IN THE SUPREME COURT OF THE STATE OF NEVADA

Case Nos. 79425 and 79526

ATHANASIOS SKARPELOS, AN INDIVIDUALectronically Filed

Appellants,

Jul 01 2020 02:42 p.m. Elizabeth A. Brown Clerk of Supreme Court

v.

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

Respondents.

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

JOINT APPENDIX VOLUME 14

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Trial Exhibit 1, Anavex Life Sciences Corp. Share Certificate 0753 for 6,633,332 shares (WEISER000281)	1/28/2019	6	JA1135- JA1136
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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

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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

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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

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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

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Trial Exhibit 35, 07/12/2013 Power of Attorney to Transfer Bonds or Shares (WEISER000368)	1/28/2019	6	JA1213- JA1214
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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

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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
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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

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Weiser's Answer to Skarpelos' Cross- Claim	6/15/2016	1	JA0071- JA0074

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Clerk of the Court
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1	2540 JOHN F. MURTHA, ESQ.	Transaction # 759
2	Nevada Bar No. 835	
3	DANE W. ANDERSON, ESQ.	
	Nevada Bar No. 6883 SETH J. ADAMS, ESQ.	
4	Nevada Bar No. 11034	
5	WOODBURN AND WEDGE	
6	Sierra Plaza	
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7	Reno, Nevada 89505	
8	Telephone: (775) 688-3000	
	jmurtha@woodburnandwedge.com	
9	danderson@woodburnandwedge.com sadams@woodburnandwedge.com	
10	Attorneys for Defendant/Cross-Claimant	
11	Athanasios Skarpelos	
11	DATE COOL BUILDING A DICTRICT COAD	
12	IN THE SECOND JUDICIAL DISTRICT COUR' IN AND FOR THE COUNTY	
13	#**	OF WASHOL
.		
14		se No. CV15-02259
15	COMPANY, a Nevada corporation, De	pt. No. 10
16	Plaintiff,	
17	VS.	
18	WEISER ASSET MANAGEMENT, LTD.,	
19	a Bahamas company; ATHANASIOS	
19	SKARPELOS, an individual; and	
20	DOES 1-10,	
21	Defendants.	
	/	
22	AND ALL RELATED CROSS-CLAIMS.	
23		
24	NOTICE OF ENTRY OF	F ORDER
25	TO: ALL INTERESTED PARTIES:	
26	PLEASE TAKE NOTICE that an Order Der	nying Motion for Reconsideration was
27	entered in the above-entitled action on October 24, 20	19, by this Court. A copy of the Order
	11	

Woodburn and Wedge 6100 Neil Road, Suite 500 Reno, Nevada 89511 775-688-3000 is attached hereto as **Exhibit 1**.

JA2670

AFFIRMATION

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

DATED: November 18, 2019.

WOODBURN AND WEDGE

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

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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 Notice of Entry of Order to: 5 6 Alexander H. Walker III, Esq. Clay P. Brust, Esq. 57 West 200 South, Ste. 400 Robison, Sharp, Sullivan & Brust 7 Salt Lake City, Utah 84101 71 Washington Street awalker@law@aol.com Reno, NV 89503 8 cbrust@rbsllaw.com Attorneys for Plaintiff 9 Attorneys for Plaintiff 10 Jeremy J. Nork, Esq. Frank Z. LaForge, Esq. 11 Holland & Hart LLP 5441 Kietzke Lane, 2nd Floor 12 Reno, Nevada 89511 inork@hollandandhart.com 13 fzlaforge@hollandandhart.com 14 Attorneys for Defendants 15 Weiser Asset Management, Ltd. and Weiser (Bahamas), Ltd. 16 17 DATED: November 18, 2019. 18 /s/ Dianne M. Kelling 19 Dianne M. Kelling, an employee of Woodburn and Wedge 20 21 22 23 24 25 26

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EXHIBIT INDEX

Exhibit No.	Description	No. of Pages (Including Exhibit Sheet)
1	Order Denying Motion for Reconsideration	8

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EXHIBIT 1

EXHIBIT 1

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2019-10-24 02:01:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7556584

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

NEVADA AGENCY AND TRANSFER COMPANY, a Nevada corporation,

Plaintiff,

Case No. CV15-02259

VS.

Dept. No. 10

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

Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION

Presently before the Court is WEISER'S MOTION FOR RECONSIDERATION OF ATTORNEY'S FEES AWARD ("the Motion") filed by Defendants WEISER ASSET MANAGEMENT, LTD. ("WAM") and WEISER (BAHAMAS) LTD. ("Weiser Capital") on August 19, 2019. Defendant ATHANASIOS SKARPELOS ("Mr. Skarpelos") filed the OPPOSITION TO MOTION FOR RECONSIDERATION OF ATTORNEY'S FEE AWARD ("the Opposition") on August 28, 2019. WAM and Weiser Capital (collectively, "Weiser") filed the REPLY IN SUPPORT OF WEISER'S MOTION FOR RECONSIDERATION OF ATTORNEY'S FEES AWARD ("the Reply") on September 10, 2019, and contemporaneously submitted the matter for the Court's consideration.

