

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

Case Nos. 79425 and 79526

ATHANASIOS SKARPELOS, AN INDIVIDUAL

Appellants,

v.

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

Respondents.

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

Appellants,

v.

ATHANASIOS SKARPELOS, AN INDIVIDUAL,

Respondent.

Appeal from the Judgment of the Second Judicial District Court, Washoe County  
District Court Case No.: CV15-02259  
Second Judicial District Court of the State of Nevada  
In and For the County of Washoe

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**JOINT APPENDIX  
VOLUME 11**

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## CHRONOLOGICAL INDEX TO APPENDIX

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Complaint	11/18/2015	1	JA0001- JA0012
Acceptance of Service (Murtha)	1/28/2016	1	JA0013- JA0015
Acceptance of Service (Nork)	1/28/2016	1	JA0016- JA0018
Answer to Complaint and Cross-Claim (Defendant Cross-Claimant Skarpelos)	2/18/2016	1	JA0019- JA0029
Amended Complaint	4/29/2016	1	JA0030- JA0042
Consent to File Amended Complaint	4/29/2016	1	JA0043- JA0045
Answer to Amended Complaint and Cross-Claim (By Defendant Skarpelos)	5/23/2016	1	JA0046- JA0057
Weiser's Answer and Cross Claim	5/24/2016	1	JA0058- JA0070
Weiser's Answer to Skarpelos' Cross- Claim	6/15/2016	1	JA0071- JA0074
Skarpelos' Answer to Weiser's Cross- Claim	6/17/2016	1	JA0075- JA0081
Joint Case Management Report	8/23/2016	1	JA0082- JA0095

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Pretrial Order	3/31/2017	1	JA0096- JA0105
Motion to Compel	7/28/2017	1	JA0106- JA0133
Weiser's Opposition to Motion to Compel	8/14/2017	1	JA0134- JA0137
Reply in Support of Motion to Compel	8/21/2017	1	JA0138- JA0144
Recommendation for Order	10/31/2017	1	JA0145- JA0157
Confirming Order	11/17/2017	1	JA0158- JA0159
Athanasios Skarpelos' Motion for Summary Judgment	3/12/2018	1; 2	JA0160- 210; JA0211- JA0248
Affidavit of John Murtha in Support of Motion for Summary Judgment	3/12/2018	2	JA0249- JA0253
Affidavit of Athanasios Skarpelos in Support of Motion for Summary Judgment	3/12/2018	2	JA0254- JA0277
Athanasios Skarpelos' Motion in Limine	3/21/2018	2	JA0278- JA0348
Affidavit of John F. Murtha In Support of Motion in Limine	3/21/2018	2	JA0349- JA0352

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Weiser's Opposition to Skarpelos' Motion in Limine	4/12/2018	2; 3	JA0353- JA0420; JA0421- 0465
Weiser's Opposition to Skarpelos' Motion for Summary Judgment	4/12/2018	3	JA0466- JA0583
Athanasios Skarpelos' Reply in Support of Motion for Summary Judgment	4/27/2018	3	JA0584- JA0596
Affidavit of John F. Murtha In Support of Skarpelos' Reply in Support of Motion for Summary Judgment	4/27/2018	3	JA0597- JA0602
Athanasios Skarpelos' Reply in Support of Motion in Limine	4/27/2018	3	JA0603- JA0607
Order Denying Athanasios Skarpelos' Motion for Summary Judgment	6/21/2018	3	JA0608- JA0615
Order Denying Skarpelos' Motion in Limine	6/29/2018	3	JA0616- JA0622
Defendant Cross-Claimant Athanasios Skarpelos' Pretrial Disclosures	12/21/2018	3	JA0623- JA0626
Defendant Cross-Claimants Weiser's Pretrial Disclosures	12/31/2018	3	JA0627- JA0629
Skarpelos' Objections to Weiser's Pretrial Disclosures	1/11/2019	4	JA0630- JA0635
Defendants Cross-Claimants Weser's Trial Statement	1/23/2019	4	JA0636- JA0658

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Defendant Cross-Claimant Athanasios Skarpelos' Trial Statement	1/23/2019	4	JA0659- JA0713
Order Granting Motion for Discharge	1/23/2019	4	JA0714- JA0716
Deposition of Christos Livadas Dated 10/23/2018	1/28/2019	4; 5; 6	JA0717- JA0840; JA841- 1050; JA1051- JA1134
Trial Exhibit 1, Anavex Life Sciences Corp. Share Certificate 0753 for 6,633,332 shares (WEISER000281)	1/28/2019	6	JA1135- JA1136
Trial Exhibit 2, WAM New Account Opening Form (WEISER000352-361)	1/28/2019	6	JA1137- JA1147
Trial Exhibit 3, Letter dated October 30, 2015 from Montello Law Firm to NATCO (WEISER000002-WEISER000003)	1/28/2019	6	JA1148- JA1150
Trial Exhibit 7, 05/30/2011 Email between Athanasios Skarpelos and Howard Daniels re Courier Address for WAM, Ltd. (S000006)	1/28/2019	6	JA1151- JA1152
Trial Exhibit 8, 05/31/2011 Skarpelos Identify Verification Form with Supporting Documents (WEISER000362-WEISER000367)	1/28/2019	6	JA1153- JA1159

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 13, 1/10/2013 Corporate Indemnity to Nevada Agency and Transfer Company to Reissuance of Lost Certificate (S000007)	1/28/2019	6	JA1160- JA1161
Trial Exhibit 14, 3/28/2013 Athanasios Skarpelos Affidavit for Lost Stock Certificate (S000008-S000009)	1/28/2019	6	JA1162- JA1164
Trial Exhibit 15, 3/29/2013 Athanasios Skarpelos Stop Transfer Order (S000010)	1/28/2019	6	JA1165- JA1166
Trial Exhibit 16, 4/4/2013 NATCO Transfer (S000011)	1/28/2019	6	JA1167- JA1168
Trial Exhibit 20, 5/24/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000340)	1/28/2019	6	JA1169- JA1170
Trial Exhibit 21, 06/24/2013 Email Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000012)	1/28/2019	6	JA1171- JA1172
Trial Exhibit 22, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000013)	1/28/2019	6	JA1173- JA1174
Trial Exhibit 23, 06/24/2013 Email Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000014)	1/28/2019	6	JA1175- JA1176

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 24, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000015)	1/28/2019	6	JA1177- JA1178
Trial Exhibit 25, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000333-000337)	1/28/2019	6	JA1179- JA1184
Trial Exhibit 26, 06/25/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000016)	1/28/2019	6	JA1185- JA1186
Trial Exhibit 27, 07/02/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000017)	1/28/2019	6	JA1187- JA1188
Trial Exhibit 28, 07/02/2013 Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000018)	1/28/2019	6	JA1189- JA1190
Trial Exhibit 29, 07/03/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000019)	1/28/2019	6	JA1191- JA1192
Trial Exhibit 30, 07/05/2013 Stock Sale and Purchase Agreement between Weiser and Skarpelos (WEISER000207-WEISER000209)	1/28/2019	6	JA1193- JA1196

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 31, 07/09/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos (S000020)	1/28/2019	6	JA1197- JA1198
Trial Exhibit 32, 07/09/2013 Blank Stock Sale and Purchase Agreement signed by Skarpelos (WEISER000161-WEISER000163)	1/28/2019	6	JA1199- JA1202
Trial Exhibit 33, 7/09/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000328-WEISER000332)	1/28/2019	6	JA1203- JA1208
Trial Exhibit 34, Blank Stock Sale and Purchase Agreement (WEISER000156-WEISER000158)	1/28/2019	6	JA1209- JA1212
Trial Exhibit 35, 07/12/2013 Power of Attorney to Transfer Bonds or Shares (WEISER000368)	1/28/2019	6	JA1213- JA1214
Trial Exhibit 36, 07/12/2013 Power of Attorney to Transfer Bonds or Shares (WEISER000369)	1/28/2019	6	JA1215- JA1216
Trial Exhibit 40, 10/28/2013 Email Tom Skarpelos and Christos Livadas (WEISER000339)	1/28/2019	6	JA1217- JA1218

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 43, 12/31/2013 Weiser Skarpelos Statement of Account for February 1, 2013 - December 31, 2013 (WEISER000378-WEISER000380)	1/28/2019	6	JA1219- JA1222
Trial Exhibit 44, Duplicate copy of 12/31/2013 Weiser Skarpelos Statement of Account for February 1, 2013 - December 31, 2013 (WEISER000378-WEISER000380)	1/28/2019	6	JA1223- JA1226
Trial Exhibit 46, 11/02/2015 Letter Ernest A. Alvarez to Nevada Agency and Transfer Company Weiser Asset Management Ltd. (WEISER000004)	1/28/2019	6	JA1227- JA1228
Trial Exhibit 47, 11/03/2015 Letter Alexander H. Walker III to Ernest A. Alvarez (WEISER000001)	1/28/2019	6	JA1229- JA1230
Trial Exhibit 48, 11/12/2015 Letter Elias Soursos, Weiser Asset Management Ltd. to NATCO (WEISER000011)	1/28/2019	6	JA1231- JA1232
Trial Exhibit 49, 11/12/2015 Letter Bernard Pinsky to Nevada Agency and Transfer Company (WEISER000007-WEISER000008)	1/28/2019	6	JA1233- JA1235
Trial Exhibit 50, 11/12/2015 Email Christos Livadas to Nick Boutasalis (WEISER 000214-WEISER000215)	1/28/2019	6	JA1236- JA1238

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 51, 11/13/2015 Letter Ernesto A. Alvarez to Alexander Walker III, Esq. (WEISER000009)	1/28/2019	6	JA1239- JA1240
Trial Exhibit 52, 11/13/2015 Letter Ernesto A. Alvarez to Nevada Agency and Transfer Company (WEISER000005)	1/28/2019	6	JA1241- JA1242
Trial Exhibit 53, 11/13/2015 email Alexander H. Walker III to Ernesto A. Alvarez cc Amanda Cardinelli (WEISER000187-WEISER000189)	1/28/2019	6	JA1243- JA1246
Trial Exhibit 54, 11/13/2015 Letter Nick Boutsalis to NATCO (PID-00045-PID-00048)	1/28/2019	6	JA1247- JA1251
Trial Exhibit 55, 11/16/2015 letter to Ernesto A. Alvarez to Alexander Walker III, Esq., (WEISER000012)	1/28/2019	6	JA1252- JA1253
Trial Exhibit 56, 11/17/2015 email Bill Simonitsch to Louis R. Montello cc Ernesto Alvarez (WEISER000238)	1/28/2019	6	JA1254- JA1255
Trial Exhibit 57, 11/18/2015 email Bill Simonitsch and Ernesto A. Alvarez (WEISER000216-WEISER000217)	1/28/2019	6	JA1256- JA1258
Trial Exhibit 58, 11/19/2015 Email bill Simonitsch and Ernesto A. Alvarez cc Louis Montello (WEISER000218-WEISER000219)	1/28/2019	7	JA1259- JA1261

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 59, 11/19/2015 Email Christos Livadas re Tom Transfer request (WEISER000320-WEISER000322)	1/28/2019	7	JA1262- JA1265
Trial Exhibit 60, 11/19/2015 email Christos Livadas re Skarpelos Email flow 2011-2013 (WEISER000341-WEISER000343)	1/28/2019	7	JA1266- JA1269
Minutes - Bench Trial Day 1	1/28/2019	7	JA1270- JA1271
Transcript of Proceedings - Trial - Day 1	1/28/2019	7	JA1272- JA1423
Minutes - Bench Trial Day 2	1/29/2019	7	JA1424
Transcript of Proceedings - Trial - Day 2	1//29/2019	7; 8	JA1425- JA1470; JA1471- JA1557
Minutes - Bench Trial Day 3	1/30/2019	8	JA1558- JA1559
Trial Exhibit 61, Bank documents (S000032-S000035)	1/30/2019	8	JA1560- JA1564
Transcript of Proceedings – Bench Trial – Day 3	1/30/2019	8; 9	JA1565- JA1680; JA1681- JA1713
Minutes - Bench Trial Day 4	1/31/2019	9	JA1714- JA1715

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 11, MHNMYA Swift-Single Customer Credit Transfer (WEISER000346)	1/31/2019	9	JA1716-JA1717
Trial Exhibit 12, 12/21/2012 email Lambros Pedafronimos L. Pedaf@gmail.com to Christos Livadas (WEISER000345)	1/31/2019	9	JA1718-JA1719
Trial Exhibit 18, 4/26/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000338)	1/31/2019	9	JA1720-JA1721
Trial Exhibit 19, 5/09/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000312)	1/31/2019	9	JA1722-JA1723
Transcript of Proceedings – Bench Trial – Day 4	1/31/2019	9	JA1724-JA1838
Minutes - Bench Trial Day 5	2/1/2019	9	JA1839-JA1850
Transcript of Proceedings – Bench Trial – Day 5	2/01/219	9; 10	JA1851-JA1890; JA1891-JA1913
Transcript of Proceedings 02/06/2019	2/6/2019	10	JA1914-JA1950

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Minutes - Decision Hearing	2/25/2019	10	JA1951
Minutes - Conference Call on 3/14/19	3/15/2019	10	JA1952
Defendants/Cross-Claimants Weiser's Objections to Findings of Fact, Conclusions of Law, and Judgment	4/3/2019	10	JA1953- JA2048
Skarpelos' Responses to Weiser's Objections to Findings of Fact, Conclusions of Law, and Judgment	4/8/2019	10	JA2049- JA2052
Defendant Cross-Claimants Weiser's Supplemental Brief Pursuant to Court Order	4/8/2019	10; 11	JA2053- JA2100; JA2101- JA2150
Skarpelos' Post-Trial Brief Regarding Restriction on Disposition of Stock	4/8/2019	11	JA2151- JA2155
Findings of Fact, Conclusions of Law and Judgment	4/22/2019	11	JA2156- JA2164
NEF Proof of Electronic Service (Findings of Fact, Conclusions of Law and Judgment)	4/22/2019	11	JA2165- JA2167
Notice of Entry of Judgment (Findings of Fact, Conclusions of Law and Judgment)	4/22/2019	11	JA2168- JA2181
Minutes - Conference Call on 04/22/2019	4/22/2019	11	JA2182
Skarpelos' Motion to Alter or Amend Judgment	4/25/2019	11	JA2183- JA2248

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
NEF Proof of Electronic Service (Motion to Alter or Amend Judgment)	4/25/2019	11	JA2249-JA2251
Motion for Attorney's Fees	4/25/2019	11; 12	JA2252-JA2310; JA2311-JA2338
Declaration of Dane W. Anderson In Support of Motion for Attorneys' Fees	4/25/2019	12	JA2339-JA2362
Verified Memorandum of Costs and Disbursements	4/25/2019	12	JA2363-JA2443
Affidavit of Dane W. Anderson In Support of Verified Memorandum of Costs and Disbursements	4/25/2019	12	JA2444-JA2447
Defendants/Cross-Claimants Weiser's Motion to Retax Costs	5/3/2019	12	JA2448-JA2454
Opposition to Motion to Retax costs	5/14/2019	12	JA2455-JA2460
Declaration of Dane W. Anderson In Support of Motion to Retax Costs	5/14/2019	12	JA2461-JA2485
Defendant/Cross-Claimant Weiser's Reply In Support of Motion To Retax Costs	5/20/2019	12	JA2486-JA2491

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Defendants/Cross-Claimants Weiser's Opposition to Skarpelos' Motion to Alter or Amend Judgment	5/24/2019	12	JA2492-JA2501
Weiser's Opposition to Skarpelo's Motion for Attorney's Fees	5/24/2019	12	JA2502-JA2508
Reply in Support of Motion for Attorneys' Fees	6/7/2019	12	JA2509-JA2518
Reply in Support of Skarpelos' Motion to Alter or Amend Judgment	6/7/2019	13	JA2519-JA2526
Order Granting in Part and Denying in Part Motion to Retax Costs	8/6/2019	13	JA2527-JA2538
Order Denying Motion to Alter or Amend Judgment	8/6/2019	13	JA2539-JA2544
NEF Proof of Electronic Filing (Order Denying Motion to Alter or Amend Judgment)	8/6/2019	13	JA2545-JA2547
Order Granting Motion for Attorney's Fees	8/9/2019	13	JA2548-JA2554
Notice of Entry of Order (Order Granting in Part and Denying in Part Motion to Retax Costs)	8/9/2019	13	JA2555-JA2571
Notice of Entry of Order (Order Denying Motion to Alter or Amend Judgment)	8/9/2019	13	JA2572-JA2582

<b>Document Title (<i>Chronological</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Notice of Entry of Order (Order Granting Motion for Attorneys' Fees)	8/9/2019	13	JA2583-JA2594
Notice of Appeal	8/15/2019	13	JA2595-JA2615
Weiser's Motion for Reconsideration of Attorney's Fee Award (Request for Oral Argument)	8/19/2019	13	JA2616-JA2623
Opposition to Motion for Reconsideration of Attorney's Fee Award	8/28/2019	13	JA2624-JA2633
Notice of Cross-Appeal	8/29/2019	13	JA2634-JA2655
Reply in Support of Weiser's Motion for Reconsideration for Attorney's Fees Award	9/10/2019	13	JA2656-JA2662
Order Denying Motion for Reconsideration	10/24/2019	13	JA2663-JA2669
Notice of Entry of Order (Order Denying Motion for Reconsideration)	11/18/2019	14	JA2670-JA2681
NEF Proof of Electronic Filing (Notice of Entry of Order Denying Motion for Reconsideration)	11/18/2019	14	JA2682-JA2684

### ALPHABETICAL INDEX TO APPENDIX

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Acceptance of Service (Murtha)	1/28/2016	1	JA0013-JA0015

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Acceptance of Service (Nork)	1/28/2016	1	JA0016- JA0018
Affidavit of Athanasios Skarpelos in Support of Motion for Summary Judgment	3/12/2018	2	JA0254- JA0277
Affidavit of Dane W. Anderson In Support of Verified Memorandum of Costs and Disbursements	4/25/2019	12	JA2444- JA2447
Affidavit of John F. Murtha In Support of Motion in Limine	3/21/2018	2	JA0349- JA0352
Affidavit of John F. Murtha In Support of Skarpelos' Reply in Support of Motion for Summary Judgment	4/27/2018	3	JA0597- JA0602
Affidavit of John Murtha in Support of Motion for Summary Judgment	3/12/2018	2	JA0249- JA0253
Amended Complaint	4/29/2016	1	JA0030- JA0042
Answer to Amended Complaint and Cross-Claim (By Defendant Skarpelos)	5/23/2016	1	JA0046- JA0057
Answer to Complaint and Cross-Claim (Defendant Cross-Claimant Skarpelos)	2/18/2016	1	JA0019- JA0029
Athanasios Skarpelos' Motion for Summary Judgment	3/12/2018	1; 2	JA0160- 210; JA0211- JA0248

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Athanasios Skarpelos' Motion in Limine	3/21/2018	2	JA0278- JA0348
Athanasios Skarpelos' Reply in Support of Motion for Summary Judgment	4/27/2018	3	JA0584- JA0596
Athanasios Skarpelos' Reply in Support of Motion in Limine	4/27/2018	3	JA0603- JA0607
Complaint	11/18/2015	1	JA0001- JA0012
Confirming Order	11/17/2017	1	JA0158- JA0159
Consent to File Amended Complaint	4/29/2016	1	JA0043- JA0045
Declaration of Dane W. Anderson In Support of Motion for Attorneys' Fees	4/25/2019	12	JA2339- JA2362
Declaration of Dane W. Anderson In Support of Motion to Retax Costs	5/14/2019	12	JA2461- JA2485
Defendant Cross-Claimant Athanasios Skarpelos' Pretrial Disclosures	12/21/2018	3	JA0623- JA0626
Defendant Cross-Claimant Athanasios Skarpelos' Trial Statement	1/23/2019	4	JA0659- JA0713
Defendant Cross-Claimants Weiser's Pretrial Disclosures	12/31/2018	3	JA0627- JA0629

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Defendant Cross-Claimants Weiser's Supplemental Brief Pursuant to Court Order	4/8/2019	10; 11	JA2053- JA2100; JA2101- JA2150
Defendant/Cross-Claimant Weiser's Reply In Support of Motion To Retax Costs	5/20/2019	12	JA2486- JA2491
Defendants Cross-Claimants Weser's Trial Statement	1/23/2019	4	JA0636- JA0658
Defendants/Cross-Claimants Weiser's Motion to Retax Costs	5/3/2019	12	JA2448- JA2454
Defendants/Cross-Claimants Weiser's Objections to Findings of Fact, Conclusions of Law, and Judgment	4/3/2019	10	JA1953- JA2048
Defendants/Cross-Claimants Weiser's Opposition to Skarpelos' Motion to Alter or Amend Judgment	5/24/2019	12	JA2492- JA2501
Deposition of Christos Livadas Dated 10/23/2018	1/28/2019	4; 5; 6	JA0717- JA0840; JA841- 1050; JA1051- JA1134
Findings of Fact, Conclusions of Law and Judgment	4/22/2019	11	JA2156- JA2164
Joint Case Management Report	8/23/2016	1	JA0082- JA0095

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Minutes - Decision Hearing	2/25/2019	10	JA1951
Minutes - Bench Trial Day 1	1/28/2019	7	JA1270- JA1271
Minutes - Bench Trial Day 2	1/29/2019	7	JA1424
Minutes - Bench Trial Day 3	1/30/2019	8	JA1558- JA1559
Minutes - Bench Trial Day 4	1/31/2019	9	JA1714- JA1715
Minutes - Bench Trial Day 5	2/1/2019	9	JA1839- JA1850
Minutes - Conference Call on 04/22/2019	4/22/2019	11	JA2182
Minutes - Conference Call on 3/14/19	3/15/2019	10	JA1952
Motion for Attorney's Fees	4/25/2019	11; 12	JA2252- JA2310; JA2311- JA2338
Motion to Compel	7/28/2017	1	JA0106- JA0133
NEF Proof of Electronic Filing (Notice of Entry of Order Denying Motion for Reconsideration)	11/18/2019	14	JA2682- JA2684

