's claim that:

11 a. Defendant Skarpelos did provide Defendant Weiser with certificates 753 and  
12 660 representing shares of Anavex common stock in order to establish a brokerage account  
13 with Defendant Weiser;

14 b. Defendant Weiser had represented itself to Defendant Skarpelos as a registered  
15 broker-dealer.

16 c. The process of opening Defendant Skarpelos's account with Defendant Weiser  
17 was not going smoothly.

18 d. Defendant Skarpelos learned that Defendant Weiser was not a properly  
19 licensed broker-dealer in the United States.

20 e. Defendant Skarpelos tried many times to reach his contact at Defendant Weiser  
21 to get his shares back, but was unsuccessful in connecting with anyone in authority at  
22 Defendant Weiser.

23 f. Defendant Skarpelos became alarmed when Defendant Weiser stopped  
24  
25

1 answering its phones.

2 g. Defendant Skarpelos was worried that Defendant Weiser was not reliably  
3 holding the shares he had delivered to Defendant Weiser, including the shares represented by  
4 certificate number 753, and contacted NATCO to see about cancelling the share certificates  
5 he had delivered to Weiser and getting a new one.

6 h. Through his efforts, Defendant Skarpelos obtained the Replacement  
7 Certificate.

8 i. In July of 2013, Defendant Weiser did re-establish contact with Defendant  
9 Skarpelos and informed him Defendant Weiser would like to arrange the sale of Defendant  
10 Skarpelos's shares of Anavex common stock.

11 j. Defendant Skarpelos was prepared to sell his Anavex shares on the right  
12 conditions and did sign a purchase agreement on July 9, 2013 with regard to the sale of shares  
13 represented by the Replacement Certificate, not the shares represented by certificate 753, a  
14 certificate which had been cancelled.

15 k. Defendant Skarpelos kept in his possession the original Replacement  
16 Certificate together with the original Stock Power. Defendant Skarpelos did not deliver the  
17 original signed Stock Power to Defendant Weiser.

18 l. Defendant Skarpelos would only deliver the original Replacement Certificate  
19 and Stock Power to Defendant Weiser after the purchase price had been paid.

20 m. The purchase price for the shares subject to any agreement between Defendant  
21 Skarpelos and Defendant Weiser never has been paid.

22 n. The terms of any sale agreement between Defendant Skarpelos and Defendant  
23 Weiser have expired.  
24  
25

1           o. Defendant Weiser is not a protected purchaser because defendant Weiser never  
2 gave value for the share it claims, and cannot claim that it did not have notice of an adverse  
3 claim.

4           p. Defendant Weiser knew and knows that Defendant Skarpelos lays claim to the  
5 shares which Defendant Weiser claims, and knew and knows Defendant Skarpelos has not  
6 sold such shares.

7           q. Defendant Weiser is holding certificate 753, and the other cancelled Anavex  
8 certificate, improperly.

9           r. Certificate 753, and the other cancelled certificate, should be returned to  
10 NATCO to complete the record of cancellation.

11           **E. Defendant Weiser (Bahamas) Ltd claim.**

12           30. Following the filing of the Complaint in this matter, counsel for Weiser  
13 accepted service of process on Weiser's behalf and appeared as counsel for Weiser in this  
14 matter.  
15

16           31. After appearing in this matter, counsel for Weiser indicated that an entity  
17 known as Weiser (Bahamas) Ltd, also known as or doing business as Weiser Ltd, ("Weiser  
18 Bahamas") asserts a claim to the shares of Anavex and/or the Replacement Certificate similar  
19 to, or identical to, the claims asserted by Weiser, and that Weiser Bahamas is an appropriate  
20 party to be named in this matter for the resolution of the claims identified in this Amended  
21 Complaint.

22           32. Based upon the information obtained by Plaintiff from Defendant Weiser  
23 Bahamas following the filing of the Complaint, Plaintiff alleges that Defendant Weiser  
24 Bahamas asserts claims or interests in the Replacement Certificate identical or similar to the  
25

1 claims asserted by Defendant Weiser and therefore Defendant Weiser Bahamas should be  
2 subject to this action and that Plaintiff is entitled to relief against Weiser Bahamas identical or  
3 similar to the relief Plaintiff seeks herein against Weiser.

4 **FIRST CLAIM FOR RELIEF**  
5 **(Interpleader of Shares)**

6 33. Plaintiff incorporates the allegations of the paragraphs above as though fully  
7 set forth herein.

8 34. Defendant Weiser, Defendant Weiser Bahamas and Defendant Skarpelos have  
9 asserted claims to the shares represented by certificate number 753 which are adverse to one  
10 another.

11 35. NATCO cannot determine which defendant is entitled to the shares represented  
12 by certificate 753.

13 36. As such NATCO is a disinterested stakeholder who may be exposed to  
14 multiple liabilities.

15 37. NATCO stands ready willing and able to tender certificate number 753 to the  
16 Court or take action in connection with certificate number 753 as the Court directs.

17 38. NATCO is entitled to an order of the Court which:

18 a. requires Defendant Weiser, Defendant Weiser Bahamas and Defendant  
19 Skarpelos to litigate their respective claims to certificate number 753 herein;

20 b. releases and forever discharges NATCO from liability related to or arising  
21 from the competing claims of the Defendants to certificate number 753;

22 c. directs NATCO, upon resolution of the Defendants' competing claims, to  
23 transfer, cancel or otherwise dispose of the shares represented by certificate 753 as the Court  
24 deems legally proper, fair, just and equitable.  
25

1           39. Plaintiff is entitled to its attorneys fees and costs in connection with this action.

2           **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of them,  
3 as follows:

4           1. For an order of the Court which:

5           a. requires Defendant Weiser, Defendant Weiser Bahamas and Defendant  
6 Skarpelos to litigate their respective claims to certificate number 753 herein;

7           b. releases and forever discharges NATCO from liability related to or arising  
8 from the competing claims of the Defendants to certificate number 753;

9           c. directs NATCO, upon resolution of the Defendants' competing claims, to  
10 transfer, cancel or otherwise dispose of the share represented by certificate 753 as the Court  
11 deems legally proper, fair, just and equitable.

12           2. For costs of suit, including reasonable attorneys fees, incurred herein; and,

13           3. For such other and further relief as the Court may deem just and proper.  
14

15                           **AFFIRMATION**  
16                           **Pursuant to NRS 239B.030**

17           The undersigned does hereby affirm that the preceding document and/or attachments  
18 do not contain the social security number of any person.

19           Dated this 29<sup>th</sup> day of April, 2016.

20                           ALEXANDER H. WALKER III

21  
22                           /s/ Alexander H. Walker III  
23                           Alexander H. Walker III  
24                           ALEXANDER H. WALKER III, LLC  
25                           57 West 200 South, Suite 400  
                             Salt Lake City, Utah 84101  
                             Attorney for Nevada Agency and Transfer Co.



CERTIFICATE OF SERVICE

I hereby certify that on the 29<sup>th</sup> day of April, 2016, I caused to be served a copy of the foregoing on all parties via the Court's electronic filing system.

/s/ Alexander H. Walker III  
Alexander H. Walker III  
ALEXANDER H. WALKER III, LLC  
57 West 200 South, Suite 400  
Salt Lake City, Utah 84101  
Attorney for Nevada Agency and Transfer Co.

**Tab No. "2"**

1 Code 1155  
2 JOHN F. MURTHA, ESQ.  
3 Nevada Bar No. 835  
4 W. CHRIS WICKER, ESQ.  
5 Nevada Bar No. 1037  
6 WOODBURN AND WEDGE  
7 6100 Neil Road, Ste. 500  
8 Reno, Nevada 89505  
9 Telephone : (775) 688-3000  
10 [jmurtha@woodburnandwedge.com](mailto:jmurtha@woodburnandwedge.com)  
11 [cwicker@woodburnandwedge.com](mailto:cwicker@woodburnandwedge.com)

12 Attorneys for Defendant/Cross-Claimant  
13 Athanasios Skarpelos

14 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

15 IN AND FOR THE COUNTY OF WASHOE

16 \*\*\*

17 NEVADA AGENCY AND TRANSFER  
18 COMPANY, a Nevada corporation,

19 Plaintiff,

20 Case No. CV15-02259  
21 Dept. No. 10

22 vs.

23 WEISER ASSET MANAGEMENT, LTD.,  
24 a Bahamas company; WEISER (BAHAMAS)  
25 LTD., a Bahamas company, ATHANASIOS  
26 SKARPELOS, an individual; and  
27 DOES 1-10,

28 Defendants.

\_\_\_\_\_  
29 ATHANASIOS SKARPELOS, an individual

30 Cross-Claimant,

31 vs.

32 WEISER ASSET MANAGEMENT, LTD., a  
33 Bahamas company; and WEISER (BAHAMAS)  
34 LTD., a Bahamas company,

35 Cross-Defendants.  
\_\_\_\_\_  
36

**ANSWER TO AMENDED COMPLAINT AND CROSS-CLAIM  
(By Defendant Skarpelos)**

Defendant Athanasios Skarpelos, by and through his counsel Woodburn and Wedge, hereby answers the Amended Complaint filed herein on April 29, 2016, as follows:

1. The allegation in Paragraph 1 is admitted.

2. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegation in Paragraph 2 and, therefore, denies the same.

3. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegations of Paragraph 3 and, therefore, denies the same.

4. The allegation in Paragraph 4 is admitted.

5. No answer is required to the allegations of Paragraph 5, but out of an abundance of caution Defendant Skarpelos repeats and realleges each and every admission, denial and other response set forth above.

6. The allegations of Paragraph 6 are admitted.

7. The allegations of Paragraph 7 are admitted.

8. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegation in Paragraph 8 and, therefore, denies the same.

9. The allegation in Paragraph 9 is admitted.

10. The allegations of Paragraph 10 are admitted.

11. The allegations of Paragraph 11 are admitted.

12. The allegations of Paragraph 12 are admitted.

13. Responding to the allegations of Paragraph 13, Defendant Skarpelos admits he has been an officer and director of Anavex Life Sciences Corp. ("Anavex"),

1 but cannot recall whether he was Anavex's sole officer and director at the time  
2 indicated in Paragraph 13 and, therefore, denies the same.

3  
4 14. Responding to the allegations of Paragraph 14, Defendant Skarpelos  
5 admits he has been an officer and director of Anavex, but cannot recall whether he  
6 was Anavex's sole officer or director at the time indicated in Paragraph 14 and,  
7 therefore, denies the same.

8 15. Responding to the allegations of Paragraph 15, Defendant Skarpelos  
9 admits NATCO issued the Replacement Certificate, but it is without sufficient  
10 information to form a belief as to the truth of the remaining allegations of Paragraph 15  
11 and, therefore, denies the same.

12  
13 16. Responding to the allegations of Paragraph 16, Defendant Skarpelos  
14 admits Defendant Weiser sent a letter to NATCO, but he denies the truth of the matters  
15 asserted in the letter and affirmatively pleads that Defendant Weiser has absolutely no  
16 claim, legal or equitable, to any Anavex stock arising out of, related to, or derived from  
17 any of the stock certificates referenced in the Amended Complaint.

18 17. Responding to the allegations of Paragraph 17, Defendant Skarpelos  
19 admits Defendant Weiser sent the letter to NATCO, but he denies Defendant Weiser  
20 has any right to make the claims asserted in the letter and affirmatively pleads that  
21 Defendant Weiser has absolutely no claim, legal or equitable, to any Anavex stock  
22 arising out of, related to, or derived from any of the stock certificates referenced in the  
23 Amended Complaint.  
24

25 18. The allegations of Paragraph 18 are admitted.

26 19. The allegations of Paragraph 19 are admitted.  
27  
28

1           20. Defendant Skarpelos is without sufficient information to form a belief as  
2 to the truth of the allegations of Paragraph 20 and, therefore, denies the same.

3           21. The allegation in Paragraph 21 is admitted.

4           22. Defendant Skarpelos is without sufficient information to form a belief as  
5 to the truth of the allegations of Paragraph 22 and, therefore, denies the same.

6           23. Defendant Skarpelos is without sufficient information to form a belief as  
7 to the truth of the allegation in Paragraph 23 and, therefore, denies the same.

8           24. The allegation in Paragraph 24 is admitted.

9           25. Defendant Skarpelos is without sufficient information to form a belief as  
10 to the truth of the allegation in Paragraph 25 and, therefore, denies the same.

11           26. Defendant Skarpelos is without sufficient information to form a belief as  
12 to the truth of the allegation in Paragraph 26 and, therefore, denies the same.

13           27. Defendant Skarpelos is without sufficient information to form a belief as  
14 to the truth of the allegation in Paragraph 27 and, therefore, denies the same.

15           28. The allegation in Paragraph 28 is admitted.

16           29. The allegations of Paragraph 29 are admitted.

17           30. The allegations of Paragraph 30 are admitted.

18           31. Defendant Skarpelos is without sufficient information to form a belief as  
19 to the truth of the allegations of Paragraph 31 and, therefore, denies the same.

20           32. Defendant Skarpelos is without sufficient information to form a belief as  
21 to the truth of the allegations of Paragraph 32 and, therefore, denies the same.

22           33. No answer is required to the allegation in Paragraph 33, but out of an  
23 abundance of caution Defendant Skarpelos repeats and realleges each and every  
24 admission, denial and other response set forth above.  
25  
26  
27  
28

34. The allegation in Paragraph 34 is admitted.

35. The allegation in Paragraph 35 is admitted.

36. The allegation in Paragraph 36 is admitted.

37. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegation in Paragraph 37 and, therefore, denies the same.

38. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegation in Paragraph 38 and, therefore, denies the same.

39. Defendant Skarpelos is without sufficient information to form a belief as to the truth of the allegation in Paragraph 39 and, therefore, denies the same.

## DEFENSES

40. Defendant Skarpelos admits the Plaintiff ("NATCO") is entitled to an order allowing it to tender the stock certificates referenced in the Amended Complaint (the "Disputed Stock") to the Court or to hold onto such Disputed Stock until such time as the Court enters an order declaring Defendant Skarpelos to be the sole, true and rightful owner of all of the Disputed Stock, but to the extent the allegations in the Amended Complaint could be interpreted as establishing a claim of ownership to the Disputed Stock in the name of Weiser Asset Management, Ltd., ("Weiser") or Weiser (Bahamas) Ltd. ("Bahamas") the Amended Complaint fails to state a claim upon which relief may be granted.

41. Defendant Skarpelos is entitled to declaratory relief to the effect that he is the sole, true and rightful owner of all of the Disputed Stock to the exclusion of Weiser, Bahamas and any other person or entity who may claim ownership to the same on account of, or derived from, Weiser's or Bahamas' claims to the Disputed Stock.

1           42. To the extent Weiser or Bahamas claim ownership to any or all of the  
2 Disputed Stock, such claims must be denied on the basis of estoppel.

3           43. To the extent Weiser or Bahamas claim ownership to any or all of the  
4 Disputed Stock, such claims must be denied on the equitable doctrine of laches.

5           44. To the extent Weiser or Bahamas claim ownership to any or all of the  
6 Disputed Stock, such claims must be denied on the basis no binding or enforceable  
7 contract regarding the sale of the Disputed Stock by Skarpelos to Weiser, Bahamas or  
8 any other person or entity claiming through them, has ever been in existence.

9           45. Without admitting that an enforceable contract exists between Skarpelos  
10 and Weiser or Bahamas, to the extent Weiser or Bahamas claim ownership to any or  
11 all of the Disputed Stock under the terms of a contract, such claims must be denied for  
12 lack of consideration.

13           46. Without admitting that an enforceable contract exists between Skarpelos  
14 and Weiser or Bahamas, to the extent Weiser or Bahamas claim ownership to any or  
15 all of the Disputed Stock under the terms of a contract, such claims must be denied for  
16 failure of consideration.

17           47. Without admitting that an enforceable contract exists between Skarpelos  
18 and Weiser or Bahamas, to the extent Weiser or Bahamas claim ownership to any or  
19 all of the Disputed Stock under the terms of a contract, such claims must be denied by  
20 reason of Weiser's and/or Bahamas' breaches of contract.

21           48. Without admitting that an enforceable contract exists between Skarpelos  
22 and Weiser or Bahamas, to the extent Weiser or Bahamas claim ownership to any or  
23 all of the Disputed Stock under the terms of a contract, such claims must be denied  
24  
25  
26  
27  
28



1 because any contract under which Weiser or Bahamas claim to have been a registered  
2 stock broker, stock agent or stock dealer is unenforceable on the basis of illegality.

3  
4 49. To the extent Weiser or Bahamas claim ownership to any or all of the  
5 Disputed Stock, such claims must be denied because of Weiser's and/or Bahamas'  
6 fraudulent conduct.

7 50. To the extent Weiser or Bahamas claim ownership to any or all of the  
8 Disputed Stock, such claims must be denied by reason of the statute of frauds.

9 51. To the extent Weiser or Bahamas claim ownership to any or all of the  
10 Disputed Stock, such claims must be denied by reason of the running of the applicable  
11 statutes of limitations.

12  
13 52. To the extent Weiser or Bahamas claim ownership to any or all of the  
14 Disputed Stock, such claims have been knowingly and validly waived by Weiser and  
15 Bahamas.

16 53. Pursuant to the provisions of FRCP 11, at the time of filing this Answer  
17 to Amended Complaint and Cross-Claim, all possible defenses may not have been  
18 alleged inasmuch as insufficient facts and other relevant information may not have  
19 been available after a reasonable inquiry and, therefore, Defendant Skarpelos  
20 reserves the right to amend this Answer to assert additional defenses should additional  
21 defenses become evident as a result of discovery in this matter.

22  
23 WHEREAS Defendant Skarpelos prays for relief as follows:

24 1. For an order of the Court declaring him to be the sole, true and rightful  
25 owner of all of the legal and equitable interests in and to the Disputed Stock;

26 2. For an order of the Court declaring that Weiser, Bahamas or any other  
27 person or entity claiming any ownership to the Disputed Stock through any claim of  
28

1 ownership by Weiser or Bahamas, have no claim of ownership to the Disputed Stock,  
2 legal or equitable;

3  
4 3. For an order of the Court authorizing NATCO to tender all of the  
5 certificates evidencing the Disputed Stock to the Court or, alternatively, directing  
6 NATCO to take no action regarding any of the Disputed Stock without a further order  
7 of the Court;

8 4. For costs of suit;

9 5. For an award of reasonable attorney's fees incurred by Skarpelos in the  
10 defense of the matters set forth in the Complaint; and

11 6. For such other and further relief as to the Court seems just and equitable  
12 under the circumstances.  
13

14  
15 **CROSS-CLAIM AS AGAINST DEFENDANTS**  
16 **WEISER ASSET MANAGEMENT, LTD. AND**  
17 **WEISER (BAHAMAS) LTD.**  
**(Declaratory Relief)**

18 Comes now Defendant/Cross-Claimant Athanasios Skarpelos ("Skarpelos"), by  
19 and through his attorneys Woodburn and Wedge, who complains and alleges as  
20 against Defendants/Cross-Defendants Weiser Asset Management, Ltd. ("Weiser") and  
21 Weiser (Bahamas) Ltd. ("Bahamas") as follows:

22 1. By reason of the Allegations set forth in the Amended Complaint filed  
23 herein on April 29, 2016, it is clear there is a dispute between Skarpelos, Weiser and  
24 Bahamas as to the ownership of the Disputed Stock.  
25

26 2. For purposes of describing the nature of the dispute between Skarpelos,  
27 Weiser and Bahamas, Skarpelos hereby incorporates the allegations of: (a) the  
28

1 Amended Complaint; (b) his Answer to the Amended Complaint set forth above; and  
2 (c) his defenses to the Amended Complaint also set forth above as if set forth in their  
3 entirety.  
4

5 3. By reason of the allegations of the Amended Complaint and Skarpelos'  
6 answer and defenses thereto, a true and justiciable case and controversy exists  
7 between Skarpelos, Weiser and Bahamas as to the ownership of the Disputed Stock.

8 4. At all times relevant to the matters set forth in the Amended Complaint  
9 and this Cross-Claim, Skarpelos was the sole, true and rightful owner of all of the legal  
10 and equitable interests in the Disputed Stock.  
11

12 5. At no time relevant to the matters set forth in the Amended Complaint  
13 and this Cross-Claim did Weiser, Bahamas or any other person or entity making a  
14 claim through them, have any right, title, interest or claim to any legal or equitable  
15 interests in the Disputed Stock by reason of contract or any other legal or equitable  
16 theory.  
17

18 6. Pursuant to Chapter 30, Nevada Revised Statutes, Nevada courts may  
19 issue declaratory judgments. Specifically, NRS §30.030 provides that "courts of record  
20 shall have power to declare rights, status and other legal relations whether or not  
21 further relief is or could be claimed."

22 7. By reason of Nevada's Declaratory Judgment statutes (NRS §§30.010,  
23 et. seq.), Skarpelos is entitled to a declaratory judgment from this Court that he is the  
24 sole, true and rightful owner of all of the legal and equitable interests in the Disputed  
25 Stock.  
26

27 ///

28 ///

1 WHEREFORE, Skarpelos prays for relief as follows:

2 1. For an order of the Court declaring him to be the sole, true and rightful  
3 owner of all of the legal and equitable interests in and to the Disputed Stock;

4 2. For an order of the Court declaring that Weiser, Bahamas or any other  
5 person or entity claiming any ownership to the Disputed Stock through any claim of  
6 ownership by Weiser or Bahamas have no claim of ownership to the Disputed Stock,  
7 legal or equitable;

8 3. For an order of the Court directing NATCO to take such action as is  
9 necessary to reflect in Anavex's corporate books and records that Skarpelos is the  
10 sole, true and rightful owner of all of the legal and equitable interests in the Disputed  
11 Stock;

12 4. For costs of suit;

13 5. For an award of reasonable attorney's fees incurred by Skarpelos in  
14 connection with the prosecution of the Cross-Claim; and  
15 For such other and further relief as to the Court seems just and equitable under the  
16 circumstances.

17 DATED this 23<sup>rd</sup> day of May, 2016.

18 WOODBURN AND WEDGE

19 By 

20 John F. Murtha, Esq.  
21 W. Chris Wicker, Esq.  
22 Attorneys for Defendant/  
23 Cross-Claimant  
24 Athanasios Skarpelos  
25  
26  
27  
28


**AFFIRMATION**  
**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the above-entitled document filed in this matter does not contain the social security number of any person whomsoever.

DATED this 23<sup>rd</sup> day of May, 2016.