This case was initiated by Plaintiff NEVADA AGENCY AND TRANSFER COMPANY ("the Plaintiff") as an interpleader action to resolve a dispute over ownership of 3,316,666 shares of stock in Anavex Life Sciences Corp.\(^1\) On May 24, 2016, the Weiser filed WEISER'S ANSWER AND CROSS-CLAIM ("the A&C") which contained three cross-claims: 1) Declaratory Judgment; 2) Breach of Contract; and 3) Breach of the Implied Covenant of Good Faith and Fair Dealing. The A&C 10-12. The Court presided over a bench trial beginning on January 28, 2019, to resolve the competing claims between Weiser and Mr. Skarpelos to the shares. The Court entered the FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT ("the FFCLJ") on April 22, 2019. The Court determined that Mr. Skarpelos was the rightful owner of the shares. The FFCLJ, p. 7 \(^1\) 25. However, the Court invoked its equitable jurisdiction to enter judgment against Mr. Skarpelos in the amount of \(^1\) 245,464.64. The FFCLJ 7-8 \(^1\) 28. The Court subsequently awarded Mr. Skarpelos \(^1\) 216,900.50 in attorney's fees on the ground that Weiser unreasonably maintained its claim to ownership of the stock under NRCP 11. See ORDER GRANTING MOTION FOR ATTORNEY'S FEES 4:21-28 (Aug. 9, 2019) ("the August Order"). Weiser has appealed the August Order. See NOTICE OF CROSS APPEAL (Aug. 29, 2019).

Weiser asks the Court to reconsider the August Order awarding Mr. Skarpelos the full amount of requested attorney's fees. The Motion 1:20-28; 2:1-11. Weiser contends the August Order is clearly erroneous for the following reasons: 1) the Court misunderstands Weiser's legal theory as being dependent on the July 2013 Purchase and Sale Agreement ("the July 2013 PSA"); 2) Weiser produced evidence in support of its legal theories at trial; and 3) Mr. Skarpelos cannot claim prejudice in regards to the nature of Weiser's claims. The Motion 2:12-18; 3:7-28; 4:15-23;

 $^{^{\}rm I}$ The Plaintiff was discharged from the action in the ORDER GRANTING MOTION FOR DISCHARGE filed on January 23, 2019.

5:1-12; 6:9-21. Mr. Skarpelos responds by making the following arguments: 1) the Motion is procedurally defective because Weiser did not request leave to file the Motion before doing so; and 2) Weiser fails to demonstrate the August Order is clearly erroneous and is merely rehashing arguments already made to and rejected by the Court. The Opposition 3:23-26; 4-5; 6:18-22; 9:7-12. Mr. Skarpelos also requests \$3,500.00 in additional fees incurred by virtue of responding to the Motion. The Opposition 8:19-23. Weiser makes the following arguments in response: 1) Mr. Skarpelos continues to misunderstand or misrepresent Weiser's legal theory, which was not dependent on the July 2013 PSA, but rather on the April 2013 transaction; 2) Mr. Skarpelos has failed to refute the fact that Weiser produced credible evidence at trial in support of its claims; and 3) Mr. Skarpelos has failed to refute the argument he has not suffered prejudice or that a trial would have been necessary in this matter. The Reply 2:1-18; 3:7-20; 4:19-28; 5:1-7. Mr. Skarpelos also contends the Motion is procedurally proper, and Mr. Skarpelos' request for additional attorney's fees is improper. The Reply 5:21; 6:3-6.

WDCR 12(8) provides in relevant part:

The hearing of motions must be done in conformity with DCR 13, Section 7. A party seeking reconsideration of a ruling of the court, other than an order which may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of entry of the order or judgment, unless the time is shortened or enlarged by order.

Emphasis added. D.C.R. 13(7) provides:

No motion once heard and dispose of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, *unless by leave of the court granted upon motion therefor*, after notice of such motion to the adverse parties.

Emphasis added. The *Huneycutt* Court outlined a procedure whereby a party to an appeal could file a motion for relief from the order of judgment and petition the district court to certify its intent to grant the requested relief. *Huneycutt v. Huneycutt*, 94 Nev. 79, 79-81, 575 P.2d 585, 585-86

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(1978). Following the certification, the party may file a motion for remand in the Nevada Supreme Court. Foster v. Dingwall, 126 Nev. 49, 52, 228 P.3d 453, 455 (2010). While the district court retains discretion to direct briefing on the motion for relief, hold a hearing on the motion or deny it altogether, the district court lacks jurisdiction to grant the motion for relief. Dingwall, 126 Nev. at 52-53, 228 P.3d at 455. The district court also has the authority to consider motions regarding matters collateral to and independent of the matter on appeal. Mack-Manley, 122 Nev. at 855, 138 P.3d at 529-30.