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
NEF Proof of Electronic Filing (Order Denying Motion to Alter or Amend Judgment)	8/6/2019	13	JA2545-JA2547
NEF Proof of Electronic Service (Findings of Fact, Conclusions of Law and Judgment)	4/22/2019	11	JA2165-JA2167
NEF Proof of Electronic Service (Motion to Alter or Amend Judgment)	4/25/2019	11	JA2249-JA2251
Notice of Appeal	8/15/2019	13	JA2595-JA2615
Notice of Cross-Appeal	8/29/2019	13	JA2634-JA2655
Notice of Entry of Judgment (Findings of Fact, Conclusions of Law and Judgment)	4/22/2019	11	JA2168-JA2181
Notice of Entry of Order (Order Denying Motion for Reconsideration)	11/18/2019	14	JA2670-JA2681
Notice of Entry of Order (Order Denying Motion to Alter or Amend Judgment)	8/9/2019	13	JA2572-JA2582
Notice of Entry of Order (Order Granting in Part and Denying in Part Motion to Retax Costs)	8/9/2019	13	JA2555-JA2571
Notice of Entry of Order (Order Granting Motion for Attorneys' Fees)	8/9/2019	13	JA2583-JA2594

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Opposition to Motion for Reconsideration of Attorney's Fee Award	8/28/2019	13	JA2624-JA2633
Opposition to Motion to Retax costs	5/14/2019	12	JA2455-JA2460
Order Denying Athanasios Skarpelos' Motion for Summary Judgment	6/21/2018	3	JA0608-JA0615
Order Denying Motion for Reconsideration	10/24/2019	13	JA2663-JA2669
Order Denying Motion to Alter or Amend Judgment	8/6/2019	13	JA2539-JA2544
Order Denying Skarpelos' Motion in Limine	6/29/2018	3	JA0616-JA0622
Order Granting in Part and Denying in Part Motion to Retax Costs	8/6/2019	13	JA2527-JA2538
Order Granting Motion for Attorney's Fees	8/9/2019	13	JA2548-JA2554
Order Granting Motion for Discharge	1/23/2019	4	JA0714-JA0716
Pretrial Order	3/31/2017	1	JA0096-JA0105
Recommendation for Order	10/31/2017	1	JA0145-JA0157
Reply in Support of Motion for Attorneys' Fees	6/7/2019	12	JA2509-JA2518

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Reply in Support of Motion to Compel	8/21/2017	1	JA0138- JA0144
Reply in Support of Skarpelos' Motion to Alter or Amend Judgment	6/7/2019	13	JA2519- JA2526
Reply in Support of Weiser's Motion for Reconsideration for Attorney's Fees Award	9/10/2019	13	JA2656- JA2662
Skarpelos' Answer to Weiser's Cross-Claim	6/17/2016	1	JA0075- JA0081
Skarpelos' Motion to Alter or Amend Judgment	4/25/2019	11	JA2183- JA2248
Skarpelos' Objections to Weiser's Pretrial Disclosures	1/11/2019	4	JA0630- JA0635
Skarpelos' Post-Trial Brief Regarding Restriction on Disposition of Stock	4/8/2019	11	JA2151- JA2155
Skarpelos' Responses to Weiser's Objections to Findings of Fact, Conclusions of Law, and Judgment	4/8/2019	10	JA2049- JA2052
Transcript of Proceedings – Bench Trial – Day 3	1/30/2019	8; 9	JA1565- JA1680; JA1681- JA1713
Transcript of Proceedings – Bench Trial – Day 4	1/31/2019	9	JA1724- JA1838

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Transcript of Proceedings – Bench Trial – Day 5	2/01/219	9; 10	JA1851- JA1890; JA1891- JA1913
Transcript of Proceedings - Trial - Day 1	1/28/2019	7	JA1272- JA1423
Transcript of Proceedings - Trial - Day 2	1//29/2019	7; 8	JA1425- JA1470; JA1471- JA1557
Transcript of Proceedings 02/06/2019	2/6/2019	10	JA1914- JA1950
Trial Exhibit 1, Anavex Life Sciences Corp. Share Certificate 0753 for 6,633,332 shares (WEISER000281)	1/28/2019	6	JA1135- JA1136
Trial Exhibit 11, MHNYMA Swift-Single Customer Credit Transfer (WEISER000346)	1/31/2019	9	JA1716- JA1717
Trial Exhibit 12, 12/21/2012 email Lambros Pedafronimos L. Pedaf@gmail.com to Christos Livadas (WEISER000345)	1/31/2019	9	JA1718- JA1719
Trial Exhibit 13, 1/10/2013 Corporate Indemnity to Nevada Agency and Transfer Company to Reissuance of Lost Certificate (S000007)	1/28/2019	6	JA1160- JA1161

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 14, 3/28/2013 Athanasios Skarpelos Affidavit for Lost Stock Certificate (S000008-S000009)	1/28/2019	6	JA1162-JA1164
Trial Exhibit 15, 3/29/2013 Athanasios Skarpelos Stop Transfer Order (S000010)	1/28/2019	6	JA1165-JA1166
Trial Exhibit 16, 4/4/2013 NATCO Transfer (S000011)	1/28/2019	6	JA1167-JA1168
Trial Exhibit 18, 4/26/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000338)	1/31/2019	9	JA1720-JA1721
Trial Exhibit 19, 5/09/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000312)	1/31/2019	9	JA1722-JA1723
Trial Exhibit 2, WAM New Account Opening Form (WEISER000352-361)	1/28/2019	6	JA1137-JA1147
Trial Exhibit 20, 5/24/2013 email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000340)	1/28/2019	6	JA1169-JA1170
Trial Exhibit 21, 06/24/2013 Email Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000012)	1/28/2019	6	JA1171-JA1172

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 22, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000013)	1/28/2019	6	JA1173-JA1174
Trial Exhibit 23, 06/24/2013 Email Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000014)	1/28/2019	6	JA1175-JA1176
Trial Exhibit 24, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000015)	1/28/2019	6	JA1177-JA1178
Trial Exhibit 25, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000333-000337)	1/28/2019	6	JA1179-JA1184
Trial Exhibit 26, 06/25/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000016)	1/28/2019	6	JA1185-JA1186
Trial Exhibit 27, 07/02/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000017)	1/28/2019	6	JA1187-JA1188
Trial Exhibit 28, 07/02/2013 Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000018)	1/28/2019	6	JA1189-JA1190

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 29, 07/03/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000019)	1/28/2019	6	JA1191-JA1192
Trial Exhibit 3, Letter dated October 30, 2015 from Montello Law Firm to NATCO (WEISER000002-WEISER000003)	1/28/2019	6	JA1148-JA1150
Trial Exhibit 30, 07/05/2013 Stock Sale and Purchase Agreement between Weiser and Skarpelos (WEISER000207-WEISER000209)	1/28/2019	6	JA1193-JA1196
Trial Exhibit 31, 07/09/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos (S000020)	1/28/2019	6	JA1197-JA1198
Trial Exhibit 32, 07/09/2013 Blank Stock Sale and Purchase Agreement signed by Skarpelos (WEISER000161-WEISER000163)	1/28/2019	6	JA1199-JA1202
Trial Exhibit 33, 7/09/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000328-WEISER000332)	1/28/2019	6	JA1203-JA1208
Trial Exhibit 34, Blank Stock Sale and Purchase Agreement (WEISER000156-WEISER000158)	1/28/2019	6	JA1209-JA1212

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 35, 07/12/2013 Power of Attorney to Transfer Bonds or Shares (WEISER000368)	1/28/2019	6	JA1213-JA1214
Trial Exhibit 36, 07/12/2013 Power of Attorney to Transfer Bonds or Shares (WEISER000369)	1/28/2019	6	JA1215-JA1216
Trial Exhibit 40, 10/28/2013 Email Tom Skarpelos and Christos Livadas (WEISER000339)	1/28/2019	6	JA1217-JA1218
Trial Exhibit 43, 12/31/2013 Weiser Skarpelos Statement of Account for February 1, 2013 - December 31, 2013 (WEISER000378-WEISER000380)	1/28/2019	6	JA1219-JA1222
Trial Exhibit 44, Duplicate copy of 12/31/2013 Weiser Skarpelos Statement of Account for February 1, 2013 - December 31, 2013 (WEISER000378-WEISER000380)	1/28/2019	6	JA1223-JA1226
Trial Exhibit 46, 11/02/2015 Letter Ernest A. Alvarez to Nevada Agency and Transfer Company Weiser Asset Management Ltd. (WEISER000004)	1/28/2019	6	JA1227-JA1228
Trial Exhibit 47, 11/03/2015 Letter Alexander H. Walker III to Ernest A. Alvarez (WEISER000001)	1/28/2019	6	JA1229-JA1230

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 48, 11/12/2015 Letter Elias Soursos, Weiser Asset Management Ltd. to NATCO (WEISER000011)	1/28/2019	6	JA1231-JA1232
Trial Exhibit 49, 11/12/2015 Letter Bernard Pinsky to Nevada Agency and Transfer Company (WEISER000007-WEISER000008)	1/28/2019	6	JA1233-JA1235
Trial Exhibit 50, 11/12/2015 Email Christos Livadas to Nick Boutasalis (WEISER 000214-WEISER000215)	1/28/2019	6	JA1236-JA1238
Trial Exhibit 51, 11/13/2015 Letter Ernesto A. Alvarez to Alexander Walker III, Esq. (WEISER000009)	1/28/2019	6	JA1239-JA1240
Trial Exhibit 52, 11/13/2015 Letter Ernesto A. Alvarez to Nevada Agency and Transfer Company (WEISER000005)	1/28/2019	6	JA1241-JA1242
Trial Exhibit 53, 11/13/2015 email Alexander H. Walker III to Ernesto A. Alvarez cc Amanda Cardinelli (WEISER000187-WEISER000189)	1/28/2019	6	JA1243-JA1246
Trial Exhibit 54, 11/13/2015 Letter Nick Boutasalis to NATCO (PID-00045-PID-00048)	1/28/2019	6	JA1247-JA1251

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 55, 11/16/2015 letter to Ernesto A. Alvarez to Alexander Walker III, Esq., (WEISER000012)	1/28/2019	6	JA1252- JA1253
Trial Exhibit 56, 11/17/2015 email Bill Simonitsch to Louis R. Montello cc Ernesto Alvarez (WEISER000238)	1/28/2019	6	JA1254- JA1255
Trial Exhibit 57, 11/18/2015 email Bill Simonitsch and Ernesto A. Alvarez (WEISER000216-WEISER000217)	1/28/2019	6	JA1256- JA1258
Trial Exhibit 58, 11/19/2015 Email bill Simonitsch and Ernesto A. Alvarez cc Louis Montello (WEISER000218-WEISER000219)	1/28/2019	7	JA1259- JA1261
Trial Exhibit 59, 11/19/2015 Email Christos Livadas re Tom Transfer request (WEISER000320-WEISER000322)	1/28/2019	7	JA1262- JA1265
Trial Exhibit 60, 11/19/2015 email Christos Livadas re Skarpelos Email flow 2011-2013 (WEISER000341-WEISER000343)	1/28/2019	7	JA1266- JA1269
Trial Exhibit 61, Bank documents (S000032-S000035)	1/30/2019	7	JA1560- JA1564
Trial Exhibit 7, 05/30/2011 Email between Athanasios Skarpelos and Howard Daniels re Courier Address for WAM, Ltd. (S000006)	1/28/2019	6	JA1151- JA1152

<b>Document Title (<i>Alphabetical</i>)</b>	<b>Date</b>	<b>Vol.</b>	<b>Page No.</b>
Trial Exhibit 8, 05/31/2011 Skarpelos Identify Verification Form with Supporting Documents (WEISER000362-WEISER00367)	1/28/2019	6	JA1153-JA1159
Verified Memorandum of Costs and Disbursements	4/25/2019	11	JA2363-JA2443
Weiser's Motion for Reconsideration of Attorney's Fee Award (Request for Oral Argument)	8/19/2019	13	JA2616-JA2623
Weiser's Opposition to Motion to Compel	8/14/2017	1	JA0134-JA0137
Weiser's Opposition to Skarpelo's Motion for Attorney's Fees	5/24/2019	12	JA2502-JA2508
Weiser's Opposition to Skarpelos' Motion for Summary Judgment	4/12/2018	3	JA0466-JA0583
Weiser's Opposition to Skarpelos' Motion in Limine	4/12/2018	2; 3	JA0353-JA0420; JA0421-0465
Weiser's Answer and Cross Claim	5/24/2016	1	JA0058-JA0070
Weiser's Answer to Skarpelos' Cross-Claim	6/15/2016	1	JA0071-JA0074

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. NORRIS: 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.)

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

3

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

<b>#</b>	38:14 40:9,24	<b>1083</b> 25:8	<b>133</b> 33:18	<b>1984</b> 30:6 34:11
<b>#51</b> 1:1,24	<b>\$250,000,000</b> 11:4	<b>1105</b> 32:7	<b>137</b> 33:19	<b>1996</b> 25:9
<b>\$</b>	<b>\$4,115.36</b> 37:5,12,15	<b>1114</b> 32:7	<b>138</b> 26:8	<b>1st</b> 15:20
<b>\$125</b> 37:3	<b>\$6</b> 40:23	<b>112</b> 25:8	<b>14</b> 17:6,7,10 50:6	<b>2</b>
<b>\$140,000</b> 15:21	<b>\$7,500</b> 37:3	<b>119</b> 25:3	<b>1407</b> 34:11	<b>2</b> 13:19 14:14, 19
<b>\$153,679.54</b> 36:19	<b>\$95,775.46</b> 36:24	<b>121</b> 25:3	<b>1411</b> 34:11	<b>2,000</b> 11:11, 20
<b>\$153,804.54</b> 36:22	-	<b>122</b> 26:7	<b>15</b> 17:7 50:6	<b>2005</b> 25:4
<b>\$2</b> 40:3,22 41:7	--o0o-- 3:2 51:16	<b>125,000</b> 41:8	<b>16</b> 50:7	<b>2006</b> 26:8 28:15
<b>\$2.08</b> 39:22	<b>1</b>	<b>1254</b> 25:3	<b>18th</b> 37:4	<b>2009</b> 14:1
<b>\$20,000</b> 19:13	<b>1</b> 11:2,18,22	<b>1262</b> 25:9	<b>196</b> 30:5	<b>2011</b> 12:22 13:10 14:5
<b>\$245,464.64</b> 37:14	<b>10</b> 1:12	<b>1265</b> 25:9	<b>1961</b> 32:24	<b>2012</b> 24:16
<b>\$249,480</b> 35:11	<b>100</b> 11:10 30:4	<b>128</b> 24:15	<b>1966</b> 32:17	<b>2013</b> 15:19,20 16:7 18:11, 12,23 36:22 37:4 40:4
<b>\$249,580</b> 36:5,23	<b>100,000</b> 41:8	<b>1297</b> 33:19	<b>1975</b> 30:4	<b>2014</b> 16:7,11, 14
<b>\$250,000</b> 36:4	<b>107</b> 29:13	<b>1299</b> 33:19	<b>1976</b> 33:19	<b>2016</b> 9:22,24
	<b>1078</b> 25:8	<b>13</b> 17:6 50:6	<b>1978</b> 33:5	
		<b>131</b> 25:16	<b>198</b> 30:5	
		<b>132</b> 32:6	<b>1981</b> 25:16	

10:2 32:7	18:11	419 32:16	5441 2:4	674 30:5
2019 1:18 3:1	3,336,000 22:19	424 32:16	546 33:19	678 30:5
226 29:14	30 7:3 18:19, 22 19:5,7 21:17	434 28:14	577 34:10	688 25:3
23rd 9:24		44 7:19,20,22 15:17 19:14 36:9	582 33:5	7
249,580 37:14	312 32:23		5th 18:23	724 32:24
24th 10:2	318 32:23	46 26:8	6	727 32:24
250 24:16 36:4	31st 15:19	469 33:5	6 1:18 3:1	753 13:21,22 17:2 35:5 46:10 47:7 50:8
255 24:21 26:3	362 32:24	477 33:5	6,633,332 13:24	77 32:23
256 29:21	366 32:6	498 26:8	6,725,832 50:10	775 323-3411 1:3
25th 36:21	371 24:15	499 26:8	660 17:2 50:8	786 33:5
283 24:15	373 32:16	4:17 51:15	663 30:3	791 33:5
29th 9:22 14:1	378 24:20	5	664 30:4	8
2nd 18:12	379 26:2 29:20	500 2:8	666 30:3	8 40:4
3	3:04 3:1	500,000 42:3	668 30:3	800,000 41:15 42:2
3 28:11	4	526770 1:23	672 25:3,22 30:5	808 29:11
3,316,666	40 7:20	541 30:3	673 25:22	
	4185 1:1			

<b>821</b> 26:7	<b>A</b>	19:20	<b>Adams</b> 2:8 3:19 4:1,3	<b>adversaries</b> 34:4
<b>839</b> 26:7	<b>ability</b> 39:8	<b>accurate</b> 27:18 28:16	<b>additional</b> 35:18 36:1 38:24 44:13, 20 47:9,18	<b>advisory</b> 12:5
<b>840</b> 26:8	<b>able</b> 4:11 24:10 34:19 39:3	<b>accurately</b> 29:1 33:11,17	<b>additionally</b> 11:20 12:11 18:2,14 23:6 29:17 31:22 32:21 33:10 37:23 38:19 45:9	<b>advocate</b> 50:22
<b>89509</b> 2:9	<b>absent</b> 30:15	<b>acknowledge</b> 34:19 35:2	<b>address</b> 31:18	<b>advocates</b> 50:22
<b>89511</b> 1:3 2:4	<b>absolutely</b> 8:4 23:17	<b>acknowledged</b> 33:6,10	<b>addressed</b> 44:22	<b>Affidavit</b> 17:9
<b>9</b>	<b>acceptance</b> 25:1 26:11,14	<b>acquired</b> 12:10	<b>addressing</b> 48:9	<b>affiliate</b> 12:4
<b>91</b> 30:3	<b>access</b> 15:3,4	<b>acronym</b> 10:5	<b>adds</b> 47:18	<b>after</b> 4:20 11:9 43:19
<b>913</b> 28:14	<b>accordance</b> 50:6	<b>across</b> 6:16	<b>admitted</b> 4:15 6:21 9:5,7,10 27:16	<b>afternoon</b> 3:7,8,20
<b>919</b> 28:14 29:11	<b>according</b> 32:22 45:18	<b>action</b> 21:14 28:7,21 29:2 32:13 34:1,15 35:19 50:6	<b>adopt</b> 28:17	<b>again</b> 3:15 4:14,17 7:1 20:1 26:23 49:7 50:14
<b>92</b> 33:18	<b>account</b> 8:3 13:10,14,17, 18 14:3,7,9, 11,13,16 15:2,4,5,10, 14,15,20,24 16:21,23 17:19 22:15, 17 35:8 36:16,23 38:7,15 42:14	<b>actions</b> 7:10 18:7 29:23	<b>Advance</b> 32:6	<b>against</b> 16:2 24:2
<b>920</b> 28:14	<b>accounts</b>	<b>actual</b> 18:17 31:15 36:21 37:10	<b>advanced</b> 37:21	<b>Agency</b> 1:10 9:21 17:1
<b>921</b> 25:8		<b>actually</b> 19:14 21:24 26:13 45:1 46:12 51:3		<b>ago</b> 9:3
<b>923</b> 29:11				<b>agree</b> 45:21
<b>94</b> 33:4				<b>agreed</b> 25:7
<b>975</b> 46:14 47:9,15 49:21,22 50:9				

26:4 34:19	<b>allowing</b> 16:3 37:23	12,23 22:7 36:19 37:10 39:15 50:10	<b>ANTHANASIO</b> <b>S</b> 2:6	23 15:9 29:23
<b>agreement</b> 7:4 18:20 21:3,16,17 22:23 23:15, 19 25:12 27:4 29:3 30:9 48:16	<b>almost</b> 40:17	<b>amounts</b> 19:12	<b>anticipated</b> 21:8,12	<b>apply</b> 13:9 45:4
<b>agrees</b> 33:24	<b>along</b> 21:15 46:8	<b>analysis</b> 10:10,22 34:14 45:22	<b>anybody</b> 15:3	<b>appreciate</b> 31:6 50:19
<b>ahead</b> 42:11	<b>already</b> 22:16 31:4 47:8 50:11	<b>Anavex</b> 13:18,23 18:11 38:21 39:18,20,21 40:11 43:7,13 46:13,14	<b>anyone</b> 19:8 22:20	<b>approach</b> 4:22 48:3,8
<b>all</b> 3:20 4:14, 21 5:2,3,12, 17,20 6:9,12 7:1,18 8:1,2, 23 9:4,6,9 11:14,15 18:6 20:5 21:6,15, 20 24:9 26:24 32:13 38:4 39:4,24 40:6 41:9 42:18,22 43:13 45:5,10 47:5,21 50:1, 24	<b>also</b> 3:22 6:14 9:18 10:11,17 12:15,23 14:19 16:24 17:22 18:10 23:4,16 25:12 34:13,18 35:7,23 39:3, 24 44:19 45:11 46:11 48:8	<b>ancillary</b> 33:7	<b>anything</b> 22:5 40:21 42:18 43:12 45:13, 19,23 46:4 47:3	<b>appropriate</b> 4:20 33:9 36:14
<b>allegation</b> 17:24	<b>although</b> 37:20	<b>Anderson</b> 2:7 3:19,24 5:14 16:10 18:19 24:10 25:3,22 40:14,15 41:16 42:5 43:21 44:4,6, 13,16 45:14 46:2 47:22 48:1,2,13 50:4	<b>anyway</b> 4:2 42:22 43:8	<b>approximately</b> 11:10,11,20
<b>allegations</b> 20:11	<b>always</b> 42:8 44:23	<b>Anderson's</b> 34:13,24 45:24	<b>apologize</b> 6:24 10:11 24:9 37:16 46:18	<b>April</b> 9:22 15:16 18:11, 12
<b>allegedly</b> 31:5,11	<b>Amanda</b> 46:21	<b>another</b> 49:1	<b>appeal</b> 40:17 42:6,7,11 43:14	<b>arguably</b> 23:12
<b>allow</b> 38:24	<b>Amended</b> 9:20,22		<b>appeals</b> 42:9, 18,22 47:6	<b>argued</b> 29:18
	<b>amount</b> 7:24 11:5 13:11,		<b>APPEARANC</b> <b>ES</b> 2:1	<b>arguing</b> 5:16
			<b>application</b> 5:1 14:15,22,	<b>argument</b> 23:18 31:7 35:1
				<b>arguments</b> 4:8 5:15
				<b>arises</b> 25:14