WOODBURN AND WEDGE

By

  
\_\_\_\_\_  
John F. Murtha, Esq.  
W. Chris Wicker, Esq.  
Attorneys for Defendant/  
Cross-Claimant  
Athanasios Skarpelos

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the law firm of Woodburn and Wedge, and that  
on the 23<sup>rd</sup> day of May, 2016, I caused the foregoing document to be delivered to  
the parties entitled to notice in this action by:

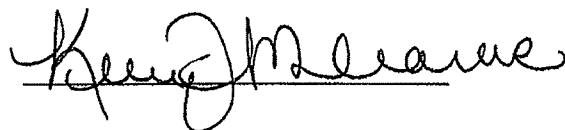
- \_\_\_\_\_ placing a true copy thereof in a sealed, stamped envelope with the  
United States Postal Service at Reno, Nevada
- \_\_\_\_\_ personal delivery
- \_\_\_\_\_ email
- X   electronic filing
- \_\_\_\_\_ Federal Express or other overnight delivery

as follows:

Alexander H. Walker III, Esq.  
57 West 200 South, Ste. 400  
Salt Lake City, Utah 84101

Clay P. Brust, Esq.  
Robison, Belaustegui, Sharp & Low  
71 Washington Street  
Reno, NV 89503

Jeremy J. Nork, Esq.  
Frank Z. LaForge, Esq.  
Holland & Hart LLP  
5441 Kietzke Lane, 2<sup>nd</sup> Flr.  
Reno, Nevada 89511



**Tab No. “3”**

1 **1137**

2 Jeremy J. Nork (SBN 4017)  
3 Frank Z. LaForge (SBN 12246)  
4 HOLLAND & HART LLP  
5 5441 Kietzke Lane, Second Floor  
6 Reno, Nevada 89511  
7 Tel: (775) 327-3000; Fax: (775) 786-6179  
8 jnork@hollandhart.com  
9 fzlaforge@hollandhart.com

6 Attorneys for Defendants/Cross-claimants Weiser

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

10 NEVADA AGENCY AND TRANSFER  
11 COMPANY, a Nevada Corporation,

12 Plaintiff,

13 v.

14 WEISER ASSET MANAGEMENT, LTD.,  
15 a Bahamas company, WEISER  
16 (BAHAMAS) LTD, a Bahamas company,  
17 ATHANASIOS SKARPELOS, an  
18 individual, and DOES 1 through 10,

19 Defendants.

19 WEISER ASSET MANAGEMENT, LTD.,  
20 a Bahamas company, WEISER  
21 (BAHAMAS) LTD., a Bahamas company,

22 Cross-claimants,

23 v.

24 ATHANASIOS SKARPELOS, an  
25 individual,

26 Cross-defendant.

Case No. CV15-02259

Dept. No. 10

**WEISER'S ANSWER AND CROSS-CLAIM**

27 Defendants/Cross-claimants Weiser Asset Management, Ltd. and Weiser (Bahamas)  
28 Ltd. (collectively "Weiser"), by and through counsel Holland & Hart LLP, for their answer to



1 Nevada Agency And Transfer Co.'s ("NATCO") Amended Complaint, hereby admit, deny, and  
2 allege as follows:

3 1. Weiser is without knowledge or information sufficient to form a belief as to the  
4 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
5 allegation.

6 2. Admit.

7 3. Admit.

8 4. Weiser is without knowledge or information sufficient to form a belief as to the  
9 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
10 allegation.

11 5. The allegation in this paragraph contains a legal assertion to which no reply is  
12 required.

13 **GENERAL ALLEGATIONS**

14 6. Weiser is without knowledge or information sufficient to form a belief as to the  
15 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
16 allegation.

17 7. Weiser is without knowledge or information sufficient to form a belief as to the  
18 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
19 allegation.

20 a. Weiser is without knowledge or information sufficient to form a belief as to the  
21 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
22 allegation.

23 b. Weiser is without knowledge or information sufficient to form a belief as to the  
24 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
25 allegation.

26 c. Weiser is without knowledge or information sufficient to form a belief as to the  
27 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
28 allegation.

1           8.       Weiser is without knowledge or information sufficient to form a belief as to the  
2 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
3 allegation.

4           9.       Weiser is without knowledge or information sufficient to form a belief as to the  
5 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
6 allegation.

7           10.      Weiser is without knowledge or information sufficient to form a belief as to the  
8 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
9 allegation.

10          11.      Weiser is without knowledge or information sufficient to form a belief as to the  
11 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
12 allegation.

13          12.      Weiser is without knowledge or information sufficient to form a belief as to the  
14 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
15 allegation.

16          13.      Weiser is without knowledge or information sufficient to form a belief as to the  
17 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
18 allegation.

19          14.      Weiser is without knowledge or information sufficient to form a belief as to the  
20 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
21 allegation.

22          15.      Weiser is without knowledge or information sufficient to form a belief as to the  
23 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
24 allegation.

25          16.      Admit.

- 26               a. The document referenced in this paragraph speaks for itself. Weiser  
27               denies the remaining allegations of this paragraph to the extent they are  
28               inconsistent with such document.

1 b. The document referenced in this paragraph speaks for itself. Weiser  
2 denies the remaining allegations of this paragraph to the extent they are  
3 inconsistent with such document.

4 c. The document referenced in this paragraph speaks for itself. Weiser  
5 denies the remaining allegations of this paragraph to the extent they are  
6 inconsistent with such document.

7 d. The document referenced in this paragraph speaks for itself. Weiser  
8 denies the remaining allegations of this paragraph to the extent they are  
9 inconsistent with such document.

10 e. The document referenced in this paragraph speaks for itself. Weiser  
11 denies the remaining allegations of this paragraph to the extent they are  
12 inconsistent with such document.

13 17. The document referenced in this paragraph speaks for itself. Weiser denies the  
14 remaining allegations of this paragraph to the extent they are inconsistent with such document.

15 a. The document referenced in this paragraph speaks for itself. Weiser  
16 denies the remaining allegations of this paragraph to the extent they are  
17 inconsistent with such document.

18 b. The document referenced in this paragraph speaks for itself. Weiser  
19 denies the remaining allegations of this paragraph to the extent they are  
20 inconsistent with such document.

21 c. The document referenced in this paragraph speaks for itself. Weiser  
22 denies the remaining allegations of this paragraph to the extent they are  
23 inconsistent with such document.

24 18. Weiser admits that counsel for NATCO responded to Weiser's letter. But the  
25 document referenced in this paragraph speaks for itself. Weiser denies the remaining allegations  
26 of this paragraph to the extent they are inconsistent with such document.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- a. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.
- b. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.
- c. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.
- d. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.

19. There is no allegation in this part of the paragraph to which Weiser must respond.

- a. Deny.
- b. Deny.
- c. Deny.
- d. Deny.

20. Admit.

- a. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.
- b. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.
- c. The letter referenced in this paragraph speaks for itself. Weiser denies the remaining allegations of this paragraph to the extent they are inconsistent with such document.

1           21.    Deny.

2           22.    Weiser is without knowledge or information sufficient to form a belief as to the  
3 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
4 allegation.

5           23.    Weiser is without knowledge or information sufficient to form a belief as to the  
6 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
7 allegation.

8           24.    Weiser is without knowledge or information sufficient to form a belief as to the  
9 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
10 allegation.

11          25.    Deny.

12          26.    Deny.

13          27.    Admit.

14          28.    Weiser is without knowledge or information sufficient to form a belief as to the  
15 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
16 allegation.

17          29.    Weiser is without knowledge or information sufficient to form a belief as to the  
18 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
19 allegation.

20               a.   Weiser is without knowledge or information sufficient to form a belief as  
21 to the truth or accuracy of the allegation in this paragraph and therefore  
22 denies each and every allegation.

23               b.   Weiser is without knowledge or information sufficient to form a belief as  
24 to the truth or accuracy of the allegation in this paragraph and therefore  
25 denies each and every allegation.

26               c.   Weiser is without knowledge or information sufficient to form a belief as  
27 to the truth or accuracy of the allegation in this paragraph and therefore  
28 denies each and every allegation.

- d. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- e. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- f. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- g. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- h. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- i. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- j. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- k. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.
- l. Weiser is without knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation in this paragraph and therefore denies each and every allegation.

- 1 m. Weiser is without knowledge or information sufficient to form a belief as  
2 to the truth or accuracy of the allegation in this paragraph and therefore  
3 denies each and every allegation.
- 4 n. Weiser is without knowledge or information sufficient to form a belief as  
5 to the truth or accuracy of the allegation in this paragraph and therefore  
6 denies each and every allegation.
- 7 o. Weiser is without knowledge or information sufficient to form a belief as  
8 to the truth or accuracy of the allegation in this paragraph and therefore  
9 denies each and every allegation.
- 10 p. Weiser is without knowledge or information sufficient to form a belief as  
11 to the truth or accuracy of the allegation in this paragraph and therefore  
12 denies each and every allegation.
- 13 q. Weiser is without knowledge or information sufficient to form a belief as  
14 to the truth or accuracy of the allegation in this paragraph and therefore  
15 denies each and every allegation.
- 16 r. Weiser is without knowledge or information sufficient to form a belief as  
17 to the truth or accuracy of the allegation in this paragraph and therefore  
18 denies each and every allegation.

19 30. Admit.

20 31. Admit.

21 32. The allegation in this paragraph contains a legal assertion to which no reply is  
22 required.

23 **FIRST CLAIM FOR RELIEF**

24 **(Interpleader of Shares)**

25 33. No response is required to the allegation in this paragraph.

26 34. Admit.

1           35.     Weiser is without knowledge or information sufficient to form a belief as to the  
2 truth or accuracy of the allegation in this paragraph and therefore denies each and every  
3 allegation.

4           36.     The allegation in this paragraph contains a legal assertion to which no reply is  
5 required.

6           37.     The allegation in this paragraph contains a legal assertion to which no reply is  
7 required.

8           38.     The allegation in this paragraph contains a legal assertion to which no reply is  
9 required.

10                   a.   The allegation in this paragraph contains a legal assertion to which no  
11                   reply is required.

12                   b.   The allegation in this paragraph contains a legal assertion to which no  
13                   reply is required.

14                   c.   The allegation in this paragraph contains a legal assertion to which no  
15                   reply is required.

16                   d.   The allegation in this paragraph contains a legal assertion to which no  
17                   reply is required.

18           39.     The allegation in this paragraph contains a legal assertion to which no reply is  
19 required.

20           As for separate affirmative defenses, Weiser alleges:

21                               **FIRST AFFIRMATIVE DEFENSE**

22           Weiser is the rightful owner of the stock at issue in NATCO's complaint.

23                               **SECOND AFFIRMATIVE DEFENSE**

24           Pursuant to the provisions of Rule 11 of the Rules of Civil Procedure, at the time of the  
25 filing of Weiser's Answer, all possible affirmative defenses may not have been alleged  
26 inasmuch as facts and other relevant information may not have been available after reasonable  
27 inquiry, and therefore, Weiser reserves the right to amend this Answer to allege affirmative  
28 defenses if subsequent investigation warrants the same.



1 WHEREFORE, Weiser prays for relief as follows:

- 2 1. An order declaring Weiser to be the sole owner of the stock in dispute;
- 3 2. An order that NATCO immediately deliver to Weiser appropriate certificates of
- 4 the stock in dispute;
- 5 3. For an award of attorney's fees and costs to Weiser; and
- 6 4. All other appropriate relief.

---

7

8 **WEISER'S CROSS-CLAIM AGAINST DEFENDANT SKARPELOS**

9 Weiser, through its attorneys of record, alleges as follows

- 10 1. Cross-claimant Weiser is organized and operated under the laws of the Bahamas.
- 11 2. On information and belief, Weiser believes that cross-defendant Athanasios
- 12 Skarpelos resides in and is a citizen of Greece.
- 13 3. In July 2013, Weiser and Skarpelos entered into a contract for the sale of a
- 14 certain amount of stock. Skarpelos, the former owner of the stock, agreed to sell it to Weiser.
- 15 4. Weiser performed under the contract.
- 16 5. Skarpelos, although he initially transferred the stock, later took actions with
- 17 NATCO that essentially negated the transfer.
- 18 6. As generally set forth in NATCO's Amended Complaint, there is a dispute
- 19 between Weiser and Skarpelos as to the ownership of the stock.
- 20 7. Weiser is the rightful owner of the stock and has suffered damages from
- 21 Skarpelos's actions concerning the stock.
- 22 8. As a result of Skarpelos's actions, Weiser has been required to retain the services
- 23 of Holland & Hart LLP and is entitled to a reasonable award of attorney's fees therefor.

24 **FIRST CLAIM**

25 (Declaratory Judgment)

- 26 9. Weiser realleges the allegations in paragraphs above as though set forth fully
- 27 herein.
- 28

1           10.     Weiser and Skarpelos have each asserted competing and conflicting claims over  
2     the entitlement to the stock at issue in their July 2013 contract.

11. Weiser is entitled to a declaration from the Court under NRS §33.010, *et seq.*  
that it is the rightful owner of the stock.

## SECOND CLAIM

(Breach Of Contract)

7           12.     Weiser realleges the allegations in paragraphs above as though set forth fully  
8     herein.

9           13.     Weiser and Skarpelos entered into a binding contract in July 2013 concerning the  
10    sale of certain stock.

11 || 14. Weiser performed under the contract.

12 15. Skarpelos initially performed by transferring the stock but later took actions that  
13 effectively negated the transfer. These later actions constitute a breach of the parties' contract.

14 16. Weiser has suffered damages in excess of \$10,000 from Skarpelos's breach.

### THIRD CLAIM

(Breach Of The Covenant Of Good Faith And Fair Dealing)

17 17. Weiser realleges the allegations in paragraphs above as though set forth fully  
18 herein.

19           18.    The aforementioned contract contained an implied covenant of good faith and  
20    fair dealing, which Skarpelos triggered upon the execution of the contract .

19. After executing the contract, Skarpelos acted unfaithfully to the purpose of the contract by, among other things, undermining Weiser's ownership of the stock.

23           20. As a result of Skarpelos's actions, Weiser's justified expectations under the  
24 contract have been denied.

25           21. As a result of Skarpelos's actions, Weiser has been damaged in an amount in  
26   excess of \$10,000.

1 WHEREFORE, Weiser respectfully requests judgment against Skarpelos as follows:

- 2 1. For an order of the Court declaring Weiser to be the legal and rightful owner of  
3 the stock;  
4 2. For an award of damages in an amount in excess of \$10,000.00;  
5 3. For costs of suit and reasonable attorney's fees; and  
6 4. For such other and further relief as the Court deems just, proper, and equitable.

7 The undersigned affirms that this document does not contain the social security number  
8 of any person.

9 DATED this 23rd day of May, 2016

10  
11 By /s/ Jeremy J. Nork  
12 Jeremy J. Nork (SBN 4017)  
13 Frank Z. LaForge (SBN 12246)  
14 HOLLAND & HART LLP  
15 5441 Kietzke Lane, Second Floor  
16 Reno, NV 89511  
17 Telephone: (775) 327-3000  
18 Facsimile: (775) 786-6179  
19 jnork@hollandhart.com  
20 fzlaforge@hollandhart.com

21 Attorneys for Defendants/Cross-claimants  
22 Weiser  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

I, Martha Hauser, certify:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law 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.

On May 23, 2016, I electronically filed the foregoing **WEISER'S ANSWER AND CROSS CLAIM**, with the Clerk of the Second Judicial District Court via the Court's e-Flex system. Service will be made by e-Flex on all registered participants.

Alexander H. Walker III, Esq.  
awalkerlaw@aol.com

Clayton P. Brust  
ROBISON, BELAUSTEGUI, SHARP & LOW  
cbrust@rbsllaw.com

John F. Murtha  
W. Chris Wicker  
WOODBURN AND WEDGE  
jmurtha@woodburnandwedge.com  
cwicker@woodburnandwedge.com

/s/ Martha Hauser  
Martha Hauser

**Tab No. “4”**

1 1750

2  
3  
4  
5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 NEVADA AGENCY AND TRANSFER  
9 COMPANY, a Nevada corporation,

Case No. CV15-02259  
Dept. No. 10

10 Plaintiff,

11 vs.

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW, AND**  
**JUDGMENT**

12 WEISER ASSET MANAGEMENT, LTD.,  
13 a Bahamas company; ATHANASIOS  
14 SKARPELOS, an individual; and  
15 DOES 1-10,

Defendants.

16 \_\_\_\_\_/  
ATHANASIOS SKARPELOS, an individual,

17 Cross-Claimant,

18 vs.

19 WEISER ASSET MANAGEMENT, LTD., a  
20 Bahamas company, and WEISER (BAHAMAS)  
21 LTD., a Bahamas company.

22 Cross-Defendants.

23 \_\_\_\_\_/  
WEISER ASSET MANAGEMENT, LTD.,  
24 a Bahamas company, WEISER (BAHAMAS), LTD.,  
a Bahamas company,

25 Cross-Claimants.

26 vs.

27 ATHANASIOS SKARPELOS, an individual,  
28 Cross-defendant.

1                   **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

2           This action came before this Court for a bench trial on January 28, 2019. This is  
3 an interpleader action filed by Nevada Agency and Transfer Company ("NATCO"),  
4 which was discharged from liability and dismissed from the case prior to trial. The  
5 operative pleadings to be resolved by the Court at trial were: (1) the Answer To Amended  
6 Complaint and Crossclaim filed by defendant Athanasios Skarpelos ("Skarpelos") on May  
7 23, 2016 and (2) the Answer and Cross-Claim filed by defendants Weiser Asset  
8 Management, Ltd. ("WAM") and Weiser (Bahamas) Ltd. ("Weiser Capital") (WAM and  
9 Weiser Capital are sometimes collectively referred to herein as "Weiser"). As framed by  
10 the pleadings, Skarpelos and Weiser asserted competing claims to 3,316,666 shares of  
11 stock (the "Disputed Stock") in Anavex Life Sciences Corp. ("Anavex").

12           During the trial, the Court listened to the testimony of the following people:  
13 Christos Livadas ("Livadas"), Skarpelos, Alexander Walker ("Walker") and Lambros  
14 Pedafronimos ("Pedafronimos"). The Court also reviewed and considered documentary  
15 evidence that was admitted at trial.

16           Based on the evidence presented at trial, the Court enters the following findings  
17 of fact, conclusions of law and judgment in this matter.

18                   **FINDINGS OF FACT**

19           1.       WAM is a Class 1 broker-dealer registered with and regulated by the  
20 Financial Services Authority and Securities Commission of the Bahamas. WAM is also a  
21 registered foreign broker-dealer in Canada, regulated by the Ontario Securities  
22 Commission.

23           2.       Weiser Capital is an affiliate entity to WAM and provides investment  
24 banking advisory services and deal arrangements as an investor and principal on behalf of  
25 WAM and its clients. Basically, Weiser Capital would direct clients to WAM. Livadas is  
26 the owner and director of Weiser Capital.

27           3.       Livadas is also the owner and director of Weiser Holdings, Ltd. ("Weiser  
28 Holdings"). Weiser Holdings acquired WAM in 2014 and is now the parent company of

1 WAM. Prior to that acquisition, WAM and Weiser Capital were two entirely separate  
2 entities.

3 4. The prior owner of WAM was Equity Trust Bahamas, Ltd. ("Equity  
4 Trust"). One of the principals of Equity Trust was Howard Daniels ("Daniels"), who later  
5 became one of two contacts that Skarpelos had at WAM in 2011.

6 5. In 2011, Skarpelos applied for and opened an account with WAM.  
7 Skarpelos funded the account with his Anavex Stock Certificates Nos. 0660 ("Certificate  
8 No. 660") and No. 0753 ("Certificate No. 753"). Certificate 660 represents 92,500 shares  
9 of Anavex stock and was issued to Skarpelos in 2007. Certificate 753 represents  
10 6,633,332 shares of Anavex stock and was issued to Skarpelos in 2009. In opening the  
11 account, Skarpelos was assisted by Daniels and Pedafronimos.

12 6. Skarpelos withdrew money, or had people withdraw money on his behalf,  
13 from his WAM account. In doing so, Skarpelos took his account balance into a negative  
14 position in the amount of \$153,679.54 as of March 25, 2013.

15 7. In early 2013, Skarpelos caused NATCO to cancel Stock Certificates No.  
16 660 and No. 753, falsely reporting them as "lost" when in fact he knew the certificates had  
17 been deposited with WAM in 2011.

18 8. On April 2, 2013, there was a sale of 3,316,666 shares of Skarpelos'  
19 Anavex stock represented by Certificate 753 to an unidentified third party. Pursuant to  
20 this transaction, WAM credited Skarpelos' account in the amount of \$249,580, taking it to  
21 a positive balance of \$95,775.46. Thereafter, a substantial portion of that money was  
22 withdrawn from Skarpelos' account leaving a balance of \$4,115.36 as of December 31,  
23 2013. The withdrawn money was provided from Skarpelos' WAM account to  
24 Pedafronimos, and Pedafronimos withdrew that money through transactions in May, July,  
25 August and September of 2013 and presumably gave that money to Skarpelos.

26 9. The Answer and Cross-Claim filed by WAM and Weiser Capital claimed  
27 ownership of the Disputed Stock under the terms of a July 5, 2013 Stock Sale and  
28 Purchase Agreement ("July 2013 PSA"). The July 2013 PSA does not evidence a sale of



1 any kind to anybody. At trial, Livadas testified he used this document for something other  
2 than its intended purpose and that, contrary to Weiser's claims throughout this case, it is a  
3 meaningless document.

4 10. There is no evidence of a contract between Skarpelos and either WAM or  
5 Weiser Capital for the sale of Anavex stock at any time. Although Weiser asserted  
6 throughout this case that "it" was the owner of the Disputed Stock by virtue of the July  
7 2013 PSA, Livadas and WAM abandoned that claim at trial and instead relied on a new  
8 theory that WAM is the owner of the stock by virtue of the April 2, 2013 transaction.  
9 However, Livadas also testified that WAM was not even the purchaser of the stock under  
10 the April 2, 2013 transaction and that the stock was just transferred through WAM to a  
11 third party.

12 11. Weiser Capital had absolutely nothing to do with any sale by Skarpelos of  
13 any Anavex stock at any time. At best what happened in this case was that, arguably,  
14 WAM was just transferring the stock sold on April 2, 2013 to somebody else. WAM was  
15 never intended to be the purchaser of that stock, and there was no such agreement between  
16 Skarpelos and WAM.

17 12. No contract was formed for the sale of Anavex stock from Skarpelos to  
18 either WAM or Weiser Capital at any time. Because there is no contract between  
19 Skarpelos and WAM and/or Weiser Capital, the Weiser claims for declaratory relief,  
20 breach of contract and breach of the implied covenant of good faith and fair dealing all  
21 fail because they all rely entirely upon the existence of a contract.