The Court will deny the Motion because the August Order is not clearly erroneous. The Court would first note the Motion is procedurally improper, as D.C.R. 13(7) requires the party seeking reconsideration to request leave to file a motion for reconsideration before actually doing so. Despite the procedural impropriety, the Court will deny the Motion on substantive grounds. The A&C stated Weiser's claim to ownership stemmed from the July 2013 PSA. The A&C states, "[i]n July 2013, Weiser and Skarpelos entered into a contract for the sale of a certain amount of stock. Skarpelos, the former owner of the stock, agreed to sell it to Weiser." The A&C ¶ 4. The A&C further contends, "Weiser and Skarpelos have each asserted competing and conflicting claims over the entitlement to the stock at issue in their July 2013 contract," and "Weiser and Skarpelos entered into a binding contract in July 2013 concerning the sale of certain stock." The A&C ¶ 10; ¶ 13. Weiser never mentions the April 2013 transaction or provides notice of this claim in the A&C. See NRCP 8(a) (emphasis added) ("A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief.") and NRCP 8(d) ("A party may set out two or more statements of a claim or defense alternatively or hypothetically "). See also Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984) (emphasis added) (explaining pleadings are liberally construed "to place into issue matters which

are *fairly noticed* to the adverse party."). Moreover, Weiser never sought leave of the Court to amend the A&C to include the April 2013 transaction. *See also* NRCP 15(a) (discussing amendment of pleadings). *See also Nutton v. Sunset Station*, 131 Nev. 279, 284, 357 P.3d 966, 970 (Nev. Ct. App. 2015) (enumerating liberal pleading amendment standard).

Contrary to Weiser's argument, the FFCLJ did not determine Weiser's claims were supported by credible evidence. In the FFCLJ, the Court noted the shares were sold "to an unidentified third party," not Weiser. The FFCLJ ¶ 8. The Court also noted, "[t]here is no evidence of a contract between Skarpelos and either WAM or Weiser Capital for the sale of Anavex stock at any time." The FFCLJ ¶ 10 (emphasis added). The Court further noted,

Although Weiser asserted throughout this case that 'it' was the owner of the Disputed Stock by virtue of the July 2013 PSA, Livadas and WAM abandoned that claim at trial and instead relied on a new theory that WAM is the owner of the stock by virtue of the April 2, 2013 transaction. However, Livadas also testified that WAM was not even the purchaser of the stock under the April 2, 2013 transaction

Id. (emphasis added). Weiser's argument that it did not rely exclusively on the July 2013 PSA is belied by the record. The A&C is clearly premised on the July 2013 PSA alone, not the April 2013 transaction. Even if the A&C had been premised on the April 2013 transaction, Mr. Livadas testified WAM was not the purchaser of the stock in April 2013. A comparison of the A&C with the trial testimony in this matter reveals the frivolity of Weiser's counterclaims. For all of these reasons, the Court properly awarded Mr. Skarpelos attorney's fees pursuant to NRCP 11.

IT IS ORDERED WEISER'S MOTION FOR RECONSIDERATION OF ATTORNEY'S FEES AWARD is hereby **DENIED**. **DATED** this 24 day of October, 2019. District Judge

CERTIFICATE OF MAILING

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

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 24day of October, 2019, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

JOHN F. MURTHA, ESQ.

DANE W. ANDERSON, ESQ.

JEREMY J. NORK, ESQ.

FRANK Z. LAFORGE, ESQ.

Sheila Mansfield

Return Of NEF

Recipients

- **DANE ANDERSON,** Notification received on 2019-11-18 10:24:53.758. **ESQ.**
- SETH ADAMS, ESQ Notification received on 2019-11-18 10:24:53.836.
 - **JEREMY NORK,** Notification received on 2019-11-18 10:24:53.804. **ESQ.**
- FRANK LAFORGE, Notification received on 2019-11-18 10:24:53.773. **ESQ.**
 - **ALEXANDER** Notification received on 2019-11-18 10:24:53.726. **WALKER III**
- **CLAYTON BRUST,** Notification received on 2019-11-18 10:24:53.68. **ESO.**
 - **JOHN MURTHA,** Notification received on 2019-11-18 10:24:53.851. **ESQ.**

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Judge:

HONORABLE ELLIOTT A. SATTLER

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Clerk Accepted: 11-18-2019:10:24:18

Court: Second Judicial District Court - State of Nevada

Civil

Case Title:

NV AGENCY & TRANSFER CO VS WEISER

ASSET ET AL (D10

Document(s) Submitted:Notice of Entry of Ord

- **Continuation

Filed By: Dane W Anderson, Esq.

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

The following people were served electronically:

SETH J. ADAMS, ESQ for ATHANASIOS

SKARPELOS

DANE W. ANDERSON, ESQ. for ATHANASIOS

SKARPELOS

FRANK Z. LAFORGE, ESQ. for WEISER

(BAHAMAS) LTD, WEISER ASSET

MANAGEMENT, LTD

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

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

ALEXANDER H. WALKER III for NEVADA AGENCY AND TRANSFER COMPANY

JOHN FRANCIS MURTHA, ESQ. for ATHANASIOS SKARPELOS

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