30:8	<b>assume</b> 3:17, 22 37:13 48:20	<b>back</b> 3:3 4:11, 14,18 9:12 25:21 29:9 34:4,21,23 38:22 39:6 40:3 45:1 48:23 49:16	35:6 36:5 48:19	<b>believe</b> 6:2 7:16 8:2 11:8 14:24 15:15 16:10 18:19 35:8 36:13 40:13 44:16 45:14
<b>around</b> 3:10			<b>basic</b> 24:23 26:10 28:3 31:13 45:6	
<b>arrangements</b> 12:5	<b>assuming</b> 42:1			
<b>asserted</b> 27:11	<b>Athanasios</b> 13:22	<b>Bahamas</b> 2:2 3:6 10:1,5,6 11:24 12:15, 16 27:1	<b>basically</b> 29:9 34:14	<b>believes</b> 16:22
<b>asserting</b> 20:14	<b>attention</b> 9:20		<b>basis</b> 41:5	<b>believing</b> 6:19
	<b>attorney</b> 18:4	<b>balance</b> 15:16,20 16:21 35:10 36:18,21,24 37:5,8,12,13	<b>bear</b> 32:10	
<b>Asset</b> 1:13 2:2 3:5 10:1,4 20:21 21:2 22:4,8,21 23:3,12 35:9, 13 36:3,19 37:18	<b>attorneys</b> 13:12		<b>became</b> 28:1	<b>bench</b> 4:7,22 9:5 37:7
	<b>August</b> 19:11	<b>Balish</b> 33:17 34:5	<b>before</b> 5:10 11:13 19:19 43:3	<b>benefit</b> 20:9 38:13 40:2
	<b>authenticity</b> 17:23	<b>Bancorp</b> 32:6	<b>began</b> 15:21	<b>bequest</b> 38:20
<b>assets</b> 11:3,5 40:11 42:12	<b>Authority</b> 11:23	<b>bank</b> 19:19	<b>Beginning</b> 29:20	<b>best</b> 8:22 23:11,17 48:8
<b>assistance</b> 14:4	<b>available</b> 17:14	<b>banking</b> 12:4	<b>behalf</b> 3:5,21 7:10 12:6 15:14 20:19 46:19 50:22	<b>between</b> 20:21 21:4,17 22:4 23:2,15, 19,24 26:14, 22 27:8 28:20 33:2 35:3,24 36:7
<b>assists</b> 13:4	<b>away</b> 4:4 39:10,11	<b>base</b> 22:10,11	<b>being</b> 13:20 17:7 20:7 25:18 38:7 47:1 50:21	<b>beyond</b> 19:5
<b>associated</b> 38:13		<b>based</b> 7:14 11:14,16,21 13:2 14:20 15:23 16:19 19:18 20:1,3 21:3,20 23:20 25:20 29:19, 23 31:2,4	<b>believablenes</b> <b>s</b> 6:11	<b>bigger</b> 44:3
<b>associates</b> 3:12	<b>B</b>			
<b>Association</b> 32:5	<b>B-A-L-I-S-H</b> 33:17			

<b>binder</b> 7:1 9:7,8 18:17	28:10 29:5	<b>Canada</b> 12:1	43:1,11 45:12 49:23 50:16 51:1,2	47:4,9,14 48:15,18,23, 24 49:2,8,13, 15 50:3,9
<b>Birnbaum</b> 8:3	<b>brief</b> 40:13 43:4 44:11,21	<b>canceled</b> 49:14,15	<b>cases</b> 30:15 32:1	<b>certificates</b> 13:19 17:2,5 50:8
<b>bit</b> 10:12 40:16	<b>briefed</b> 41:4	<b>cannot</b> 26:5 30:23,24 40:10	<b>cash</b> 15:2 37:5,8	
<b>blame</b> 5:17	<b>bring</b> 9:19			
<b>bona</b> 49:9	<b>brings</b> 36:23	<b>Capital</b> 10:6 12:3,13,24 13:8 14:3 18:24 20:13, 14,21 21:2,18 22:1,5,21 23:4,16,24 31:6 34:21 35:13 40:1	<b>cause</b> 28:6,21 29:2 35:19	<b>Certified</b> 24:13,19 25:5,10 26:1 28:4 29:17
<b>bond</b> 40:18, 20 42:6	<b>broker</b> 11:22 49:7		<b>causes</b> 21:14 39:2	<b>chance</b> 40:18 41:2
<b>bookkeeping</b> 16:6 23:21	<b>broker-dealer</b> 11:2 12:1		<b>caveat</b> 42:24	
<b>books</b> 49:14, 15	<b>busy</b> 3:10	<b>Cardinalli</b> 46:21,24 47:2,11,12,16 48:18 49:3,6	<b>CCR</b> 1:1,24	<b>change</b> 19:3 41:8
<b>both</b> 4:21 5:16 13:4,12 20:13,15 24:7,19 29:15 34:19 37:24 38:10 45:6 51:2	<b>Butch</b> 29:10, 13		<b>cell</b> 27:5	<b>changed</b> 7:7 35:6
	<b>C</b>	<b>care</b> 39:5	<b>cents</b> 40:4	<b>chat</b> 51:8
<b>boxes</b> 26:24 27:1	<b>call</b> 46:3	<b>case</b> 1:11 4:16 5:8 7:15 8:7,24 9:2,18 19:2,8 23:11, 21 24:16 25:4,9 26:8, 12 28:4,10, 15,18 29:13, 18 30:4,6,22 31:3 32:7,17, 22,24 33:6,9, 13,19 34:5,11 39:2 40:22	<b>certainly</b> 3:24 5:15 8:9,18 14:17 26:18 31:16 37:21 42:3 44:22 50:15	<b>Chinese</b> 39:14
<b>breach</b> 20:16 23:5 28:6,12, 17,21,23	<b>called</b> 22:18		<b>certificate</b> 13:21,22 15:12 17:9, 11,16,17,21 18:9 35:5 42:19 46:10	<b>choosing</b> 6:21
<b>breached</b>	<b>came</b> 6:16 38:6 40:5			<b>chose</b> 27:21
	<b>can't</b> 22:10 23:23 31:13, 16,17,18,20			<b>Christos</b> 12:7
				<b>chunk</b> 39:12

<b>Circle</b> 1:2	<b>claim</b> 24:4	<b>climates</b> 3:17	<b>comment</b> 19:6 51:6	<b>complication</b> 47:19
<b>Circuit</b> 32:17, 18	<b>claimant</b> 34:1,6	<b>close</b> 25:2,14, 21 26:6 30:1	<b>Commission</b> 11:23 12:2 26:7	<b>concern</b> 49:18
<b>circumstances</b> 32:10 36:14 38:17 45:4	<b>claimants</b> 33:21	<b>closed</b> 39:21	<b>commissioner</b> 27:24	<b>concerned</b> 42:11
<b>circumstantia</b> l 5:1 7:14 16:19 20:2	<b>claims</b> 7:9 24:2 35:14 45:17	<b>closer</b> 43:2	<b>Community</b> 32:5	<b>conclude</b> 14:20 16:20 19:21 20:7,24 30:10,24 31:20 36:5
<b>circumstantia</b> lly 19:21	<b>clarify</b> 24:11 45:20,23 46:5	<b>CLOSING</b> 1:1	<b>company</b> 9:21 12:9 17:1 26:6 34:9	<b>concluded</b> 32:18 51:15
<b>citation</b> 29:9, 13,15	<b>Class</b> 11:2, 18,22	<b>cogent</b> 24:11	<b>compelling</b> 20:3	<b>concludes</b> 40:10
<b>citations</b> 32:11	<b>clean</b> 5:17	<b>coincidence</b> 7:18,22 8:16	<b>compensator</b> y 24:3	<b>conclusion</b> 14:13 15:23 23:23 37:9 45:22 47:4 49:11
<b>cite</b> 24:19 31:24	<b>clear</b> 17:6 30:13 31:5,10 50:12	<b>cold</b> 10:12	<b>competing</b> 20:11	<b>conclusions</b> 4:6,12 10:18, 21 24:6 43:22 44:15
<b>cited</b> 4:16 44:20	<b>clearly</b> 25:20	<b>colleagues</b> 41:3	<b>Complaint</b> 9:20,22	<b>conduct</b> 25:13 30:1
<b>cites</b> 28:13 29:1 33:17	<b>clerk</b> 9:6	<b>collegiality</b> 50:18	<b>complete</b> 33:2	<b>confer</b> 44:1
<b>citing</b> 25:2,7, 15,21 26:6 30:2,15,20 32:15 34:4,8	<b>client</b> 5:16,17 11:3,10 41:3	<b>come</b> 4:2,11, 18 23:23 37:14 49:16 51:6,10	<b>completely</b> 41:19	<b>confirm</b> 49:8
<b>civil</b> 44:9	<b>clients</b> 11:8 12:6 13:3 50:23	<b>coming</b> 10:11	<b>complex</b> 51:2	
	<b>climate</b> 3:22	<b>commendable</b> 51:1		

<b>confusion</b> 23:20	<b>contained</b> 27:1	<b>contrary</b> 37:13	10:9 14:18 20:4	39:5 40:7,8, 10,24 41:7, 14,18,19,24 42:23 43:4,18 44:14,17,19 45:8,15,19,22 46:9,10,11, 16,23 47:1,8, 15,17,24 48:13,14,15 49:5,18 50:2, 4,18 51:3,13, 14
<b>consider</b> 8:23 32:9 40:18 41:6	<b>contemplated</b> 15:8 42:20	<b>conversation</b> 27:5	<b>court</b> 1:4,6 3:3,9,12,15, 16,19 4:3,5,8, 9 9:3,6 10:14, 24 11:2,4,7, 12,15,18,21 12:3,7,10,11, 14,15,17,23 13:6,8,9,16, 17 14:2,12, 14,19,24 15:5,12,14,22 16:2,5,16,18, 22,24 17:3,21 18:6,10,12, 14,21,22 19:1,4,6,9,14, 18 20:6,10, 12,18,20,23 21:19,21 22:3,6,10,12, 18,21,22 23:2,16,18,22 24:1,6,13,22 25:5,10,18,19 26:1,12,15,19 27:17 28:2, 17,18,21 29:17,22 30:7,17,22 31:14,24 32:8,12,21 33:1,6,7,12, 16,24 34:18, 19 35:2,7,12, 18,20,23 36:1,2,5,9,13, 17 37:19,23 38:11,15,19	<b>court's</b> 9:20 10:10 24:12 25:19 31:10 35:6 38:23 39:23 40:7 42:8 43:6,23 44:5 45:18,22 48:11,21
<b>consideration</b> 4:10,20 9:14 25:2 26:11 37:8 48:12	<b>contents</b> 27:9	<b>conversation s</b> 27:12		
<b>considered</b> 8:17 9:18	<b>context</b> 25:12	<b>converted</b> 7:6		
<b>considering</b> 16:18 32:13	<b>continue</b> 39:4	<b>copy</b> 44:17 46:7		
<b>consolidation</b> 41:13,22 50:11	<b>contract</b> 20:16,19,21, 24 21:16,20 22:3,13,19 23:2,4,7,24 24:4,8,17,18, 23,24 25:17 26:5,9,17,22 27:3 28:3,6,9, 18,20,21 29:7,19,24 30:8,9,11,17, 23 31:1,15,16 35:3,7,14 36:6 37:21 38:12 39:24 45:6,7,8	<b>Corporation</b> 30:3 39:21		
<b>Construction</b> 24:15		<b>correct</b> 16:14 36:20 41:17, 18 46:20		
<b>contact</b> 12:21 16:24 27:6 43:18 44:8 49:7		<b>correctly</b> 15:18		<b>courts</b> 32:3,4, 9 33:2
<b>contacting</b> 19:22	<b>contract's</b> 25:7	<b>counsel</b> 4:8, 21 5:16 6:24 18:18 24:9 38:24 44:1 51:14		<b>covenant</b> 20:16 23:5 24:5 28:24 35:15
<b>contacts</b> 12:19	<b>contracting</b> 31:12	<b>counting</b> 8:7		<b>covered</b> 45:5
<b>contain</b> 24:18	<b>contracts</b> 25:15 29:24	<b>Country</b> 1:2		<b>create</b> 39:1 44:3
		<b>COUNTY</b> 1:7		<b>creating</b> 13:1 43:8,10
		<b>course</b> 9:8		

<b>credibility</b> 4:24 5:9,12 6:10,19 8:6, 12,17	<b>customers</b> 11:11,19,20  <b>CV15-02259</b> 1:11 3:4 <hr/> <b>D</b> <hr/>	<b>decides</b> 48:15  <b>decision</b> 4:18 22:11 24:7 42:8 44:5 45:21	20:4 21:10,19 22:22 23:22 26:13 27:14 28:19 36:8 37:20 50:20	<b>determination</b> 8:6 22:10 35:6 36:2 48:17,21
<b>credible</b> 6:17 38:4			<b>denied</b> 29:8	<b>determination</b> <b>s</b> 9:2 11:16
<b>credit</b> 36:22		<b>declaration</b> 16:11,13	<b>denies</b> 33:12	<b>determinative</b> 16:17
<b>credited</b> 35:11	<b>damage</b> 28:11	<b>declaratory</b> 23:7,9 24:3 31:22 33:15 35:14,19	<b>depends</b> 25:11	<b>determine</b> 20:18 33:21
<b>cross-examination</b> 8:19 20:5	<b>damages</b> 28:12		<b>deposit</b> 15:11	<b>determined</b> 39:5
<b>crossclaim</b> 9:23,24 20:12 21:14	<b>DANE</b> 2:7	<b>defendant</b> 28:10 29:3,4, 5	<b>deposited</b> 17:18 42:19	<b>determining</b> 24:17
<b>crossclaims</b> 20:11	<b>Daniels</b> 12:17,19 14:4	<b>Defendants</b> 1:14	<b>deposition</b> 9:13	<b>detriment</b> 32:19
<b>curiosity</b> 48:19	<b>dare</b> 51:2	<b>defer</b> 25:19	<b>depositions</b> 9:12 21:11	<b>different</b> 7:6 16:12 21:9,12
<b>curious</b> 39:17	<b>deal</b> 12:5 24:7	<b>dematerializat</b> <b>ion</b> 50:7	<b>Dept</b> 1:12	<b>difficult</b> 5:8 7:15 42:13
<b>current</b> 46:12,13	<b>dealer-broker</b> 11:19	<b>dematerialize</b> <b>d</b> 49:21	<b>describe</b> 17:12	<b>difficulty</b> 6:18 39:2
<b>currently</b> 11:20	<b>dealing</b> 20:17 23:6 24:5 28:24 35:15	<b>demonstrate</b> 19:7 20:20 27:2 28:7 33:16 50:7	<b>describes</b> 14:15	<b>digital</b> 27:4 49:21
<b>custody</b> 11:3	<b>debts</b> 38:6	<b>demonstrated</b>	<b>desired</b> 32:15	<b>dime</b> 38:5
	<b>December</b> 15:19 16:11		<b>desires</b> 14:16	
	<b>decide</b> 22:18		<b>destroy</b> 48:24	

<b>direct</b> 5:1 13:3 20:3 43:21 45:4 47:6	37:10	22:7	<b>effect</b> 18:5	<b>Enrichment</b> 30:21
<b>directly</b> 36:8	<b>dismissed</b> 35:16	<b>documents</b> 4:15 17:4 18:15 27:22	<b>either</b> 5:14 6:7 9:15 10:20 21:1,4, 18 22:4,8,20 23:2,24 27:24 36:8 42:7 51:9	<b>ensures</b> 30:18
<b>director</b> 12:8, 12 13:7	<b>dismissing</b> 42:17	<b>done</b> 7:10	<b>electronic</b> 47:13	<b>entire</b> 7:7 9:13
<b>disagree</b> 48:3 50:21	<b>dismissive</b> 5:13	<b>down</b> 10:11	<b>elements</b> 29:1	<b>entirely</b> 7:6 13:5
<b>disagreeable</b> 50:21	<b>dispose</b> 38:21 39:8 42:24 48:5	<b>draft</b> 43:24 45:18 46:2	<b>eliminate</b> 44:4	<b>entirety</b> 32:9
<b>discovery</b> 27:24	<b>disposition</b> 43:6	<b>during</b> 9:5,8 10:8 14:18 20:4 21:23	<b>ELLIOTT</b> 1:8	<b>entities</b> 3:4 13:2,5 20:13, 20 21:4 23:9 24:2 26:20
<b>discuss</b> 13:6 41:2 44:11 48:7	<b>dispute</b> 16:15 25:14 46:3	<b>duty</b> 29:4,6	<b>email</b> 27:4	<b>entitled</b> 23:9 33:16 38:10 48:22 49:12
<b>discussed</b> 13:8 23:1 27:18 40:4	<b>disputed</b> 15:11 35:21 37:1	<b>E</b>	<b>emphasize</b> 50:14	<b>entity</b> 7:10 12:4
<b>discussion</b> 13:11 14:6	<b>distinction</b> 22:14	<b>each</b> 31:1 33:14 34:1,6, 16 44:1 50:17	<b>end</b> 37:2 48:20 50:2	<b>equitable</b> 20:15 32:18 33:12,20 35:23 38:16 45:9
<b>disgorge</b> 38:17	<b>district</b> 1:6,8 25:19 28:15 34:11	<b>earlier</b> 18:15 27:19 31:20	<b>enforceable</b> 24:24	<b>equities</b> 32:10
<b>disgorged</b> 36:15	<b>document</b> 6:21 7:7,8 18:17 19:1,3	<b>ease</b> 10:3	<b>enjoy</b> 51:4	<b>equity</b> 12:15, 16 24:8 32:3,
<b>disgorgement</b>	<b>documentary</b>	<b>edit</b> 27:19	<b>enjoyable</b> 51:3	

4,8,22 33:2,8 36:2	6:17	<b>excuse</b> 13:20 21:8 24:3	41:5	5:3,10 6:8 10:14,18,20 11:1,5,14 20:19,24 25:18 26:21 27:21 28:1 29:14 36:3 43:22 44:15, 23 45:16 48:11
<b>erroneous</b> 25:20	<b>evidence</b> 5:2 7:15 8:4,18 10:15 11:15, 17 12:18 13:17 14:12, 20 15:6,24 16:19 18:13 19:19 20:2,3, 23 21:12 22:7 25:21 26:21 27:16 31:2 34:8 35:17	<b>exhibit</b> 6:22 7:1,3,19,22 13:19,20 14:14,19 15:17 17:7,10 18:17,19,22 19:5,7,14 21:17 27:7 36:9 47:7	<b>expenses</b> 19:13	
<b>ESQ</b> 2:3,7,8			<b>experience</b> 48:20	
<b>essence</b> 5:16			<b>explanation</b> 17:3	
<b>essential</b> 25:7,11 26:4, 17		<b>exhibits</b> 4:15 6:9 9:4,6,10, 17 17:6 20:5 50:6	<b>explanations</b> 17:8	<b>fact-finder</b> 30:10
<b>establish</b> 7:8 28:6 31:13 34:16	<b>evidencing</b> 19:2	<b>exist</b> 14:12 22:8	<b>express</b> 24:23	<b>facto</b> 33:14
<b>establishing</b> 34:7	<b>exact</b> 16:17		<b>extend</b> 41:1	<b>facts</b> 45:12, 13,15
<b>Estates</b> 1:2	<b>exactly</b> 7:24 17:15 31:5 50:1	<b>existed</b> 15:24 16:23 20:21 26:22 35:7	<hr/> <b>F</b> <hr/>	<b>failed</b> 26:20 39:13
<b>Euro</b> 37:3	<b>example</b> 6:20	<b>existence</b> 28:8	<b>F-A-R-N-H-A-M</b> 33:18	<b>fails</b> 28:22
<b>even</b> 4:3 21:22 31:5, 13,18,20 36:6 42:1 50:12 51:5	<b>examples</b> 6:18	<b>exists</b> 14:23 25:6,17 27:5 30:18 37:13	<b>F-R-I-E-D-G-O-O-D</b> 34:10	<b>fair</b> 20:17 23:6 24:5 28:24 35:15 40:1
<b>eventually</b> 9:9	<b>Excellent</b> 47:1	<b>expect</b> 45:20	<b>F.2d</b> 32:16	<b>faith</b> 20:17 23:5 24:5 28:24 29:4 35:15
<b>every</b> 6:5	<b>excess</b> 40:23	<b>expectations</b> 29:8	<b>F.sup.1047</b> 34:10	<b>familiar</b> 16:6
<b>everybody</b>	<b>exchanged</b> 30:12 31:2	<b>expedited</b>	<b>F.sup.2d</b> 28:14	<b>Farnham</b> 33:18
	<b>exclusive</b> 6:3		<b>fact</b> 4:6,12	

