

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.

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 7**

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(Bahamas) Ltd., A Bahamas Company*

CHRONOLOGICAL INDEX TO APPENDIX

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
Trial Exhibit 11, MHNHYMA 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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

Document Title (<i>Chronological</i>)	Date	Vol.	Page No.
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

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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Document Title (<i>Alphabetical</i>)	Date	Vol.	Page No.
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

Message

From: Simonitsch, Bill J [bill.simonitsch@klgates.com]
Sent: 11/19/2015 1:50:32 PM
To: Ernesto Alvarez [/O=FIRST ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Ealvarez]
CC: Louis Montello [/O=FIRST ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=LMontello]
Subject: RE: Transfer of Shares of Anavex Life Sciences Corp.

Thank you again for providing this back-up. Do you also have proof that you can provide me showing that the purchase price was paid and received?

Sincerely,

Bill Simonitsch



William J. Simonitsch
K&L Gates LLP
Southeast Financial Center, Suite 3900
200 S. Biscayne Blvd.
Miami, Florida 33131
Phone: 305.539.3336
Fax: 305.358.7095
E-mail: bill.simonitsch@klgates.com
Website: www.klgates.com

From: Ernesto Alvarez [mailto:ealvarez@montellolaw.com]
Sent: Wednesday, November 18, 2015 12:21 PM
To: Simonitsch, Bill J
Cc: Louis Montello
Subject: Transfer of Shares of Anavex Life Sciences Corp.

Mr. Simonitsch:

As per your request, attached please find the following documents:

1. Stock Power.
2. Stock Sale and Purchase Agreement.

Thank you,

Ernesto A. Alvarez



2750 NE 185th St., Suite 201

Aventura, FL 33180

T: (305) 682-2000 | F: (305) 682-3669

ealvarez@montellolaw.com

www.montellolaw.com

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No. WIS-02259

Skarpelos

vs.

Weiser et al

Weiser Ex. 58

Admitted: 1/28, 2019

JACQUELINE BRYANT, CLERK

By Wm

Deputy



Message

From: Christos [christos@bizex.bz]
Sent: 11/19/2015 1:13:30 PM
To: Christos Weiser Capital [/O=WEISER/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Xtos]
Subject: FW: Tom Transfer request. Fw: Quadruple Bypass

Begin forwarded message:

From: Alana Wheaton
Date: April 27, 2013 at 1:17:02 AM GMT+8
To: Rainbow
Cc: Christos
Subject: RE: Transfer request. Fw: Quadruple Bypass

Completed.

From: Rainbow
Sent: Friday, April 26, 2013 12:42 PM
To: Alana Wheaton
Cc: Christos
Subject: FW: Transfer request. Fw: Quadruple Bypass

Hi Alana,

Please authorize the following payment online per Christos` request.

Txn Date	Payment From	Beneficiary	Reference	Amount	Prepared/ 1st Authorised
29/04/2013	Business Integrated Account 817-552540-838 USD Savings	NIKOLAOS PENTAFRONIMOS 542002101002793		USD 20,000.00	PUSER2 /

Thanks

Rainbow

From: Christos
Sent: 2013年4月26日 23:30
To: Rainbow
Subject: Transfer request. Fw: Quadruple Bypass

Hi R,

Can you transfer \$20k as shareholder withdrawal to details below. Soonest possible.. Tom had heart-attack and is waiting for payments to stay alive.

From: Lambros Pedafronimos
To: Christos
Sent: Fri Apr 26 11:21:32 2013
Subject: Quadruple Bypass

Bank Name: Alpha Bank A.E

Bank Address: 2, Mavrothalassiti Street, Paralio Astros, 22001

Branch: 542

Bank Tel: +30 27550 52466

Beneficiary: Nikolaos Pentafronimos

Beneficiary Address: Astros Kynourias, Arkadia Greece

IBAN: GR78 0140 5420 5420 0210 1002 793

Account Number: 542 00 2101 002 793

BIC/SWIFT: CRBAGRAAXXX

US Intermediary: Bank of New York Mellon, New York, IRVTUS3N

--

Lambros Pedafronimos

No. CN15-02259
Skarpelos
vs.
Weisenhof
Weisen Ex. 59
Admitted: 1/28, 2019
JACQUELINE BRYANT, CLERK
By [Signature]
Deputy