22 13. Any conclusion of law set forth below which is more appropriately a  
23 finding of fact is hereby incorporated as a finding of fact.

#### 24 **CONCLUSIONS OF LAW**

25 14. "Basic contract principles require, for an enforceable contract, an offer and  
26 acceptance, meeting of the minds, and consideration." *Certified Fire Prot. Inc. v.*  
27 *Precision Construction, Inc.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012), citing *May v.*  
28 *Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). "A meeting of the minds

1 exists when the parties have agreed upon the contract's essential terms.” *Id.*, citing *Roth v.*  
2 *Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1296 (1996). “Which terms are essential  
3 depends on the agreement and its context and also on the subsequent conduct of the  
4 parties, including the dispute which arises and the remedy sought.” *Id.*, citing  
5 Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a contract exists is a  
6 question of fact entitled to deference unless clearly erroneous or not based on substantial  
7 evidence. *Id.*, citing *May v. Anderson*, 121 Nev. at 672-73, 119 P.3d at 1257.

8       15. When the essential terms of a contract have yet to be agreed upon by the  
9 parties, a contract cannot be formed. *Certified Fire*, 128 Nev. at 379, 283 P.3d at 255,  
10 citing *Nevada Power Co. v. Public Util. Comm’n*, 122 Nev. 821, 839-840, 138 P.3d 486,  
11 498-499 (2006).

12       16. Here, there is no evidence of an offer and acceptance between Skarpelos  
13 and either WAM or Weiser Capital, nor is there any meeting of the minds as to the  
14 relevant and essential terms of any contract. The Court concludes as a matter of law that  
15 there was no contract between Skarpelos and either WAM or Weiser Capital for the sale  
16 and purchase of any Anavex stock at any time, much less the Disputed Stock.

17       17. In order to establish a claim for breach of contract, the claiming party must  
18 establish: (1) the existence of a valid contract; (2) a breach by the defendant; and (3)  
19 damage as a result of the breach. *Saini v. Int’l Game Tech.*, 434 F.Supp.2d 913, 919-920  
20 (D. Nev. 2006), citing *Richardson v. Jones*, 1 Nev. 405, 405 (Nev. 1865).

21       18. Because the Court has found that no valid contract existed between  
22 Skarpelos and either WAM or Weiser Capital, Weiser’s claim for breach of contract fails.

23       19. In order to establish a claim for breach of the implied covenant of good  
24 faith and fair dealing, the claiming party must establish: (1) that the plaintiff and  
25 defendant were parties to an agreement; (2) that defendant owed a duty of good faith to  
26 the plaintiff; (3) the defendant breached that duty by performing in a manner that is  
27 unfaithful to the purpose of the contract; and (4) that plaintiff’s justified expectations were  
28

1 denied. *Hilton Hotels Corp. v. Butch Lewis Prod., Inc.*, 107 Nev. 226, 234, 808 P.2d 919,  
2 923 (1991).

3 20. Because the Court has found that no valid contract existed between  
4 Skarpelos and either WAM or Weiser Capital, Weiser's claim for breach of the implied  
5 covenant of good faith and fair dealing fails.

6 21. Although not raised by Weiser's pleadings, the Court further concludes that  
7 there is no contract implied-in-fact between Skarpelos and either WAM or Weiser Capital.  
8 Quantum meruit applies in actions based upon contracts implied-in-fact. *Certified Fire*,  
9 128 Nev. at 379, 283 P.3d at 256. "A contract implied-in-fact must be manifested by  
10 conduct; it is a true contract that arises from the tacit agreement of the parties." *Id.*  
11 (internal quotations and citations omitted). "To find a contract implied-in-fact, the fact-  
12 finder must conclude that the parties intended to contract and promises were exchanged,  
13 the general obligations for which must be sufficiently clear. *Id.*, 128 Nev. at 379-380, 238  
14 P.3d at 257. "It is at that point that a party may invoke quantum meruit as a gap-filer to  
15 supply the absent term." *Id.*, 128 Nev. at 380, 238 P.3d at 257. "Where such a contract  
16 exists, then, quantum meruit ensures the laborer receives the reasonable value, usually  
17 market price, for his services." *Id.*

18 22. Even if Weiser had timely raised this issue in its pleadings, the Court  
19 concludes there is no contract implied-in-fact because there is no evidence that Skarpelos  
20 intended to contract with either WAM or Weiser Capital. The Court concludes that the  
21 parties to the contract must be identified, and in this case Livadas' testimony was unclear  
22 whether WAM or Weiser Capital was the supposed purchaser of the stock. If the Court  
23 cannot even establish that basic premise, it cannot find or conclude that there is an oral  
24 contract, a written contract, or even an implied-in-fact contract. The Court cannot find or  
25 conclude there was a meeting of the minds because neither WAM nor Weiser Capital  
26 seems to know who claims to be the owner.

27 23. "When sitting in equity, however, courts must consider the entirety of the  
28 circumstances that bear upon the equities." *Shadow Wood Homeowners Ass'n, Inc. v.*

1 *New York Community Bancorp., Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1114 (2016).  
2 “This includes considering the status and actions of all parties involved, including whether  
3 an innocent party may be harmed by granting the desired relief.” *Id.*, 366 P.3d at 1115,  
4 citing *Smith v. U.S.*, 373 F.2d 419, 424 (4<sup>th</sup> Cir. 1996) (“Equitable relief will not be  
5 granted to the possible detriment of innocent third parties.”) (other citations omitted). It is  
6 a “recognized province” of a court sitting in equity to do “complete justice between the  
7 parties.” *MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961).

8         24. “Interpleader is an equitable proceeding to determine the rights of rival  
9 claimants to property held by a third person having no interest therein.” *Balish v.*  
10 *Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976). “In such a proceeding, each  
11 claimant is treated as a plaintiff and must recover on the strength of his own right to title  
12 and not upon the weakness of his adversary’s. *Id.*, 92 Nev. at 137, 546 P.2d at 1300. In  
13 an interpleader action, each claimant must succeed in establishing his right to the property  
14 by a preponderance of the evidence. *Midland Ins. Co. v. Friedgood*, 577 F.Supp. 1407  
15 (S.D.N.Y. 1984).

16         25. Based on the foregoing, Skarpelos’ single cause of action for declaratory  
17 relief is granted. Skarpelos is the owner of all shares of Anavex stock previously  
18 represented by Certificates Nos. 660 and 753 and now represented by Certificate No. 975.

19         26. Neither WAM nor Weiser Capital, nor anyone claiming through WAM or  
20 Weiser Capital, has any ownership interest in Anavex stock represented by Certificates  
21 Nos. 660, 753 or 975.

22         27. Weiser’s claims for declaratory relief, breach of contract and breach of the  
23 implied covenant of good faith and fair dealing are all dismissed.

24         28. However, as indicated above, the Court finds that Skarpelos agreed to sell  
25 shares on April 2, 2013 to an unknown third party and that, as a result, WAM credited  
26 Skarpelos’ account \$249,580 pursuant to that transaction. This credit took the account  
27 from a balance of negative \$153,679.54 to a positive balance of \$95,775.46. The Court  
28 further found that Skarpelos subsequently withdrew and received a substantial portion of

1 those funds, eventually leaving a balance of \$4,115.36. Therefore, despite Weiser's  
2 failure to plead this claim for relief, the Court concludes it has equitable jurisdiction to  
3 enter judgment against Skarpelos and in favor of WAM in the total amount of  
4 \$245,464.64. Allowing Skarpelos to retain ownership of the Disputed Stock and the funds  
5 he received would result in a windfall. This is an obligation that is separate from and  
6 independent of Skarpelos' ownership of stock in Anavex and has no bearing on his  
7 ownership.

8 29. Any finding of fact set forth above which is more appropriately a  
9 conclusion of law is hereby incorporated as a conclusion of law.

#### 10 **JUDGMENT**

11 Based on the foregoing findings of fact and conclusions of law,

12 IT IS HEREBY ORDERED AND ADJUDGED that Athanasios "Tom" Skarpelos  
13 is the sole, true and rightful owner of all shares of stock in Anavex Life Sciences Corp.,  
14 previously represented by Certificates Nos. 660 and 753 and now represented by  
15 Certificate No. 975.

16 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that neither Weiser  
17 Asset Management, Ltd. (referred to above as WAM) nor Weiser (Bahamas) Ltd.  
18 (referred to above as Weiser Capital) have any claim of ownership to any of the shares  
19 previously represented by Certificates No. 660 and 753 and now represented by  
20 Certificate No. 975, nor does any other person or entity claiming any ownership to said  
21 shares by or through Weiser Asset Management, Ltd. or Weiser (Bahamas) Ltd.

22 IT IS HEREBY FURTHER ORDERED that Nevada Agency and Transfer  
23 Company shall take such action as is necessary to reflect in Anavex's stock register,  
24 corporate books and records that Athanasios "Tom" Skarpelos is the sole, true and rightful  
25 owner of all the legal and equitable interest in all the shares previously represented by  
26 Certificates No. 660 and 753 and now represented by Certificate No. 975.

1 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that judgment is  
2 entered against Athanasios "Tom" Skarpelos and in favor of WAM in the total amount of  
3 \$245,464.64.

4 Dated this 22 day of April, 2019.

5   
6 DISTRICT JUDGE

**Tab No. "5"**

1 **2545**

2 JOHN F. MURTHA, ESQ.

3 Nevada Bar No. 835

4 DANE W. ANDERSON, ESQ.

5 Nevada Bar No. 6883

6 SETH J. ADAMS, ESQ.

7 Nevada Bar No. 11034

8 **WOODBURN AND WEDGE**

9 Sierra Plaza

10 6100 Neil Road, Ste. 500

11 P.O. Box 2311

12 Reno, Nevada 89505

13 Telephone : (775) 688-3000

14 [jmurtha@woodburnandwedge.com](mailto:jmurtha@woodburnandwedge.com)

15 [danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)

16 [sadams@woodburnandwedge.com](mailto:sadams@woodburnandwedge.com)

17 *Attorneys for Defendant/Cross-Claimant*

18 *Athanasios Skarpelos*

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

21 \*\*\*

22 NEVADA AGENCY AND TRANSFER  
23 COMPANY, a Nevada corporation,

Case No. CV15-02259

Dept. No. 10

24 Plaintiff,

25 vs.

**NOTICE OF ENTRY OF FINDINGS  
OF FACT, CONCLUSIONS OF  
LAW, AND JUDGMENT**

26 WEISER ASSET MANAGEMENT, LTD.,  
27 a Bahamas company; ATHANASIOS  
28 SKARPELOS, an individual; and  
DOES 1-10,

Defendants.

ATHANASIOS SKARPELOS, an individual,

Cross-Claimant,

vs.

WEISER ASSET MANAGEMENT, LTD., a  
Bahamas company, and WEISER (BAHAMAS)  
LTD., a Bahamas company.

Cross-Defendants.



1 WEISER ASSET MANAGEMENT, LTD.,  
2 a Bahamas company, WEISER (BAHAMAS), LTD.,  
3 a Bahamas company,

4 Cross-Claimants.

5 vs.

6 ATHANASIOS SKARPELOS, an individual,  
7 Cross-defendant.

8 **NOTICE OF ENTRY OF FINDINGS OF FACT,**  
9 **CONCLUSIONS OF LAW, AND JUDGMENT**

10 **PLEASE TAKE NOTICE** that on April 22, 2019, the Court entered its Findings of  
11 Fact, Conclusions of Law, and Judgment, a true and correct copy of which is attached hereto  
12 as Exhibit "1".

13 **AFFIRMATION**

14 The undersigned does hereby affirm that the preceding document does not contain the  
15 personal information of any person.

16 DATED: April 22, 2019.

WOODBURN AND WEDGE

17 By /s/ Dane W. Anderson  
18 John F. Murtha, Esq.  
19 Nevada Bar No. 835  
20 Dane W. Anderson, Esq.  
21 Nevada Bar No. 6883  
22 Seth J. Adams, Esq.  
23 Nevada Bar No. 11034

24 *Attorneys for Defendant/  
25 Cross-Claimant  
26 Athanasios Skarpelos*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43
- 44
- 45
- 46
- 47
- 48
- 49
- 50
- 51
- 52
- 53
- 54
- 55
- 56
- 57
- 58
- 59
- 60
- 61
- 62
- 63
- 64
- 65
- 66
- 67
- 68
- 69
- 70
- 71
- 72
- 73
- 74
- 75
- 76
- 77
- 78
- 79
- 80
- 81
- 82
- 83
- 84
- 85
- 86
- 87
- 88
- 89
- 90
- 91
- 92
- 93
- 94
- 95
- 96
- 97
- 98
- 99
- 100
- 101
- 102
- 103
- 104
- 105
- 106
- 107
- 108
- 109
- 110
- 111
- 112
- 113
- 114
- 115
- 116
- 117
- 118
- 119
- 120
- 121
- 122
- 123
- 124
- 125
- 126
- 127
- 128
- 129
- 130
- 131
- 132
- 133
- 134
- 135
- 136
- 137
- 138
- 139
- 140
- 141
- 142
- 143
- 144
- 145
- 146
- 147
- 148
- 149
- 150
- 151
- 152
- 153
- 154
- 155
- 156
- 157
- 158
- 159
- 160
- 161
- 162
- 163
- 164
- 165
- 166
- 167
- 168
- 169
- 170
- 171
- 172
- 173
- 174
- 175
- 176
- 177
- 178
- 179
- 180
- 181
- 182
- 183
- 184
- 185
- 186
- 187
- 188
- 189
- 190
- 191
- 192
- 193
- 194
- 195
- 196
- 197
- 198
- 199
- 200
- 201
- 202
- 203
- 204
- 205
- 206
- 207
- 208
- 209
- 210
- 211
- 212
- 213
- 214
- 215
- 216
- 217
- 218
- 219
- 220
- 221
- 222
- 223
- 224
- 225
- 226
- 227
- 228
- 229
- 230
- 231
- 232
- 233
- 234
- 235
- 236
- 237
- 238
- 239
- 240
- 241
- 242
- 243
- 244
- 245
- 246
- 247
- 248
- 249
- 250
- 251
- 252
- 253
- 254
- 255
- 256
- 257
- 258
- 259
- 260
- 261
- 262
- 263
- 264
- 265
- 266
- 267
- 268
- 269
- 270
- 271
- 272
- 273
- 274
- 275
- 276
- 277
- 278
- 279
- 280
- 281
- 282
- 283
- 284
- 285
- 286
- 287
- 288
- 289
- 290
- 291
- 292
- 293
- 294
- 295
- 296
- 297
- 298
- 299
- 300
- 301
- 302
- 303
- 304
- 305
- 306
- 307
- 308
- 309
- 310
- 311
- 312
- 313
- 314
- 315
- 316
- 317
- 318
- 319
- 320
- 321
- 322
- 323
- 324
- 325
- 326
- 327
- 328
- 329
- 330
- 331
- 332
- 333
- 334
- 335
- 336
- 337
- 338
- 339
- 340
- 341
- 342
- 343
- 344
- 345
- 346
- 347
- 348
- 349
- 350
- 351
- 352
- 353
- 354
- 355
- 356
- 357
- 358
- 359
- 360
- 361
- 362
- 363
- 364
- 365
- 366
- 367
- 368
- 369
- 370
- 371
- 372
- 373
- 374
- 375
- 376
- 377
- 378
- 379
- 380
- 381
- 382
- 383
- 384
- 385
- 386
- 387
- 388
- 389
- 390
- 391
- 392
- 393
- 394
- 395
- 396
- 397
- 398
- 399
- 400
- 401
- 402
- 403
- 404
- 405
- 406
- 407
- 408
- 409
- 410
- 411
- 412
- 413
- 414
- 415
- 416
- 417
- 418
- 419
- 420
- 421
- 422
- 423
- 424
- 425
- 426
- 427
- 428
- 429
- 430
- 431
- 432
- 433
- 434
- 435
- 436
- 437
- 438
- 439
- 440
- 441
- 442
- 443
- 444
- 445
- 446
- 447
- 448
- 449
- 450
- 451
- 452
- 453
- 454
- 455
- 456
- 457
- 458
- 459
- 460
- 461
- 462
- 463
- 464
- 465
- 466
- 467
- 468
- 469
- 470
- 471
- 472
- 473
- 474
- 475
- 476
- 477
- 478
- 479
- 480
- 481
- 482
- 483
- 484
- 485
- 486
- 487
- 488
- 489
- 490
- 491
- 492
- 493
- 494
- 495
- 496
- 497
- 498
- 499
- 500
- 501
- 502
- 503
- 504
- 505
- 506
- 507
- 508
- 509
- 510
- 511
- 512
- 513
- 514
- 515
- 516
- 517
- 518
- 519
- 520
- 521
- 522
- 523
- 524
- 

5

6

7

Q

10

11

15

17

13

19

20

2

3.

2

2

?

2

2

2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT LIST**

<u>Exhibit No.</u>	<u>Exhibit Title</u>	<u>Pages</u>
1	Findings of Fact, Conclusions of Law, and Judgment	9

EXHIBIT 1

EXHIBIT 1

1 1750

2  
3  
4  
5  
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

8 NEVADA AGENCY AND TRANSFER  
9 COMPANY, a Nevada corporation,

Case No. CV15-02259  
Dept. No. 10

10 Plaintiff,

11 vs.

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW, AND**  
**JUDGMENT**

12 WEISER ASSET MANAGEMENT, LTD.,  
13 a Bahamas company; ATHANASIOS  
14 SKARPELOS, an individual; and  
DOES 1-10,

15 Defendants.

16 \_\_\_\_\_/  
ATHANASIOS SKARPELOS, an individual,

17 Cross-Claimant,

18 vs.

19 WEISER ASSET MANAGEMENT, LTD., a  
20 Bahamas company, and WEISER (BAHAMAS)  
LTD., a Bahamas company.

21 Cross-Defendants.

22 \_\_\_\_\_/  
23 WEISER ASSET MANAGEMENT, LTD.,  
24 a Bahamas company, WEISER (BAHAMAS), LTD.,  
a Bahamas company,

25 Cross-Claimants.

26 vs.

27 ATHANASIOS SKARPELOS, an individual,  
28 Cross-defendant.  
\_\_\_\_\_ /

1                   **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

2           This action came before this Court for a bench trial on January 28, 2019. This is  
3 an interpleader action filed by Nevada Agency and Transfer Company ("NATCO"),  
4 which was discharged from liability and dismissed from the case prior to trial. The  
5 operative pleadings to be resolved by the Court at trial were: (1) the Answer To Amended  
6 Complaint and Crossclaim filed by defendant Athanasios Skarpelos ("Skarpelos") on May  
7 23, 2016 and (2) the Answer and Cross-Claim filed by defendants Weiser Asset  
8 Management, Ltd. ("WAM") and Weiser (Bahamas) Ltd. ("Weiser Capital") (WAM and  
9 Weiser Capital are sometimes collectively referred to herein as "Weiser"). As framed by  
10 the pleadings, Skarpelos and Weiser asserted competing claims to 3,316,666 shares of  
11 stock (the "Disputed Stock") in Anavex Life Sciences Corp. ("Anavex").

12           During the trial, the Court listened to the testimony of the following people:  
13 Christos Livadas ("Livadas"), Skarpelos, Alexander Walker ("Walker") and Lambros  
14 Pedafronimos ("Pedafronimos"). The Court also reviewed and considered documentary  
15 evidence that was admitted at trial.

16           Based on the evidence presented at trial, the Court enters the following findings  
17 of fact, conclusions of law and judgment in this matter.

18                   **FINDINGS OF FACT**

19           1.       WAM is a Class 1 broker-dealer registered with and regulated by the  
20 Financial Services Authority and Securities Commission of the Bahamas. WAM is also a  
21 registered foreign broker-dealer in Canada, regulated by the Ontario Securities  
22 Commission.

23           2.       Weiser Capital is an affiliate entity to WAM and provides investment  
24 banking advisory services and deal arrangements as an investor and principal on behalf of  
25 WAM and its clients. Basically, Weiser Capital would direct clients to WAM. Livadas is  
26 the owner and director of Weiser Capital.

27           3.       Livadas is also the owner and director of Weiser Holdings, Ltd. ("Weiser  
28 Holdings"). Weiser Holdings acquired WAM in 2014 and is now the parent company of

1 WAM. Prior to that acquisition, WAM and Weiser Capital were two entirely separate  
2 entities.

3 4. The prior owner of WAM was Equity Trust Bahamas, Ltd. ("Equity  
4 Trust"). One of the principals of Equity Trust was Howard Daniels ("Daniels"), who later  
5 became one of two contacts that Skarpelos had at WAM in 2011.

6 5. In 2011, Skarpelos applied for and opened an account with WAM.  
7 Skarpelos funded the account with his Anavex Stock Certificates Nos. 0660 ("Certificate  
8 No. 660") and No. 0753 ("Certificate No. 753"). Certificate 660 represents 92,500 shares  
9 of Anavex stock and was issued to Skarpelos in 2007. Certificate 753 represents  
10 6,633,332 shares of Anavex stock and was issued to Skarpelos in 2009. In opening the  
11 account, Skarpelos was assisted by Daniels and Pedafronimos.

12 6. Skarpelos withdrew money, or had people withdraw money on his behalf,  
13 from his WAM account. In doing so, Skarpelos took his account balance into a negative  
14 position in the amount of \$153,679.54 as of March 25, 2013.

15 7. In early 2013, Skarpelos caused NATCO to cancel Stock Certificates No.  
16 660 and No. 753, falsely reporting them as "lost" when in fact he knew the certificates had  
17 been deposited with WAM in 2011.

18 8. On April 2, 2013, there was a sale of 3,316,666 shares of Skarpelos'  
19 Anavex stock represented by Certificate 753 to an unidentified third party. Pursuant to  
20 this transaction, WAM credited Skarpelos' account in the amount of \$249,580, taking it to  
21 a positive balance of \$95,775.46. Thereafter, a substantial portion of that money was  
22 withdrawn from Skarpelos' account leaving a balance of \$4,115.36 as of December 31,  
23 2013. The withdrawn money was provided from Skarpelos' WAM account to  
24 Pedafronimos, and Pedafronimos withdrew that money through transactions in May, July,  
25 August and September of 2013 and presumably gave that money to Skarpelos.

26 9. The Answer and Cross-Claim filed by WAM and Weiser Capital claimed  
27 ownership of the Disputed Stock under the terms of a July 5, 2013 Stock Sale and  
28 Purchase Agreement ("July 2013 PSA"). The July 2013 PSA does not evidence a sale of

1 any kind to anybody. At trial, Livadas testified he used this document for something other  
2 than its intended purpose and that, contrary to Weiser's claims throughout this case, it is a  
3 meaningless document.