<b>fashion</b> 34:20	8:11,21 11:23	35:20 36:1 37:19,23 38:11,15 40:7,8	<b>form</b> 49:21	<b>funded</b> 13:18
<b>fashions</b> 36:13	<b>find</b> 7:15 11:18,21 12:11,23 13:9 16:18 18:6 19:9,14,20 30:9,23 31:14 38:3 47:23	<b>fine</b> 41:11	<b>format</b> 47:13	<b>funds</b> 36:15, 18 37:19 38:18
<b>favor</b> 40:8		<b>fingertips</b> 6:23	<b>formed</b> 26:5	<b>funny</b> 42:4 45:20
<b>February</b> 1:18 3:1 15:20	<b>finder</b> 5:3	<b>Fire</b> 24:13,19 25:5,10 26:1 28:4 29:18	<b>forward</b> 10:4, 7 19:23	<b>further</b> 11:13 12:3 19:9 26:15 34:6
<b>Federal</b> 28:15	<b>finding</b> 11:5 22:16 40:7 45:18	<b>first</b> 20:12 29:23 31:21 39:16	<b>forwarded</b> 38:1,14 42:14	
<b>fee</b> 36:20 37:3			<b>found</b> 5:20 7:4,11 8:10, 20 38:8 39:23 45:9	<b>G</b>
<b>fide</b> 49:10	<b>findings</b> 4:6, 12 5:10 6:8 10:14,18,20, 24 11:14 25:19 29:14 36:9 43:22 44:14,23 45:12,15 46:8 48:11	<b>Floor</b> 2:4	<b>four</b> 29:7	<b>Game</b> 28:13
<b>fight</b> 44:7,9		<b>following</b> 10:14,24 24:6,22 28:7 29:1,22	<b>four-to-one</b> 41:13,21	<b>gap-filler</b> 30:14
<b>figure</b> 48:7		<b>follows</b> 17:11 35:12 36:1	<b>Fourth</b> 32:17	<b>gave</b> 16:12
<b>file</b> 9:21	<b>finds</b> 11:2 12:3,7,10,14, 17 13:16,17 14:2,12,19 15:5,12,14,22 16:2,24 17:3 18:10,12,14, 22 19:1,18 20:6,23 21:19,21 22:3,21 23:2, 16 24:13 26:12,15,19 28:2,18,21	<b>force</b> 38:17	<b>frankly</b> 5:20 6:11,16 7:14 27:23 38:9	<b>general</b> 9:1 30:12 33:7 49:19
<b>filed</b> 9:20,23, 24		<b>foreign</b> 11:24	<b>free</b> 5:16	<b>gentlemen</b> 3:21 4:5 10:12 16:8 37:17 43:11 46:9 50:14
<b>filing</b> 17:8		<b>forgive</b> 10:12	<b>fresh</b> 4:19	<b>getting</b> 7:24 8:3 18:16 40:2
<b>final</b> 24:12 40:14 43:24 48:17		<b>forgotten</b> 41:16,19	<b>Friday</b> 4:8,13	<b>gift</b> 38:20
<b>finality</b> 41:5			<b>Friedgood</b> 34:9	
<b>financial</b>				

<b>gifted</b> 49:24	48:2 49:1	<b>head</b> 7:2	<b>HOLLAND</b> 2:3	<b>idea</b> 18:7 27:9 38:6
<b>give</b> 4:23 36:7 38:24 42:2 43:15 44:24	<b>guy</b> 5:18	<b>heard</b> 4:8 6:14 14:21 16:19 37:12	<b>Homeowners</b> 32:5	<b>identified</b> 10:8 18:3 19:10,13 21:7,8,15 28:4 31:10 46:4 50:11
<b>given</b> 4:20 5:7 19:16,24 36:16 39:10, 11 45:11 48:23	<b>guys</b> 44:7,10, 24	<b>hearing</b> 44:12	<b>Honor</b> 3:8,11, 18,24 16:10 18:19 40:15 41:23 42:15, 20 43:17 44:16 46:6,15 47:18,23 51:12	<b>identifies</b> 39:9
<b>giving</b> 36:11	<hr/> <b>H</b> <hr/>	<b>hearsay</b> 51:7, 8,11,13	<b>HONORABLE</b> 1:8	<b>impact</b> 39:23
<b>glaring</b> 6:18	<b>half</b> 39:10	<b>held</b> 33:22	<b>hope</b> 3:18,24 4:11	<b>impeach</b> 9:15
<b>goes</b> 25:5,10 26:1 30:7,17 32:12 33:24	<b>handled</b> 51:1	<b>Help</b> 16:8	<b>Hotels</b> 29:9	<b>implications</b> 40:19
<b>good</b> 3:7,8, 12,20 20:17 23:5 24:5 28:24 29:4 35:15 39:12 42:3	<b>happen</b> 42:21	<b>here</b> 3:5,19, 21 4:5 5:4 7:2 9:1 22:11 28:2 32:2 37:6 46:4,18, 19 47:1	<b>Howard</b> 12:17	<b>implied</b> 20:16 23:5 24:4 28:23 35:15 45:7
<b>granted</b> 32:19 35:20	<b>happened</b> 23:11	<b>higher</b> 39:19	<b>however</b> 13:4 28:17 30:22 32:9 35:7 44:5 46:11	<b>implied-in- fact</b> 29:19,24 30:10,23 31:15
<b>granting</b> 32:15	<b>happens</b> 8:15	<b>Hilton</b> 29:9	<b>hurdle</b> 31:17	<b>important</b> 5:9 22:14
<b>Greece</b> 17:23	<b>happy</b> 41:4	<b>hit</b> 45:10	<b>hurt</b> 49:10,17	<b>impressed</b> 50:15
<b>guess</b> 8:21 40:15 41:7	<b>harmed</b> 32:15	<b>Hold</b> 31:23	<hr/> <b>I</b> <hr/>	<b>impression</b>
	<b>HART</b> 2:3	<b>Holdings</b> 12:8,9,10 13:1	<b>i.e.</b> 17:12	
	<b>hash</b> 48:10	<b>Holdings'</b> 22:9		
	<b>having</b> 4:20 6:24 7:23 33:22 34:20 35:16 37:4			
	<b>Hay</b> 30:4			

5:15	<b>indicates</b> 17:9	37:17 40:6	<b>involved</b> 32:14	<b>judgment</b> 6:10 38:23 45:16
<b>inaccurate</b> 45:3	<b>inform</b> 10:22 24:7 51:8	<b>interaction</b> 7:23 27:8	<b>ipso</b> 33:14	<b>JUDICIAL</b> 1:6
<b>include</b> 29:15 44:22	<b>information</b> 27:20,23 44:14	<b>interest</b> 23:10 33:22 34:16 35:5 43:7	<b>issuance</b> 50:9	<b>July</b> 15:18 18:23 19:11
<b>includes</b> 32:12	<b>informed</b> 4:18 6:9	<b>interesting</b> 51:2	<b>issue</b> 5:7 6:6 28:2 35:24 39:2 40:14 42:5 43:8 44:3 46:1 48:5,7,10	<b>juries</b> 5:2
<b>including</b> 25:13 32:14	<b>inherent</b> 33:7	<b>International</b> 28:13	<b>issued</b> 13:24 47:8	<b>jurisdiction</b> 33:8 35:24
<b>inconsistenci es</b> 5:24	<b>initial</b> 36:17	<b>interplays</b> 47:21	<b>issues</b> 4:19 8:20,21,24 16:17 24:8 38:8 44:21 45:7	<b>jurors</b> 4:24 8:5
<b>inconsistency</b> 6:5	<b>innocent</b> 32:14,19	<b>interpleader</b> 33:20 34:1,15	<b>J</b>	<b>jury</b> 5:6 6:7
<b>inconsistent</b> 14:18 21:7 26:19	<b>instructed</b> 5:7	<b>interpled</b> 35:22 48:14	<b>K</b>	<b>justice</b> 33:2
<b>Incorporated</b> 24:14,15,20 29:10	<b>instructions</b> 4:23	<b>into</b> 5:6 16:4 37:8 41:11	<b>JEREMY</b> 2:3	<b>justified</b> 29:8
<b>incorrectly</b> 37:16	<b>instructive</b> 24:16	<b>investment</b> 12:4	<b>job</b> 1:23 42:10 45:24	<b>K-R-A-U-S-E</b> 32:23
<b>increased</b> 11:10	<b>Insurance</b> 34:9	<b>investor</b> 12:5	<b>joining</b> 3:9	<b>keep</b> 18:16 38:14 47:19
<b>indicated</b> 17:1 39:18	<b>intended</b> 30:11,24	<b>investors</b> 39:14	<b>judge</b> 1:8 4:24 8:5	<b>keeping</b> 38:11
	<b>intention</b>	<b>invoke</b> 30:14	<b>judged</b> 8:17	<b>kept</b> 49:16

<b>Kietzke</b> 2:4	<b>layer</b> 47:18	<b>likely</b> 15:5	21:11,23 27:15	<b>maintaining</b> 11:3
<b>kind</b> 24:9	<b>leaf</b> 6:24	<b>lily</b> 5:18		
<b>knew</b> 17:15, 18,24	<b>leaps</b> 46:6	<b>limitation</b> 39:8	<b>location</b> 17:17	<b>make</b> 4:18 7:9 8:6 9:2 11:4, 12 15:4 22:14 24:6,11 42:3, 13 45:17,24 48:17
<b>Krause</b> 32:23	<b>least</b> 7:9 31:10 37:19	<b>liquidate</b> 38:21 39:4 42:12	<b>logically</b> 19:24	
<hr/> <b>L</b> <hr/>	<b>leave</b> 43:20 44:6		<b>longer</b> 41:1	<b>makes</b> 10:14, 24 31:7
<b>L-A-N-D-E-X</b> 33:4	<b>left</b> 50:12	<b>liquidation</b> 36:18	<b>looked</b> 27:13	<b>making</b> 11:15
<b>laborer</b> 30:18	<b>legal</b> 7:8 44:20,21 45:6,11	<b>listen</b> 51:3	<b>looks</b> 43:24	<b>Management</b> 2:2 3:5 10:1,4 20:22 21:2 22:4,8,21 23:3,12 35:9, 13 36:3,19 37:18
<b>Laforge</b> 3:9 51:7,10	<b>less</b> 37:14	<b>Litigation</b> 1:2	<b>LORI</b> 1:1,24	
<b>Laforge's</b> 51:5	<b>let</b> 15:3 37:6 43:4,19 44:3, 8 51:12	<b>little</b> 10:12 19:1 40:9,16	<b>lost</b> 17:2,5,7, 9,12,14,21 18:3,9,16	<b>mangle</b> 24:9
<b>Landex</b> 33:4		<b>Livadas</b> 3:16, 17 5:21 6:20 7:5,23 11:9 12:7,12,24 13:2,7,13 15:7 16:3,5, 22 19:3,22,23 21:21,24 22:6 23:23 27:2,6, 9,21 34:21 38:5,8 40:1,9, 12,19	<b>love</b> 51:13	<b>manifested</b> 30:1
<b>Lane</b> 2:4	<b>Lewis</b> 29:10, 13		<hr/> <b>M</b> <hr/>	
<b>large</b> 5:23 13:12 22:7	<b>Life</b> 39:21		<b>Macdonald</b> 32:22	<b>manner</b> 29:6
<b>last</b> 4:7 37:2	<b>like</b> 27:13 39:11 40:4, 13,16,17 41:6,11,14 43:2,9 45:19 46:5,7 47:11, 12 49:11 50:14	<b>Livadas's</b>	<b>made</b> 10:17 21:24 22:16 36:10 37:9 45:15 51:2	<b>Mansfield</b> 43:19
<b>law</b> 4:6,12,16 10:19,21 24:7 28:16 43:22 44:15 45:3			<b>main</b> 45:10	<b>many</b> 41:24 50:12
				<b>March</b> 36:21

<b>margins</b> 15:3	<b>medical</b> 19:13	17:12,13	<b>must</b> 20:18 24:18 30:1, 10,12 32:9 34:2,6,16 37:11	<b>needs</b> 41:4
<b>mark</b> 49:14	<b>meeting</b> 25:1, 6 26:11,16 31:19,21	<b>moment</b> 9:3 10:23 29:12 32:2 37:6 47:4	<b>mysterious</b> 39:13	<b>negative</b> 15:16,20 16:21 35:10 36:18,21
<b>marked</b> 49:14	<b>mere</b> 7:22 17:13	<b>money</b> 7:13, 24 8:3 15:4, 13 16:1 19:9, 11,15,23,24 20:7 36:7,10 38:5,22 39:6 40:12 42:14	<b>N</b>	<b>negotiated</b> 49:19
<b>market</b> 30:19 49:9	<b>meruit</b> 30:14, 18	<b>monies</b> 38:1	<b>name</b> 13:3,22 32:22	<b>Neil</b> 2:8
<b>marketing</b> 13:4	<b>meruit's</b> 29:23	<b>month</b> 16:15, 17	<b>NATCO</b> 7:9 17:1,20 18:8 35:22 42:17, 18 43:11,12 46:20,22 47:8,20 48:6, 9,20 50:5	<b>Nevada</b> 1:3,6, 10,19 2:4,9 3:1 9:21 17:1 24:15,17,21, 22 25:3,8,22 26:2,6,7 28:15 29:13, 14,15,20,21 30:3,5,7 32:1, 6,7,23,24 33:4,6,18 52:1
<b>math</b> 37:6,16	<b>Midland</b> 34:9	<b>moot</b> 43:7,14 44:2	<b>near</b> 7:24 40:3	<b>never</b> 7:13 17:16 23:14 38:5,7 42:9
<b>matter</b> 4:9 9:19 27:11 31:7,9	<b>might</b> 50:2,4	<b>more</b> 4:13 8:8 15:5 42:13	<b>necessarily</b> 27:18	<b>New</b> 32:5 34:12
<b>may</b> 9:23 10:2 14:5 19:11 22:8 25:2,21 26:23 27:2,4 30:14 32:14 40:19 49:22	<b>million</b> 39:10, 11 40:22,23	<b>most</b> 6:16 44:9	<b>necessary</b> 41:1 44:3	<b>nice</b> 3:15
<b>maybe</b> 8:14, 15 42:23	<b>mind</b> 4:17,19 15:9 20:10 31:11 43:3 46:6 47:20	<b>much</b> 10:9 39:18 42:5 51:14	<b>need</b> 26:9,10 28:7 44:13 45:13 48:4	<b>non- consummate d</b> 39:13
<b>mean</b> 8:14 15:9 33:13 42:2,10,19 46:3 50:23	<b>mindful</b> 4:23	<b>mud</b> 50:13	<b>needless</b> 39:2	<b>Nork</b> 2:3 3:4,
<b>meaning</b> 7:7 19:1	<b>minds</b> 25:1,6 26:11,16 31:19,21	<b>multiple</b> 27:7		
<b>means</b> 47:5	<b>minute</b> 19:6	<b>Murtha</b> 3:20		
	<b>misplaced</b>			

7,8,10,14,18 5:14 8:19 16:14 20:6,19 21:6 28:13,24 31:7 33:17 41:10,11,17, 18,23 42:15 43:1,2,15,17, 24 44:2,6 45:7,19 46:6, 15 47:18 48:4 50:10 51:9,12	14:7  <b>number</b> 6:12 8:7,24 11:8 14:17 28:8,9, 11 29:2,3,5,7 30:15 31:24 <hr/> <b>O</b> <hr/> <b>obligation</b> 6:4 33:15  <b>obligations</b> 30:12  <b>occurred</b> 35:10  <b>occurs</b> 42:15  <b>October</b> 14:1  <b>offended</b> 42:9  <b>offer</b> 25:1 26:10,13  <b>offered</b> 8:18 21:13 27:10  <b>offers</b> 34:14  <b>office</b> 49:8  <b>officially</b> 14:7	<b>omit</b> 32:11  <b>once</b> 8:15 48:16  <b>one</b> 6:3,18 7:4 8:8,14 10:23 12:16, 19 17:8 18:3 19:4 21:4 28:8 29:2,12 31:8 32:2 33:12 37:6 47:19  <b>only</b> 5:22 9:7, 14 15:2 22:11 38:23 41:12, 14  <b>Ontario</b> 12:1  <b>open</b> 13:10 14:2 17:19 43:20  <b>opened</b> 13:14,17 14:8  <b>Opinion</b> 32:6  <b>opportunity</b> 41:6 43:15  <b>oral</b> 31:14 45:7,8  <b>order</b> 4:6,12	10:19,21 24:11,12 26:9 28:6,23 33:8 35:12,18 42:16 43:6,22 44:15 45:24  <b>ordered</b> 40:24  <b>orders</b> 38:19  <b>original</b> 46:10,11  <b>otherwise</b> 47:7  <b>outcome</b> 39:23  <b>outside</b> 14:21  <b>over</b> 11:3 31:17 41:9 49:22 51:9,10  <b>owe</b> 36:3  <b>owed</b> 29:4 39:7  <b>owes</b> 40:9  <b>owing</b> 40:12  <b>own</b> 22:1 34:3	<b>owner</b> 12:8, 12,14 13:7 21:22 35:21  <b>owns</b> 50:1 <hr/> <b>P</b> <hr/> <b>P.2d</b> 25:9 29:11 30:3,5 32:24 33:5,19  <b>P.3d</b> 24:15 25:3 26:8 32:7  <b>p.m.</b> 3:1 51:15  <b>Pacific</b> 24:21 25:23 26:3 29:21  <b>paid</b> 38:22 39:6  <b>paper</b> 49:2  <b>paraphrasing</b> 31:8  <b>parent</b> 12:9  <b>parenthetical</b> 10:6
<b>Normally</b> 40:19  <b>notary</b> 17:22  <b>note</b> 3:16 6:6 9:3 11:7,12 14:14 16:5 17:22 19:6 21:24 34:18 41:19 44:19 46:11  <b>noted</b> 35:7  <b>notes</b> 4:14 10:16 12:15 21:23 22:6 29:17 32:21 36:17  <b>nothing</b> 23:17 34:22 42:21 46:6  <b>notification</b>				

<b>parenthetically</b> 17:11 39:22	5:22 7:17 8:2, 19 13:13 14:5 15:7 19:10, 16,22,23 20:8 36:10,11	21:5 31:21 37:21 43:5	<b>positive</b> 36:23 37:5	<b>present</b> 3:16 17:10 28:5
<b>particularly</b> 5:8 24:16		<b>placed</b> 38:7	<b>possession</b> 22:9 47:7 48:14	<b>presentation</b> 50:16
<b>parties</b> 4:17 5:11 10:3,7, 10,19 14:21 21:20 22:24 24:19 25:6,13 26:5,18 28:1, 7,20 29:3 30:9,11,24 31:9,16,24 32:13 33:3,10 34:18,22 35:24 39:17 40:5,6 41:20 42:21 43:4 47:6,21 48:16	<b>Pedafronimos</b> 's 8:10	<b>placing</b> 39:7	<b>possible</b> 17:8 32:19	<b>presented</b> 10:15 31:2
	<b>pending</b> 40:17	<b>plaintiff</b> 1:11 29:2,5 34:2	<b>post</b> 40:20	<b>president</b> 46:22
	<b>people</b> 6:20 15:13 42:8	<b>plaintiffs'</b> 29:8	<b>power</b> 26:6 33:7	<b>presumably</b> 36:11
	<b>performing</b> 29:6	<b>pleading</b> 24:20	<b>pragmatic</b> 48:3	<b>presumptivel</b> <b>y</b> 19:16
	<b>perhaps</b> 16:12	<b>pleadings</b> 9:18,19 29:16 34:13	<b>Precision</b> 24:14	<b>prevailing</b> 8:9
<b>parts</b> 21:10 49:22	<b>person</b> 33:22	<b>point</b> 3:23 10:4,7 22:9 30:13 31:17 41:12	<b>premise</b> 31:13	<b>prevails</b> 33:14
<b>party</b> 8:9 30:13 32:14, 20 33:12,13, 14 42:7 49:9, 17	<b>persuasive</b> 18:6 27:23	<b>Poor</b> 4:3	<b>prepare</b> 24:12 29:14 43:21 44:14	<b>previous</b> 12:21
<b>past</b> 39:19	<b>phone</b> 27:5	<b>portion</b> 36:17 38:23 44:5	<b>prepared</b> 45:17	<b>previously</b> 23:1
<b>pay</b> 37:11	<b>physical</b> 47:13 49:15	<b>portions</b> 9:11,15	<b>preponderanc</b> <b>e</b> 11:14,16 12:18 13:16 15:6,23 18:13 26:21 34:8 35:17	<b>price</b> 30:20
<b>pays</b> 40:11	<b>piece</b> 49:2	<b>position</b> 5:6 16:4 34:23 35:10		<b>primarily</b> 13:20
<b>Pedafronimos</b>	<b>place</b> 4:7 5:5 8:1 14:15 15:21 16:1 18:14 19:15			<b>principal</b> 12:6
				<b>principals</b>

12:16	<b>Productions</b> 29:10	<b>provided</b> 19:10,15	35:23	30:2
<b>principles</b> 24:24 26:10 28:3 44:20 45:6,9,11	<b>professional</b> 44:9	<b>provides</b> 12:4 42:17	<b>put</b> 4:5,11 5:10 6:2,4 8:22 19:4 34:22 48:10	<b>raised</b> 38:7 42:4 45:7
<b>prior</b> 12:14, 20,24	<b>professionali sm</b> 50:17	<b>province</b> 33:1	<hr/> <b>Q</b> <hr/>	<b>rate</b> 39:19
<b>privacy</b> 27:17	<b>promises</b> 30:11 31:1	<b>prudent</b> 4:13		<b>rather</b> 8:24 46:1,2
<b>privilege</b> 27:17	<b>proper</b> 48:2	<b>Public</b> 26:7	<b>quantum</b> 29:22 30:14, 18	<b>reached</b> 22:23 45:16 48:16
<b>privileged</b> 27:23	<b>property</b> 33:22 34:7,17	<b>purchase</b> 7:3 11:9 16:8 18:20 21:16	<b>question</b> 17:16 25:17 48:23 50:1	<b>reading</b> 29:16
<b>probably</b> 13:4 43:14 51:5	<b>proposed</b> 46:8 48:11	<b>purchased</b> 16:7,21 31:5	<b>questionable</b> 23:21	<b>really</b> 4:22 5:5 10:8 16:6 19:19 22:2 31:7 34:16 40:18 42:5 50:18 51:4
<b>problem</b> 47:10	<b>proposition</b> 33:20	<b>purchaser</b> 49:10	<b>questioning</b> 13:12	<b>reason</b> 7:5 14:24 15:15 18:3 20:1
<b>problems</b> 43:9	<b>propounded</b> 21:13	<b>purchasing</b> 12:24 23:14	<b>quick</b> 37:6	
<b>proceeding</b> 33:21 35:22	<b>Protection</b> 24:14,19 25:5,10 26:1 28:4 29:18	<b>purported</b> 21:13	<b>quote</b> 17:10 24:23 25:2, 11,15,17,21 26:3,6 29:22 30:1,8 32:8, 18 33:6,20 34:1	<b>reasonable</b> 14:20 15:22, 23 16:4,20 19:21 20:7 30:19
<b>proceedings</b> 1:17 13:6 44:10 46:19 47:5 51:15	<b>prove</b> 26:20	<b>purports</b> 18:22,24	<hr/> <b>R</b> <hr/>	<b>reasons</b> 27:17
<b>process</b> 6:16 47:6	<b>proven</b> 35:16	<b>purpose</b> 29:7		<b>receive</b> 40:20
	<b>provide</b> 27:22	<b>pursuant</b>	<b>R-E-C-R-I-O-N</b>	