From: Christos Weiser Capital [/O=WEISER/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=XTOS]
Sent: 11/19/2015 1:41:10 PM
To: Christos Weiser Capital [/O=WEISER/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Xtos]
Subject: Skarpelos email flow 2011-2013

Outlook Web Access		Microsoft Outlook Web App	
Inbox			
Just E-mail			
Calendar			
Contacts			
Tasks			
Folders			
Public Folders			
Options			
Log Off			
	<p> Outlook: Banks make secret profits. More on Wall Street Outlook: Re. Apartment and House to lease in Miami Beach Outlook: Answer presentation for Siemens contract Outlook: For Potential Buyers Outlook: RE: AVXL - Short Term Forecasting Needs Outlook: Re: AVXL - Short Term Forecasting Needs Outlook: For TDV Daily: From Microsoft For All Outlook: For TDV Daily: Are They Trying to Destroy the US on Purpose? Outlook: Re: Forecasting Q-4 Outlook: Re: AVXL deck Outlook: Re: Answer - Director Appointment Outlook: Co. AD partner w. search firm, CDN Company Outlook: RE: Answer Road Show Deck Outlook: Director for Mathematics - 12 Outlook: Soft Outlook: Re: AVXL - regression statement Outlook: Re: Feedback from Ford Analysis Outlook: Out of Office AutoReply: ANAVEL Update Report for Q3 2011 Outlook: For Potential guy - check out the site ASAP Outlook: Answer 2.75 Outlook: Re: Forecast extended via models Outlook: Re: Forecast extended via models Outlook: Answer outline Outlook: Re: Answer outline Outlook: RE: Answer - Double Clicking Outlook: AV - 5 Outlook: Harvey - loading payback Outlook: Re: Answer CEO Outlook: Harvey RE: Answer - Investor Notes Outlook: Re: Harvey RE: Answer - Investor Notes Outlook: Harvey 10/2/11 Outlook: FW: Byrnes Capital Markets Conference Argentina Meeting in September. They want CLO CO Target Price Outlook: FW: Paris Outlook: Robert C Outlook: Lab </p>	<p> Sat 1/25/2011 11:11 PM 3 KB Thu 1/27/2011 11 PM 4 KB Thu 2/1/2011 2:13 AM 1 KB Thu 2/3/2011 2:15 AM 90 KB Fri 2/4/2011 12:34 AM 14 KB Fri 2/4/2011 4:16 PM 14 KB Tue 2/8/2011 4:06 AM 215 KB Tue 2/8/2011 4:26 PM 194 KB Wed 2/9/2011 4:49 PM 4 KB Thu 2/10/2011 3:12 AM 4 KB Thu 2/10/2011 9:26 PM 9 KB Wed 2/16/2011 9:19 PM 1 KB Thu 2/17/2011 5:45 PM 13 KB Fri 2/18/2011 3:21 PM 1 KB Fri 2/19/2011 12:12 AM 692 B Thu 2/24/2011 1:23 AM 1 KB Thu 2/3/2011 10:13 PM 4 KB Wed 2/2/2011 12:18 AM 439 B Sat 3/11/2011 1:06 AM 3 KB Thu 3/10/2011 3:00 PM 3 KB Fri 3/10/2011 3:12 AM 3 KB Fri 3/10/2011 3:25 AM 3 KB Thu 3/2/2011 3:19 AM 1 KB Thu 3/2/2011 7:07 AM 3 KB Mon 6/13/2011 10:36 PM 11 KB Thu 6/16/2011 1:40 AM 1 KB Sat 6/18/2011 8:37 AM 3 KB Wed 6/22/2011 7:29 PM 9 KB Thu 6/23/2011 2:15 AM 27 KB Sat 6/25/2011 3:42 PM 19 KB Mon 6/27/2011 4:10 PM 4 KB Mon 11/20/2011 2:34 PM 1 MB Tue 7/10/2011 4:27 PM 3 KB Mon 6/1/2011 5:50 PM 3 KB Tue 6/21/2011 7:59 PM 2 KB Tue 6/21/2011 7:59 PM 19 KB </p>	