4 10. There is no evidence of a contract between Skarpelos and either WAM or  
5 Weiser Capital for the sale of Anavex stock at any time. Although Weiser asserted  
6 throughout this case that "it" was the owner of the Disputed Stock by virtue of the July  
7 2013 PSA, Livadas and WAM abandoned that claim at trial and instead relied on a new  
8 theory that WAM is the owner of the stock by virtue of the April 2, 2013 transaction.  
9 However, Livadas also testified that WAM was not even the purchaser of the stock under  
10 the April 2, 2013 transaction and that the stock was just transferred through WAM to a  
11 third party.

12 11. Weiser Capital had absolutely nothing to do with any sale by Skarpelos of  
13 any Anavex stock at any time. At best what happened in this case was that, arguably,  
14 WAM was just transferring the stock sold on April 2, 2013 to somebody else. WAM was  
15 never intended to be the purchaser of that stock, and there was no such agreement between  
16 Skarpelos and WAM.

17 12. No contract was formed for the sale of Anavex stock from Skarpelos to  
18 either WAM or Weiser Capital at any time. Because there is no contract between  
19 Skarpelos and WAM and/or Weiser Capital, the Weiser claims for declaratory relief,  
20 breach of contract and breach of the implied covenant of good faith and fair dealing all  
21 fail because they all rely entirely upon the existence of a contract.

22 13. Any conclusion of law set forth below which is more appropriately a  
23 finding of fact is hereby incorporated as a finding of fact.

#### 24 **CONCLUSIONS OF LAW**

25 14. "Basic contract principles require, for an enforceable contract, an offer and  
26 acceptance, meeting of the minds, and consideration." *Certified Fire Prot. Inc. v.*  
27 *Precision Construction, Inc.*, 128 Nev. 371, 378, 283 P.3d 250, 255 (2012), citing *May v.*  
28 *Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). "A meeting of the minds



1 exists when the parties have agreed upon the contract's essential terms." *Id.*, citing *Roth v.*  
2 *Scott*, 112 Nev. 1078, 1083, 921 P.2d 1262, 1296 (1996). "Which terms are essential  
3 depends on the agreement and its context and also on the subsequent conduct of the  
4 parties, including the dispute which arises and the remedy sought." *Id.*, citing  
5 Restatement (Second) of Contracts § 131 cmt. g (1981). Whether a contract exists is a  
6 question of fact entitled to deference unless clearly erroneous or not based on substantial  
7 evidence. *Id.*, citing *May v. Anderson*, 121 Nev. at 672-73, 119 P.3d at 1257.

8 15. When the essential terms of a contract have yet to be agreed upon by the  
9 parties, a contract cannot be formed. *Certified Fire*, 128 Nev. at 379, 283 P.3d at 255,  
10 citing *Nevada Power Co. v. Public Util. Comm'n*, 122 Nev. 821, 839-840, 138 P.3d 486,  
11 498-499 (2006).

12 16. Here, there is no evidence of an offer and acceptance between Skarpelos  
13 and either WAM or Weiser Capital, nor is there any meeting of the minds as to the  
14 relevant and essential terms of any contract. The Court concludes as a matter of law that  
15 there was no contract between Skarpelos and either WAM or Weiser Capital for the sale  
16 and purchase of any Anavex stock at any time, much less the Disputed Stock.

17 17. In order to establish a claim for breach of contract, the claiming party must  
18 establish: (1) the existence of a valid contract; (2) a breach by the defendant; and (3)  
19 damage as a result of the breach. *Saini v. Int'l Game Tech.*, 434 F.Supp.2d 913, 919-920  
20 (D. Nev. 2006), citing *Richardson v. Jones*, 1 Nev. 405, 405 (Nev. 1865).

21 18. Because the Court has found that no valid contract existed between  
22 Skarpelos and either WAM or Weiser Capital, Weiser's claim for breach of contract fails.

23 19. In order to establish a claim for breach of the implied covenant of good  
24 faith and fair dealing, the claiming party must establish: (1) that the plaintiff and  
25 defendant were parties to an agreement; (2) that defendant owed a duty of good faith to  
26 the plaintiff; (3) the defendant breached that duty by performing in a manner that is  
27 unfaithful to the purpose of the contract; and (4) that plaintiff's justified expectations were  
28

1 denied. *Hilton Hotels Corp. v. Butch Lewis Prod., Inc.*, 107 Nev. 226, 234, 808 P.2d 919,  
2 923 (1991).

3 20. Because the Court has found that no valid contract existed between  
4 Skarpelos and either WAM or Weiser Capital, Weiser's claim for breach of the implied  
5 covenant of good faith and fair dealing fails.

6 21. Although not raised by Weiser's pleadings, the Court further concludes that  
7 there is no contract implied-in-fact between Skarpelos and either WAM or Weiser Capital.  
8 Quantum meruit applies in actions based upon contracts implied-in-fact. *Certified Fire*,  
9 128 Nev. at 379, 283 P.3d at 256. "A contract implied-in-fact must be manifested by  
10 conduct; it is a true contract that arises from the tacit agreement of the parties." *Id.*  
11 (internal quotations and citations omitted). "To find a contract implied-in-fact, the fact-  
12 finder must conclude that the parties intended to contract and promises were exchanged,  
13 the general obligations for which must be sufficiently clear. *Id.*, 128 Nev. at 379-380, 238  
14 P.3d at 257. "It is at that point that a party may invoke quantum meruit as a gap-filer to  
15 supply the absent term." *Id.*, 128 Nev. at 380, 238 P.3d at 257. "Where such a contract  
16 exists, then, quantum meruit ensures the laborer receives the reasonable value, usually  
17 market price, for his services." *Id.*

18 22. Even if Weiser had timely raised this issue in its pleadings, the Court  
19 concludes there is no contract implied-in-fact because there is no evidence that Skarpelos  
20 intended to contract with either WAM or Weiser Capital. The Court concludes that the  
21 parties to the contract must be identified, and in this case Livadas' testimony was unclear  
22 whether WAM or Weiser Capital was the supposed purchaser of the stock. If the Court  
23 cannot even establish that basic premise, it cannot find or conclude that there is an oral  
24 contract, a written contract, or even an implied-in-fact contract. The Court cannot find or  
25 conclude there was a meeting of the minds because neither WAM nor Weiser Capital  
26 seems to know who claims to be the owner.

27 23. "When sitting in equity, however, courts must consider the entirety of the  
28 circumstances that bear upon the equities." *Shadow Wood Homeowners Ass'n, Inc. v.*

1 *New York Community Bancorp., Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1114 (2016).  
2 “This includes considering the status and actions of all parties involved, including whether  
3 an innocent party may be harmed by granting the desired relief.” *Id.*, 366 P.3d at 1115,  
4 citing *Smith v. U.S.*, 373 F.2d 419, 424 (4<sup>th</sup> Cir. 1996) (“Equitable relief will not be  
5 granted to the possible detriment of innocent third parties.”) (other citations omitted). It is  
6 a “recognized province” of a court sitting in equity to do “complete justice between the  
7 parties.” *MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961).

8 24. “Interpleader is an equitable proceeding to determine the rights of rival  
9 claimants to property held by a third person having no interest therein.” *Balish v.*  
10 *Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976). “In such a proceeding, each  
11 claimant is treated as a plaintiff and must recover on the strength of his own right to title  
12 and not upon the weakness of his adversary’s. *Id.*, 92 Nev. at 137, 546 P.2d at 1300. In  
13 an interpleader action, each claimant must succeed in establishing his right to the property  
14 by a preponderance of the evidence. *Midland Ins. Co. v. Friedgood*, 577 F.Supp. 1407  
15 (S.D.N.Y. 1984).

16 25. Based on the foregoing, Skarpelos’ single cause of action for declaratory  
17 relief is granted. Skarpelos is the owner of all shares of Anavex stock previously  
18 represented by Certificates Nos. 660 and 753 and now represented by Certificate No. 975.

19 26. Neither WAM nor Weiser Capital, nor anyone claiming through WAM or  
20 Weiser Capital, has any ownership interest in Anavex stock represented by Certificates  
21 Nos. 660, 753 or 975.

22 27. Weiser’s claims for declaratory relief, breach of contract and breach of the  
23 implied covenant of good faith and fair dealing are all dismissed.

24 28. However, as indicated above, the Court finds that Skarpelos agreed to sell  
25 shares on April 2, 2013 to an unknown third party and that, as a result, WAM credited  
26 Skarpelos’ account \$249,580 pursuant to that transaction. This credit took the account  
27 from a balance of negative \$153,679.54 to a positive balance of \$95,775.46. The Court  
28 further found that Skarpelos subsequently withdrew and received a substantial portion of

1 those funds, eventually leaving a balance of \$4,115.36. Therefore, despite Weiser's  
2 failure to plead this claim for relief, the Court concludes it has equitable jurisdiction to  
3 enter judgment against Skarpelos and in favor of WAM in the total amount of  
4 \$245,464.64. Allowing Skarpelos to retain ownership of the Disputed Stock and the funds  
5 he received would result in a windfall. This is an obligation that is separate from and  
6 independent of Skarpelos' ownership of stock in Anavex and has no bearing on his  
7 ownership.

8 29. Any finding of fact set forth above which is more appropriately a  
9 conclusion of law is hereby incorporated as a conclusion of law.

#### 10 **JUDGMENT**

11 Based on the foregoing findings of fact and conclusions of law,

12 IT IS HEREBY ORDERED AND ADJUDGED that Athanasios "Tom" Skarpelos  
13 is the sole, true and rightful owner of all shares of stock in Anavex Life Sciences Corp.,  
14 previously represented by Certificates Nos. 660 and 753 and now represented by  
15 Certificate No. 975.

16 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that neither Weiser  
17 Asset Management, Ltd. (referred to above as WAM) nor Weiser (Bahamas) Ltd.  
18 (referred to above as Weiser Capital) have any claim of ownership to any of the shares  
19 previously represented by Certificates No. 660 and 753 and now represented by  
20 Certificate No. 975, nor does any other person or entity claiming any ownership to said  
21 shares by or through Weiser Asset Management, Ltd. or Weiser (Bahamas) Ltd.

22 IT IS HEREBY FURTHER ORDERED that Nevada Agency and Transfer  
23 Company shall take such action as is necessary to reflect in Anavex's stock register,  
24 corporate books and records that Athanasios "Tom" Skarpelos is the sole, true and rightful  
25 owner of all the legal and equitable interest in all the shares previously represented by  
26 Certificates No. 660 and 753 and now represented by Certificate No. 975.

1 IT IS HEREBY FURTHER ORDERED AND ADJUDGED that judgment is  
2 entered against Athanasios "Tom" Skarpelos and in favor of WAM in the total amount of  
3 \$245,464.64.

4 Dated this 22 day of April, 2019.

5   
6 DISTRICT JUDGE

**Tab No. "6"**

1 **2250**  
JOHN F. MURTHA, ESQ.  
2 Nevada Bar No. 835  
DANE W. ANDERSON, ESQ.  
3 Nevada Bar No. 6883  
4 SETH J. ADAMS, ESQ.  
Nevada Bar No. 11034  
5 **WOODBURN AND WEDGE**  
Sierra Plaza  
6 6100 Neil Road, Ste. 500  
P.O. Box 2311  
7 Reno, Nevada 89505  
Telephone : (775) 688-3000  
8 [jmurtha@woodburnandwedge.com](mailto:jmurtha@woodburnandwedge.com)  
9 [danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)  
[sadams@woodburnandwedge.com](mailto:sadams@woodburnandwedge.com)  
10 *Attorneys for Defendant/Cross-Claimant*  
*Athanasios Skarpelos*

11  
12 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

13 \*\*\*

14 NEVADA AGENCY AND TRANSFER  
15 COMPANY, a Nevada corporation,

Case No. CV15-02259  
Dept. No. 10

16 Plaintiff,

17 vs.

**SKARPELOS' MOTION TO ALTER**  
**OR AMEND JUDGMENT**

18 WEISER ASSET MANAGEMENT, LTD.,  
19 a Bahamas company; ATHANASIOS  
20 SKARPELOS, an individual; and  
DOES 1-10,

21 Defendants.

22 \_\_\_\_\_/  
ATHANASIOS SKARPELOS, an individual,

23 Cross-Claimant,

24 vs.

25 WEISER ASSET MANAGEMENT, LTD., a  
26 Bahamas company, and WEISER (BAHAMAS)  
27 LTD., a Bahamas company.

28 Cross-Defendants.  
\_\_\_\_\_ /

1 WEISER ASSET MANAGEMENT, LTD.,  
2 a Bahamas company, WEISER (BAHAMAS), LTD.,  
3 a Bahamas company,

4 Cross-Claimants.

5 vs.

6 ATHANASIOS SKARPELOS, an individual,  
7 Cross-defendant.

8 **SKARPELOS' MOTION TO ALTER OR AMEND JUDGMENT**

9 Cross-Claimant Athanasios Skarpelos ("Skarpelos") moves this Court pursuant to  
10 NRCP 59(e) for an amendment of Court's judgment entered on April 22, 2019, removing  
11 that portion of the judgment awarding cross-claimant Weiser Asset Management, Ltd.  
12 ("WAM") the sum of \$245,464.64. This motion is based on the following memorandum  
13 of points and authorities, the entire file, and the testimony and documentary evidence  
14 presented at trial.

15 **I. INTRODUCTION**

16 Skarpelos asks the Court to amend its judgment to remove the award of  
17 \$245,465.54 to WAM for three reasons: (1) Skarpelos was denied due process because  
18 the award was outside the scope of the pleadings and Skarpelos was never provided fair  
19 notice that an award would be based on an April 2013 transaction rather than the July  
20 2013 Stock Sale and Purchase Agreement ("July 2013 PSA") that was Weiser's sole basis  
21 of relief throughout this lawsuit; (2) the award to WAM was based on the Court's  
22 equitable powers even though WAM had an adequate legal remedy it chose not to  
23 pursue—that Skarpelos breached his account agreement related to an April 2013  
24 transaction involving a sale of his stock to another WAM customer; and (3) the Court  
25 lacked subject matter jurisdiction to make the award to WAM because that award did not  
26 involve Weiser's claim to ownership of the Disputed Stock that was the subject of this  
27 equitable interpleader proceeding.

28 ///



1 Therefore, Skarpelos requests the Court amend its judgment by removing the  
2 monetary award to WAM.

## 3 **II. RELEVANT BACKGROUND**

4 On April 22, 2019, the Court entered its judgment in this matter. The Court's  
5 judgment was that Skarpelos was the owner of the Disputed Stock. The Disputed Stock  
6 was the "fund" or "res" put in issue by NATCO in filing this interpleader action.  
7 Interpleader of the Disputed Stock was NATCO's only claim for relief in its Amended  
8 Complaint filed on April 29, 2016.

9 Both Skarpelos and WAM filed answers and cross-claims against each other, each  
10 claiming to be the owner of the Disputed Stock.<sup>1</sup> WAM's claim to ownership was based  
11 on the July 2013 PSA pursuant to which Skarpelos allegedly agreed to sell the Disputed  
12 Stock to "Weiser." See Weiser's Answer and Cross-claim filed on May 24, 2016, pp. 10-  
13 11, ¶¶ 3-5, 9-11, 13, 18. Indeed, all of Weiser's claims are based solely on the July 2013  
14 PSA. Id. It is the only contract identified in Weiser's cross-claim and the only contract  
15 Skarpelos is alleged to have breached.<sup>2</sup>

16 During this lawsuit "Weiser" rotated between WAM and Weiser Capital as the  
17 claimed owner of the Disputed Stock. However, whether WAM or Weiser Capital was  
18 the soup de jour, Weiser consistently maintained that the basis of ownership for both was  
19 the July 2013 PSA. For instance, WAM initially claimed to be the owner pursuant to the  
20 July 2013 PSA. See Trial Exhibit 3. However, in opposing summary judgment, Weiser  
21 claimed that the July 2013 PSA "memorialized" a transaction that occurred in April 2013,  
22 by which Weiser Capital—not WAM—became the owner of the Disputed Stock. See  
23 Weiser's Opposition To Skarpelos' Motion for Summary Judgment, p. 1:6-8, and the  
24 supporting Declaration of Christos Livadas, ¶ 13. Weiser claimed that WAM and Weiser  
25

---

27 <sup>1</sup> As documented in other briefs, WAM and Weiser (Bahamas) Ltd. (aka "Weiser Capital"), referring to  
28 themselves collectively as "Weiser" both claimed to be the owner. See Weiser's Answer and Cross-Claim filed  
on May 24, 2016 at p. 1, lines 27-28; p. 5, ¶¶ 3-5, 9-11.

<sup>2</sup> This is consistent with WAM's October 30, 2015 demand letter to NATCO, in which it claimed Skarpelos sold  
the Disputed Stock to WAM "[o]n or about July 12, 2013."

1 Capital “had already performed their part by crediting Skarpelos’s [sic] account...in April  
2 2013.” Weiser Opposition at 1:16-22; Livadas Declaration at ¶ 15.

3 In other words, Weiser’s position in April 2018 was that there was only one  
4 transaction—the sale of the Disputed Stock to Weiser Capital—and that the July 2013  
5 PSA documented that transaction. Id. at 1:18-19, 4:23-24. This continued to be Weiser’s  
6 position at Livadas’ deposition in October 2018 in Athens, Greece. Livadas confirmed at  
7 trial that his deposition testimony was that the July 2013 PSA (Trial Exhibit 30) was  
8 intended to memorialize the April 2013 sale to Weiser Capital—not WAM. That Weiser  
9 Capital was the owner of the Disputed Stock remained Weiser’s position up to the week  
10 before trial, as it stated in its Trial Statement: “Skarpelos agreed to sell 3,316,666 shares  
11 in WAM’s possession to Weiser Capital for \$250,000 (minus a \$420 processing fee).”  
12 Weiser’s Trial Statement, filed on January 23, 2019, at 4:17-18.

13 **Nevertheless, at trial Livadas testified there were two transactions. First, the**  
14 **April 2013 transaction was the sale of the Disputed Stock to WAM (not Weiser**  
15 **Capital) and that the July 2013 PSA, which purports to sell the stock to Weiser**  
16 **Capital, was for another transaction that never occurred and so Livadas used the**  
17 **July 2013 PSA for something other than its intended purpose.** At the hearing on  
18 February 6, 2019, the Court found Weiser’s use of that document to assert claims and  
19 make representations to NATCO to be “very troubling.” See Transcript of Proceedings,  
20 February 6, 2019, attached hereto as **Exhibit 1**, at 6:18-7:11. The Court also noted  
21 Livadas’ testimony that neither WAM nor Weiser Capital was the owner of the Disputed  
22 Stock and that the stock was really just to be transferred through them to somebody else.  
23 Id. at 21:21-22:2; 23:11-13.

24 In other words, at trial Weiser completely abandoned its pleadings and prior  
25 representations that the July 2013 PSA was the basis of its claims in this lawsuit and  
26 attempted a completely new theory that WAM (not Weiser Capital) was the owner of the  
27 Disputed Stock by virtue of the April 2013 transaction. Livadas testified that the July  
28

1 2013 PSA that had been the basis of Weiser's claims both before trial and throughout 3  
2 years of litigation was essentially a "meaningless" document.

3 After trial, the Court concluded that the July 2013 PSA "does not demonstrate a  
4 sale of any type to anyone in this case" and that there was "no evidence that I can use to  
5 conclude that there was in fact a contract for the sale of shares of stock to either Weiser  
6 Asset Management or to Weiser Capital." Id. at pp. 19-20. Based on the absence of such  
7 a contract, the Court ruled against WAM and Weiser Capital and dismissed their claims  
8 for declaratory relief, breach of contract and breach of the implied covenant of good faith  
9 and fair dealing. Id. at pp. 22-23, 35.

10 Nevertheless, the Court awarded WAM \$245,464.64 for money the Court found  
11 WAM paid Skarpelos pursuant to the April 2013 transaction, in which Livadas claimed  
12 Skarpelos sold stock to an unidentified third-party client of WAM. It appears the basis for  
13 the Court's award is the account agreement it found existed between Skarpelos and  
14 WAM. The Court found Skarpelos had an account with WAM, that he was in negative  
15 cash position on that account, and that "something occurred" such that his account was  
16 credited \$249,480, and that money presumably was given to Skarpelos. Id. at 35-36.

17 However, WAM never pleaded a claim that Skarpelos had breached the account  
18 agreement related to the April 2013 transaction and therefore WAM was entitled to  
19 \$249,480 in damages. Weiser's only pleaded claims were related to the July 2013 PSA.  
20 While Weiser Capital at one point asserted it was the owner of the Disputed Stock by  
21 virtue of the April 2013 transaction, the basis of its claim still was the July 2013 PSA that  
22 "documented" that transaction. Skarpelos had no notice of any claim by Weiser that it  
23 was requesting damages related to an April 2013 sale of stock to another WAM customer.  
24 As the Court pointed out, WAM's theory at trial that it was the owner of the Disputed  
25 Stock pursuant to the April 2013 transaction was different than the theory it had pleaded  
26 and argued all along in this lawsuit. Id. at 21:6-22:5. Skarpelos objected to this claim  
27 being raised for the first time at trial. Nevertheless, citing its equitable powers, the Court  
28 awarded WAM substantial damages based on the April 2013 transaction.

1 As set forth below, Skarpelos respectfully submits that the award to WAM was  
2 manifest error and requests that the Court amend its judgment to remove that portion  
3 awarding WAM \$245,464.64.