<b>received</b> 7:13 14:7 38:5	15:17	31:22 32:15, 18 33:12,15, 16 35:14,20	24:21,22 25:23,24 26:2,3 29:20, 21 44:18	5:17 6:7 38:1 39:5
<b>receives</b> 30:19	<b>referring</b> 10:16	<b>remain</b> 47:7	<b>represent</b> 46:12	<b>Restatement</b> 25:15 30:20
<b>receiving</b> 14:8 34:22	<b>refresh</b> 4:17 9:15	<b>remaining</b> 39:9	<b>representatio</b> <b>ns</b> 7:9	<b>restitution</b> 30:21 33:8 37:10
<b>recess</b> 51:14	<b>regarding</b> 4:7 7:12 8:11,20 10:15,17,18 11:5 16:3 24:23 27:15 31:22 32:3 34:15 37:9 38:1 43:6,12 44:21 45:6, 12,13,21 46:9 48:18	<b>remedies</b> 25:14	<b>request</b> 20:15 23:7 44:17	<b>result</b> 28:12
<b>recognized</b> 33:1		<b>remedy</b> 34:20 36:13	<b>require</b> 24:24	<b>resulted</b> 28:11
<b>recollection</b> 9:16 42:16		<b>remember</b> 15:18 39:17	<b>required</b> 40:20	<b>retain</b> 37:24 48:14
<b>record</b> 3:3 4:7,13 5:10 6:5 26:24 27:4	<b>registered</b> 11:22,24	<b>remove</b> 9:6	<b>requiring</b> 25:18	<b>return</b> 37:18 49:13 50:3,5
<b>records</b> 16:7 26:24 49:16	<b>regulated</b> 11:22 12:1	<b>removed</b> 45:5	<b>research</b> 39:1	<b>returns</b> 50:4
<b>recover</b> 34:2	<b>reimburse</b> 42:13	<b>Reno</b> 1:3,19 2:4,9 3:1	<b>resolve</b> 44:12	<b>review</b> 4:14 6:9 9:9,13,14 44:23 47:20
<b>Recrion</b> 30:2	<b>reissuance</b> 50:8	<b>repeated</b> 27:6	<b>resolved</b> 43:13	<b>reviewed</b> 5:12 9:4,9,11, 17
<b>redact</b> 27:19	<b>relevant</b> 9:11, 14 13:5 21:10 26:16	<b>replacement</b> 47:16	<b>resolves</b> 35:24	<b>reviewing</b> 48:6
<b>refer</b> 10:3,5	<b>relief</b> 20:15 23:8,10 24:3	<b>report</b> 15:1	<b>respect</b> 21:6 45:16	<b>revisit</b> 48:4
<b>referenced</b> 7:19 18:15		<b>Reported</b> 1:24	<b>responsibility</b>	<b>rid</b> 46:16
<b>referencing</b>		<b>reporter</b> 1:4		

<b>rights</b> 33:21	34:5,14	<b>Securities</b> 11:23 12:2	40:3,5,22 41:8	<b>sign</b> 44:24
<b>rival</b> 33:21	<b>SATTLER</b> 1:8	<b>seems</b> 40:16 42:20	<b>shares</b> 13:24 15:24 16:2 18:11 21:1 22:19 23:10 35:4,21 39:11 40:22 41:8, 15,24 42:2,3 43:1 46:12,13 47:16 50:1, 10,12	<b>signature</b> 43:23
<b>Road</b> 2:8	<b>saw</b> 6:5 18:4	<b>sell</b> 22:19 38:20 41:8 49:7		<b>signed</b> 17:22 47:20
<b>roster</b> 11:10	<b>say</b> 5:13,18 11:13 15:18 23:3 25:5 27:17 30:17 36:4 37:11 44:9 47:11,12 49:12 50:13 51:3	<b>selling</b> 41:7		<b>significant</b> 11:8 13:11 19:5 39:14
<b>Roth</b> 25:8		<b>send</b> 4:1	<b>sheer</b> 7:17	<b>simply</b> 8:7 14:11,21 15:7 17:21 18:24 20:6 22:22 26:12,14 27:21 28:3 33:11 34:22 38:3,13
<b>rule</b> 51:7,8		<b>sense</b> 5:23 9:2 49:19	<b>shooed</b> 4:4	<b>single</b> 6:5,6 35:19
<b>rules</b> 24:1	<b>saying</b> 22:15 30:22 38:13 49:1	<b>sent</b> 20:7	<b>shot</b> 27:10,13	<b>sister</b> 46:23
<b>run</b> 15:2 42:18,22	<b>says</b> 15:1 16:13 24:22 27:12,22 29:22	<b>separate</b> 13:1,5	<b>shots</b> 27:8	<b>sit</b> 5:4 9:1 28:2 46:4
<b>running</b> 3:10		<b>September</b> 19:12 37:4	<b>should</b> 6:23 11:13 23:3 32:3 36:4,15 37:10	<b>sits</b> 32:21
<b>S</b>		<b>services</b> 1:2 11:23 12:5 30:20	<b>shouldn't</b> 36:4 38:10	<b>sitting</b> 32:4,8 36:2
<b>said</b> 5:24 6:13,20 16:11 38:3	<b>Science</b> 39:21	<b>set</b> 44:11	<b>showed</b> 15:19	<b>Skarpelos</b> 2:6 3:4,21,22 5:21 7:12
<b>Saini</b> 28:13	<b>Scott</b> 25:8	<b>SETH</b> 2:8	<b>shows</b> 22:12	
<b>sale</b> 7:3 15:16 18:10,13,17, 20,23 19:7 21:1,16 22:13 23:17 35:3 39:13 40:3	<b>screen</b> 27:8, 10,13	<b>Shadow</b> 32:4	<b>side</b> 6:3 8:8 34:16	
<b>same</b> 4:19	<b>seal</b> 27:20	<b>share</b> 39:22		
	<b>Second</b> 1:6 2:4 25:15			
	<b>Section</b> 25:16			

9:23 12:20 13:9,13,15, 18,23 14:1,2, 6 15:1,7,11, 12 16:1,4,20, 24 17:15,18 18:2,7 19:17, 18 20:1,22 21:4,18 22:5, 15 23:15,20 24:1 26:14,22 27:7,8 28:10 31:11 33:13 34:20 35:3,8, 20 36:3,7,8, 12,15 37:4, 11,18,24 38:2,17,19 39:3 40:8,9, 10,21 42:2, 12,24 48:21 49:12,13,23 50:3	<b>solve</b> 46:1  <b>solving</b> 43:9  <b>somebody</b> 23:13 42:9  <b>somehow</b> 21:15 36:12 49:19  <b>someone</b> 21:17 49:20  <b>something</b> 5:11 7:6 8:14 17:14 19:4 35:10 39:11 41:3 42:9 45:2  <b>somewhere</b> 4:1 27:1  <b>sort</b> 40:17,20  <b>sought</b> 25:14  <b>Southern</b> 34:11  <b>specifically</b> 8:11 17:7 18:12 22:13 26:20  <b>spoke</b> 10:8	<b>stamped</b> 9:21  <b>standpoint</b> 48:8  <b>starts</b> 10:13  <b>state</b> 1:6 16:23 24:17 25:11 26:2,23 30:7 32:12 33:4,24 52:1  <b>stated</b> 9:3 17:4 19:12 31:20 33:1 41:20  <b>statement</b> 17:20 21:9 28:16 34:14, 24 45:3  <b>statements</b> 10:17 14:8 33:11 38:3 41:20  <b>states</b> 32:8, 16  <b>status</b> 17:10 32:13  <b>stay</b> 40:17,21  <b>still</b> 4:19	37:13 39:9,14 42:1  <b>stip</b> 43:3  <b>stipulation</b> 43:5 47:20 48:4  <b>stock</b> 7:3 13:19,20,22, 23 15:11 17:2,4,9,16, 17,20 18:9, 11,23 21:1, 16,22 22:1,2 23:11,13,14 31:5 34:21 35:5,21 37:24 38:11,22 39:4,9,15,18 40:2,21 41:13,21 42:19,22 43:12 46:9,13 47:3,8 48:5, 15,22,23,24 50:3,8,9  <b>stocks</b> 48:22  <b>stolen</b> 17:12, 13  <b>stranger</b> 51:5  <b>strength</b> 34:2  <b>strike</b> 7:19	11:4 34:10  <b>strongly</b> 50:22  <b>submitted</b> 4:9 7:4 10:19  <b>subsequent</b> 25:13 39:12  <b>substantial</b> 25:21  <b>subtract</b> 37:11  <b>succeed</b> 28:23 34:6  <b>such</b> 26:4 30:17  <b>sufficient</b> 45:15  <b>sufficiently</b> 30:13  <b>suggested</b> 10:18,20  <b>suggestion</b> 34:24  <b>suggestions</b>
--	---	--	---	---

17:13	<b>talk</b> 9:1 51:6, 10	<b>text</b> 27:5	25:23 26:3 29:21 30:20 32:19 33:22 49:9,16	<b>together</b> 48:10
<b>Suite</b> 2:8	<b>talked</b> 45:10	<b>than</b> 9:1 15:6 19:2 21:9,12 39:19 41:1 44:3 46:2 51:5	<b>thought</b> 4:13 42:5	<b>told</b> 18:5
<b>sullied</b> 5:19	<b>talking</b> 40:23 46:1	<b>their</b> 11:10 24:2,4,20 33:10,15 35:14 41:20	<b>thoughts</b> 41:10 47:24	<b>took</b> 4:7 6:6 8:1 18:7,8,13 19:15 21:5
<b>sums</b> 37:22	<b>Technology</b> 28:14	<b>themselves</b> 9:19 23:11 35:4	<b>three</b> 4:22 6:12 18:4 29:5 40:22 50:15,20	<b>total</b> 50:10
<b>supply</b> 30:14	<b>telling</b> 21:11	<b>theoretically</b> 49:5,6 50:5	<b>through</b> 7:1 14:4 20:5 21:23 22:2 36:9 43:14 45:23 47:5	<b>totally</b> 33:14
<b>support</b> 14:13 27:10 45:15,16	<b>term</b> 30:15	<b>therefore</b> 23:1 24:1 28:20 35:4,12 38:15	<b>throughout</b> 38:4 44:10	<b>touch</b> 47:22
<b>supposed</b> 8:5	<b>terms</b> 24:18 25:7,11 26:4, 16,17 27:3 31:19	<b>therein</b> 33:23	<b>time</b> 4:20 5:3 8:1 15:16,17 16:7 37:9 39:16 48:6,10 49:22	<b>towards</b> 5:14 50:17
<b>supreme</b> 24:22 25:18 29:21 30:7 32:8 33:1,6	<b>testified</b> 6:1, 11 7:5 11:9 14:17 16:5 17:15,24 18:2 21:21,24 22:6 27:2,6 49:23	<b>thing</b> 19:4 38:16 41:12 42:15	<b>times</b> 13:5,8	<b>trade</b> 15:2
<b>swearing</b> 17:23	<b>testimony</b> 5:20 7:12,17 8:10,17,20 11:21 13:2 14:10 16:3, 11,12 21:3,6, 7,8,10,23 23:22 26:18 27:15 31:4 36:6 37:1,12 39:12	<b>things</b> 3:11 5:2 6:1,12,19 8:23 9:7 14:17,21 15:8 18:4 22:11	<b>title</b> 34:3	<b>trades</b> 15:4
<b>T</b>		<b>third</b> 24:21	<b>today</b> 3:9 39:16,20,21	<b>trading</b> 39:18, 20 40:3
<b>tacit</b> 30:9				<b>transaction</b> 37:3
<b>take</b> 6:21 15:21 39:4 42:2 43:2 48:9 49:3,6 50:5				<b>transactions</b> 7:14,18 8:1, 11 38:4
<b>taken</b> 37:8				<b>transcript</b> 1:17 44:17 46:7 48:7
				<b>transcripts</b>

9:12	46:15	<b>unclear</b> 21:3	<b>unreasonable</b> 38:2	29:10 30:2,4 32:5,16,23 33:4,18 34:9
<b>transfer</b> 1:10 9:21 17:1 36:20 38:20 40:11	<b>truly</b> 50:18	<b>unconvincing</b> 38:9	<b>until</b> 38:22 40:11 42:18, 22 43:13,24 47:6 48:15,17	<b>view</b> 46:8
<b>transferred</b> 22:2	<b>trust</b> 12:15,16 24:10	<b>under</b> 17:22 36:14 38:16 40:9 45:4	<b>URMSTON</b> 1:1,24	<b>viewed</b> 5:12
<b>transferring</b> 23:13	<b>truth</b> 27:11	<b>understand</b> 5:11 10:10	<b>use</b> 20:24	<b>vis-a-vis</b> 48:6
<b>transfers</b> 15:21	<b>try</b> 4:23 5:5	<b>unfaithful</b> 29:6	<b>used</b> 7:8 9:15 10:21	<b>voice</b> 10:13
<b>treated</b> 34:2	<b>trying</b> 6:15	<b>unintended</b> 40:2	<b>using</b> 10:20	<hr/> <b>W</b> <hr/>
<b>treatises</b> 30:16	<b>turn</b> 20:10	<b>uninterested</b> 6:15	<b>usually</b> 30:19	<b>W-A-M</b> 10:5
<b>trial</b> 4:7 9:5,8 10:9,15,17 14:18 19:11 20:4 21:7,9 33:11 34:14, 24 37:1 41:20	<b>turns</b> 20:12	<b>United</b> 32:16	<b>Utility</b> 26:7	<b>wait</b> 43:23
	<b>two</b> 12:19 13:1,5 21:13 28:9 29:4 39:10	<b>Unjust</b> 30:21	<hr/> <b>V</b> <hr/>	<b>Walker</b> 6:14, 15
	<b>type</b> 19:7,20	<b>unless</b> 25:20	<b>vague</b> 42:16	<b>Walker's</b> 46:23
	<hr/> <b>U</b> <hr/>	<b>unnecessarily</b> 42:12	<b>valid</b> 28:8,20 49:8	<b>WAM</b> 10:4 11:2,6,7,9,18, 21 12:4,6,9, 10,14,20,21, 23,24 13:3,10 14:3,11,16 16:7,8,21 17:19 20:8, 13,14 21:18, 22 22:1 23:3, 12,15,19 24:1 26:14,20 31:6 34:21 35:3,9,
<b>trials</b> 4:22	<b>unadmitted</b> 9:6	<b>unpersuasive</b> 8:21 14:11 17:5	<b>value</b> 30:19 49:2	
<b>tried</b> 4:1	<b>unbelievable</b> 8:12	<b>unprofession</b> <b>al</b> 50:24	<b>versus</b> 3:4 5:1,24 24:14 25:2,8,22 26:6 28:13	
<b>troubling</b> 5:22 7:11	<b>unbelievablen</b> <b>ess</b> 6:12			
<b>true</b> 17:21 18:1 30:8				

13 36:7 38:22 39:6 40:1 42:13	<b>Wednesday</b> 1:18 3:1	23:19 25:17 31:18 32:14	16:1	<b>York</b> 32:5 34:12
<b>WAM's</b> 16:6	<b>week</b> 4:8	<b>while</b> 4:18 14:23 48:6,10	<b>withdrew</b> 19:11	<b>yourselves</b> 51:1
<b>want</b> 5:10 15:2,3,17 22:14 39:1,3, 6 40:24 41:1 42:10 43:9 44:5,7,11 47:3 51:10	<b>weight</b> 19:5	<b>white</b> 5:18	<b>without</b> 50:21	
<b>wanted</b> 4:2 6:2 15:1	<b>Weiser</b> 1:13 2:2 3:4,5,6 10:1,3,5,6 12:3,8,10,12, 23 13:1,3,7 14:3 18:23 20:12,13,14, 19,21 21:1,2, 18 22:1,4,8,9, 20,21 23:3,4, 9,12,16,24 26:19 31:6 34:21 35:9,13 36:3,19 37:18 40:1 45:17	<b>whole</b> 46:19	<b>witness</b> 6:17	
<b>wants</b> 8:2 51:6,7	<b>went</b> 45:22	<b>will</b> 3:3 10:3,5 13:6 24:6 31:24 32:18 39:16 45:4 47:7,19,22 48:14 50:2 51:12	<b>witness's</b> 9:16	
<b>warmer</b> 3:17, 22	<b>whatever</b> 47:23	<b>willing</b> 19:3	<b>witnesses</b> 4:24 5:9,13, 21 6:10 8:6,7, 8	
<b>WASHOE</b> 1:7	<b>whatsoever</b> 7:13 19:2 38:12	<b>windfall</b> 38:2, 11	<b>Wood</b> 32:4	
<b>way</b> 5:14 6:2 8:22 23:21 38:14,21 44:10,12 47:5 49:1 51:1,9	<b>wherein</b> 32:17	<b>wins</b> 33:14	<b>WOODBURN</b> 2:7	
<b>ways</b> 27:19	<b>whether</b> 13:14 14:6,8 20:18 22:18	<b>wire</b> 36:20	<b>words</b> 18:5	
<b>weakness</b> 34:3		<b>wishes</b> 42:7	<b>work</b> 44:18	
<b>WEDGE</b> 2:7		<b>withdraw</b> 15:13 42:23	<b>worked</b> 28:1	
		<b>withdrawal</b> 37:2,3	<b>wound</b> 37:4	
		<b>withdrawing</b>	<hr/> <b>Y</b> <hr/>	
			<b>year</b> 16:14	
			<b>yet</b> 26:4	

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## EXHIBIT 2

## EXHIBIT 2

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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

STIPULATION TO MOTION FOR DISCHARGE

The parties, and each of them, hereby stipulate to the entry of an order granting Plaintiff's Motion for Discharge and the relief sought therein. In that regard, the parties stipulate to an order which:

1. discharges plaintiff Nevada Agency and Transfer Company ("NATCO") from this interpleader action;
2. releases and forever discharges NATCO from liability related to or arising from

1 the competing claims of the defendants to certificate number 753 representing  
2 share of the common stock of Anavex Life Sciences Corp.;

- 3 3. requires Defendant Weiser Asset Management LTD, Defendant Weiser  
4 (Bahamas) LTD and Defendant Athanasios Skarpelos to continue to litigate their  
5 respective claims to certificate number 753 representing shares of common stock  
6 of Anavex Life Sciences Corp. herein without NATCO's participation as a party  
7 hereto;
- 8 4. recognizes the tender of the deposit of certificate number 753, which tender shall  
9 be deemed sufficient for any and all interpleader jurisdictional purposes, but  
10 requires NATCO to maintain possession of certificate number 753, pending further  
11 order of the Court, which order also shall clearly declare the party entitled to  
12 possession of certificate 753 and ownership of the shares represented thereby, and  
13 which shall provide for delivery of certificate 753 upon the expiration of any date  
14 for appeal of final judgment in this matter if no appeal is taken, or the date of final  
15 order resulting from an appeal in this matter; and,
- 16 6. awards NATCO its costs of suit incurred herein in the amount of \$260.00, with the  
17 defendant deemed the non-prevailing party at trial ordered to pay such costs within  
18 10 days of the entry of a final judgment in this matter.

19 Dated this 17<sup>th</sup> day of January, 2019.  
20  
21

22 ALEXANDER H. WALKER III

23 /s/ Alexander H. Walker III  
24 Alexander H. Walker III  
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14 and Weiser (Bahamas), Ltd.  
15  
16  
17  
18  
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21  
22  
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24  
25

CERTIFICATE OF SERVICE

I hereby certify that on the 17<sup>th</sup> day of January, 2019, I caused to be served a copy of the foregoing on all parties via the Court's electronic filing system.

AFFIRMATION

Pursuant to NRS 239B.030

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

/s/ Alexander H. Walker III

Alexander H. Walker III

ALEXANDER H. WALKER III, LLC

50 West Liberty Street, Suite 880

Reno, Nevada 89501

Attorney for Nevada Agency and Transfer Co.

INDEX OF EXHIBITS

EXHIBIT NO.	DOCUMENT	# OF PAGES
1	Order Granting Motion for Discharge	5

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**EXHIBIT 1**

CODE: 3060

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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

**ORDER GRANTED MOTION FOR DISCHARGE**

The parties, and each of them, having stipulated to the entry of an order granting plaintiff's Motion for Discharge, and plaintiff having deposited with the Clerk of Court certificate number 753 representing shares of the common stock of Anavex Life Sciences

1 Corp., the property which is subject of the dispute in this interpleader action, and there  
2 being good cause hereto, it is hereby:

3 ORDERED, that plaintiff's Motion for Discharge is granted. It is further ordered  
4 that :

- 5 1. Plaintiff Nevada Agency and Transfer Company ("NATCO") is hereby discharged  
6 from this interpleader action;
- 7 2. Plaintiff Nevada Agency and Transfer Company is released and forever discharged  
8 from liability related to or arising from the competing claims of the defendants to  
9 certificate number 753 representing share of the common stock of Anavex Life  
10 Sciences Corp.;
- 11 3. Defendant Weiser Asset Management LTD, Defendant Weiser (Bahamas) LTD  
12 and Defendant Athanasios Skarpelos shall continue to litigate their respective  
13 claims to certificate number 753 representing shares of common stock of Anavex  
14 Life Sciences Corp. herein without NATCO's participation as a party hereto;
- 15 4. NATCO's tender of the deposit of certificate number 753 is deemed sufficient for  
16 any and all interpleader jurisdictional purposes, but NATCO shall maintain  
17 possession of certificate number 753, pending further order of the Court, which  
18 order also shall clearly declare the party entitled to possession of certificate 753  
19 and ownership of the shares represented thereby, and which shall provide for  
20 delivery of certificate 753 upon the expiration of any date for appeal of final  
21 judgment in this matter if no appeal is taken, or the date of final order resulting  
22 from an appeal in this matter; and,
- 23 5. NATCO is awarded its costs of suit incurred herein in the amount of \$260.00, with  
24  
25

1 the defendant deemed the non-prevailing party at trial shall pay within 10 days of  
2 the entry of a final judgment in this matter.