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Options

Log Off

Clarence Re: Lab proposal

Clarence Walter statements for Profile for Anaven

Clarence Walter 5 update

Clarence Re: Walter 5 update

Clarence Re: Profile for Anaven

Clarence Re: Re: bud

Clarence We had an interesting time today

Clarence Out of Office AutoReply: AV Patents

Clarence Filed: ANXI DTCC Sheet

Clarence Meet Alzheimer's Association, Alexander Vaitshikov

Clarence Consumer group asks FDA over Anogen safety - Health - Alzheimer's Disease - NBCNews.com

Clarence For: How the FDA can make you a millionaire

Clarence Re: Macberry is dead

Clarence Re: Macberry is dead

Clarence Re: ANAVEX - SUMMARY OUTCOME OF THE TELECONFERENCE WITH Dr. PIAZZA

Clarence Re: ANAVEX - SUMMARY OUTCOME OF THE TELECONFERENCE WITH Dr. PIAZZA

Clarence For: Leading pharmaceutical firms 'spring up' on Alzheimer's treatment after series of expensive failed trials

Clarence Re: U-PSON

Clarence Re: Anaven's LP, actual version 09/14/2012

Clarence Chat with Christopher on 9/15/2012

Clarence Re: Anaven's requests

Clarence New IP agreement to Alex

Clarence Re: Anaven's requests

Clarence Re: Anaven's requests

Clarence FW: Vaitshikov - CNY 4208400000000000 - Approval Requested

Clarence Short FW: Kasten Fact Sheet

Clarence Re: 859-360 Anaven new agreement and end of contract 10-10-12

Clarence FW: Alzheimer's: Are We Ready for the Coming Epidemic?

Clarence Stockholm - Z TICE - Eagle Mountain Church \$7 Million Private Placement with Wesco Capital

Clarence For: U-ANXI ANAVEX 2.73 shown to block oxidative stress, preventing onset of Alzheimer's disease

Clarence Re: FYI - Anaven

Clarence Anaven

Clarence Re: Anaven

Clarence Re: 859-360 New agreement

Clarence For: NIH Beta First EXPRESSO Clinic Yields

Thu 8/2/2012 4:37 PM 2 KB

Mon 8/6/2012 4:19 PM 21 KB

Tue 8/7/2012 5:50 PM 1 KB

Tue 8/7/2012 5:19 PM 2 KB

Thu 8/9/2012 11:16 AM 33 KB

Thu 8/9/2012 8:57 PM 1 KB

Sat 8/18/2012 7:12 AM 4 KB

Tue 8/21/2012 5:10 PM 348 B

Mon 8/27/2012 9:16 PM 34 KB

Mon 9/10/2012 2:03 AM 421 B

Mon 9/10/2012 2:19 AM 761 B

Wed 9/12/2012 4:31 PM 17 KB

Sat 9/15/2012 9:57 AM 1001 B

Sat 9/16/2012 12:45 PM 1 KB

Tue 9/18/2012 4:28 AM 8 KB

Tue 9/18/2012 5:42 AM 773 B

Wed 9/19/2012 2:57 PM 1 KB

Fri 9/21/2012 1:04 PM 4 KB

Mon 9/24/2012 1:11 AM 12 KB

Fri 9/28/2012 10:21 PM 1 KB

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Wed 10/3/2012 12:34 AM 9 KB

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Wed 10/10/2012 1:26 AM 24 KB