## 4 **II. LAW AND ARGUMENT**

5 NRCP 59(e) provides that a motion to alter or amend a judgment must be filed no  
6 later than 28 days after the entry of judgment. “Among the basic grounds for a Rule 59(e)  
7 motion are correcting manifest errors of law or fact, newly discovered or previously  
8 unavailable evidence, the need to prevent manifest injustice, or a change in controlling  
9 law. *Id.* at 124–27, 976 P.2d 518. *AA Primo Builders, LLC v. Washington*, 126 Nev. 578,  
10 582, 245 P.3d 1190, 1193 (2010). Rule 59(e) provides an opportunity to seek correction  
11 at the trial court level of an erroneous order or judgment, thereby initially avoiding the  
12 time and expense of appeal. *Chiara v. Belaustegui*, 86 Nev. 856, 859, 477 P.2d 857, 858  
13 (1970). Rule 59(e) provides the remedy that, where the issues have been litigated and  
14 resolved, a motion may be made to alter or amend a judgment. *Id.*

15 A motion to alter or amend judgment under Rule 59(e) is “an extraordinary remedy  
16 which should be used sparingly.” *Stevo Design, Inc. v. SBR Mktg. Ltd.*, 919 F.Supp.2d  
17 1112, 1117 (D. Nev. 2013). However, “[s]ince Rule 59(e) does not itself provide  
18 standards for granting or denying a motion to alter or amend, the district court enjoys  
19 considerable discretion in granting or denying the motion.” *Id.*

20 For three reasons, Skarpelos believes this case presents an extraordinary  
21 circumstance justifying the use of this extraordinary remedy. First, the award was outside  
22 the scope of the pleadings and Skarpelos was never provided fair notice that an award  
23 would be based on an April 2013 transaction as opposed to the July 2013 PSA. Second,  
24 the award to WAM was based on the Court’s equitable powers even though WAM had an  
25 adequate legal remedy it chose not to pursue—that Skarpelos breached his account  
26 agreement with WAM and that WAM sustained damages. Third, while the Court’s  
27 equitable powers are broad with respect to resolving the *equities* involved, the equity the  
28 Court attempted to fashion here—awarding WAM \$245,464.64 for money the Court

1 found Skarpelos received from WAM pursuant to the April 2013 transaction—does not  
2 relate to the property that was the subject of this equitable interpleader proceeding, the  
3 Disputed Stock, and therefore the Court lacked subject matter jurisdiction to make the  
4 award to WAM.

5 **(1) WAM never pleaded damages for breach of an April 2013 transaction.**

6 The Court found that “something occurred” in April 2013 for which Skarpelos  
7 account was credited \$249,480. Exhibit 1 at 35:10. The Court also found that Skarpelos  
8 then received that money. It appears the Court’s award was based on the account  
9 agreement the Court found existed between Skarpelos and WAM. Yet nowhere in  
10 Weiser’s pleadings is a breach of that contract alleged. The only contract Weiser alleges  
11 was entered into and breached by Skarpelos is the July 2013 PSA. See Weiser’s Cross-  
12 Claim at ¶¶ 3-5, 13 and 18.

13 Nevada is a notice-pleading jurisdiction and liberally construes pleadings to place  
14 into issue matter which is fairly noticed to the adverse party. *Chavez v. Robberson Steel*  
15 *Co.*, 94 Nev. 597, 599, 584 P.2d 159, 160 (1978). Here, there was no fair notice of any  
16 claim by WAM for damages based on its brokerage account agreement with Skarpelos.  
17 Weiser’s cross-claim identifies only the July 2013 PSA, which the Court found “has little  
18 to no meaning whatsoever in this case.” Exhibit 1 at 18:22-19:4.

19 There was no pleading that fairly gave Skarpelos notice that WAM was claiming  
20 damages based on an alleged breach of the WAM brokerage account agreement. The only  
21 notice Weiser gave was that its ownership claims were specifically and entirely based on  
22 the July 2013 PSA, a theory it abandoned at trial when Livadas testified he used that  
23 document for another purpose. Skarpelos was ambushed at trial with a new theory and  
24 objected accordingly. Skarpelos was never given fair notice of the nature and basis of the  
25 claim or the relief requested. Therefore, the award to WAM was manifest error and  
26 resulted in manifest injustice to Skarpelos.

27 As the Court pointed out at trial, the true nature of Weiser’s claim is that it was  
28 exposed to liability, for which the appropriate remedy would be damages—not ownership

1 of the Disputed Stock—had WAM actually pleaded that claim and produced evidence to  
2 support it. That did not happen. Weiser misled Skarpelos, the Court and NATCO both  
3 prior to and throughout the entirety of this litigation as to the nature of its claims. The  
4 Court’s award of money damages to Weiser is inequitable given Weiser’s failure to plead  
5 such a claim. Skarpelos was denied due process.

6 **(2) WAM had an adequate legal remedy it chose not to pursue.**

7 For equitable relief to be appropriate, there must generally be no adequate legal  
8 remedy. *Cont’l Airlines, Inc. v. Intra Brokers, Inc.*, 24 F.3d 1099, 1104 (9<sup>th</sup> Cir. 1994),  
9 *citing Orantes–Hernandez v. Thornburgh*, 919 F.2d 549, 558 (9<sup>th</sup> Cir.1990). Here, the  
10 Court’s award to WAM appears to have been based on the account agreement the Court  
11 found existed between Skarpelos and WAM, and pursuant to which WAM credited  
12 Skarpelos’ account. WAM had an adequate legal remedy against Skarpelos—it could  
13 have and should have asserted a claim against Skarpelos’ for breach of the account  
14 agreement and corresponding damages related to the April 2013 transaction. Instead,  
15 Weiser’s pleadings identify only the July 2013 PSA pursuant to which Skarpelos allegedly  
16 sold the Disputed Stock to Weiser.

17 Because WAM had an adequate legal remedy for breach of contract against  
18 Skarpelos related to the April 2, 2013 transaction, but failed to pursue that remedy, there  
19 can be no equitable relief based on that claim. Had that legal claim been asserted,  
20 Skarpelos would have had the right to demand a jury trial to resolve it. But because the  
21 only claims at issue dealt with ownership of the Disputed Stock pursuant to the July 2013  
22 PSA—and not damages based on the WAM brokerage account agreement related to the  
23 April 2013 transaction—this issue was never properly presented. Skarpelos has been  
24 deprived of his constitutional right to a jury trial on that claim.

25 WAM had an adequate legal remedy but failed to properly present and pursue it.  
26 Therefore, it was manifest error for the Court to award WAM equitable relief.

27 ///

28 ///

1           (3)    The award to WAM is entirely unrelated to the property that was the  
2                   subject of this equitable interpleader and therefore the Court lacked  
3                   subject matter jurisdiction to make that award.

4           “Interpleader is an equitable proceeding to determine the rights of rival claimants  
5   to property held by a third person having no interest therein.” *Balish v. Farnham*, 92 Nev.  
6   133, 137, 546 P.2d 1297, 1299 (1976). It proposes to protect the stakeholder from a  
7   double vexation in regard to one liability. *Id.* An essential element of the equitable basis  
8   of interpleader is that two or more persons have made claims against each other for the  
9   same thing. *Rutherford v. Union Land & Cattle Co.*, 47 Nev. 21, 213 P. 1045, 1047–48  
10   (1923). This equitable power includes bringing in parties that may have an interest in the  
11   “subject matter of the lawsuit” to achieve the “very essence of an interpleader suit” which  
12   is to protect a party from double vexation in respect to one liability. *Id.*

13           Here, the “essential element” of the Court’s equitable jurisdiction in interpleader  
14   was the competing claims of Skarpelos and Weiser to *ownership* of the Disputed Stock.  
15   As discussed above, Weiser’s claims in this case all are centered on its allegation that, in  
16   July 2013, Weiser and Skarpelos entered into a contract by which Skarpelos agreed to sell  
17   the Disputed Stock to Weiser.

18           However, the Court’s award to WAM was based on its finding that something  
19   occurred such that Skarpelos’ account was credited \$249,580. Exhibit 1, 35:10. It  
20   appears the Court based this award on the account agreement the Court found existed  
21   between Skarpelos and WAM, and that the award related to the April 2013 sale from  
22   Skarpelos to another WAM customer. That April 2013 transaction is an entirely separate  
23   issue that, as the Court found, did not involve WAM’s claim to ownership of the Disputed  
24   Stock upon which this Court’s equity jurisdiction was based.

25           The April 2013 sale was a “pass through” transaction in which, as the Court noted,  
26   Weiser did not even claim to be the owner of the Disputed Stock. *Id.* at 21:21-22:2.  
27   Thus, as admitted by Mr. Livadas, that transaction had nothing to do with WAM’s claim  
28

1 to ownership of the Disputed Stock and therefore was entirely unrelated to the Court's  
2 equitable jurisdiction in interpleader over the Disputed Stock.

3 When sitting in equity, courts must consider the entirety of the circumstances that  
4 bear upon the *equities*. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5,  
5 366 P.3d 1105, 1114 (2016) (emphasis added). Generally, a party may assert a crossclaim  
6 where the claim arises out of the same transaction or occurrence that is the subject matter  
7 of the original action or of a counterclaim, or if the claim relates to any property that is the  
8 subject matter of the original action. NRCP 13(g).

9 Cross-claims may be asserted pursuant to Rule 13 to attack other parties' claims  
10 against the common fund, "but for no other purpose." *Allstate Ins. Co. v. McNeill*, 382  
11 F.2d 84, 87 (4<sup>th</sup> Cir. 1967). Interpleader "may not be used as the arena for resolution of  
12 claims of the defendants inter se, except insofar as they have adversity in their demands  
13 upon the fund." *Id.* Where the respective claimants' entitlement to the stake is the sole  
14 the sole contested issue, "[t]he stake marks the outer limits of the controversy." *Hartford*  
15 *Casualty Ins. Co. v. Lexington Ins. Co.*, 2016 WL 1267801 at \*3 (S.D.N.Y. 2016), citing  
16 *Lee v. W. Coast Life Ins. Co.*, 688 F.3d 1004, 1011 (9<sup>th</sup> Cir. 2012).

17 Here, the Court's award to WAM involves a transaction that, by Livadas' own  
18 admission, did not relate to WAM's claim to ownership of the Disputed Stock. He  
19 admitted WAM was not the owner by way of the April 2013 transaction. *Id.* at 21:21-  
20 22:2. The Court's award is based on the Court's finding that Skarpelos was paid  
21 \$249,480 for the April 2013 sale but did not deliver the stock to the third party WAM  
22 customer, and WAM was exposed to liability and had to cover the loss. Any such breach  
23 of contract by Skarpelos is a breach of an agreement that has nothing to do with WAM's  
24 claim to *ownership* of the Disputed Stock. The competing claims of Skarpelos and  
25 Weiser (whose claim was always based on the July 2013 PSA) to such ownership were  
26 the sole contested issues in this case as framed by the pleadings. As such, ownership of  
27 the Disputed Stock marked the "outer limits of the controversy."

28 ///



1 The Court's award of \$245,464.64 to WAM exceeded its subject matter  
2 jurisdiction in this case.

3 **III. CONCLUSION**

4 Skarpelos respectfully requests that the Court amend its judgment to remove the  
5 award of \$245,464.64 to WAM.

6 **AFFIRMATION**

7 The undersigned does hereby affirm that the preceding document does not contain the  
8 personal information of any person.

9 DATED: April 24, 2019.

WOODBURN AND WEDGE

11 By /s/ Dane W. Anderson  
12 John F. Murtha, Esq.  
13 Nevada Bar No. 835  
14 Dane W. Anderson, Esq.  
15 Nevada Bar No. 6883  
16 Seth J. Adams, Esq.  
17 Nevada Bar No. 11034

18 *Attorneys for Defendant/  
19 Cross-Claimant  
20 Athanasios Skarpelos*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Woodburn and Wedge and that on this date,  
3 I caused to be sent via electronic delivery through the Court's E-flex system a true and correct  
4 copy of ***SKARPELOS' MOTION TO ALTER OR AMEND JUDGMENT*** to:  
5

6 Alexander H. Walker III, Esq.  
7 57 West 200 South, Ste. 400  
8 Salt Lake City, Utah 84101  
9 **awalker@law@aol.com**

10 *Attorneys for Plaintiff*

11 Jeremy J. Nork, Esq.  
12 Frank Z. LaForge, Esq.  
13 Holland & Hart LLP  
14 5441 Kietzke Lane, 2<sup>nd</sup> Floor  
15 Reno, Nevada 89511  
16 **jnork@hollandandhart.com**  
17 **fzlaforge@hollandandhart.com**

18 *Attorneys for Defendants*  
19 *Weiser Asset Management, Ltd.*  
20 *and Weiser (Bahamas), Ltd.*

21 DATED: April 25<sup>th</sup>, 2019.

Clay P. Brust, Esq.  
Robison, Sharp, Sullivan & Brust  
71 Washington Street  
Reno, NV 89503  
**cbrust@rbsllaw.com**

*Attorneys for Plaintiff*

22 /s/ Dianne M. Kelling  
23 Dianne M. Kelling, an employee of  
24 Woodburn and Wedge  
25  
26  
27  
28

## **EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>	<b>No. of Pages <sup>*</sup></b>
1	Transcript of Proceedings – February 6, 2019	52

\* Number of Pages Does **Not** include the divider page marking the exhibit.

FILED  
Electronically  
CV15-02259  
2019-04-25 11:24:30 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7237893 : yvyloria

# EXHIBIT 1

# EXHIBIT 1

1 CODE: 4185  
2 LORI URMSTON, CCR #51  
3 Litigation Services  
4 151 Country Estates Circle  
5 Reno, Nevada 89511  
6 (775) 323-3411  
7 Court Reporter

8 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 HONORABLE ELLIOTT A. SATTler, DISTRICT JUDGE

11 NEVADA AGENCY & TRANSFER CO.,

12 Plaintiff,

Case No. CV15-02259

13 vs.

Dept. No. 10

14 WEISER ASSET, ET AL.,

15 Defendants.  
16 \_\_\_\_\_/

17 TRANSCRIPT OF PROCEEDINGS

18 Wednesday, February 6, 2019

19 Reno, Nevada

20  
21  
22  
23  
24 Reported by:

LORI URMSTON, CCR #51

1 APPEARANCES:

2 FOR WEISER ASSET MANAGEMENT AND WEISER BAHAMAS, LTD.:

3 HOLLAND & HART

4 By: JEREMY L. NORK, ESQ.

5 5441 Kietzke Lane, Second Floor

6 Reno, Nevada 89511

7 FOR ANTHANASIOS SKARPELOS:

8 WOODBURN AND WEDGE

9 By: DANE W. ANDERSON, ESQ.

10 SETH J. ADAMS, ESQ.

11 6100 Neil Road, Suite 500

12 Reno, Nevada 89509

1 RENO, NEVADA; WEDNESDAY, FEBRUARY 6, 2019; 3:04 P.M.

2 --o0o--

3 THE COURT: We will go back on the record in  
4 CV15-02259, Weiser entities versus Skarpelos. Mr. Nork  
5 is here on behalf of Weiser Asset Management, Ltd., and  
6 Weiser Bahamas, Ltd.

7 Good afternoon, Mr. Nork.

8 MR. NORK: Good afternoon, Your Honor.

9 THE COURT: Mr. LaForge is not joining us today?

10 MR. NORK: I've got him busy running around doing  
11 other things, Your Honor.

12 THE COURT: Good for you. That's what associates  
13 are for.

14 MR. NORK: That's right.

15 THE COURT: So it's nice to see you again. The  
16 Court would note that Mr. Livadas is not present. I  
17 assume that Mr. Livadas is in warmer climates.

18 MR. NORK: I would hope so, Your Honor, yes.

19 THE COURT: Mr. Anderson and Mr. Adams are here as  
20 well as Mr. Murtha. Good afternoon to all of you  
21 gentlemen. They're here on behalf of Mr. Skarpelos.  
22 Mr. Skarpelos, I assume, is also in a warmer climate at  
23 this point.

24 MR. ANDERSON: I certainly hope so, Your Honor.

1 And I tried to send Mr. Adams somewhere else, but he  
2 wanted to come anyway.

3 THE COURT: Poor Mr. Adams, he couldn't even get  
4 shooed away.

5 We are here, gentlemen, for the Court to put its  
6 findings of fact, conclusions of law and order on the  
7 record regarding the bench trial that took place last  
8 week. The Court heard arguments of counsel on Friday,  
9 and then the matter was submitted to the Court for  
10 consideration.

11 It was my hope to be able to come back and put the  
12 findings of fact, conclusions of law and the order on  
13 the record Friday, but I thought it was more prudent to  
14 go back and review my notes again, review all of the  
15 other documents and exhibits that had been admitted in  
16 the case, look at some of the case law that was cited  
17 by the parties and refresh my mind with that again, and  
18 then come back and make an informed decision while the  
19 issues were still fresh in my mind, but at the same  
20 time after having given it appropriate consideration.

21 Counsel, just so you both know how I -- or all of  
22 you three know how I approach bench trials, I really  
23 try and be mindful of the instructions that we give  
24 jurors in how to judge the credibility of witnesses,



1 the application of direct versus circumstantial  
2 evidence, and all the other things that we tell juries  
3 all the time. When I'm the finder of fact, I don't  
4 just sit here and think, "Well, this is what I think or  
5 this is what I would do." I really try and place  
6 myself into the position of what would the jury be  
7 instructed on any given issue.

8 This case is particularly difficult because the  
9 credibility of the witnesses is so important. And  
10 before I put the findings of fact on the record, I want  
11 the parties to understand something about how I  
12 reviewed -- or how I viewed the credibility of all of  
13 the witnesses. And I don't say this in a dismissive  
14 way towards either Mr. Anderson or Mr. Nork, but in the  
15 closing arguments I certainly got the impression that  
16 both counsel were arguing in essence my client is free  
17 from all responsibility and blame, my client is clean,  
18 shall we say, or lily white, and this other guy is  
19 sullied.

20 And, frankly, I found the testimony of all of the  
21 witnesses, Mr. Livadas, Mr. Skarpelos and  
22 Mr. Pedafronimos, to be troubling. And troubling only  
23 in the sense that there were some just large  
24 inconsistencies in what they said versus what they did

1 and in some of the things that they testified to that  
2 they wanted me to believe. Let's put it that way. It  
3 was not exclusive to one side or the other.

4 I don't think I have an obligation to put on the  
5 record every single inconsistency that I saw or every  
6 single issue that I took note of, because I don't think  
7 a jury has a responsibility to do that either. I'm  
8 just going to tell you what my findings of fact are,  
9 but it is informed by my review of all of the exhibits,  
10 my judgment of the credibility of the witnesses as they  
11 testified, frankly, the believableness or  
12 unbelievableness of a number of things that all three  
13 of them said.

14 As we also know, I heard from Mr. Walker. I'm not  
15 trying to pump Mr. Walker up, but he was uninterested  
16 in the process and frankly came across as the most  
17 credible witness out of everybody.

18 You know, one of the glaring examples of difficulty  
19 in credibility and believing some of the things that  
20 people said were just, for example, Mr. Livadas  
21 choosing to take the document that was admitted as  
22 exhibit --

23 I should have had this at my fingertips. I  
24 apologize. I apologize, counsel, for having to leaf

1 through my exhibit binder again. I had all this in my  
2 head. Oh, here it is.

3 It's Exhibit 30, the Stock Sale and Purchase  
4 Agreement, which I found was submitted to him for one  
5 reason, and then Mr. Livadas testified that he just  
6 converted it to something that was entirely different.  
7 He just changed the meaning of the entire document.  
8 And then that document was used to establish legal  
9 claims or at least to make representations to NATCO  
10 about actions that were done on behalf of some entity.  
11 I found that very troubling.

12 Regarding Mr. Skarpelos, the testimony that he's  
13 never received any money whatsoever from any of these  
14 transactions, frankly, based on the circumstantial  
15 evidence in the case, I find that very difficult to  
16 believe.

17 The testimony of Mr. Pedafronimos about the sheer  
18 coincidence that all of the transactions that are  
19 referenced in Exhibit No. 44 -- or strike that. I  
20 think it's 40. There it is. No, it was 44. I had it  
21 right.

22 In Exhibit 44, it was just a mere coincidence that  
23 he was having interaction with Mr. Livadas, he was  
24 getting exactly that amount of money at or near the

1 time that all of these transactions took place, and  
2 Mr. Pedafronimos wants me to believe that that's all  
3 because he was getting money from his Birnbaum account  
4 that there's absolutely no evidence of.

5 I don't -- jurors are not supposed to judge the  
6 credibility of witnesses nor to make any determination  
7 in the case simply by counting the number of witnesses  
8 on one side and the side with the more witnesses is the  
9 prevailing party. And I certainly didn't do that. But  
10 I just -- I found Mr. Pedafronimos's testimony  
11 regarding specifically those financial transactions to  
12 be unbelievable. It just -- there was no credibility  
13 to that.

14 Maybe if there was just one -- I mean, if something  
15 happens once, you look at it and go, okay, well, maybe  
16 that's just a coincidence. But as I listened to his  
17 testimony, I judged his credibility, I considered the  
18 evidence that was offered, and certainly the  
19 cross-examination of Mr. Nork of Mr. Pedafronimos on  
20 those issues, I just found his testimony regarding the  
21 financial issues to be unpersuasive I guess would be  
22 the best way to put it.

23 So I consider all of those things. I think that  
24 there are a number of issues in the case. And rather

1 than sit here and just talk about them in a general  
2 sense, I'll make my determinations about the case.

3 The Court would note, as I stated a moment ago,  
4 that I have reviewed all of the exhibits that have been  
5 admitted. What I do during a bench trial is I have my  
6 court clerk remove all of the unadmitted exhibits from  
7 my binder so I only have the things that are admitted  
8 during the course of the trial in the binder that I  
9 eventually review. So I've reviewed all of the  
10 admitted exhibits.

11 I have reviewed the relevant portions of the  
12 transcripts from the depositions. I don't go back and  
13 review the entire deposition, because that's not  
14 relevant for my consideration. I only review those  
15 portions that are used to either impeach or refresh the  
16 witness's recollection.

17 So I've reviewed those exhibits as well, and I've  
18 also considered the pleadings in the case. The  
19 pleadings themselves that bring the matter to the  
20 Court's attention are the Amended Complaint filed by  
21 Nevada Agency & Transfer Company file stamped  
22 April 29th of 2016, the Answer to the Amended Complaint  
23 and the Crossclaim filed by Mr. Skarpelos on May  
24 23rd of 2016, and the Answer and Crossclaim filed by

1 Weiser Asset Management, Ltd., and Weiser Bahamas,  
2 Ltd., on May 24th of 2016.

3 For ease of the parties, I will refer to Weiser  
4 Asset Management, Ltd., from this point forward as WAM,  
5 the acronym W-A-M. And I will refer to Weiser Bahamas,  
6 Ltd., and Bahamas is parenthetical, as Weiser Capital  
7 from this point forward, because that's how the parties  
8 really identified them and spoke about them during the  
9 course of the trial and I think that is much easier for  
10 the parties to understand the Court's analysis.

11 I also apologize. I think I'm coming down with a  
12 little bit of a cold. So forgive me, gentlemen, if my  
13 voice starts to go out.

14 The Court makes the following findings of fact  
15 regarding the evidence presented at the trial. And  
16 just so you know, I am referring to some of the notes  
17 that I've made regarding your trial statements and also  
18 regarding the suggested findings of fact, conclusions  
19 of law and order that the parties have submitted. I'm  
20 not using either of your suggested findings of fact,  
21 conclusions of law and order, but I've used them to  
22 inform my analysis.