3 DATED this \_\_\_\_ day of December, 2018.

4  
5 \_\_\_\_\_  
6 DISTRICT JUDGE

7 Submitted by:

8 /s/ Alexander H. Walker III  
9 Alexander H. Walker III  
10 ALEXANDER H. WALKER III, LLC  
11 50 West Liberty Street, Suite 880  
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14 Approved as to form:

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16 John Murtha  
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Attorney for Weiser Asset Management, Ltd.  
and Weiser (Bahamas), Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of ~~December~~ <sup>January</sup>, 2018, 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

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11 *Athanasios Skarpeilos*

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

\*\*\*

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

Case No. CV15-02259  
Dept. No. 10

16 Plaintiff,

17 vs.

**SKARPELOS' POST-TRIAL BRIEF**  
**REGARDING RESTRICTION ON**  
**DISPOSITION OF STOCK**

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' POST-TRIAL BRIEF REGARDING RESTRICTION ON**  
9 **DISPOSITION OF STOCK**

10 **I. INTRODUCTION**

11 This interpleader action involved competing claims to ownership of 3,316,666  
12 shares of common stock in Anavex Life Sciences Corp ("Anavex"). On the one hand,  
13 Skarpelos claimed he was the owner of the stock. On the other hand, the "Weiser" entities  
14 at various times claimed either one or both of them were the owners of the stock. After  
15 the lawsuit was filed, Anavex stock was subject to a four-to-one consolidation, such that  
16 there were 829,166.5 shares of Anavex stock ultimately in dispute in this case ("the  
17 Disputed Stock").

18 After the conclusion of trial, the Court announced its decision. The Court found in  
19 favor of Skarpelos, concluding he is the owner of the Disputed Stock. The Court also  
20 found that Skarpelos owes WAM \$245,464.64 and prohibited Skarpelos from selling or  
21 otherwise disposing of any of his Anavex stock until he has paid WAM the \$245,464.64.

22 This brief addresses the injunction portion of the Court's decision, what essentially  
23 amounts to granting "Weiser" a stay pending appeal without having to post adequate  
24 security. Anavex stock currently is trading near \$3.00 per share. At that price, the  
25 Court's award of the Disputed Stock to Skarpelos equates to a \$2,487,499.50 judgment in  
26 his favor. Ordinarily, to obtain a stay restricting Skarpelos from selling or disposing of  
27 his stock, Weiser would have to post a bond in at least that amount (if not more). In the  
28 normal course, Weiser would also have to pursue collection of its judgment pursuant to

1 law up to the amount owed unless Skarpelos obtained a stay pending appeal. Such a stay  
2 would likely also require the posting of security in the amount of the judgment. Here, the  
3 imposition of the restriction on all of Skarpelos' Anavex stock amounts to an  
4 unreasonable restraint on his right to dispose of the property he was awarded.

## 5 **II. LAW AND ARGUMENT**

6 Skarpelos is clearly the prevailing party in this matter. This was an interpleader  
7 action in which Skarpelos and Weiser asserted competing claims to ownership of the  
8 Disputed Stock. The Court declared Skarpelos the owner of the Disputed Stock, currently  
9 worth approximately \$2,500,000. Citing its equitable powers, the Court awarded WAM  
10 approximately \$245,000.

11 In the normal course, judgment is entered and then either enforced pursuant to law  
12 or a stay of enforcement is imposed, typically subject to the posting of adequate security.  
13 "The purpose of a supersedeas bond is to protect the prevailing party from loss resulting  
14 from a stay of execution of the judgment. Thus, a supersedeas bond posted under NRC  
15 62 should usually be set in an amount that will permit full satisfaction of the judgment.  
16 McCulloch v. Jeakins, 99 Nev. 122, 123, 659 P.2d 302, 303 (1983), dismissed, 100 Nev.  
17 816, 808 P.2d 18 (1984), and holding modified by Nelson v. Heer, 121 Nev. 832, 122  
18 P.3d 1252 (2005).

19 If Weiser wishes to appeal the Court's finding that Skarpelos is the owner of the  
20 Disputed Stock, Weiser would have to post a bond of at least \$2,500,000—and arguably  
21 more if the issue were fully briefed. Here, the Court has effectively granted that relief  
22 without requiring Weiser to post a bond. The Court has restricted \$2,500,000 in stock to  
23 secure payment of an award less than a tenth of that size. The restriction does not even  
24 require Weiser to post security in the amount of \$245,000. The injunction unreasonably  
25 restricts Skarpelos' stock ownership without requiring Weiser to post security.

26 It may be tempting to suggest that Skarpelos simply sell a portion of the stock and  
27 either pay WAM or post security for a stay. However, it must be kept in mind that he is a  
28 director of a publicly-traded corporation. His ability to sell, or not, has implications

1 beyond simply using the money to pay Weiser. Skarpelos respectfully contends that the  
2 imposition of any stay on Skarpelos' disposition of the Disputed Stock be the subject of a  
3 proper motion to stay, fully briefed and heard, following the entry of judgment.

4 If the Court is inclined to impose the restriction on Skarpelos' disposition of the  
5 Disputed Stock as part of the judgment, it should be limited to that amount of stock  
6 necessary to secure the \$245,464.64 award in favor of WAM. At \$3 per share, that  
7 amount is 81,821.5 shares. Even then, however, WAM should be required to post at least  
8 \$245,464.64 as security for the stay.

9 However, Skarpelos maintains that the proper resolution to this issue is by way of  
10 a proper post-judgment motion to stay.

### 11 **III. CONCLUSION**

12 Any restriction on Skarpelos' disposition of the Disputed Stock as the prevailing  
13 party should be the subject of a fully-briefed and heard motion for stay following entry of  
14 judgment. The restriction should not be included in the Court's judgment.

### 15 **AFFIRMATION**

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

18 DATED: April 8, 2019.

WOODBURN AND WEDGE

20 By /s/ Dane W. Anderson

21 John F. Murtha, Esq.

22 Nevada Bar No. 835

Dane W. Anderson, Esq.

23 Nevada Bar No. 6883

Seth J. Adams, Esq.

24 Nevada Bar No. 11034

25 *Attorneys for Defendant/*

*Cross-Claimant*

26 *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' POST-TRIAL BRIEF REGARDING RESTRICTION ON***  
5 ***DISPOSITION OF STOCK*** to:  
6

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18  
19 DATED: April 8, 2019.

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

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)  
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, must 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.

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6 DISTRICT JUDGE  
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## Return Of NEF

### Recipients

**DANE ANDERSON, ESQ.** - Notification received on 2019-04-22 14:07:52.007.

**SETH ADAMS, ESQ.** - Notification received on 2019-04-22 14:07:52.1.

**JEREMY NORK, ESQ.** - Notification received on 2019-04-22 14:07:52.069.

**FRANK LAFORGE, ESQ.** - Notification received on 2019-04-22 14:07:52.038.

**ALEXANDER WALKER III** - Notification received on 2019-04-22 14:07:51.976.

**CLAYTON BRUST, ESQ.** - Notification received on 2019-04-22 14:07:51.913.

**JOHN MURTHA, ESQ.** - Notification received on 2019-04-22 14:07:52.132.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*

PROOF OF SERVICE OF ELECTRONIC FILING

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**A filing has been submitted to the court RE:** CV15-02259

**Judge:**

HONORABLE ELLIOTT A. SATTLER

**Official File Stamp:**

04-22-2019:14:06:14

**Clerk Accepted:**

04-22-2019:14:07:09

**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

NV AGENCY & TRANSFER CO VS WEISER  
ASSET ET AL (D10)

**Document(s) Submitted:**

Findings, Conclusions & Judg

**Filed By:**

Judicial Asst. SMansfield

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

FRANK Z. LAFORGE, ESQ. for WEISER ASSET  
MANAGEMENT, LTD, WEISER (BAHAMAS) LTD

SETH J. ADAMS, ESQ for ATHANASIOS  
SKARPELOS

CLAYTON P. BRUST, ESQ. for NEVADA  
AGENCY AND TRANSFER COMPANY

JOHN FRANCIS MURTHA, ESQ. for  
ATHANASIOS SKARPELOS

JEREMY J. NORK, ESQ. for WEISER ASSET  
MANAGEMENT, LTD, WEISER (BAHAMAS) LTD

ALEXANDER H. WALKER III for NEVADA  
AGENCY AND TRANSFER COMPANY

DANE W. ANDERSON, ESQ. for ATHANASIOS  
SKARPELOS

**The following people have not been served electronically and must be served by traditional means** (see Nevada Electronic Filing Rules.):

1 **2545**

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**

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6 6100 Neil Road, Ste. 500

P.O. Box 2311

7 Reno, Nevada 89505

8 Telephone : (775) 688-3000

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10 *Attorneys for Defendant/Cross-Claimant*

11 *Athanasios Skarpelos*

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

\*\*\*

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 FINDINGS  
OF FACT, CONCLUSIONS OF  
LAW, AND 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  
5 Cross-Claimants.

6 vs.

7 ATHANASIOS SKARPELOS, an individual,  
8 Cross-defendant.  
9 \_\_\_\_\_/

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

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

15 **AFFIRMATION**

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

18 DATED: April 22, 2019.

19 WOODBURN AND WEDGE

20 By /s/ Dane W. Anderson

21 John F. Murtha, Esq.  
22 Nevada Bar No. 835  
23 Dane W. Anderson, Esq.  
24 Nevada Bar No. 6883  
25 Seth J. Adams, Esq.  
26 Nevada Bar No. 11034

27 *Attorneys for Defendant/  
28 Cross-Claimant  
Athanasios Skarpelos*

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57 West 200 South, Ste. 400  
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**awalker@law@aol.com**

*Attorneys for Plaintiff*

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

/s/ Tommie Kay Atkinson  
Tommie Kay Atkinson, an employee of  
Woodburn and Wedge

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**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

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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  
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Case No. CV15-02259  
Dept. No. 10

10 Plaintiff,

11 vs.

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

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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  
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12                  During the trial, the Court listened to the testimony of the following people:  
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18                                   **FINDINGS OF FACT**

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23                  2.       Weiser Capital is an affiliate entity to WAM and provides investment  
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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

CASE NO. CV15-02259      **NEVADA AGENCY & TRANSFER CO. VS. WEISER ASSET ETAL**

DATE, JUDGE  
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

---

4/22/19

**CONFERENCE CALL**

HONORABLE

10:30 a.m. – Court convened in chambers.

ELLIOTT A.

Jeremy Nork, Esq., was present telephonically on behalf of Cross-Claimants Weiser (Bahamas) Ltd., and Weiser Asset Management, Ltd.

SATTLER

DEPT. NO. 10

Dane Anderson, Esq., was present telephonically on behalf of Cross-Claimant Anthanasios Skarpelos.

M. Merkouris

(Clerk)

**COURT** advised respective counsel that he scheduled this conference call to discuss the proposed Findings of Fact and Conclusions of Law submitted by counsel Anderson, and counsel Nork's objections.

Not reported

**COURT** addressed the limited objections first, noting the following: the language regarding an unidentified third party is accurate, and shall remain; the Court intended to use the word "presumably" not "presumptively"; the language contained on page 4, line 9, shall remain as proposed by counsel Anderson; and on page 4, line 15, the language shall remain as "purchaser" not "final purchaser".

**COURT** further found that the final paragraph is unnecessary, and counsel Nork's request to leave it in is denied.

**COURT** directed counsel Anderson to prepare the Findings of Fact and Conclusions of Law as proposed, and submit it to Ms. Mansfield.

Counsel Anderson indicated that he will finalize the document and send it to counsel Nork for approval, and then he will submit it to Ms. Mansfield in Word and PDF format.

10:39 a.m. – Court adjourned.

1 **2250**

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3 DANE W. ANDERSON, ESQ.

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10 *Attorneys for Defendant/Cross-Claimant*

11 *Athanasios Skarpepos*

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

\*\*\*

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 \$245,4654.54 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

John F. Murtha, Esq.

Nevada Bar No. 835

Dane W. Anderson, Esq.

Nevada Bar No. 6883

Seth J. Adams, Esq.

Nevada Bar No. 11034

*Attorneys for Defendant/*

*Cross-Claimant*

*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

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15 *Attorneys for Defendants*  
16 *Weiser Asset Management, Ltd.*  
*and Weiser (Bahamas), Ltd.*

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

18 /s/ Dianne M. Kelling  
19 Dianne M. Kelling, an employee of  
20 Woodburn and Wedge  
21  
22  
23  
24  
25  
26  
27  
28

## **EXHIBIT INDEX**

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

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

# EXHIBIT 1

# EXHIBIT 1

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

5  
6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 HONORABLE ELLIOTT A. SATTler, DISTRICT JUDGE  
9

10 NEVADA AGENCY & TRANSFER CO.,

11 Plaintiff,

Case No. CV15-02259

12 vs.

Dept. No. 10

13 WEISER ASSET, ET AL.,

14 Defendants.  
-----/

15  
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 --oOo--

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  
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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

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HONORABLE ELLIOTT A. SATTLER

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**Court:**

Second Judicial District Court - State of Nevada  
Civil

**Case Title:**

NV AGENCY & TRANSFER CO VS WEISER  
ASSET ET AL (D10)

**Document(s) Submitted:**

Mtn Alter or Amend Judgment  
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**Filed By:**

Dane W Anderson, Esq.

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CLAYTON P. BRUST, ESQ. for NEVADA  
AGENCY AND TRANSFER COMPANY

JOHN FRANCIS MURTHA, ESQ. for  
ATHANASIOS SKARPELOS

JEREMY J. NORK, ESQ. for WEISER ASSET  
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10 *Attorneys for Defendant/Cross-Claimant*

11 *Athanasios Skarpelos*

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.

**MOTION FOR ATTORNEYS' FEES**

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 **MOTION FOR ATTORNEYS' FEES**

9 Cross-Claimant Athanasios Skarpelos ("Skarpelos") moves this Court pursuant to  
10 NRS 18.010(2)(b) for an award of attorneys' fees against cross-defendants Weiser Asset  
11 Management Ltd. ("WAM") and Weiser (Bahamas) Ltd. ("Weiser Capital") (sometimes  
12 collectively referred to as ("Weiser"). Weiser's cross-claims against Skarpelos were  
13 brought and maintained without reasonable grounds or to harass Skarpelos, as were  
14 Weiser's defenses to Skarpelos' cross-claims. This motion is based on the following  
15 memorandum of points and authorities, the Declaration of Dane W. Anderson filed  
16 concurrently ("Anderson Declaration"), the entire file in this matter, and the evidence  
17 presented at trial.

18 **I. INTRODUCTION**

19 This interpleader action involved competing claims to ownership of certain shares  
20 of stock ("the Disputed Stock") in Anavex Life Sciences Corp ("Anavex"). On the one  
21 hand, Skarpelos claimed he was the owner of the stock. On the other hand, the "Weiser"  
22 entities at various times claimed either one or both of them were the owners of the stock.  
23 Weiser's sole basis of their claim of ownership was a July 2013 contract pursuant to  
24 which Skarpelos allegedly agreed to sell the Disputed Stock to "Weiser" (the "July 2013  
25 PSA"). See Weiser's Answer and Cross-claim filed on May 24, 2016, pp. 10-11, ¶¶ 3-5,  
26 9-11, 13, 18. However, Weiser's cross-claim did not identify which "Weiser" entity was  
27 the purchaser under the July 2013 PSA. *Id.*, p. 1:27-28, p. 10, ¶¶ 3, 13, 19.

28 ///

1 Which Weiser entity claimed to be the owner of the Disputed Stock pursuant to the  
2 July 2013 PSA was a conundrum over the 3 years this matter was litigated. Of course, it  
3 all started with WAM's October 30, 2015 letter to NATCO in which it claimed Skarpelos  
4 sold the Disputed Stock to WAM "[o]n or about July 12, 2013." See Trial Exhibit 3.  
5 Weiser's attorney repeated this claim in his letter to NATCO of November 13, 2015,  
6 again claiming the "July 12, 2013 sale transaction whereby Mr. Skarpelos sold 3,316,666  
7 shares of Anavex common stock (the "Stock") to Weiser)." See Trial Exhibit 52.

8 As testified by Mr. Livadas, these demand letters were sent with his knowledge  
9 and authorization. Of course, WAM's demand letters (and Skarpelos' response disputing  
10 WAM's claims) caused NATCO to file this lawsuit on November 18, 2015, naming only  
11 WAM and Skarpelos as Defendants. However, as testified by Alex Walker, WAM's  
12 counsel subsequently advised him that Weiser Capital may be the owner of the Disputed  
13 Stock pursuant to Trial Exhibit 30. See Exhibit 1, attached hereto. Therefore, NATCO  
14 filed an Amended Complaint on April 29, 2016 naming Weiser Capital as an additional  
15 defendant, alleging that Weiser Capital had asserted a claim "similar to, or identical to,"  
16 that of WAM's claim. See NATCO's Amended Complaint at ¶¶ 31-32. Again, the basis  
17 of WAM's claim to ownership was the July 2013 PSA. Id. at ¶ 16(a).

18 Skarpelos proceeded with written discovery in an effort to determine which of the  
19 Weiser entities actually claimed to be the owner of the Disputed Stock under the alleged  
20 July 2013 PSA. On February 6, 2018, in response to requests for admissions, Weiser  
21 stated under oath that *both* WAM and Weiser Capital claimed to own the Disputed Stock.  
22 See Exhibit 2, RFA Nos. 5 and 7, and supporting Declaration of Christos Livadas  
23 attached thereto.

24 Ultimately, Skarpelos filed a Motion for Summary Judgment on March 12, 2018.  
25 Weiser filed its opposition brief and supporting declaration of Christos Livadas  
26 ("Livadas") on April 12, 2018, in which it claimed Skarpelos had agreed to sell the  
27 Disputed Stock to Weiser Capital, not WAM, and that the sale to Weiser Capital occurred  
28 in April 2013. See Weiser's Opposition To Skarpelos' Motion for Summary Judgment, p.

1 1:6-8, and the supporting Declaration of Christos Livadas, ¶ 13. Weiser claimed  
2 Skarpelos and Weiser Capital “memorialized the transaction in July 2013 in a fully  
3 executed purchase-and-sale agreement and power of attorney” and argued that WAM and  
4 Weiser Capital “had already performed their part by crediting Skarpelos’s account...in  
5 April 2013.” Weiser Opposition at 1:16-22; Livadas Declaration at ¶ 15. At that point, in  
6 April 2018, Weiser still relied on the July 2013 PSA as the contract by which “Weiser”  
7 (but apparently Weiser Capital and *not* WAM) obtained ownership of the Disputed Stock.  
8 Id. at 1:18-19, 4:23-24.

9 This continued to be Weiser’s position at Livadas’ deposition in October 2018 in  
10 Athens, Greece. Livadas confirmed at trial that his deposition testimony was that the July  
11 2013 PSA (Trial Exhibit 30) was intended to memorialize the April 2013 sale to Weiser  
12 Capital—not WAM. That Weiser Capital was the owner of the Disputed Stock continued  
13 to be Weiser’s position up to the week before trial: “Skarpelos agreed to sell 3,316,666  
14 shares in WAM’s possession to Weiser Capital for \$250,000 (minus a \$420 processing  
15 fee).” Weiser’s Trial Statement, filed on January 23, 2019, at 4:17-18.

16 **Nevertheless, at trial Livadas testified that the April 2013 transaction was for**  
17 **the sale of the Disputed Stock to WAM and that the July 2013 PSA, which purports**  
18 **to sell the stock to Weiser Capital, was for another transaction that never occurred**  
19 **and so Livadas used the July 2013 PSA for a something other than its intended**  
20 **purpose.** At the hearing on February 6, 2019, the Court found Weiser’s use of that  
21 document to assert claims and make representations to NATCO to be “very troubling.”  
22 See Exhibit 3, Transcript of Proceedings at 6:18-7:11.

23 In other words, at trial Weiser completely abandoned its pleadings and prior  
24 representations that the July 2013 PSA was the basis of its claim of ownership and  
25 adopted a completely new theory that WAM (not Weiser Capital), by virtue of the April  
26 2013 transaction and not the July 2013 PSA, was the owner of the stock. Livadas testified  
27 that the July 2013 PSA that had been the basis of Weiser’s claims throughout 3 years of  
28 litigation was essentially a “meaningless” document.

1 At the pronouncement of its ruling, the Court made several findings regarding the  
2 July 2013 PSA that was basis of Weiser's claim to ownership of the Disputed Stock all  
3 along, as well as Weiser's new theory of ownership presented for the first time at trial:

4 ● The Court found that Exhibit 30, the July 2013 PSA, "is simply not  
5 what it purports to be." Exhibit 3 at 18:22-24. The Court found Exhibit 30  
6 to have "little to no meaning whatsoever in the case other than evidencing  
7 that Mr. Livadas is willing to just change a document from one thing to  
8 something else." Id. at 19:1-4. The Court found that Exhibit 30, which  
9 was Weiser's basis for its ownership claim to NATCO and throughout the  
10 litigation, "does not demonstrate a sale of any type to anyone in this case."  
11 Id. at 19:7-8.

12 ● The Court found "there is no evidence that I can use to conclude that  
13 there was in fact a contract for the sale of shares of stock to either Weiser  
14 Asset Management or to Weiser Capital." Id. at 20:23-21:2.