Wed 10/10/2012 6:56 PM 58 KB

Mon 10/15/2012 7:12 PM 10 KB

Mon 10/15/2012 1:16 PM 110 KB

Thu 10/18/2012 4:01 AM 669 B

Thu 10/18/2012 4:40 PM 2 KB

Fri 10/19/2012 1:21 AM 7 KB

Fri 10/19/2012 1:51 AM 1 KB

Fri 10/19/2012 1:59 AM 1 KB

Thu 10/25/2012 4:44 PM 24 KB

Fri 10/26/2012 5:22 PM 17 KB

Outlook Web Access		Microsoft Outlook Web App		Help	
Inbox		Microsoft Exchange - Inbox		Page 1 of 10	
	From	Subject	Received	Size	
	Charles	AC comments to Tom	Sat 10/27/2012 1:34 AM	1 KB	
	Charles	AV contract jurisdiction	Tue 10/30/2012 9:17 PM	1 KB	
	Charles	Re: Coordination on Asarco actual situation	Wed 10/31/2012 2:32 AM	19 KB	
	Charles	AV	Sat 11/3/2012 10:59 PM	902 B	
	Charles	Re: AV	Sat 11/3/2012 11:27 PM	1 KB	
	Charles	Re: Notes to AC and AV	Fri 11/9/2012 5:52 AM	3 KB	
	Charles	For Paul, Request of situation	Fri 11/9/2012 10:26 PM	69 KB	
	Charles	Meet in Greece, update 2007 agreement	Thu 11/8/2012 12:51 AM	2 KB	
	Charles	Re: Meet in Greece, update 2007 agreement	Thu 11/8/2012 12:55 AM	1 KB	
	Charles	Every one's schedule set?	Thu 11/8/2012 12:04 AM	375 B	
	Charles	Re: Everyone's schedule set?	Thu 11/8/2012 12:18 AM	1 KB	
	Charles	Re: \$59 Answer 14-11-2012	Thu 11/8/2012 12:52 AM	6 KB	
	Charles	Re: \$59 Answer 14-11-2012	Thu 11/8/2012 1:36 AM	5 KB	
	Charles	Re: \$59 Amendment	Mon 11/19/2012 4:25 PM	2 KB	
	Charles	Where are we in now?	Sat 11/24/2012 9:08 AM	575 B	
	Charles	Re: Where are we in now?	Sat 11/24/2012 9:49 PM	2 KB	
	Charles	Re:	Wed 11/28/2012 10:31 PM	9 KB	
	Charles	Coach-up Tuesday AM RE: \$10 New draft of amendment and some questions on process	Mon 12/3/2012 8:54 PM	7 KB	
	Charles	FW: AVXL DTCC Sheet	Fri 12/4/2012 7:49 PM	31 KB	
	Charles	Re: AVXL DTCC Sheet	Fri 12/4/2012 8:05 PM	1 KB	
	Charles	Deadline process	Wed 12/5/2012 10:51 PM	1 KB	
	Charles	Answer - Director	Wed 12/19/2012 5:37 PM	1 KB	
	Charles	FW: AVXL DTCC Sheet	Mon 1/7/2013 4:30 PM	19 KB	
	Charles	Re: Director	Thu 1/10/2013 3:23 AM	757 B	
	Charles	Time	Thu 1/10/2013 5:40 PM	974 B	
	Charles	Call - 1-542-433-2571	Thu 1/10/2013 6:48 PM	701 B	
	Charles	2013: Asarco Gold Co. of the Year - ETSX	Wed 1/23/2013 6:36 PM	154 KB	
	Charles	Initiative Design May Work U.S. Approved After Early Trade	Fri 2/1/2013 4:29 PM	1 KB	
	Charles	RE: LAMBOULD TAKES 15% STAKE IN EAGLE MOUNTAIN (E TEX), EAGLE ACQUIRES 100% OF EAC OUYANA PROJECT	Fri 2/1/2013 9:57 PM	23 KB	
	Charles	CM	Wed 2/20/2013 4:08 AM	1 KB	
	Charles	CM	Wed 2/20/2013 4:30 PM	1 KB	



No. CV15-02259
Skarpelos
vs.
Weisenfeld
Weiser Ex. 100
Admitted: 1/28, 20 19
JACQUELINE BRYANT, CLERK
By [Signature]
Deputy

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

DATE, JUDGE
OFFICERS OF
COURT PRESENT

Pg. 1

APPEARANCES-HEARING

1/28/19
HONORABLE
ELLIOTT A.
SATTLER
DEPT. NO. 10
M. Merkouris
(Clerk)
P. Hoogs
(Reporter)

BENCH TRIAL

Respective counsel met with the Clerk on January 24, 2019, to mark Trial Exhibits 1-62.

8:37 a.m. – Court convened.

Alexander Walker, III, Esq., was present on behalf of Plaintiff Nevada Agency & Transfer Company. President Amanda Cardinalli was present with counsel Walker.

Jeremy Nork, Esq., was present on behalf of Cross-Claimants Weiser (Bahamas) Ltd., and Weiser Asset Management, Ltd. Mr. Christos Livadas was present with counsel Nork.