23 One moment.

24 Okay. The Court makes the following findings of

1 fact:

2 The Court finds that WAM is a Class 1 broker-dealer  
3 maintaining custody of client assets of over  
4 \$250,000,000. Strike that. The Court does not make  
5 the finding of fact regarding the amount of assets that  
6 WAM has.

7 The Court would note that WAM does have a  
8 significant number of clients. I believe that  
9 Mr. Livadas testified that after his purchase of WAM he  
10 increased their client roster from approximately 100  
11 customers to approximately 2,000 customers now. So the  
12 Court would make that note.

13 I should say before I go any further that the  
14 findings of fact are all based on a preponderance of  
15 the evidence. So the Court is making all of these  
16 determinations based on a preponderance of the  
17 evidence.

18 So the Court does find that WAM is a Class 1  
19 dealer-broker and that it does have customers of  
20 approximately 2,000 customers currently. Additionally,  
21 the Court does find based on the testimony that WAM is  
22 a registered and regulated Class 1 broker by the  
23 Financial Services Authority and Securities Commission  
24 of the Bahamas and is a registered foreign

1 broker-dealer in Canada regulated by the Ontario  
2 Securities Commission.

3 The Court further finds that Weiser Capital is an  
4 affiliate entity to WAM and provides investment banking  
5 advisory services and deal arrangements as an investor  
6 and principal on behalf of WAM and its clients.

7 The Court does finds that Christos Livadas is the  
8 owner and director of Weiser Holdings, Ltd. Weiser  
9 Holdings, Ltd., now is the parent company of WAM. The  
10 Court finds that WAM was acquired by Weiser Holdings,  
11 Ltd. Additionally, the Court does find that  
12 Mr. Livadas is the owner and director of Weiser  
13 Capital.

14 The Court finds that the prior owner of WAM was  
15 Equity Trust Bahamas, Ltd. The Court also notes that  
16 one of the principals of Equity Trust Bahamas, Ltd.,  
17 was Howard Daniels. The Court finds that there is  
18 evidence by a preponderance of the evidence that  
19 Mr. Daniels was one of the two contacts that  
20 Mr. Skarpelos had at WAM and was Mr. Skarpelos's prior  
21 previous -- was Mr. Skarpelos's previous contact at WAM  
22 in 2011.

23 The Court does also find that WAM and Weiser  
24 Capital, prior to Mr. Livadas purchasing WAM and



1 creating Weiser Holdings, Ltd., were two separate  
2 entities. Based on the testimony of Mr. Livadas, he  
3 would direct clients to WAM. And so the name Weiser in  
4 both probably assists in marketing. However, they were  
5 two entirely separate entities at the relevant times  
6 that the Court will discuss in these proceedings.  
7 Mr. Livadas was the owner and director of Weiser  
8 Capital at the times discussed by the Court.

9 The Court does find that Mr. Skarpelos did apply  
10 for and did open an account with WAM in 2011. There  
11 is -- there has been a significant amount of discussion  
12 by the attorneys and a large amount of questioning both  
13 of Mr. Livadas and Mr. Skarpelos and Mr. Pedafronimos  
14 about whether or not an account was opened by  
15 Mr. Skarpelos.

16 The Court finds that by a preponderance of the  
17 evidence there was an account opened. The Court finds  
18 that Mr. Skarpelos funded that account with his Anavex  
19 stock certificates, which are Exhibit No. 2, that  
20 primarily being Exhibit -- excuse me -- the Stock  
21 Certificate 753.

22 Stock Certificate 753 is in the name of Athanasios  
23 Skarpelos. It is for Anavex stock in the amount of  
24 6,633,332 shares. Those shares were issued to

1 Mr. Skarpelos on October 29th of 2009.

2 The Court finds that Mr. Skarpelos did open the  
3 account with WAM, not with Weiser Capital but with WAM,  
4 through the assistance of Mr. Daniels and  
5 Mr. Pedafronimos in May of 2011. There was some  
6 discussion about whether or not Mr. Skarpelos ever  
7 received a notification that his account was officially  
8 opened or whether he was receiving statements about his  
9 account.

10 Mr. Skarpelos's testimony that he didn't think that  
11 he had an account with WAM simply was unpersuasive.  
12 The Court finds that the evidence does exist and does  
13 support the conclusion that there was an account.

14 The Court would note that in Exhibit No. 2 there is  
15 an application in place that describes what  
16 Mr. Skarpelos's desires are for his WAM account. And  
17 certainly a number of things that were testified to  
18 during the course of the trial were inconsistent with  
19 Exhibit No. 2, but the Court also finds that it is  
20 reasonable to conclude based on the evidence that it  
21 heard that the parties were simply doing things outside  
22 of the application.

23 So while the application itself exists, and the  
24 Court has no reason to believe that it does not, and

1 that, as it says in the report, Mr. Skarpelos wanted to  
2 run a cash only account, he didn't want to trade on the  
3 margins, he didn't want to let anybody else have access  
4 to his account or to make trades or access his money in  
5 the account, the Court finds that it is more likely  
6 than not by a preponderance of the evidence that  
7 Mr. Livadas, Mr. Skarpelos and Mr. Pedafronimos simply  
8 were doing things that weren't contemplated by the  
9 application. But that doesn't mean in my mind that  
10 there wasn't an account there.

11 Mr. Skarpelos did deposit the disputed stock  
12 certificate, and the Court finds that Mr. Skarpelos did  
13 withdraw money or had people withdraw money on his  
14 behalf from the account. The Court finds that there's  
15 no reason to believe that the account didn't have a  
16 negative balance at the time of the April sale or at  
17 the time that Exhibit 44 is referencing about -- I want  
18 to say July, if I remember correctly. As of  
19 December 31st of 2013 it showed that there was a  
20 negative account balance on February 1st of 2013 of  
21 \$140,000, and then the transfers began to take place.

22 The Court finds that it's reasonable -- it is a  
23 reasonable conclusion based on the preponderance of the  
24 evidence that the account existed, that the shares were

1 in place and that Mr. Skarpelos was withdrawing money  
2 against those shares. And the Court finds that the  
3 testimony of Mr. Livadas regarding allowing  
4 Mr. Skarpelos to get into that position was reasonable.

5 The Court does note that Mr. Livadas testified that  
6 he really wasn't familiar with WAM's bookkeeping or  
7 records at the time he purchased WAM in 2013 or 2014.

8 When did he purchase WAM, gentlemen? Help me with  
9 that.

10 MR. ANDERSON: Your Honor, I believe his  
11 declaration testimony said December of 2014. And he  
12 gave perhaps slightly different testimony, but I think  
13 that's what his declaration says.

14 MR. NORK: I think the year is correct, 2014.  
15 There was some dispute about which month.

16 THE COURT: So the Court does -- I don't think the  
17 exact month is determinative of any of the issues that  
18 the Court is considering, but the Court does find that  
19 based on the circumstantial evidence that I heard that  
20 it's reasonable to conclude that Mr. Skarpelos did have  
21 a negative account balance when WAM was purchased by  
22 Mr. Livadas, and so the Court believes that that  
23 account existed in the state that it was.

24 The Court also finds that Mr. Skarpelos did contact

1 Nevada Agency & Transfer Company, NATCO, and indicated  
2 that his Stock Certificates No. 660 and 753 were lost.  
3 The Court finds that Mr. Skarpelos's explanation for  
4 why he stated that those documents -- or those stock  
5 certificates were lost was unpersuasive.

6 It is clear in the exhibits, which are 13, 14 and  
7 15, specifically with Exhibit No. 14, that being lost  
8 is one of the possible explanations for filing an  
9 Affidavit of Lost Stock Certificate. It indicates in  
10 Exhibit No. 14, quote, "That the present status of the  
11 certificate is as follows," parenthetically, "please  
12 describe, i.e., lost, misplaced or stolen." So, lost,  
13 misplaced or stolen are mere suggestions of why  
14 something is lost or it's not available.

15 Mr. Skarpelos testified that he knew exactly where  
16 the stock certificate was. There was never a question  
17 about the stock certificate itself or its location,  
18 because Mr. Skarpelos knew that he had deposited it  
19 with WAM to open his account.

20 So the statement to NATCO that the stock  
21 certificate was lost is simply not true. The Court  
22 would also note that that was signed under a notary  
23 from Greece. So he's swearing to the authenticity of  
24 that allegation. And he testified that he knew it just

1 wasn't true.

2       Additionally, Mr. Skarpelos testified that the  
3 reason he identified "lost" was because it was one of  
4 the three things that he saw there and his attorney  
5 told him to do it or words to that effect. And the  
6 Court just doesn't find that to be persuasive at all.  
7 I have no idea why Mr. Skarpelos took the actions that  
8 he did with NATCO, but he took them. So now we've got  
9 the lost stock certificate.

10       The Court also finds that there was a sale of  
11 3,316,666 shares of Anavex stock in April of 2013,  
12 specifically on April 2nd of 2013. The Court finds  
13 that by a preponderance of the evidence that sale took  
14 place. Additionally, the Court finds that the  
15 documents that I referenced earlier --

16       I keep doing this. I keep getting lost in my  
17 exhibit binder. The actual sale document was what,  
18 counsel?

19       MR. ANDERSON: Your Honor, I believe Exhibit 30 was  
20 the Purchase and Sale Agreement.

21       THE COURT: There it is.

22       The Court finds that Exhibit 30, which purports to  
23 be a July 5th, 2013, sale of the stock to Weiser  
24 Capital, is simply not what it purports to be. The

1 Court finds that that document has little to no meaning  
2 whatsoever in the case other than evidencing that  
3 Mr. Livadas is willing to just change a document from  
4 one thing to something else. So the Court doesn't put  
5 any significant weight in Exhibit 30 beyond what I'll  
6 comment on in a minute, but the Court would note that  
7 Exhibit 30 does not demonstrate a sale of any type to  
8 anyone in this case.

9 Further, the Court does find that the money was  
10 provided to Mr. Pedafronimos as identified in the  
11 trial, that he withdrew the money in May, July, August  
12 and September in the amounts stated as well as the  
13 \$20,000 in medical expenses as were identified in  
14 Exhibit No. 44. The Court does find that that actually  
15 took place and that that money was provided to  
16 Mr. Pedafronimos presumptively to be given to  
17 Mr. Skarpelos.

18 The Court finds that Mr. Skarpelos based on the  
19 evidence that I have before me has really no bank  
20 accounts of any type, and so I find that  
21 circumstantially it's reasonable to conclude that  
22 Mr. Pedafronimos was contacting Mr. Livadas and asking  
23 Mr. Livadas to forward money to Mr. Pedafronimos. And  
24 that money would then logically be given to

1 Mr. Skarpelos for some reason. Again, it's based on  
2 circumstantial evidence, but circumstantial evidence is  
3 just as compelling as direct evidence. And based on  
4 what was demonstrated during the course of the trial  
5 through all of the exhibits and the cross-examination  
6 of Mr. Nork, the Court simply finds that it's  
7 reasonable to conclude that that money was being sent  
8 from WAM to Mr. Pedafronimos for Mr. Skarpelos's  
9 benefit.

10 Now, with that in mind, the Court has to turn to  
11 the allegations in the competing crossclaims. And the  
12 Court first turns to the crossclaim for the Weiser  
13 entities, both WAM and Weiser Capital.

14 As we know, WAM and Weiser Capital are asserting  
15 both a request for equitable relief and a request for a  
16 breach of contract and a breach of the implied covenant  
17 of good faith and fair dealing.

18 The Court must determine whether or not there was  
19 in fact a contract. Mr. Nork on behalf of the Weiser  
20 entities has to demonstrate to the Court that a  
21 contract existed between Weiser Capital or Weiser Asset  
22 Management and Mr. Skarpelos.

23 The Court finds that there is no evidence that I  
24 can use to conclude that there was in fact a contract



1 for the sale of the shares of stock to either Weiser  
2 Asset Management or to Weiser Capital. It's just  
3 unclear based on the testimony that that agreement  
4 between either one of those entities and Mr. Skarpelos  
5 ever took place.

6 With all respect to Mr. Nork, the testimony at the  
7 trial was inconsistent with the testimony identified --  
8 or, excuse me -- the anticipated testimony identified  
9 in the trial statement, it was different than the  
10 testimony that was demonstrated in relevant parts from  
11 Mr. Livadas's depositions and, telling, it was  
12 different than the anticipated evidence that would be  
13 offered as purported -- or as propounded in the two  
14 causes of action in the crossclaim.

15 It was identified all along that somehow this  
16 contract, the Stock Sale and Purchase Agreement that is  
17 Exhibit No. 30, was an agreement between someone,  
18 either Weiser Capital or WAM, and Mr. Skarpelos. But  
19 the Court finds that it has not been demonstrated that  
20 the parties had a contract at all based on what I see.

21 The Court finds that Mr. Livadas has testified that  
22 WAM wasn't even the owner of the stock. I was going  
23 through my notes, and during Mr. Livadas's testimony I  
24 actually made a note that Mr. Livadas testified that

1 Weiser Capital and WAM don't own the stock, because the  
2 stock really was just to be transferred through them.  
3 And so the Court finds that there was no contract  
4 between either Weiser Asset Management or Weiser  
5 Capital and Mr. Skarpelos to do anything.

6 The Court notes that Mr. Livadas testified that  
7 there was a large amount of documentary evidence that  
8 may exist and may be in either Weiser Asset Management  
9 or Weiser Holdings' possession at this point, but the  
10 Court can't base its determination on any of those  
11 things. I can only base my decision on what I see here  
12 in court. And what I see in court shows me that there  
13 was no contract specifically for the sale.

14 I want to make an important distinction. I'm not  
15 saying that there wasn't an account that Mr. Skarpelos  
16 had. I've already made that finding. I think he did  
17 have an account.

18 The Court is called upon to decide whether or not  
19 there was a contract to sell 3,336,000 shares to  
20 anyone, either -- well, not anyone -- to either Weiser  
21 Capital or Weiser Asset Management. The Court finds  
22 that it simply has not been demonstrated to the Court  
23 that those -- or that that agreement was reached by the  
24 parties.

1           Therefore, as we've previously discussed, if the  
2 Court finds that there is no contract between either  
3 Weiser Asset Management -- or WAM, I should say, and  
4 Weiser Capital, there's no contract. There can also be  
5 no breach of the implied covenant of good faith and  
6 fair dealing. And, additionally, if there is no  
7 contract, there can be no request for declaratory  
8 relief.

9           The Weiser entities are not entitled to declaratory  
10 relief, because they have no interest in the shares of  
11 stock themselves. At best what happened in this case  
12 was that arguably Weiser Asset Management, WAM, was  
13 just transferring the stock to somebody else. They  
14 were never purchasing the stock. That was never the  
15 agreement between Mr. Skarpelos and WAM.

16          The Court also finds that Weiser Capital had  
17 absolutely nothing to do with the sale. At best the  
18 argument -- or what the Court would look at it is  
19 whether or not there was an agreement between WAM and  
20 Mr. Skarpelos. And based on the confusion in the  
21 bookkeeping, the questionable way that the case has  
22 been demonstrated to the Court and the testimony of  
23 Mr. Livadas, I just can't come to the conclusion that  
24 there was a contract between either Weiser Capital or

1 WAM and Mr. Skarpelos. Therefore, the Court rules  
2 against those entities in their claims for  
3 compensatory -- or, excuse me -- declaratory relief,  
4 their contract claim and their claim for the implied  
5 covenant of good faith and fair dealing.

6 The Court will make the following conclusions of  
7 law that inform my decision. And these deal with both  
8 contract issues and equity issues.

9 Counsel, I apologize if I kind of mangle them all  
10 up, but I trust, Mr. Anderson, you'll be able to  
11 clarify them and make them in a cogent order when you  
12 prepare the Court's final order.

13 Okay. The Court finds that Certified Fire  
14 Protection, Incorporated, versus Precision  
15 Construction, Incorporated, 128 Nevada 371, 283 P.3d  
16 250, a 2012 case, is particularly instructive in  
17 determining what a contract is in the state of Nevada  
18 and the terms that that contract must contain.

19 Both parties cite to Certified Fire Protection,  
20 Incorporated, in their pleading. At page 378 of the  
21 Nevada Reporter and page 255 of the Pacific Third  
22 Reporter, the Nevada Supreme Court says the following  
23 regarding an express contract: Quote, "Basic contract  
24 principles require, for an enforceable contract, an

1 offer and an acceptance, a meeting of the minds, and  
2 consideration," close quote, citing May versus  
3 Anderson, 121 Nevada 688, at page 672, 119 P.3d 1254,  
4 at page 1257, a 2005 case.

5 The Certified Fire Protection court goes on to say,  
6 "A meeting of the minds exists when the parties have  
7 agreed upon the contract's essential terms," citing  
8 Roth versus Scott, 112 Nevada 1078, at page 1083, 921  
9 P.2d 1262, at page 1265, a 1996 case.

10 The Certified Fire Protection court goes on to  
11 state, "Which terms are essential," quote, "depends on  
12 the agreement and its context and also on the  
13 subsequent conduct of the parties, including the  
14 dispute which arises and the remedies sought," close  
15 quote, citing the Restatement (Second) of Contracts at  
16 Section 131 from 1981.

17 Quote, "Whether a contract exists is a question of  
18 fact requiring this court," that being the supreme  
19 court, "to defer to the district court's findings  
20 unless they are clearly erroneous or not based on  
21 substantial evidence," close quote, citing back to May  
22 versus Anderson at page 672 to 673 of the Nevada  
23 Reporter and at page 1257 of the Pacific Third  
24 Reporter.

1       The Certified Fire Protection court goes on to  
2 state at page 379 of the Nevada Reporter and at page  
3 255 of the Pacific Third Reporter, quote, "When  
4 essential terms such as these have yet to be agreed  
5 upon by the parties, a contract cannot be formed,"  
6 close quote, citing to Nevada Power Company versus  
7 Public Utility Commission, 122 Nevada 821, at 839 to  
8 840, 138 P.3d 46, at page 498 to 499, a 2006 case.

9       So in order to have a contract, you need to have  
10 those basic principles. You need to have offer and  
11 acceptance, a meeting of the minds and consideration.

12       The Court finds that in this case it simply has not  
13 been demonstrated that there actually was an offer and  
14 an acceptance between Mr. Skarpelos and WAM. It simply  
15 is not there. Further, the Court finds that there is  
16 no meeting of the minds as to the relevant terms or  
17 essential terms of the contract.

18       The testimony of the parties was certainly  
19 inconsistent, but the Court finds that the Weiser  
20 entities and WAM specifically have failed to prove by a  
21 preponderance of the evidence that there was in fact a  
22 contract that existed between them and Mr. Skarpelos.

23       I'll state again, it may be that there is some  
24 record out there in all of the records, the boxes and

1 boxes that are contained somewhere in the Bahamas that  
2 Mr. Livadas testified to that may demonstrate what the  
3 contract was or what the terms were, that there was an  
4 agreement. There may be some digital record, an email  
5 or a cell phone conversation or a text that exists.

6 Mr. Livadas testified that he had repeated contact  
7 with Mr. Skarpelos. There is an exhibit with multiple  
8 screen shots of interaction between Mr. Skarpelos and  
9 Mr. Livadas. I have no idea what the contents of those  
10 are. The screen shot itself wasn't offered to support  
11 the truth of the matter asserted, that is, that there  
12 are conversations, it's just this is what he says the  
13 screen shot looked like. So I just don't know. It  
14 just hasn't been demonstrated.

15 Regarding Mr. Livadas's testimony that there was  
16 evidence there, it just couldn't be admitted for  
17 privacy or for privilege reasons, the Court would say  
18 that that is not necessarily accurate. As we discussed  
19 earlier, there are ways that you can redact or edit or  
20 seal information.

21 So the fact that Mr. Livadas simply chose not to  
22 provide documents that he says he has because it's  
23 privileged information frankly is not persuasive.  
24 Either the discovery commissioner or I could have

1 worked with the parties if in fact that became an  
2 issue. But as I sit here right now, the Court finds  
3 simply that those basic contract principles as  
4 identified in the Certified Fire Protection case are  
5 not present.

6 In order to establish a breach of contract cause of  
7 action the parties need to demonstrate the following:  
8 Number one, that there is the existence of a valid  
9 contract. Number two, that that contract had been  
10 breached by the defendant in this case, Mr. Skarpelos.  
11 And, number 3, that damage resulted as -- there were  
12 damages as a result of the breach.

13 Mr. Nork cites Saini versus International Game  
14 Technology, 434 F.Supp.2d 913, at page 919 to 920, a  
15 2006 case, from the Federal District of Nevada. I  
16 think that is an accurate statement of the law and the  
17 Court does adopt it. However, there is no breach of  
18 contract in this case because the Court finds there is  
19 not -- it has not been demonstrated that there is a  
20 valid contract between the parties. Therefore, the  
21 Court finds that the breach of contract cause of action  
22 fails.

23 In order to succeed on a breach of the implied  
24 covenant of good faith and fair dealing, Mr. Nork



1 accurately cites to the following elements for that  
2 cause of action: Number one, that the plaintiff and  
3 the defendant were parties to an agreement. Number  
4 two, the defendant owed a duty of good faith to the  
5 plaintiff. Number three, the defendant breached that  
6 duty by performing in a manner that was unfaithful to  
7 the purpose of the contract. And, number four, that  
8 the plaintiffs' justified expectations were denied.  
9 That is a citation basically back to Hilton Hotels  
10 versus Butch Lewis Productions, Incorporated, which is  
11 808 P.2d 919, at page 923.

12 One moment.

13 The Nevada citation for the Butch Lewis case is 107  
14 Nevada 226. So when you prepare your findings of fact  
15 you can have both, you can include the Nevada citation,  
16 but I was reading from his pleadings.

17 Additionally, the Court notes that in the Certified  
18 Fire Protection case it can be argued that there was a  
19 contract based upon -- or a contract implied-in-fact.  
20 Beginning at page 379 of the Nevada Reporter and page  
21 256 of the Pacific Third Reporter, the Nevada Supreme  
22 Court says the following: Quote, "Thus, quantum  
23 meruit's first application is in actions based upon  
24 contracts implied-in-fact. A contract implied-in-fact

1 must be," quote, "manifested by conduct," close quote,  
2 citing to Smith versus Recrion, R-e-c-r-i-o-n,  
3 Corporation, 91 Nevada 666, at page 668, 541 P.2d 663,  
4 at page 664, a 1975 case, and Hay versus Hay, 100  
5 Nevada 196, at page 198, 678 P.2d 672, at page 674, a  
6 1984 case.