15 ● The Court noted that Livadas' testimony at trial was inconsistent  
16 with Weiser's trial statement, different from his testimony at deposition,  
17 and different from the allegations in Weiser's cross-claim. Id. at 21:6-20

18 ● The Court found that Livadas testified that neither WAM nor Weiser  
19 Capital was the owner of the stock and that WAM was just transferring the  
20 stock to "somebody else." Id. at 21:21-22:2; 23:11-13.

21 ● The Court found it was "never the agreement" that Skarpelos would  
22 sell the stock to Weiser. Id. at 23:9-13.

23 ● The Court found that Weiser Capital had "absolutely nothing to do  
24 with the sale." Id. at 23:16-17.

25 ● The Court concluded that Weiser had failed to even establish the  
26 "basic premise" of which Weiser entity was the alleged purchaser of the  
27 Disputed Stock. Id. at 31:4-21. In other words, after 3 years of litigation  
28

1 and 5 days of trial, the Court still was “not exactly clear who allegedly even  
2 purchased the stock. Was it WAM or was it Weiser Capital?” Id.

3 The Court’s findings demonstrate that Weiser’s claims (and defenses) as pleaded  
4 and as argued throughout the case were not supported by any credible evidence at trial.  
5 After 3 years of litigation the Court still was unsure of which Weiser entity claimed to be  
6 the purchaser of the Disputed Stock. Weiser’s failure to produce any credible evidence to  
7 establish even that basic premise—let alone an actual contract to support it—strongly  
8 supports the award of attorneys’ fees requested by Skarpelos.

9 As the Court pointed out at trial, the true nature of Weiser’s claim is that WAM  
10 was exposed to liability, for which the appropriate remedy would be damages—not  
11 ownership of the Disputed Stock. But WAM never asserted that claim. Instead, Weiser  
12 misled the Court and the parties about the nature of its claims.

13 Skarpelos is clearly the prevailing party and had to spend \$216,900.50 defending  
14 and prosecuting against Weiser’s frivolous claims and defenses. See Anderson  
15 Declaration. He should be awarded that amount against WAM and Weiser Capital, jointly  
16 and severally, pursuant to NRS 18.010(2)(b).

## 17 **II. LAW AND ARGUMENT**

18 NRS 18.010(2)(b) provides:

19 In addition to the cases where an allowance is authorized by specific statute,  
20 the court may make an allowance of attorney’s fees to a prevailing party:

21 (b) Without regard to the recovery sought, when the court finds that the claim,  
22 counterclaim, cross-claim or third-party complaint or defense of the opposing  
23 party was brought or maintained without reasonable ground or to harass the  
24 prevailing party. The court shall liberally construe the provisions of this  
25 paragraph in favor of awarding attorney’s fees in all appropriate situations. It is  
26 the intent of the Legislature that the court award attorney’s fees pursuant to this  
27 paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of  
28 Civil Procedure in all appropriate situations to punish for and deter frivolous or  
vexatious claims and defenses because such claims and defenses overburden  
limited judicial resources, hinder the timely resolution of meritorious claims  
and increase the costs of engaging in business and providing professional  
services to the public.

1 A claim or defense is groundless if the allegations upon which they are based are not  
2 supported by any credible evidence at trial. Semenza v. Caughlin Crafted Homes, 111 Nev.  
3 1089, 1095, 901 P.2d 684, 688 (1995).

4 As discussed above, Weiser's cross-claims and defenses were based entirely on the  
5 allegation that Skarpelos agreed to sell the Disputed Stock to "Weiser" pursuant to the July  
6 2013 PSA. There was no credible evidence at trial to support this allegation. In fact, Weiser  
7 completely abandoned that allegation at trial and instead tried to persuade the Court that  
8 WAM was the owner of the Disputed Stock pursuant to the April 2013 transaction. However,  
9 as the Court noted, Livadas testified that WAM was not the owner of the stock but just an  
10 intermediary. Weiser presented no credible evidence at trial to support the allegations of its  
11 cross-claims or defenses to Skarpelos' cross-claims.

12 In Nevada, "district courts have great discretion to award attorney fees, and this  
13 discretion is tempered only by reason and fairness." Haley v. Dist. Ct., 128 Nev. 171, 178,  
14 273 P.3d 855, 860 (2012). In determining the amount of fees to award, the court is not  
15 limited to one specific approach; its analysis may begin with any method rationally designed  
16 to calculate a reasonable amount, as long as the requested amount is reviewed in light of the  
17 factors set forth in *Brunzell v. Golden Gate National Bank*." Id. The "Brunzell factors" to  
18 determine the reasonableness of attorneys' fees are: (1) the qualities of the attorney, (2) the  
19 character of the work to be done, (3) the actual work performed by the attorney, and (4) the  
20 case's result. Id.

21 Skarpelos requests an award of fees in the amount of \$216,900.50. The Court  
22 determined him to be the owner of the Disputed Stock, which was the sole issue in this case  
23 under the pleadings. The character of the work was made difficult by Weiser's "musical  
24 chairs" claim to ownership of the Disputed Stock. The Court had an opportunity to observe  
25 the qualities of Skarpelos' counsel and can evaluate that factor as it sees fit. Skarpelos  
26 submits that the actual work performed was reasonably and necessary in light of Weiser's  
27 frivolous claims to ownership of the Disputed Stock. Skarpelos submits that an award of  
28 \$216,900.50 is reasonable under the circumstances of this case.

1 **III. CONCLUSION**

2 Weiser's cross-claims against Skarpelos and its defenses against Skarpelos' cross-  
3 claims were brought without reasonable grounds or to harass Skarpelos. Skarpelos  
4 requests an award of attorneys' fees against WAM and Weiser Capital, jointly and  
5 severally, in the reasonable amount of \$216,900.50.

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

John F. Murtha, Esq.

Nevada Bar No. 835

Dane W. Anderson, Esq.

Nevada Bar No. 6883

Seth J. Adams, Esq.

Nevada Bar No. 11034

*Attorneys for Defendant/*

*Cross-Claimant*

*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 **MOTION FOR ATTORNEYS' FEES** 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](mailto:awalker@law@aol.com)

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*Attorneys for Plaintiff*

11 Jeremy J. Nork, Esq.  
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15 Reno, Nevada 89511  
16 [jnork@hollandandhart.com](mailto:jnork@hollandandhart.com)  
17 [fzlaforge@hollandandhart.com](mailto:fzlaforge@hollandandhart.com)

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

18 DATED: April 25<sup>th</sup> 2019.

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

## **EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>	<b>No. of Pages *</b>
1	Trial Exhibit 30	6
2	Responses to Athanasios Skarpelos' First Requests for Admission to Weiser Asset Management, Ltd. and Weiser (Bahamas), Ltd.	17
3	Transcript of Proceedings – February 6, 2019	52

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

# EXHIBIT 1

# EXHIBIT 1

From: **Jeremy Nork** JNork@hollandhart.com  
Subject: RE: Skarpelos/Weiser  
Date: February 22, 2016 at 5:12 PM  
To: Alex Walker Alex@awalkerlaw.com  
Cc: Frank LaForge fzlaforge@hollandhart.com



Thank you, Alex.

In preparing the response to your complaint, I was made aware of the attached two documents, both of which seem to indicate that the proper party is Weiser (Bahamas) Ltd., and not Weiser Asset Management Ltd. Please let me know if, after reviewing the attached, you are inclined to amend your complaint to substitute Weiser (Bahamas) Ltd. in the place of Weiser Asset Management Ltd. If not, we will respond to the complaint as it is written. Thank you.

**Jeremy J. Nork**  
775-327-3043



---

**From:** Alex Walker [mailto:Alex@awalkerlaw.com]  
**Sent:** Monday, February 22, 2016 12:52 PM  
**To:** Jeremy Nork  
**Subject:** Re: Skarpelos/Weiser

Jeremy:

Perhaps I have it scheduled incorrectly, but filing per you schedule is fine. I just wanted to check with you.

Alex

Alexander Walker III  
Attorney at Law  
American Plaza II  
57 West 200 South, Suite 400  
Salt Lake City, Utah 84101  
(801)363-0100  
(801)521-3301 (Fax)  
[alex@awalkerlaw.com](mailto:alex@awalkerlaw.com)

\*Admitted in Utah and Nevada

PLEASE NOTE: The information contained in this message may be privileged and confidential. If you are not the intended recipient, you are hereby notified that any review, printing, dissemination, distribution, copying or other use of this communication is strictly prohibited. If you have received this communication in error, please reply to the sender and delete all copies of the message.

IRS CIRCULAR 230 NOTICE. To ensure compliance with requirements imposed by the IRS, I am informing you that, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any tax-related matter addressed herein.

JA2263

On Feb 22, 2016, at 10:38 AM, Jeremy Nork <[JNork@hollandhart.com](mailto:JNork@hollandhart.com)> wrote:

We have calendared our response as being due 2/29. I will double check; but yes, we intend to respond.

**Jeremy J. Nork**  
775-327-3043 <[image001.gif](#)>

---

**From:** Alex Walker [<mailto:Alex@awalkerlaw.com>]  
**Sent:** Monday, February 22, 2016 9:37 AM  
**To:** Jeremy Nork  
**Subject:** Skarpelos/Weiser

Jeremy:

My calendar shows the Weiser response to the complaint due. Do you plan to file a response?

Alex

Alexander Walker III  
Attorney at Law  
American Plaza II  
57 West 200 South, Suite 400  
Salt Lake City, Utah 84101  
(801)363-0100  
(801)521-3301 (Fax)  
[alex@awalkerlaw.com](mailto:alex@awalkerlaw.com)

\*Admitted in Utah and Nevada

PLEASE NOTE: The information contained in this message may be privileged and confidential. If you are not the intended recipient, you are hereby notified that any review, printing, dissemination, distribution, copying or other use of this communication is strictly prohibited. If you have received this communication in error, please reply to the sender and delete all copies of the message.

IRS CIRCULAR 230 NOTICE. To ensure compliance with requirements imposed by the IRS, I am informing you that, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any tax-related matter addressed herein.

**POWER OF ATTORNEY TO TRANSFER BONDS OR SHARES**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

Weiser (Bahamas) Ltd.

(Name of transferee)

of

#104 Island Lane

Old Town, Sandport

Nassau, Bahamas

(Transferor's address)

6,633,332 Share of Anavex Life Sciences Corp. Common Stock

(Description of Security - include number and class of Shares or amount (par value), rate and maturity of Bonds)

standing in the name of the undersigned on the books of ATHANASIOS SKARPELOS represented by certificate No 753 and keeps and holds certificates and appoints WEISER (BAHAMAS) LTD the attorney of the undersigned to transfer the said shares on the books of the Company with full power of substitution in the premises

DATED at Athens this 12 day of JULY, 20 13

Signed:

In the presence of:

Signature of Transferor

Signature of transferor guaranteed by

ATHANASIOS SKARPELOS AT 12 45 22  
09/12/13  
Signature of Witness  
Witness

**NOTE: The signature to this assignment must correspond with the name as recorded on the certificate bond in every particular without alteration or enlargement or any change whatever. The signature of the person executing this power must be guaranteed by a Bank or Trust Company; or by a Member of the Toronto Stock Exchange.**

WEISEI



WEISER000196  
- 0001...01.pdf

JA2265

## STOCK SALE AND PURCHASE AGREEMENT

THIS STOCK SALE AND PURCHASE AGREEMENT (this **Agreement**) is dated as of July 5, 2013, and is made and entered into by and among WEISER LTD ( **Buyer** ) and Athanasios Skarpelos ( **Seller** ) with respect to the following facts:

A.

Seller owns 3,316,666 shares of common stock of Anavex Life Sciences Corp., a Nevada corporation (the **Company** ).

B.

Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, 3,316,666 shares of the Company's common stock upon the terms and conditions set forth in this Agreement.

Accordingly, for and in consideration of the premises, the mutual promises, covenants and agreements hereafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer, intending to be legally bound, do hereby agree as follows:

### ARTICLE I

#### SALE AND PURCHASE

##### Section 1.1

**Sale and Purchase of Shares.** On and subject to the terms and conditions of this Agreement, effective as of the Closing Date, Buyer shall purchase from Seller, and Seller shall sell to Buyer, Three Million Three Hundred and Sixteen Thousand Six Hundred and Sixty Six (3,316,666) shares of common stock (the **Shares** ) of the Company registered in the name of Seller for the consideration specified in Section 1.2 and upon the terms and conditions set forth in this Agreement.

##### Section 1.2

**Purchase Price.** The purchase price for the Shares (the **Purchase Price** ) is Two Hundred and Fifty Thousand dollars (\$250,000.00). The Purchase Price shall be paid to the Seller at the Closing, in cash.

##### Section 1.3

**Closing Date; Deliveries.** The closing shall occur on September 30, 2013 or such other date as the parties hereto may agree to (the **Closing Date** ). On the Closing Date, Buyer shall deliver a check in the amount of the Purchase Price to Seller, and Seller shall deliver to Buyer a share certificate representing the Shares issued in the name of the Seller.

### ARTICLE II

#### REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER

To induce Buyer to enter into and perform its obligations under this Agreement, Seller hereby represents and warrants to Buyer, and covenants with Buyer, as follows:

#### **Section 2.1**

**Authority and Capacity.** Seller has all requisite power, authority and capacity to enter into this Agreement. The execution, delivery and performance of this Agreement by Seller does not, and the consummation of the transaction contemplated hereby will not, result

in a breach of or default under any agreement to which Seller is a party or by which Seller is bound.

#### **Section 2.2**

**Binding Agreement.** This Agreement has been duly and validly executed and delivered by Seller and constitutes Seller's valid and binding agreement, enforceable against Seller in accordance with and subject to its terms.

#### **Section 2.3**

**Title to Shares.** Seller is the lawful, record and beneficial owner of all of the Shares, free and clear of any liens, claims, agreements, charges, security interests and encumbrances whatsoever. The sale, conveyance, assignment, and transfer of the Shares in accordance with the terms of this Agreement transfers to Buyer legal and valid title to the Shares, free and clear of all liens, security interests, hypothecations or pledges.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES OF BUYER**

To induce Seller to enter into and perform their obligations under this Agreement, Buyer represents and warrants to Seller as follows:

#### **Section 3.1**

**Authority and Capacity.** Buyer has all requisite power, authority and capacity to enter into this Agreement. The execution, delivery and performance of this Agreement by Buyer does not, and the consummation of the transaction contemplated hereby will not, result in a breach of or default under any agreement to which Buyer is a party or by which Buyer is bound.

#### **Section 3.2**

**Disclosure.** Buyer has reviewed the SEC Reports and is aware of the Company's business and financial condition.

#### **Section 3.3**

**Investment Representations.** Buyer is acquiring the Shares for Buyer's own account and is not acquiring the Shares with a view to or for sale in connection with any distribution thereof within the meaning of the Securities Act of 1933, as amended.

#### ARTICLE IV

##### MISCELLANEOUS

###### Section 4.1

**Entire Agreement.** This Agreement constitutes the entire understanding and agreement of the parties relating to the subject matter hereof and supersedes any and all prior understandings, agreements, negotiations and discussions, both written and oral, between the parties hereto with respect to the subject matter hereof.

###### Section 4.2

**Governing Law.** This Agreement shall be construed, interpreted and enforced in accordance with, and shall be governed by, the laws of the State of California without reference to, and regardless of, any applicable choice or conflicts of laws principles.

###### Section 4.3

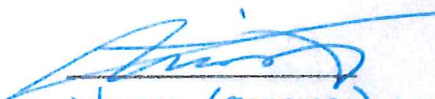
**Counterparts.** This Agreement may be executed in any number of counterparts and by the several parties hereto in separate counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same Agreement.


###### Section 4.4

**Further Assurances.** Each of the parties hereto shall from time to time at the request of any other party hereto, and without further consideration, execute and deliver to such other party such further instruments of assignment, transfer, conveyance and confirmation and take such other action as such other party may reasonably request in order to more effectively fulfill the purposes of this Agreement.

IN WITNESS WHEREOF, this Agreement has been signed by the parties hereto as of the date first above written.

Buyer:

  
WEISER (BAHAMAS) LTD

  
Seller:  
Athanasios Skarpeles

Κέντρο Εμπιστοσύνης Πολιτών  
Βεβαιώνει το γνήσιο της υπογραφή  
ΣΚΑΡΠΕΛΕ ΑΘΑΝΑΣΙΟΣ  
09/12/13 ΑΠ 12452  
ΣΩΤΗΡΙΟΣ Γ. ΚΑΥΑΛΗΣ  
Υπάλληλος Κ.Ε.Π.  
Λόγου Βόρειας Κυνουρίας

# EXHIBIT 2

# EXHIBIT 2

HOLLAND & HART LLP  
5441 KIETZKE LANE, SECOND FLOOR  
RENO, NEVADA 89511  
(775) 327-3000

**DISC**

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

Attorneys for Defendants/Cross-claimants Weiser

**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,

v.

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

**RESPONSES TO ATHANASIOS  
SKARPELOS' FIRST REQUESTS FOR  
ADMISSION TO WEISER ASSET  
MANAGEMENT LTD. AND WEISER  
(BAHAMAS) LTD.**

AND RELATED CROSS-ACTIONS.

**REQUESTS FOR ADMISSION**

**Request for Admission No. 1:**

By its First Claim for Relief in the Amended Complaint filed by Plaintiff Nevada Agency and Transfer Company on April 29, 2016, it seeks to interplead 3,316,666 shares of stock in a Nevada corporation known as Anavex Life Sciences Corp. (the "Stock").

**Response to Request for Admission No. 1:**

Weiser Asset Management, Ltd and Weiser (Bahamas) Ltd. (collectively "Weiser") object to this request on the basis that it does not seek an admission of a fact or the authenticity of a

1 document. Rather, it asks Weiser to interpret or characterize another party's legal claims, which  
2 is outside the scope of NRCP 36 requests for admission. Weiser further objects that the pronoun  
3 "it" in this request is ambiguous. Last, Weiser objects that the Amended Complaint speaks for  
4 itself.

5 **Request for Admission No. 2:**

6 The Stock was evidenced by Anavex Life Sciences Corp. certificate no. 0753 issued on  
7 October 29, 2009, in the amount of 6,633,332 shares ("Stock Cert. 753").

8 **Response to Request for Admission No. 2:**

9 Weiser objects that the term "evidence" is ambiguous and subjective and subject to  
10 differing meanings. Without waiving this objection, Weiser answers as follows: Admit.

11 **Request for Admission No. 3:**

12 Paragraph 3 of WAM's and Bahama's Cross-Claim against Skarpelos dated May 23,  
13 2016 ("Cross-Claim"), states: "In July 2013, Weiser and Skarpelos entered into a contract for  
14 the sale of a certain amount of stock."

15 **Response to Request for Admission No. 3:**

16 Weiser objects to this request on the basis that it does not seek an admission of an  
17 external fact relevant to this case. Rather, it asks Weiser for an admission about the nature of its  
18 own pleadings. Weiser further objects that its Cross-Claim speaks for itself.

19 **Request for Admission No. 4:**

20 The "certain amount of stock" referenced in Paragraph 3 of the Cross-Claim is the Stock  
21 which Nevada Agency and Transfer Company wishes to interplead in this action.

22 **Response to Request for Admission No. 4:**

23 Weiser objects that this request is compound. *See San Diego Unified Port Dist. v. Nat'l*  
24 *Union Fire Ins. Co. of Pittsburg, PA*, 2017 WL 3877731, at \*2 (S.D. Cal. Sept. 5, 2017)  
25 ("Requests for admission 'may not contain compound, conjunctive, or disjunctive (e.g.,  
26 "and/or") statements.'"). Without waiving this objection, Weiser answers as follows: Admit.

27 **Request for Admission No. 5:**

28 WAM claims to own the Stock.

**Response to Request for Admission No. 5:**

Weiser objects to the extent that this request presumes that Weiser's claim is based on a single legal theory. Without waiving that objection, Weiser responds as follows: Admit.

**Request for Admission No. 6:**

WAM's claim of ownership of the Stock is based upon a purported Stock Sale and Transfer Agreement dated July 5, 2013, wherein Skarpelos was the seller and Weiser Ltd was the buyer ("Purported Contract"), a copy of which is attached hereto as Exhibit 1.

**Response to Request for Admission No. 6:**

Weiser objects to the extent that this request presumes that Weiser's claim is based on a single legal theory. Weiser also objects to this request on the basis that it does not seek an admission of a fact or the authenticity of a document. Rather, it asks Weiser to interpret or characterize its own legal claims, which is outside the scope of NRCP 36 requests for admission. *See, e.g., Morgan v. Demille*, 799 P.2d 561, 564 (Nev. 1990) ("The purpose of procedural statutes such as NRCP 36 is to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications."); *id.* (concluding that requests that "called for either crucial facts central to the lawsuit or legal concessions" were improper). Weiser further objects that this request is compound. *See San Diego Unified*, 2017 WL 3877731, at \*2 ("Requests for admission 'may not contain compound, conjunctive, or disjunctive (e.g., 'and/or') statements.'").

**Request for Admission No. 7:**

Bahamas claims to own the stock.

**Response to Request for Admission No. 7:**

Weiser objects to the extent that this request presumes that Weiser's claim is based on a single legal theory. Without waiving that objection, Weiser responds as follows: Admit.

**Request for Admission No. 8:**

Bahama's claim of ownership of Stock is based upon the Purported Contract.

1 **Response to Request for Admission No. 8:**

2 Weiser objects to the extent that this request presumes that Weiser's claim is based on a  
3 single legal theory. Weiser also objects to this request on the basis that it does not seek an  
4 admission of a fact or the authenticity of a document. Rather, it asks Weiser to interpret or  
5 characterize its own legal claims, which is outside the scope of NRCP 36 requests for  
6 admission. *See, e.g., Morgan, 799 P.2d at 564* ("The purpose of procedural statutes such as  
7 NRCP 36 is to obtain admission of facts which are in no real dispute and which the adverse  
8 party can admit cleanly, without qualifications."); *id.* (concluding that requests that "called for  
9 either crucial facts central to the lawsuit or legal concessions" were improper). Weiser further  
10 objects that this request is compound. *See San Diego Unified, 2017 WL 3877731, at \*2*  
11 ("Requests for admission 'may not contain compound, conjunctive, or disjunctive (e.g.,  
12 "and/or") statements.'").