Cross-Claimant Anthanasios Skarpelos was present with counsel Dane Anderson, Esq., and Seth Adams, Esq.

COURT reviewed the procedural history of the case, noting that this is the time set for a 5-day bench trial, however there some pretrial issues to address.

Counsel Walker advised the Court that he is here to address the issue of the deposit of the stock certificate in question.

Discussion ensued between the Court and respective counsel regarding the stock certificate.

COURT ORDERED: The stock certificate shall be given to the Clerk for safekeeping during the trial; at the end of the trial, the original stock certificate shall be given to the prevailing party. The Clerk is directed to make a copy of the original stock certificate and make it part of the record.

Discussion ensued between the Court and respective counsel regarding the order of witnesses and opening statements. Counsel Anderson advised the Court that he will defer his opening statement until the beginning of his case.

Counsel Nork presented opening statements.

Counsel Nork invoked the Rule of Exclusion.

Counsel Nork advised the Court that the parties have stipulated to the following Exhibits: 1, 2, 4, 7, 8, 13, 14, 15, 16, 20-36, 40, and 46-58; ordered ADMITTED into evidence.

Counsel Nork called **Christos Livadas** who was sworn and direct examined.

Counsel Nork offered Exhibit 5; counsel Anderson objected.

Witness further direct examined.

Counsel Nork re-offered Exhibit 5; counsel Anderson objected; objection overruled and Exhibit 5 ordered ADMITTED into evidence.

Witness further direct examined.

Counsel Nork offered Exhibit 6; counsel Anderson objected; objection overruled and Exhibit 6 ordered ADMITTED into evidence.

Witness further direct examined.

10:15 a.m. – Court stood in recess.

10:33 a.m. – Court reconvened.

Witness further direct examined.

JA1270

DATE, JUDGE
OFFICERS OF
COURT PRESENT

Pg. 2

APPEARANCES-HEARING

1/28/19
HONORABLE
ELLIOTT A.
SATTLER
DEPT. NO. 10
M. Merkouris
(Clerk)
P. Hoogs
(Reporter)

BENCH TRIAL

Counsel Nork offered Exhibit 9; no objection; ordered ADMITTED into evidence.

Witness further direct examined.

Counsel Nork offered Exhibit 12; counsel Anderson objected; objection sustained.

Witness further direct examined.

Discussion ensued between the Court and respective counsel regarding Exhibits 18 & 59.

Counsel Nork offered Exhibit 59; counsel Anderson objected; objection overruled and Exhibit 59 shall be ADMITTED into evidence with the limitations as stated by the Court.

Witness further direct examined.

Counsel Nork offered Exhibit 60; counsel Anderson objected; objection overruled and Exhibit 60 shall be ADMITTED into evidence.

12:05 p.m. – Court stood in recess for lunch.

1:19 p.m. – Court reconvened.

Witness further direct examined.

Counsel Nork offered Exhibit 44; counsel Anderson objected.

Counsel Anderson requested to conduct voir dire of the witness; **SO ORDERED.**

Counsel Anderson moved to open and publish the deposition of Christos Livadas, dated October 23, 2018; **SO ORDERED.**

Counsel Anderson further conducted voir dire; witness questioned by the Court.

COURT ORDERED: Objection overruled and Exhibit 44 shall be ADMITTED into evidence.

Counsel Nork offered Exhibit 43; counsel Anderson maintained his objection; objection overruled and Exhibit 43 shall be ADMITTED into evidence.

Witness further direct examined; cross examined by counsel Anderson; questioned by the Court; further cross examined.

3:00 p.m. – Court stood in recess.

3:17 p.m. – Court reconvened.

Witness further cross examined.

Counsel Anderson offered Exhibit 3; no objection; ordered ADMITTED into evidence.

Witness further cross examined.

4:07 p.m. – Court stood in recess.

4:16 p.m. – Court reconvened.

Witness further cross examined.

4:47 p.m. – Court stood in recess, to reconvene tomorrow, January 29, 2019, at 8:30 a.m.