7 Then the Nevada Supreme Court goes on to state,  
8 quote, "It is a true contract that arises from the  
9 tacit agreement of the parties. To find a contract  
10 implied-in-fact, the fact-finder must conclude that the  
11 parties intended to contract and promises were  
12 exchanged, the general obligations for which must be  
13 sufficiently clear. It is at that point that a party  
14 may invoke quantum meruit as a gap-filler to supply the  
15 absent term," citing a number of cases in other  
16 treatises.

17 The Court goes on to say, "Where such a contract  
18 exists, then, quantum meruit ensures that the laborer  
19 receives the reasonable value, usually the market  
20 price, for his services," citing to Restatement (Third)  
21 of Restitution and Unjust Enrichment.

22 However, the Court in this case, I'm saying I,  
23 cannot find that there is a contract implied-in-fact,  
24 because I cannot conclude that the parties intended to

1 contract with each other and that promises were  
2 exchanged based on the evidence that has been presented  
3 in this case.

4 We already know based on the testimony it's not  
5 exactly clear who allegedly even purchased the stock.  
6 Was it WAM or was it Weiser Capital? I appreciate the  
7 argument Mr. Nork makes that it really doesn't matter  
8 which one. I'm just paraphrasing there. But I think  
9 it does matter. I think that the parties have to be  
10 identified. It has to be at least clear in the Court's  
11 mind who it is that Mr. Skarpelos allegedly was  
12 contracting with.

13 If we can't even establish that basic premise, then  
14 the Court doesn't find that you can get to an oral  
15 contract, a contract implied-in-fact or an actual  
16 contract. And certainly the parties can't -- if we  
17 can't get to that point, we can't get over that hurdle  
18 and we can't even address whether or not there was a  
19 meeting of the minds or what the terms were. But as I  
20 stated earlier, I can't even conclude that there was a  
21 meeting of the minds in the first place.

22 Additionally, regarding declaratory relief --

23 Hold on.

24 The Court will cite the parties to a number of

1 Nevada cases --

2 One moment. I had it right here.

3 -- regarding equity and what courts should look at  
4 when sitting in courts of equity. In Shadow Wood  
5 Homeowners Association versus New York Community  
6 BanCorp, which is 132 Nevada Advance Opinion 5, 366  
7 P.3d 1105, at page 1114, a 2016 case, the Nevada  
8 Supreme Court states, quote, "When sitting in equity,  
9 however, courts must consider the entirety of the  
10 circumstances that bear upon the equities." And I'll  
11 omit the citations there.

12 The Court goes on to state, "This includes  
13 considering the status of action of all parties  
14 involved, including whether an innocent party may be  
15 harmed by granting the desired relief," citing Smith  
16 versus United States, 373 F.2d 419, at page 424, a  
17 Fourth Circuit case from 1966, wherein the Fourth  
18 Circuit concluded, quote, "Equitable relief will not be  
19 granted to the possible detriment of an innocent third  
20 party."

21 Additionally, the Court notes when it sits in  
22 equity, according to a case by the name of MacDonald  
23 versus Krause, K-r-a-u-s-e, 77 Nevada 312, at page 318,  
24 362 P.2d 724, at page 727, a 1961 case, the Nevada

1 Supreme Court stated that "It is a recognized province  
2 of the courts of equity to do complete justice between  
3 the parties."

4 In Landex, L-a-n-d-e-x, versus the State, 94 Nevada  
5 469, at page 477, 582 P.2d 786, at page 791, a 1978  
6 case, the Nevada Supreme Court acknowledged, quote, "A  
7 court has the inherent power ancillary to its general  
8 equity jurisdiction to order restitution in an  
9 appropriate case."

10 Additionally, the parties acknowledged in their  
11 trial statements accurately that simply because the  
12 Court denies equitable relief for one party doesn't  
13 mean that the other party, in this case Mr. Skarpelos,  
14 ipso facto wins or prevails totally. Each party with  
15 their declaratory relief has an obligation to  
16 demonstrate to the Court it is entitled to relief.

17 Mr. Nork accurately cites to Balish, B-a-l-i-s-h,  
18 versus Farnham, F-a-r-n-h-a-m, 92 Nevada 133, at page  
19 137, 546 P.2d 1297, at page 1299, a 1976 case, for the  
20 proposition, quote, "Interpleader is an equitable  
21 proceeding to determine the rights of rival claimants  
22 to property held by a third person having no interest  
23 therein."

24 Then he goes on to state, and the Court agrees, "In

1 an interpleader action," quote, "each claimant is  
2 treated as a plaintiff and must recover on the strength  
3 of his own right to title and not upon the weakness of  
4 his adversaries." That is citing back to page -- the  
5 same page of the Balish case.

6 "Further, each claimant must succeed in  
7 establishing his right to the property by a  
8 preponderance of the evidence." That is citing to  
9 Midland Insurance Company versus Friedgood,  
10 F-r-i-e-d-g-o-o-d, 577 F.Supp.1047 -- strike that --  
11 1407 at 1411, a 1984 case, from the Southern District  
12 of New York.

13 In looking at Mr. Anderson's pleadings and also his  
14 trial statement, he basically offers the same analysis  
15 regarding the interpleader action and, that is, that  
16 each side really must establish its right or interest  
17 in the property.

18 The Court would also note that the parties have  
19 agreed and both acknowledge that the Court is able to  
20 fashion a remedy that isn't solely Mr. Skarpelos having  
21 the stock back and WAM or Mr. Livadas or Weiser Capital  
22 receiving nothing. I don't just simply put the parties  
23 back in the position that they were which was what  
24 Mr. Anderson's suggestion was in his trial statement

1 and in his argument.

2 The Court does acknowledge that because there is no  
3 contract of sale between WAM and Mr. Skarpelos, the  
4 shares themselves when they were sold and, therefore,  
5 Mr. Skarpelos's interest in Stock Certificate 753 has  
6 not changed based on the Court's determination that no  
7 contract existed. However, the Court has also noted  
8 that it does believe that Mr. Skarpelos had an account  
9 with Weiser Asset Management or WAM, that he was in a  
10 negative balance position, that something occurred and  
11 that he was credited \$249,480.

12 Therefore, it is the order of the Court as follows:  
13 That Weiser Asset Management or WAM and Weiser Capital,  
14 their claims for contract, for declaratory relief and  
15 for the implied covenant of good faith and fair dealing  
16 are dismissed as having not been proven by a  
17 preponderance of the evidence.

18 It is an additional order of the Court that  
19 Mr. Skarpelos's single cause of action for declaratory  
20 relief is granted. The Court finds that Mr. Skarpelos  
21 is the owner of the disputed shares of stock that have  
22 been interpled by NATCO in this proceeding.

23 The Court also pursuant to its equitable  
24 jurisdiction resolves the issue between the parties as

1 follows: The Court finds that as an additional  
2 determination, sitting as a court of equity, that  
3 Mr. Skarpelos does in fact owe Weiser Asset Management  
4 \$250,000 -- I shouldn't say 250 -- I should say  
5 \$249,580, because the Court does conclude based on the  
6 testimony that even though there wasn't a contract  
7 between WAM and Mr. Skarpelos, WAM did give that money  
8 to Mr. Skarpelos, either directly, as demonstrated by  
9 Exhibit No. 44, or through the findings that the Court  
10 has made that the money was going to Mr. Pedafronimos  
11 and then presumably Mr. Pedafronimos is giving it  
12 somehow to Mr. Skarpelos.

13 So the Court fashions a remedy that I believe is  
14 appropriate under the circumstances and, that is, that  
15 Mr. Skarpelos should be disgorged of those funds that  
16 were given to him from his account.

17 The Court notes that the initial portion of the  
18 funds were a liquidation of his negative balance with  
19 Weiser Asset Management in the amount of \$153,679.54.  
20 Correct that, because there was a wire transfer fee as  
21 well. So the actual negative balance as of March 25th  
22 of 2013 was \$153,804.54. Then when there is the credit  
23 of \$249,580, that brings him to a positive account  
24 balance of \$95,775.46.



1       There was no testimony at the trial that disputed  
2       that at the end of the last withdrawal, which was the  
3       \$7,500 Euro withdrawal and a \$125 transaction fee on  
4       September 18th of 2013, Mr. Skarpelos wound up having a  
5       cash positive balance of \$4,115.36.

6       So one moment. Let me do some quick math here on  
7       the bench.

8       I hadn't taken that cash balance into consideration  
9       at the time that I had made my conclusion regarding the  
10      actual amount of restitution or disgorgement, I should  
11      say, that Mr. Skarpelos must pay. So when I subtract  
12      the balance of \$4,115.36, because I heard no testimony  
13      to the contrary and I assume that balance still exists,  
14      I come up with \$245,464.64. That's the 249,580 less  
15      \$4,115.36.

16      If I did the math incorrectly, I apologize,  
17      gentlemen, but it's my intention that he,  
18      Mr. Skarpelos, return to Weiser Asset Management those  
19      funds, because the Court finds that it has at least  
20      been demonstrated to me that although there was no  
21      contract in place, he certainly was advanced those  
22      sums.

23      Additionally, the Court finds that allowing  
24      Mr. Skarpelos to both retain the stock and to have no

1 responsibility regarding the monies that were forwarded  
2 to him is an unreasonable windfall to Mr. Skarpelos.  
3 As I said, I just simply did not find his statements to  
4 be credible that throughout all of these transactions  
5 with Mr. Livadas he never received a dime, no money  
6 ever came to him, that he has no idea why these debits  
7 were being placed on his account, that he never raised  
8 any of these issues with Mr. Livadas. I just found it  
9 to be frankly unconvincing.

10 And so he shouldn't be entitled to both the  
11 windfall of keeping the stock, because the Court finds  
12 that there was no contract whatsoever, and the  
13 associated benefit of simply saying, "Oh, and, by the  
14 way, I get to keep the \$250,000 that you forwarded to  
15 me on my account." And, therefore, the Court finds  
16 that it is the equitable thing to do under the  
17 circumstances to force Mr. Skarpelos to disgorge those  
18 funds.

19 Additionally, the Court orders that Mr. Skarpelos  
20 shall not transfer, sell, gift, bequest, or in any  
21 other way dispose of or liquidate any of his Anavex  
22 stock until he has paid WAM the money back. And that  
23 is the only portion of the Court's judgment that,  
24 counsel, I would allow you to give me some additional

1 research on, because what I don't want to do is create  
2 an issue in the case that causes needless difficulty,  
3 but I also don't want Mr. Skarpelos to be able to just  
4 now continue to liquidate all of his stock and not take  
5 care of his responsibility as the Court has determined.

6 I just want him to get WAM paid back the money I  
7 think that they are owed. That's why I'm placing the  
8 limitation on his ability to dispose of any of that  
9 remaining stock that he identifies he still has. I  
10 know he's given away a million and a half or two  
11 million shares or something like that. He's given away  
12 a good chunk of it was his testimony subsequent to the  
13 failed or non-consummated sale to the mysterious  
14 Chinese investors, but he still has a significant  
15 amount of stock.

16 And what I will do for the first time today  
17 is look. I'm just curious. I remember the parties had  
18 indicated that Anavex stock was trading at a much  
19 higher rate than it had in the past. So let's see what  
20 Anavex is trading at today.

21 Anavex Life Science Corporation closed today at  
22 \$2.08 a share. So parenthetically -- and it has no  
23 impact on the Court's outcome, because I found that  
24 there was no contract at all. I also don't think it

1 would be fair for WAM or Mr. Livadas or Weiser Capital  
2 to have the unintended benefit of getting stock that's  
3 trading at or near \$2 a share when the sale back in  
4 2013 was -- as we discussed, it was like 8 cents a  
5 share is what the parties came to. That wasn't the  
6 intention of the parties at all.

7 So that is the Court's finding. The Court finds in  
8 favor of Mr. Skarpelos. The Court finds that  
9 Mr. Skarpelos owes Mr. Livadas a little under \$250,000.  
10 And the Court concludes that Mr. Skarpelos cannot  
11 transfer any of his assets in Anavex until he pays  
12 Mr. Livadas the money that is due and owing.

13 Do you believe that you would like to brief that  
14 final issue, Mr. Anderson?

15 MR. ANDERSON: Yes, Your Honor. I guess I would  
16 like to just think about it a little bit. It seems  
17 almost like sort of a stay pending appeal. And I  
18 haven't had a chance to really consider what the bond  
19 implications may be. Normally Mr. Livadas would be  
20 required to post some sort of a bond or to receive a  
21 stay that Skarpelos not do anything with the stock.

22 In this case at three million shares at \$2 a share  
23 we're talking about \$6 million, well in excess of the  
24 \$250,000 the Court has ordered. So I don't want to

1 extend this longer than necessary, but I do want to  
2 have a chance to think about it and discuss with my  
3 client and my colleagues and see if that's something  
4 that needs to be briefed. I'm happy to do it on an  
5 expedited basis so we can have finality to this, but I  
6 would like an opportunity to consider it.

7 THE COURT: I guess if it's selling at \$2 and  
8 change a share, just go sell 100,000 or 125,000 shares  
9 and it's all over with.

10 Mr. Nork, what are your thoughts?

11 MR. NORK: That's fine. I would like to look into  
12 that as well. The only thing I would point out is  
13 there was that four-to-one stock consolidation.

14 THE COURT: That's right. So now there's only like  
15 800,000 shares.

16 MR. ANDERSON: And I had forgotten about that.  
17 Mr. Nork is correct.

18 THE COURT: That is correct, Mr. Nork. I had  
19 completely forgotten about that. The Court would note  
20 that the parties stated in their trial statements that  
21 there was -- what? -- a four-to-one stock  
22 consolidation.

23 MR. NORK: Yes, Your Honor.

24 THE COURT: So there are not as many shares out

1 there, but still, even assuming that he has -- by "he"  
2 I mean Mr. Skarpelos -- has give or take 800,000 shares  
3 or 500,000 shares, he can certainly make this good.

4 You know, and it's funny when you raised that  
5 issue, Mr. Anderson, I hadn't really thought too much  
6 about an appeal. You're right, there's an appeal bond.  
7 I don't know if either party wishes to appeal the  
8 Court's decision. And I always tell people this: I am  
9 never offended if somebody appeals something that I do,  
10 because, I mean, that's your job. So if you want to  
11 appeal, go ahead and appeal. I'm just concerned that  
12 Mr. Skarpelos would liquidate his assets unnecessarily  
13 or make it more difficult to reimburse WAM for the  
14 money that was forwarded to him on his account.

15 MR. NORK: Your Honor, the other thing that occurs  
16 to me is I have a vague recollection that the order  
17 dismissing NATCO provides that they are not going to do  
18 anything until all appeals have run. So if NATCO -- I  
19 mean, they deposited the stock certificate with Your  
20 Honor, but it seems to me to have been contemplated by  
21 the parties that nothing was going to happen with the  
22 stock until all appeals had run anyway.

23 THE COURT: Well, then maybe I'll just withdraw the  
24 caveat that Mr. Skarpelos not dispose of any of his

1 shares if that's the case, Mr. Nork.

2 MR. NORK: You know, I would like to take a closer  
3 look at that stip, if you don't mind, before that.

4 THE COURT: Okay. I'll let the parties brief that.  
5 If that is the stipulation that's in place, then the  
6 Court's order regarding the disposition of  
7 Mr. Skarpelos's interest in Anavex would be moot  
8 anyway, so it would just be creating an issue that I  
9 don't want to do. I like solving problems, not  
10 creating them.

11 So if that is the case, gentlemen, if NATCO -- if  
12 NATCO is not going to do anything regarding the stock  
13 at all with Anavex until all of this is resolved  
14 through appeal, then it's probably moot, I think,  
15 Mr. Nork, but I'll give you the opportunity to give  
16 that a look.

17 MR. NORK: Thank you, Your Honor.

18 THE COURT: So if you could just contact  
19 Ms. Mansfield after you look at that and let me know.  
20 I'll leave that open.

21 Mr. Anderson, I'll direct you to prepare the  
22 findings of fact and conclusions of law and the order  
23 for the Court's signature. And if you could wait to do  
24 the final draft until Mr. Nork looks at that. So,

1 counsel, if you could just confer with each other.

2 Mr. Nork, if you think it's moot or would just  
3 create a bigger issue than is necessary, then just let  
4 Mr. Anderson know that and he can eliminate that  
5 portion of the Court's decision. If, however, you want  
6 to leave it in, Mr. Nork, and, Mr. Anderson, you don't  
7 want it in there and you guys want to fight about it,  
8 contact me and let me know.

9 I say "fight" in the most civil and professional  
10 way as you guys have been throughout these proceedings.  
11 If you want to discuss it with me, we can set a brief  
12 hearing and resolve it that way.

13 Mr. Anderson, do you need any additional  
14 information from the Court to prepare the findings of  
15 fact and conclusions of law and the order?

16 MR. ANDERSON: I don't believe so, Your Honor.  
17 I'll request a copy of the transcript from the court  
18 reporter and get to work.

19 THE COURT: And I would also note that if there are  
20 additional legal principles that you have cited in your  
21 brief regarding any of the legal issues that I have  
22 addressed, you can certainly include those in the  
23 findings of fact, because I always review them. You  
24 know, I don't just sign what you guys give me. I



1 actually go back and look at it myself.

2 And so if I think that there's something in there  
3 that is an inaccurate statement of the law or that  
4 doesn't apply under the circumstances, I will direct  
5 that it be removed, but I think I've covered all of the  
6 basic legal principles regarding both the contract  
7 issues, the implied contract that Mr. Nork raised, oral  
8 contract -- there was no oral contract that the Court  
9 found -- and additionally the equitable principles that  
10 we've talked about. So I think I hit on all the main  
11 principles, legal principles, and I've also given you  
12 the findings regarding the facts in the case.

13 Do you need anything else regarding the facts?

14 MR. ANDERSON: I don't believe so. I think the  
15 Court made sufficient facts to support the findings of  
16 fact to support the judgment it reached with respect to  
17 the claims by Weiser. I think I'm prepared to make the  
18 draft according to the Court's finding.

19 THE COURT: Mr. Nork, anything that you would like  
20 me to clarify? I know -- it's funny. I don't expect  
21 you to agree with the decision. But regarding the  
22 Court's conclusion and the analysis that the Court went  
23 through, is there anything that I can clarify for you  
24 in order to make Mr. Anderson's job easier? I would

1 rather just solve the issue now as we're talking about  
2 it rather than Mr. Anderson going to draft it, then  
3 there's a dispute, then you've got to call me. I mean,  
4 as you sit here is there anything I've identified that  
5 you would like me to clarify?

6 MR. NORK: Nothing leaps to mind, Your Honor. I  
7 too would like a copy of the transcript, though, so I  
8 can view it along with the proposed findings.

9 THE COURT: Okay, gentlemen. Regarding the Stock  
10 Certificate 753, we have the original. The Court has  
11 the original. However, the Court would also note that  
12 actually that doesn't represent the current shares of  
13 stock in Anavex. I think the current shares of stock  
14 in Anavex are now 975.

15 MR. NORK: That's true, Your Honor.

16 THE COURT: But I'm not just going to get rid of  
17 that, just so you know.

18 And, ma'am, I apologize. I know you've been here  
19 for the whole proceedings. You're here on behalf of  
20 NATCO; correct?

21 MS. CARDINALLI: Yes. I'm Amanda Cardinalli. I'm  
22 the president of NATCO.

23 THE COURT: And you're Mr. Walker's sister?

24 MS. CARDINALLI: I am.

1 THE COURT: Excellent. Thank you for being here,  
2 Ms. Cardinalli.

3 I don't want to do anything with the stock  
4 certificate at this moment. At the conclusion of the  
5 proceedings, which means all the way through the  
6 appeals process or until the parties direct me  
7 otherwise, Exhibit 753 will remain in the possession of  
8 the court. But as we already know, NATCO issued Stock  
9 Certificate 975. So now this additional certificate is  
10 out there. It's a problem.

11 Ms. Cardinalli, what would you like to say?

12 MS. CARDINALLI: I would like to say it's in  
13 electronic format. It is not in a physical  
14 certificate.

15 THE COURT: 975?

16 MS. CARDINALLI: Yes, the replacement shares.

17 THE COURT: Okay.

18 MR. NORK: Your Honor, it adds an additional layer  
19 of complication and one that I will have to keep in  
20 mind when I review the stipulation signed by NATCO and  
21 the other parties to see how that interplays at all.  
22 And I will be in touch with Mr. Anderson and with Your  
23 Honor about whatever I find.

24 THE COURT: What are your thoughts on that,

1 Mr. Anderson?

2 MR. ANDERSON: I think it's proper to be, I guess,  
3 pragmatic about how we approach this. I don't disagree  
4 with Mr. Nork that I need to revisit the stipulation on  
5 how we are going to dispose of the issue of the stock  
6 vis-a-vis NATCO. So we have time while we're reviewing  
7 the transcript to discuss the issue and figure out how  
8 to best approach it from our standpoint and also  
9 addressing it with NATCO. So I think we'll just take  
10 the time to hash that issue out while we put together  
11 the proposed findings of fact for the Court's  
12 consideration.

13 THE COURT: Thank you, Mr. Anderson.

14 The Court will retain possession of the interpled  
15 stock certificate until the Court decides what to do  
16 with it once the parties have reached an agreement or  
17 until I make a final determination.

18 Ms. Cardinalli, regarding the certificate itself --  
19 this is just out of curiosity now based on your  
20 experience at NATCO. In the end, let's just assume  
21 that the Court's determination is that Mr. Skarpelos is  
22 entitled to that stock -- or to those stocks in  
23 question and the stock certificate is given back to  
24 him. Would he just destroy the stock certificate? I

1 guess what I'm saying in another way is does that  
2 certificate, that piece of paper, have any value?

3 MS. CARDINALLI: It would. He could take it -- not  
4 that he would do this.

5 THE COURT: Theoretically.

6 MS. CARDINALLI: Theoretically he could take it and  
7 sell it again. And if that broker didn't contact my  
8 office and confirm that it was a valid certificate, it  
9 could be sold in the market and a third party, a bona  
10 fide purchaser, could be hurt.

11 So I would like at the conclusion of this -- let's  
12 say Mr. Skarpelos does -- is entitled to the  
13 certificate. I would ask Mr. Skarpelos to return it to  
14 me to mark it canceled on the books, which it is marked  
15 canceled on the books, but the physical certificate  
16 would come back and be kept in the records so a third  
17 party could not be hurt.

18 THE COURT: Right. That was my concern in a  
19 general sense is that it could be negotiated somehow to  
20 someone who doesn't know that it has been  
21 dematerialized and now it's in the digital form as 975.  
22 And then 975 may have been sold in parts over time or,  
23 as Mr. Skarpelos testified in this case, I think he's  
24 gifted some of it, sold some of it, has some of it. So

1 exactly who owns all the shares is in question.