13 **Request for Admission No. 9:**

14 Bahamas is the same entity identified in the Purported Contract as Weiser Ltd.

15 **Response to Request for Admission No. 9:**

16 Deny.

17 **Request for Admission No. 10:**

18 The contract referenced in Paragraph 3 of the Cross-Claim is the Purported Contract  
19 attached hereto as Exhibit 1.

20 **Response to Request for Admission No. 10:**

21 Weiser admits Exhibit 1 comprises part of the parties' contract as referenced in  
22 Paragraph 3.

23 **Request for Admission No. 11:**

24 WAM's and Bahama's First Claim for Relief in the Cross-Claim seeks a declaration that  
25 WAM and/or Bahama are the rightful owner of the Stock.

26 **Response to Request for Admission No. 11:**

27 Weiser objects to this request on the basis that it does not seek an admission of a fact or  
28 the authenticity of a document. Rather, it asks Weiser to interpret or characterize its own legal

1 claims, which is outside the scope of NRCP 36 requests for admission. *See, e.g., Morgan, 799*  
2 *P.2d at 564* (“The purpose of procedural statutes such as NRCP 36 is to obtain admission of  
3 facts which are in no real dispute and which the adverse party can admit cleanly, without  
4 qualifications.”); *id.* (concluding that requests that “called for either crucial facts central to the  
5 lawsuit or legal concessions” were improper). Weiser also objects that the Cross-Claim speaks  
6 for itself.

7 **Request for Admission No. 12:**

8 WAM’s and Bahama’s First Claim for Relief in the Cross-Claim is based upon the  
9 Purported Contract.

10 **Response to Request for Admission No. 12:**

11 Weiser objects to this request on the basis that it does not seek an admission of a fact or  
12 the authenticity of a document. Rather, it asks Weiser to interpret or characterize its own legal  
13 claims, which is outside the scope of NRCP 36 requests for admission. *See, e.g., Morgan, 799*  
14 *P.2d at 564* (“The purpose of procedural statutes such as NRCP 36 is to obtain admission of  
15 facts which are in no real dispute and which the adverse party can admit cleanly, without  
16 qualifications.”); *id.* (concluding that requests that “called for either crucial facts central to the  
17 lawsuit or legal concessions” were improper). Weiser also objects that the Cross-Claim speaks  
18 for itself.

19 **Request for Admission No. 13:**

20 WAM’s and Bahama’s Second Claim for Relief in the Cross-Claim is for breach of  
21 contract against Skarpelos related to the Purported Contract.

22 **Response to Request for Admission No. 13:**

23 Weiser objects to this request on the basis that it does not seek an admission of a fact or  
24 the authenticity of a document. Rather, it asks Weiser to interpret or characterize its own legal  
25 claims, which is outside the scope of NRCP 36 requests for admission. *See, e.g., Morgan, 799*  
26 *P.2d at 564* (“The purpose of procedural statutes such as NRCP 36 is to obtain admission of  
27 facts which are in no real dispute and which the adverse party can admit cleanly, without  
28 qualifications.”); *id.* (concluding that requests that “called for either crucial facts central to the

lawsuit or legal concessions” were improper). Weiser also objects that the Cross-Claim speaks for itself.

**Request for Admission No. 14:**

WAM’s and Bahama’s Third Claim for Relief in the Cross-Claim is for breach of the covenant of good faith and fair dealing against Skarpelos related to the Purported Contract.

**Response to Request for Admission No. 14:**

Weiser objects to this request on the basis that it does not seek an admission of a fact or the authenticity of a document. Rather, it asks Weiser to interpret or characterize its own legal claims, which is outside the scope of NRCP 36 requests for admission. *See, e.g., Morgan, 799 P.2d at 564* (“The purpose of procedural statutes such as NRCP 36 is to obtain admission of facts which are in no real dispute and which the adverse party can admit cleanly, without qualifications.”); *id.* (concluding that requests that “called for either crucial facts central to the lawsuit or legal concessions” were improper). Weiser also objects that the Cross-Claim speaks for itself.

**Request for Admission No. 15:**

The Purported Contract was drafted by WAM, Bahamas or someone acting on their behalf.

**Response to Request for Admission No. 15:**

Weiser objects to this request as compound. *See San Diego Unified, 2017 WL 3877731, at \*2* (“Requests for admission ‘may not contain compound, conjunctive, or disjunctive (e.g., “and/or”) statements.’”). Without waiving this objection, Weiser answers as follows: Deny.

**Request for Admission No. 16:**

Pursuant to Section 1.2 of the Purported Contract, the purchase price for the Stock was to have been \$250,000 (“Purchase Price”).

**Response to Request for Admission No. 16:**

Weiser objects to this request on the basis that it does not seek an admission of a fact or the authenticity of a document. Rather, it asks Weiser to interpret or characterize a written document, which is outside the scope of NRCP 36 requests for admission. *See, e.g., Morgan,*

1 799 P.2d at 564 (“The purpose of procedural statutes such as NRCP 36 is to obtain admission of  
2 facts which are in no real dispute and which the adverse party can admit cleanly, without  
3 qualifications.”); *id.* (concluding that requests that “called for either crucial facts central to the  
4 lawsuit or legal concessions” were improper). Weiser also objects that the document at issue  
5 speaks for itself.

6 **Request for Admission No. 17:**

7 Pursuant to Section 1.3 of the Purported Contract, closing for the sale of the Stock was  
8 to have occurred on September 30, 2013.

9 **Response to Request for Admission No. 17:**

10 Weiser objects to this request on the basis that it does not seek an admission of a fact or  
11 the authenticity of a document. Rather, it asks Weiser to interpret or characterize a written  
12 document, which is outside the scope of NRCP 36 requests for admission. *See, e.g., Morgan,*  
13 *799 P.2d at 564* (“The purpose of procedural statutes such as NRCP 36 is to obtain admission of  
14 facts which are in no real dispute and which the adverse party can admit cleanly, without  
15 qualifications.”); *id.* (concluding that requests that “called for either crucial facts central to the  
16 lawsuit or legal concessions” were improper). Weiser also objects that the document at issue  
17 speaks for itself.

18 **Request for Admission No. 18:**

19 Pursuant to Section 1.3 of the Purported Contract, Weiser Ltd was to deliver a check in  
20 the amount of the Purchase Price to Skarpelos at closing.

21 **Response to Request for Admission No. 18:**

22 Weiser objects to this request on the basis that it does not seek an admission of a fact or  
23 the authenticity of a document. Rather, it asks Weiser to interpret or characterize a written  
24 document, which is outside the scope of NRCP 36 requests for admission. *See, e.g., Morgan,*  
25 *799 P.2d at 564* (“The purpose of procedural statutes such as NRCP 36 is to obtain admission of  
26 facts which are in no real dispute and which the adverse party can admit cleanly, without  
27 qualifications.”); *id.* (concluding that requests that “called for either crucial facts central to the  
28 lawsuit or legal concessions” were improper). Weiser also objects that the document at issue

1 speaks for itself.

2 **Request for Admission No. 19:**

3 Neither WAM nor Bahamas delivered a check in the amount of \$250,000 to Skarpelos  
4 on or any time after September 30, 2013, as payment of the Purchase Price.

5 **Response to Request for Admission No. 19:**

6 Weiser objects to this request as compound. *See San Diego Unified*, 2017 WL 3877731,  
7 at \*2 (“Requests for admission ‘may not contain compound, conjunctive, or disjunctive (e.g.,  
8 “and/or”) statements.”). Without waiving this objection, Weiser answers as follows: Admit.

9 **Request for Admission No. 20:**

10 Neither WAM nor Bahamas wire transferred \$250,000 to Skarpelos on or any time after  
11 September 30, 2013, as payment of the Purchase Price.

12 **Response to Request for Admission No. 20:**

13 Weiser objects to this request as compound. *See San Diego Unified*, 2017 WL 3877731,  
14 at \*2 (“Requests for admission ‘may not contain compound, conjunctive, or disjunctive (e.g.,  
15 “and/or”) statements.”). Weiser also objects to the term “wire transfer” in that it is ambiguous  
16 and susceptible to more than one reasonable interpretation. Without waiving these objections,  
17 Weiser answers as follows: Admit.

18 **Request for Admission No. 21:**

19 Neither WAM nor Bahamas tendered the Purchase Price to Skarpelos in any form as  
20 payment of the Purchase Price for the Stock on or any time after September 30, 2013.

21 **Response to Request for Admission No. 21:**

22 Weiser objects to this request as compound. *See San Diego Unified*, 2017 WL 3877731,  
23 at \*2 (“Requests for admission ‘may not contain compound, conjunctive, or disjunctive (e.g.,  
24 “and/or”) statements.”). Without waiving this objection, Weiser answers as follows: Deny.

25 **Request for Admission No. 22:**

26 Neither WAM nor Bahamas delivered a check in the amount of \$250,000 to any one  
27 purporting to be an agent of Skarpelos on or any time after September 30, 2013, as payment of  
28 the Purchase Price.

**Response to Request for Admission No. 22:**

Weiser objects to this request as compound. *See San Diego Unified*, 2017 WL 3877731, at \*2 (“Requests for admission ‘may not contain compound, conjunctive, or disjunctive (e.g., “and/or”) statements.’”). It also objects to the extent that Skarpelos has not identified his purported agents. Without waiving these objections, Weiser answers as follows: Admit.

**Request for Admission No. 23:**

Neither WAM nor Bahamas wire transferred \$250,000 to anyone purporting to be an agent of Skarpelos on or any time after September 30, 2013, as payment of the Purchase Price.

**Response to Request for Admission No. 23:**

Weiser objects to this request as compound. *See San Diego Unified*, 2017 WL 3877731, at \*2 (“Requests for admission ‘may not contain compound, conjunctive, or disjunctive (e.g., “and/or”) statements.’”). Weiser also objects to the term “wire transfer” in that it is ambiguous and susceptible to more than one reasonable interpretation. It further objects to the extent that Skarpelos has not identified his purported agents. Without waiving these objections, Weiser answers as follows: Admit.

**Request for Admission No. 24:**

Neither WAM nor Bahamas tendered \$250,000 in any form to any one purporting to be an agent of Skarpelos as payment of the Purchase Price for the stock on or any time after September 30, 2013.

**Response to Request for Admission No. 24:**

Weiser objects to this request as compound. *See San Diego Unified*, 2017 WL 3877731, at \*2 (“Requests for admission ‘may not contain compound, conjunctive, or disjunctive (e.g., “and/or”) statements.’”). It also objects to the extent that Skarpelos has not identified his purported agents. Without waiving these objections, Weiser answers as follows: Deny.

**Request for Admission No. 25:**

No agent of WAM or Bahamas has ever delivered a check in the amount of \$250,000 to Skarpelos as payment of the Purchase Price.

1 **Response to Request for Admission No. 25:**

2 Admit.

3 **Request for Admission No. 26:**

4 No agent of WAM or Bahamas has ever wire transferred \$250,000 to Skarpelos as  
5 payment of the Purchase Price.

6 **Response to Request for Admission No. 26:**

7 Weiser objects to the term "wire transfer" in that it is ambiguous and susceptible to more  
8 than one reasonable interpretation. Without waiving this objection, Weiser responds as follows:  
9 Admit.

10 **Request for Admission No. 27:**

11 No agent of WAM or Bahamas has ever tendered the Purchase Price to Skarpelos in any  
12 form.

13 **Response to Request for Admission No. 27:**

14 Deny.

15 **Request for Admission No. 28:**

16 No agent of WAM or Bahamas has ever delivered a check in the amount of \$250,000 to  
17 any one purporting to be an agent of Skarpelos as payment of the Purchase Price.

18 **Response to Request for Admission No. 28:**

19 Weiser objects to this request as compound. *See San Diego Unified*, 2017 WL 3877731,  
20 at \*2 ("Requests for admission 'may not contain compound, conjunctive, or disjunctive (e.g.,  
21 "and/or") statements.'"). It also objects to the extent that Skarpelos has not identified his  
22 purported agents. Without waiving these objections, Weiser answers as follows: Admit.

23 **Request for Admission No. 29:**

24 No agent of WAM or Bahamas has ever wire transferred \$250,000 to anyone purporting  
25 to be an agent of Skarpelos as payment of the Purchase Price.

26 **Response to Request for Admission No. 29:**

27 Weiser objects to this request as compound. *See San Diego Unified*, 2017 WL 3877731,  
28 at \*2 ("Requests for admission 'may not contain compound, conjunctive, or disjunctive (e.g.,

1 “and/or”) statements.”). Weiser also objects to the term “wire transfer” in that it is ambiguous  
2 and susceptible to more than one reasonable interpretation. It further objects to the extent that  
3 Skarpelos has not identified his purported agents. Without waiving these objections, Weiser  
4 answers as follows: Deny.

5 **Request for Admission No. 30:**

6 No agent of WAM or Bahamas has ever tendered \$250,000 in any form to any one  
7 purporting to be an agent of Skarpelos as payment of the Purchase Price.

8 **Response to Request for Admission No. 30:**

9 Weiser objects to this request as compound. *See San Diego Unified*, 2017 WL 3877731,  
10 at \*2 (“Requests for admission ‘may not contain compound, conjunctive, or disjunctive (e.g.,  
11 “and/or”) statements.”). It also objects to the extent that Skarpelos has not identified his  
12 purported agents. Without waiving these objections, Weiser answers as follows: Deny.

13 **Request for Admission No. 31:**

14 Neither WAM nor Bahamas ever requested an extension of the Closing Date for the sale  
15 of the Stock beyond September 30, 2013.

16 **Response to Request for Admission No. 31:**

17 Weiser objects to this request to the extent that the phrase “requested an extension” is  
18 ambiguous and susceptible to more than one reasonable interpretation. Without waiving this  
19 objection, Weiser answers as follows: Deny.

20 **Request for Admission No. 32:**

21 Pursuant to Section 4.1 of the Purported Contract, the entire understandings of the  
22 parties to the Purported Contract relating to the subject matter thereof were contained within the  
23 Purported Contract.

24 **Response to Request for Admission No. 32:**

25 Weiser objects to this request on the basis that it does not seek an admission of a fact or  
26 the authenticity of a document. Rather, it asks Weiser to interpret or characterize a written  
27 document, which is outside the scope of NRCP 36 requests for admission. *See, e.g., Morgan*,  
28 799 P.2d at 564 (“The purpose of procedural statutes such as NRCP 36 is to obtain admission of

1 facts which are in no real dispute and which the adverse party can admit cleanly, without  
2 qualifications.”); *id.* (concluding that requests that “called for either crucial facts central to the  
3 lawsuit or legal concessions” were improper). Weiser also objects that the document at issue  
4 speaks for itself.

5 **Request for Admission No. 33:**

6 Pursuant to Section 4.2 of the Purported Contract, it is to be construed, interpreted and  
7 enforced in accordance with California law.

8 **Response to Request for Admission No. 33:**

9 Weiser objects to this request on the basis that it does not seek an admission of a fact or  
10 the authenticity of a document. Rather, it asks Weiser to interpret or characterize a written  
11 document, which is outside the scope of NRCP 36 requests for admission. *See, e.g., Morgan,*  
12 *799 P.2d at 564* (“The purpose of procedural statutes such as NRCP 36 is to obtain admission of  
13 facts which are in no real dispute and which the adverse party can admit cleanly, without  
14 qualifications.”); *id.* (concluding that requests that “called for either crucial facts central to the  
15 lawsuit or legal concessions” were improper). Weiser also objects that the document at issue  
16 speaks for itself.

17 **Request for Admission No. 34:**

18 The Purported Contract does not provide for or allow facsimile or copies of signature to  
19 be effective.

20 **Response to Request for Admission No. 34:**

21 Weiser objects to this request on the basis that it does not seek an admission of a fact or  
22 the authenticity of a document. Rather, it asks Weiser to interpret or characterize a written  
23 document, which is outside the scope of NRCP 36 requests for admission. *See, e.g., Morgan,*  
24 *799 P.2d at 564* (“The purpose of procedural statutes such as NRCP 36 is to obtain admission of  
25 facts which are in no real dispute and which the adverse party can admit cleanly, without  
26 qualifications.”); *id.* (concluding that requests that “called for either crucial facts central to the  
27 lawsuit or legal concessions” were improper). Weiser also objects that the document at issue  
28 speaks for itself.

1 **Request for Admission No. 35:**

2 WAM caused Ernesto Alvarez, Esq. of Montello Law, Aventura, Florida, to send a letter  
3 to Nevada Agency and Transfer Company on October 30, 2015, demanding that transfer  
4 3,316,666 shares of Stock Cert. 753 to WAM based upon the Purported Contract, copy of which  
5 is attached hereto as Exhibit 2.

6 **Response to Request for Admission No. 35:**

7 Weiser objects to this request as compound. *See San Diego Unified*, 2017 WL 3877731,  
8 at \*2 ("Requests for admission 'may not contain compound, conjunctive, or disjunctive (e.g.,  
9 "and/or") statements.'"). Weiser also objects that Exhibit 2 speaks for itself.

10 **Request for Admission No. 36:**

11 On November 19, 2015, Bill Simonitsch, Esq. of the law firm of K&L Gates sent an  
12 email to Alvarez, a copy of which is attached hereto as Exhibit 3 in which he asked "Do you  
13 also have proof that you can provide me showing that the purchase price was paid an received?"

14 **Response to Request for Admission No. 36:**

15 Weiser objects to this request as compound. *See San Diego Unified*, 2017 WL 3877731,  
16 at \*2 ("Requests for admission 'may not contain compound, conjunctive, or disjunctive (e.g.,  
17 "and/or") statements.'"). Weiser also objects that Exhibit 3 speaks for itself.

18 **Request for Admission No. 37:**

19 Mr. Alvarez never provided Mr. Simonitsch with proof that the Purchase Price for the  
20 Stock was ever paid to and received by Skarpelos.

21 **Response to Request for Admission No. 37:**

22 Weiser objects to this request as argumentative. Weiser also objects that the term  
23 "proof" is ambiguous and subjective and subject to differing interpretations.

24 **Request for Admission No. 38:**

25 Mr. Alvarez never provided Mr. Simonitsch with proof that the Purchase Price for the  
26 Stock was ever paid to and received by any one purporting to be an agent of Skarpelos.

**Response to Request for Admission No. 38:**

Weiser objects to this request as argumentative. Weiser also objects that the term “proof” is ambiguous and subjective and subject to differing interpretations. Weiser further objects that it does not know whom Skarpelos’s agents may be.

**Request for Admission No. 39:**

To date, neither WAM nor Bahamas has produced any documentary evidence during discovery that the Purchase Price was ever paid to Skarpelos on or after September 30, 2013.

**Response to Request for Admission No. 39:**

Weiser objects that this request is outside the scope of NRCP 36 requests for admissions as it concerns litigation conduct rather than underlying facts. It also objects to this request as argumentative. Weiser further objects that the term “evidence” is ambiguous and subjective and subject to differing interpretations.

**Request for Admission No. 40:**

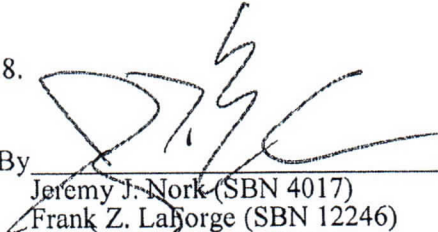
To date, neither WAM nor Bahamas has produced any documentary evidence during discovery that the Purchase Price was ever paid to anyone purporting to be an agent o Skarpelos on or after September 30, 2013.

**Response to Request for Admission No. 40:**

Weiser objects that this request is outside the scope of NRCP 36 requests for admissions as it concerns litigation conduct rather than underlying facts. It also objects to this request as argumentative. Weiser further objects that the term “evidence” is ambiguous and subjective and subject to differing interpretations.

DATED this 6th day of February, 2018.

By

  
Jeremy J. Nork (SBN 4017)  
Frank Z. LaForge (SBN 12246)  
HOLLAND & HART LLP  
5441 Kietzke Lane, Second Floor  
Reno, NV 89511

Attorneys for Defendants/Cross-claimants

HOLLAND & HART LLP  
5441 KIETZKE LANE, SECOND FLOOR  
RENO, NEVADA 89511  
(775) 327-3000

DECLARATION

Pursuant to NRS 53.370, Christos Livadas, declares as follows:


1. I am the authorized representative of Weiser Asset Management, Ltd., and a director of Weiser (Bahamas) Ltd.

2. I have read the foregoing **RESPONSES TO ATHANASIOS SKARPELOS' FIRST REQUESTS FOR ADMISSION TO WEISER ASSET MANAGEMENT LTD. AND WEISER (BAHAMAS) LTD.**, and know the contents thereof; and that the matters stated therein are true of my own personal knowledge and upon information and belief.

3. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States.

Executed on February 05, 2018.

WEISER ASSET MANAGEMENT, LTD.  
WEISER (BAHAMAS) LTD.

By:   
Christos Livadas

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 February 6, 2018, I served **RESPONSES TO ATHANASIOS SKARPELOS' FIRST REQUESTS FOR ADMISSION TO WEISER ASSET MANAGEMENT LTD. AND WEISER (BAHAMAS) LTD.**, by electronic mail and by placing a true copy in Holland & Hart LLP's outgoing mail in a sealed envelope addressed as follows:

Alexander H. Walker III, Esq.  
57 West 200 South, Suite 400  
Salt Lake City, Utah 84101  
[awalkerlaw@aol.com](mailto:awalkerlaw@aol.com)

Clayton P. Brust  
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Martha Hauser

HOLLAND & HART LLP  
5441 KIETZKE LANE, SECOND FLOOR  
RENO, NEVADA 89511  
(775) 327-3000

# EXHIBIT 3

# EXHIBIT 3

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