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE ELLIOTT A. SATTLER, DISTRICT JUDGE

-oOo-

NEVADA AGENCY AND TRANSFER Case No. CV15-02259
COMPANY, a Nevada corporation, Dept. No. 10
Plaintiff,

vs.

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

Defendants.

AND RELATED ACTIONS.

=====

TRIAL

DAY ONE

MONDAY, JANUARY 28, 2019

RENO, NEVADA

Job No.: 524000

Reported By: PEGGY B. HOOGS, CCR #160, RDR, CRR

Page 2		Page 3	
1	-oOo- APPEARANCES -oOo-	1	INDEX
2		2	WITNESSES FOR FOR WEISER ASSET MANAGEMENT, LTD. and WEISER (BAHAMAS), LTD.:
3	FOR ATHANASIOS SKARPELOS:	3	CHRISTOS LIVADAS
4	WOODBURN & WEDGE	4	
5	By: DANE W. ANDERSON, ESQ.	5	Direct Examination by Mr. Nork 18
6	SETH J. ADAMS, ESQ.	6	Voir Dire Examination by Mr. Anderson 184
7	6100 Neil Road, Suite 500	7	Direct Examination (Resumed) by Mr. Nork 208
8	Reno, Nevada 89505	8	Cross-Examination by Mr. Anderson 215
9		9	EXHIBITS
10	FOR WEISER ASSET MANAGEMENT, LTD. and WEISER (BAHAMAS), LTD.:	10	Exhibit No. Description Admitted
11		11	Exhibit 1 Anavex Life Sciences Corp Share Certificate 0753 15
12	HOLLAND & HART	12	Exhibit 2 WAM New Account Opening Form 15
13	By: JEREMY NORK, ESQ.	13	Exhibit 3 10/30/15 letter, Montello Law Firm to NATCO 282
14	FRANK LAFORGE, ESQ.	14	Exhibit 4 9/24/07 Anavex physical certificates registered to Athanasios Skarpelos 15
15	5441 Kietzke Lane, Second Floor	15	Exhibit 5 9/27/07 Anavex Affiliate Stock Purchase Agreement 70
16	Reno, Nevada 89511	16	Exhibit 6 10/1/07 email between Skarpelos and Livadas 74
17	ALSO PRESENT:	17	Exhibit 7 5/30/11 email between Skarpelos and Howard Daniels 15
18	ALEXANDER H. WALKER III, ESQ.	18	Exhibit 8 5/31/11 Skarpelos Identify Verification Form with Supporting Documents 15
19		19	Exhibit 9 5/31/11 certified copy of Pedafronimos Lambros passport 100
20		20	Exhibit 13 1/10/13 Corporate Indemnity to NATCO 15
21		21	
22		22	
23		23	
24		24	
Page 4		Page 5	
1	Exhibit 14 3/28/13 Athanasios Skarpelos Affidavit for Lost Stock Certificate 15	1	Exhibit 33 7/9/13 email, Pedafronimos to Livadas 15
2	Exhibit 15 3/29/13 Athanasios Skarpelos Stop Transfer Order 15	2	Exhibit 34 Blank Stock Sale and Purchase Agreement 15
3	Exhibit 16 4/4/13 NATCO Transfer 15	3	Exhibit 35 7/12/13 Power of Attorney to Transfer Bonds or Shares 15
4	Exhibit 20 5/24/13 email, Lambros Pedafronimos to Christos Livadas 15	4	Exhibit 36 7/12/13 Power of Attorney to Transfer Bonds or Shares 15
5	Exhibit 21 6/24/13 email, Livadas to Pedafronimos 15	5	Exhibit 40 10/28/13 email, Skarpelos and Livadas 15
6	Exhibit 22 6/24/13 email, Pedafronimos to Livadas 15	6	Exhibit 43 12/31/13 Weiser Skarpelos Statement of Account for 2/1/13-12/31/13 207
7	Exhibit 23 6/24/13 email, Livadas to Pedafronimos 15	7	Exhibit 44 Weiser Asset Management Account Agreement Terms and Conditions 207
8	Exhibit 24 6/24/13 email, Pedafronimos to Livadas 15	8	Exhibit 46 11/2/15 letter, Ernesto Alvarez to NATCO and Weiser Asset Management Ltd. 15
9	Exhibit 25 6/24/13 email, Pedafronimos to Livadas 15	9	Exhibit 47 11/3/15 letter, Alexander Walker III to Ernesto Alvarez 15
10	Exhibit 26 6/25/13 email, Pedafronimos to Livadas 15	10	Exhibit 48 11/12/15 letter, Elias Sourson, Weiser Asset Management Ltd. To NATCO 15
11	Exhibit 27 7/2/13 email, Pedafronimos to Livadas 15	11	Exhibit 49 11/12/15 letter, Bernard Pinsky to NATCO 15
12	Exhibit 28 7/2/13 email, Livadas to Pedafronimos 15	12	Exhibit 50 11/12/15 email, Livadas to Nick Boutsalis 15
13	Exhibit 29 7/3/13 email, Pedafronimos to Livadas 15	13	Exhibit 51 11/13/15 letter, Alvarez to Walker 15
14	Exhibit 30 7/5/13 Stock Sale and Purchase Agreement 15	14	Exhibit 52 11/13/15 letter, Alvarez to NATCO 15
15	Exhibit 31 7/9/13 email, Pedafronimos to Livadas 15	15	Exhibit 53 11/13/15 email, Walker to Alvarez 15
16	Exhibit 32 7/9/13 Blank Stock Sale and Purchase Agreement signed by Skarpelos 15	16	Exhibit 54 11/13/15 letter, Boutsalis to NATCO 15
17		17	
18		18	
19		19	
20		20	
21		21	
22		22	
23		23	
24		24	