2       So it might be in the end that the Court will not  
3 return the stock certificate to Mr. Skarpelos. It  
4 might be that the Court returns it to Mr. Anderson  
5 theoretically to return to NATCO to have NATCO take any  
6 action in accordance with the Exhibits 13, 14, 15 and I  
7 think 16 which demonstrate the dematerialization -- the  
8 reissuance of Stock Certificates No. 660 and No. 753  
9 and then the issuance of Stock Certificate 975 in the  
10 total of amount of 6,725,832 shares of which Mr. Nork  
11 has already identified we've had a consolidation, so  
12 there are not even that many shares left. It's clear  
13 as mud as they say.

14       Okay, gentlemen. I would again like to emphasize  
15 to the three of you certainly how impressed I have been  
16 with the presentation of this case, with your  
17 professionalism towards each other and with your  
18 collegiality with the Court. I really do truly  
19 appreciate that.

20       The three of you have demonstrated to me that you  
21 can disagree without being disagreeable, you can be  
22 advocates and strongly advocate on behalf of your  
23 clients and it doesn't mean that you have to be  
24 unprofessional. So I think that all of you have

1 handled yourselves in a commendable way in this case  
2 and made a complex case both interesting and, dare I  
3 say, enjoyable for the Court to listen to. I actually  
4 really did enjoy it.

5 That probably is even stranger than Mr. LaForge's  
6 comment that he wants to come to talk to me about the  
7 hearsay rule. I don't know if Mr. LaForge wants to  
8 inform me about the hearsay rule or just to chat. But  
9 either way, now that it's over with, Mr. Nork, if you  
10 want to tell Mr. LaForge to come on over and we'll talk  
11 about hearsay.

12 MR. NORK: I will let him know, Your Honor.

13 THE COURT: I love hearsay. We'll go from there.

14 Counsel, court is in recess. Thank you very much.

15 (The proceedings were concluded at 4:17 p.m.)

16 --o0o--  
17  
18  
19  
20  
21  
22  
23  
24

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

4 I, LORI URMSTON, Certified Court Reporter, in and  
5 for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me  
7 at the time and place therein set forth; that the  
8 proceedings were recorded stenographically by me and  
9 thereafter transcribed via computer under my  
10 supervision; that the foregoing is a full, true and  
11 correct transcription of the proceedings to the best  
12 of my knowledge, skill and ability.

13 I further certify that I am not a relative nor an  
14 employee of any attorney or any of the parties, nor am  
15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws  
17 of the State of Nevada that the foregoing statements  
18 are true and correct.

19 DATED: At Reno, Nevada, this 8th day of  
20 February, 2019.

21  
22 LORI URMSTON, CCR #51

23 \_\_\_\_\_  
24 LORI URMSTON, CCR #51



**Tab No. “7”**

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

\*\*\*

NEVADA AGENCY AND TRANSFER  
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,  
a Bahamas company, WEISER (BAHAMAS)  
LTD., a Bahamas company, ATHANASIOS  
SKARPELOS, an individual, and DOES 1  
through 10,

Defendants.  
/

**ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT**

Presently before the Court is SKARPELOS' MOTION TO ALTER OR AMEND  
JUDGMENT ("the Motion") filed by Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos")  
on April 25, 2019. Defendants WEISER ASSET MANAGEMENT, LTD. ("WAM") and WEISER  
(BAHAMAS) LTD. ("Weiser Capital") filed DEFENDANTS/CROSS-CLAIMANTS WEISER'S  
OPPOSITION TO SKARPELOS'S MOTION TO ALTER OR AMEND JUDGMENT ("the  
Opposition") on May 24, 2019. Mr. Skarpelos filed the REPLY IN SUPPORT OF SKARPELOS'  
MOTION TO ALTER OR AMEND JUDGMENT ("the Reply") on June 7, 2019, and  
contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY  
2 (“the Plaintiff”) as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of  
3 stock in Anavex Life Sciences Corp.<sup>1</sup> The Court presided over a bench trial beginning on January  
4 28, 2019, to resolve the competing claims between Weiser Capital and WAM (collectively, “the  
5 Weiser Defendants”) and Mr. Skarpelos to the shares. The Court entered the FINDINGS OF  
6 FACT, CONCLUSIONS OF LAW AND JUDGMENT (“the FFCLJ”) on April 22, 2019. The  
7 Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ 7 ¶ 25.  
8 However, the Court invoked its equitable jurisdiction to require Mr. Skarpelos to make restitution  
9 to WAM in the amount of \$245,464.64, for money WAM credited to his account and from which  
10 Mr. Skarpelos benefitted. The FFCLJ ¶ 28.

13 Mr. Skarpelos argues the FFCLJ should be amended to remove the judgment against him  
14 for \$245,464.64. The Motion 2:9-14. Mr. Skarpelos argues amendment is appropriate for three  
15 reasons: 1) Mr. Skarpelos was denied due process because the award was outside of the pleadings;  
16 2) the Weiser Defendants had an adequate legal remedy it chose not to pursue; and 3) the Court  
17 lacked subject matter jurisdiction to make the award because the award did not relate to the  
18 disputed stock. The Motion 2:16-27; 6:20-28; 7:1-4. The Weiser Defendants contend the  
19 following in support of the award: 1) Mr. Skarpelos had fair notice of the potential award because  
20 the money was deposited in his brokerage account; 2) the award was not manifestly unjust; and 3)  
21 the award relates to the disputed stock. The Opposition 4:17-26; 6:6-11; 8:3-18. Mr. Skarpelos  
22 responds by contending: 1) he did not have notice of the Weiser Defendants’ damages claim from  
23 the pleadings or its trial statement; 2) equitable relief premised on unjust enrichment is unavailable

---

27 <sup>1</sup> The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on  
28 January 23, 2019.

1 where a contract governs the parties' relationships; and 3) the Court lacked subject matter  
2 jurisdiction to make the award because it was completely unrelated to the Weiser Defendants'  
3 claim of ownership and thus unrelated to the equities of the case. The Reply 3:21-28; 4:1-3; 5:17-  
4 24; 6:9-26.

5  
6 NRCP 59(e) permits a party to file a motion to alter or amend a judgment within ten days  
7 after service of written notice of entry of the judgment.<sup>2</sup> Such a motion is permitted for any  
8 appealable order; a final judgment is not required. *Lytle v. Rosemere Estate Prop. Owners*, 129  
9 Nev. 923, 926, 314 P.3d 946, 948 (2013). A motion to alter or amend must be in writing and state  
10 the grounds for relief with particularity and identify the relief sought. *United Pac. Ins. Co. v. St.*  
11 *Denis*, 81 Nev. 103, 106, 399 P.2d 135, 137 (1956). Motions to alter or amend may be used to  
12 correct manifest errors of law or fact, address newly discovered or previously unavailable  
13 evidence, avoid manifest injustice or adjust to a change in controlling law. *AA Primo Builders,*  
14 *LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010). A district court has  
15 considerable discretion in determining whether a motion to amend or alter should be granted.  
16  
17 *Stevo Design, Inc. v. SBR Mktg. Ltd*, 919 F. Supp. 2d 1112, 1117 (D. Nev. 2013) (explaining  
18 FRCP 59 may be consulted in interpretation of NRCP 59). *See also AA Primo*, 126 Nev. at 582,  
19 245 P.3d at 1193. A motion to alter or amend constitutes "an extraordinary remedy which should  
20 be used sparingly." *Stevo Design*, 919 F. Supp. 2d at 1117 ("[T]he district court enjoys  
21 considerable discretion in granting or denying the motion.").

22  
23  
24  
25  
26  
27  
28 

---

<sup>2</sup> The Motion was timely filed.

1       The Court will not amend the FFCLJ because it properly invoked its equitable jurisdiction  
2 to require Mr. Skarpelos to make restitution to WAM and to prevent him from receiving a windfall  
3 in this matter. First, Mr. Skarpelos was on notice of the potential for equitable relief given the  
4 nature of this case and the relief requested. As an interpleader action, this matter originated in  
5 equity to determine ownership of the shares. *See Balish v. Farnham*, 92 Nev. 133, 137, 546 P.2d  
6 1297, 1299 (1976) (identifying interpleader as equitable proceeding). Restitution was a  
7 foreseeable equitable ruling in an action already predicated on principles of equity. *See also*  
8 *Landex, Inc. v. State ex rel. List*, 94 Nev. 469, 477, 582 P.2d 786, 791 (1978) (“[A] court has the  
9 inherent power, ancillary to its general equity jurisdiction, to order restitution in an appropriate  
10 case.”). Furthermore, Mr. Skarpelos requested “such other and further relief as to the Court seems  
11 just and equitable under the circumstances.” ANSWER TO COMPLAINT AND CROSS-CLAIM  
12 (Defendant Cross-Claimant Skarpelos) 9:26-27 (Feb. 18, 2016).

13  
14  
15       Second, the Court properly afforded equitable relief to comprehensively resolve this matter  
16 without affording Mr. Skarpelos a windfall. The Court found Weiser had proven by a  
17 preponderance of the evidence WAM had credited Mr. Skarpelos’ WAM account in April of 2013,  
18 and Mr. Skarpelos had received the benefit of this money. The FFCLJ ¶ 28. *See also* Tr. of Hr’g  
19 36-38 (Feb. 6, 2019). As the Court stated in the FFCLJ, Mr. Skarpelos allegedly transferred the  
20 stock to a third party, and his WAM account was credited \$249,580.00 to reflect the transfer. *See*  
21 the FFCLJ 7:24-28; 8:1. Moreover, the judgment of restitution was directly related, and not  
22 ancillary, to the shares at issue in this case. The Court found Mr. Skarpelos had funded his WAM  
23 account with stock certificate 753 and was permitted to borrow against that account. *See the*  
24 FFCLJ ¶ 5. *See also* Tr. of Hr’g 14-16; 17:15-19. If the Court would have refused to invoke its  
25 equitable jurisdiction, Mr. Skarpelos would have been permitted to retain ownership of the stock  
26  
27  
28

1 as well as the amount paid for it, a windfall for Mr. Skarpelos and a forfeiture for WAM. *See*  
2 *MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961) (explaining province of courts  
3 of equity is “to do complete justice between the parties . . .”). For these reasons, the Court  
4 properly invoked its equitable jurisdiction to order Mr. Skarpelos to make restitution to WAM.  
5

6 **IT IS ORDERED** that SKARPELOS’ MOTION TO ALTER OR AMEND JUDGMENT  
7 is hereby **DENIED**.

8 **DATED** this 6 day of August, 2019.

9  
10   
11 ELLIOTT A. SATTLER  
12 District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

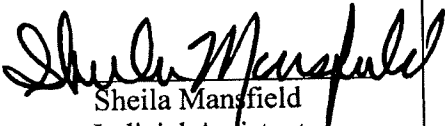
**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this \_\_\_\_ day of August, 2019, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 6 day of August, 2019, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

- JOHN F. MURTHA, ESQ.
- DANE W. ANDERSON, ESQ.
- JEREMY J. NORK, ESQ.
- FRANK Z. LAFORGE, ESQ.

  
Sheila Mansfield  
Judicial Assistant

**Tab No. "8"**



1 **2540**  
2 JOHN F. MURTHA, ESQ.  
3 Nevada Bar No. 835  
4 DANE W. ANDERSON, ESQ.  
5 Nevada Bar No. 6883  
6 SETH J. ADAMS, ESQ.  
7 Nevada Bar No. 11034  
8 **WOODBURN AND WEDGE**  
9 Sierra Plaza  
10 6100 Neil Road, Ste. 500  
11 P.O. Box 2311  
12 Reno, Nevada 89505  
13 Telephone : (775) 688-3000  
14 [jmurtha@woodburnandwedge.com](mailto:jmurtha@woodburnandwedge.com)  
15 [danderson@woodburnandwedge.com](mailto:danderson@woodburnandwedge.com)  
16 [sadams@woodburnandwedge.com](mailto:sadams@woodburnandwedge.com)  
17 *Attorneys for Defendant/Cross-Claimant*  
18 *Athanasios Skarpepos*

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

13 \*\*\*

14 NEVADA AGENCY AND TRANSFER  
15 COMPANY, a Nevada corporation,

Case No. CV15-02259  
Dept. No. 10

16 Plaintiff,

17 vs.

**NOTICE OF ENTRY OF ORDER**

18 WEISER ASSET MANAGEMENT, LTD.,  
19 a Bahamas company; ATHANASIOS  
20 SKARPELOS, an individual; and  
21 DOES 1-10,

21 Defendants.

22 ATHANASIOS SKARPELOS, an individual,

23 Cross-Claimant,

24 vs.

25 WEISER ASSET MANAGEMENT, LTD., a  
26 Bahamas company, and WEISER (BAHAMAS)  
27 LTD., a Bahamas company.

28 Cross-Defendants.

1 WEISER ASSET MANAGEMENT, LTD.,  
2 a Bahamas company, WEISER (BAHAMAS), LTD.,  
3 a Bahamas company,

4 Cross-Claimants.

5 vs.

6 ATHANASIOS SKARPELOS, an individual,  
7 Cross-defendant.

8 **NOTICE OF ENTRY OF ORDER**

9 PLEASE TAKE NOTICE that on August 6, 2019, the Court entered its Order  
10 Denying Motion to Alter or Amend Judgment, a true and correct copy of which is attached  
11 hereto as **Exhibit 1**.

12 **AFFIRMATION**

13 The undersigned does hereby affirm that the preceding document does not contain the  
14 personal information of any person.

15 DATED: August 9, 2019

WOODBURN AND WEDGE

17 By /s/ Dane W. Anderson

18 John F. Murtha, Esq.  
19 Nevada Bar No. 835  
20 Dane W. Anderson, Esq.  
21 Nevada Bar No. 6883  
22 Seth J. Adams, Esq.  
23 Nevada Bar No. 11034

24 *Attorneys for Defendant/  
25 Cross-Claimant  
26 Athanasios Skarpelos*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

-3-

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT LIST**

<u>Exhibit No.</u>	<u>Exhibit Title</u>	<u>Pages</u> (including exhibit sheet)
1	Order Denying Motion to Alter or Amend Judgment	7

FILED  
Electronically  
CV15-02259  
2019-08-09 11:51:31 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7421265

**EXHIBIT 1**

**EXHIBIT 1**

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

\*\*\*

NEVADA AGENCY AND TRANSFER  
COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

vs.

Dept. No. 10

WEISER ASSET MANAGEMENT, LTD.,  
a Bahamas company, WEISER (BAHAMAS)  
LTD., a Bahamas company, ATHANASIOS  
SKARPELOS, an individual, and DOES 1  
through 10,

Defendants.

**ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT**

Presently before the Court is SKARPELOS' MOTION TO ALTER OR AMEND  
JUDGMENT ("the Motion") filed by Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos")  
on April 25, 2019. Defendants WEISER ASSET MANAGEMENT, LTD. ("WAM") and WEISER  
(BAHAMAS) LTD. ("Weiser Capital") filed DEFENDANTS/CROSS-CLAIMANTS WEISER'S  
OPPOSITION TO SKARPELOS'S MOTION TO ALTER OR AMEND JUDGMENT ("the  
Opposition") on May 24, 2019. Mr. Skarpelos filed the REPLY IN SUPPORT OF SKARPELOS'  
MOTION TO ALTER OR AMEND JUDGMENT ("the Reply") on June 7, 2019, and  
contemporaneously submitted the matter for the Court's consideration.

1 This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY  
2 ("the Plaintiff") as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of  
3 stock in Anavex Life Sciences Corp.<sup>1</sup> The Court presided over a bench trial beginning on January  
4 28, 2019, to resolve the competing claims between Weiser Capital and WAM (collectively, "the  
5 Weiser Defendants") and Mr. Skarpelos to the shares. The Court entered the FINDINGS OF  
6 FACT, CONCLUSIONS OF LAW AND JUDGMENT ("the FFCLJ") on April 22, 2019. The  
7 Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ 7 ¶ 25.  
8 However, the Court invoked its equitable jurisdiction to require Mr. Skarpelos to make restitution  
9 to WAM in the amount of \$245,464.64, for money WAM credited to his account and from which  
10 Mr. Skarpelos benefitted. The FFCLJ ¶ 28.

13 Mr. Skarpelos argues the FFCLJ should be amended to remove the judgment against him  
14 for \$245,464.64. The Motion 2:9-14. Mr. Skarpelos argues amendment is appropriate for three  
15 reasons: 1) Mr. Skarpelos was denied due process because the award was outside of the pleadings;  
16 2) the Weiser Defendants had an adequate legal remedy it chose not to pursue; and 3) the Court  
17 lacked subject matter jurisdiction to make the award because the award did not relate to the  
18 disputed stock. The Motion 2:16-27; 6:20-28; 7:1-4. The Weiser Defendants contend the  
19 following in support of the award: 1) Mr. Skarpelos had fair notice of the potential award because  
20 the money was deposited in his brokerage account; 2) the award was not manifestly unjust; and 3)  
21 the award relates to the disputed stock. The Opposition 4:17-26; 6:6-11; 8:3-18. Mr. Skarpelos  
22 responds by contending: 1) he did not have notice of the Weiser Defendants' damages claim from  
23 the pleadings or its trial statement; 2) equitable relief premised on unjust enrichment is unavailable  
24  
25

---

27 <sup>1</sup> The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on  
28 January 23, 2019.

1 where a contract governs the parties' relationships; and 3) the Court lacked subject matter  
2 jurisdiction to make the award because it was completely unrelated to the Weiser Defendants'  
3 claim of ownership and thus unrelated to the equities of the case. The Reply 3:21-28; 4:1-3; 5:17-  
4 24; 6:9-26.

5  
6 NRCP 59(e) permits a party to file a motion to alter or amend a judgment within ten days  
7 after service of written notice of entry of the judgment.<sup>2</sup> Such a motion is permitted for any  
8 appealable order; a final judgment is not required. *Lyle v. Rosemere Estate Prop. Owners*, 129  
9 Nev. 923, 926, 314 P.3d 946, 948 (2013). A motion to alter or amend must be in writing and state  
10 the grounds for relief with particularity and identify the relief sought. *United Pac. Ins. Co. v. St.*  
11 *Denis*, 81 Nev. 103, 106, 399 P.2d 135, 137 (1956). Motions to alter or amend may be used to  
12 correct manifest errors of law or fact, address newly discovered or previously unavailable  
13 evidence, avoid manifest injustice or adjust to a change in controlling law. *AA Primo Builders,*  
14 *LLC v. Washington*, 126 Nev. 578, 582, 245 P.3d 1190, 1193 (2010). A district court has  
15 considerable discretion in determining whether a motion to amend or alter should be granted.  
16 *Stevo Design, Inc. v. SBR Mktg. Ltd*, 919 F. Supp. 2d 1112, 1117 (D. Nev. 2013) (explaining  
17 FRCP 59 may be consulted in interpretation of NRCP 59). *See also AA Primo*, 126 Nev. at 582,  
18 245 P.3d at 1193. A motion to alter or amend constitutes "an extraordinary remedy which should  
19 be used sparingly." *Stevo Design*, 919 F. Supp. 2d at 1117 ("[T]he district court enjoys  
20 considerable discretion in granting or denying the motion.").

21  
22  
23  
24  
25  
26  
27  
28 <sup>2</sup> The Motion was timely filed.



1       The Court will not amend the FFCLJ because it properly invoked its equitable jurisdiction  
2 to require Mr. Skarpelos to make restitution to WAM and to prevent him from receiving a windfall  
3 in this matter. First, Mr. Skarpelos was on notice of the potential for equitable relief given the  
4 nature of this case and the relief requested. As an interpleader action, this matter originated in  
5 equity to determine ownership of the shares. *See Balish v. Farnham*, 92 Nev. 133, 137, 546 P.2d  
6 1297, 1299 (1976) (identifying interpleader as equitable proceeding). Restitution was a  
7 foreseeable equitable ruling in an action already predicated on principles of equity. *See also*  
8 *Landex, Inc. v. State ex rel. List*, 94 Nev. 469, 477, 582 P.2d 786, 791 (1978) (“[A] court has the  
9 inherent power, ancillary to its general equity jurisdiction, to order restitution in an appropriate  
10 case.”). Furthermore, Mr. Skarpelos requested “such other and further relief as to the Court seems  
11 just and equitable under the circumstances.” ANSWER TO COMPLAINT AND CROSS-CLAIM  
12 (Defendant Cross-Claimant Skarpelos) 9:26-27 (Feb. 18, 2016).

13  
14  
15       Second, the Court properly afforded equitable relief to comprehensively resolve this matter  
16 without affording Mr. Skarpelos a windfall. The Court found Weiser had proven by a  
17 preponderance of the evidence WAM had credited Mr. Skarpelos’ WAM account in April of 2013,  
18 and Mr. Skarpelos had received the benefit of this money. The FFCLJ ¶ 28. *See also* Tr. of Hr’g  
19 36-38 (Feb. 6, 2019). As the Court stated in the FFCLJ, Mr. Skarpelos allegedly transferred the  
20 stock to a third party, and his WAM account was credited \$249,580.00 to reflect the transfer. *See*  
21 the FFCLJ 7:24-28; 8:1. Moreover, the judgment of restitution was directly related, and not  
22 ancillary, to the shares at issue in this case. The Court found Mr. Skarpelos had funded his WAM  
23 account with stock certificate 753 and was permitted to borrow against that account. *See the*  
24 FFCLJ ¶ 5. *See also* Tr. of Hr’g 14-16; 17:15-19. If the Court would have refused to invoke its  
25 equitable jurisdiction, Mr. Skarpelos would have been permitted to retain ownership of the stock  
26  
27  
28

1 as well as the amount paid for it, a windfall for Mr. Skarpelos and a forfeiture for WAM. *See*  
2 *MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961) (explaining province of courts  
3 of equity is "to do complete justice between the parties . . ."). For these reasons, the Court  
4 properly invoked its equitable jurisdiction to order Mr. Skarpelos to make restitution to WAM.  
5

6 **IT IS ORDERED** that SKARPELOS' MOTION TO ALTER OR AMEND JUDGMENT  
7 is hereby **DENIED**.

8 **DATED** this 6 day of August, 2019.

9  
10   
11 ELLIOTT A. SATTLER  
12 District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this \_\_\_\_ day of August, 2019, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 6 day of August, 2019, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

- JOHN F. MURTHA, ESQ.
- DANE W. ANDERSON, ESQ.
- JEREMY J. NORK, ESQ.
- FRANK Z. LAFORGE, ESQ.

  
Sheila Mansfield  
Judicial Assistant