<p>1 Exhibit 55 11/16/15 letter, Alvarez to Walker 15</p> <p>2 Exhibit 56 11/17/15 email, Bill Simonitsch to 15</p> <p>3 Lewis Montello</p> <p>4 Exhibit 57 11/18/15 email, Simonitsch and 15</p> <p>5 Alvarez</p> <p>6 Exhibit 58 11/19/15 email, Simonitsch and 15</p> <p>7 Alvarez</p> <p>8 Exhibit 59 11/19/15 email, Livadas re Tom 118</p> <p>9 Transfer request</p> <p>10 Exhibit 60 11/19/15 email, Livadas re 163</p> <p>11 Skarpelos email flow 2011-2013</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>Page 6</p> <p>1 -oOo-</p> <p>2 RENO, NEVADA; MONDAY, JANUARY 28, 2019; 8:37 A.M.</p> <p>3 -oOo-</p> <p>4</p> <p>5 THE COURT: This is CV15-02259, Nevada Agency</p> <p>6 and Transfer Company vs. --</p> <p>7 Is it WEEZ-er or WIZE-er?</p> <p>8 MR. NORK: WIZE-er, Your Honor.</p> <p>9 THE COURT: -- Weiser Asset Management, et al.</p> <p>10 Let's see. Mr. Walker is here -- Where's Mr.</p> <p>11 Walker?</p> <p>12 MR. WALKER: Right here, Your Honor.</p> <p>13 THE COURT: You're behind somebody.</p> <p>14 Mr. Walker is here on behalf of Nevada Agency</p> <p>15 and Transfer Company.</p> <p>16 Good morning, Mr. Walker.</p> <p>17 MR. WALKER: Good morning, Your Honor.</p> <p>18 MR. ANDERSON: Mr. Nork and Mr. LaForge are</p> <p>19 here on behalf of Weiser.</p> <p>20 MR. NORK: Good morning, Your Honor.</p> <p>21 THE COURT: And Mr. Anderson and -- I'm looking</p> <p>22 around the corner there to see you there, Mr. Adams.</p> <p>23 Good morning to you as well.</p> <p>24 MR. ADAMS: Good morning.</p>
<p>Page 8</p> <p>1 THE COURT: This is the time set for a five-day</p> <p>2 bench trial. The case initiated as an interpleader</p> <p>3 action with Nevada Agency and Transfer Company desiring</p> <p>4 to interplead a stock certificate, and then there are</p> <p>5 competing interests in the stock certificate between</p> <p>6 Weiser and Mr. Skarpelos.</p> <p>7 Are you Mr. Skarpelos?</p> <p>8 MR. SKARPELOS: Yes, sir.</p> <p>9 THE COURT: Good morning to you as well.</p> <p>10 So that's what we're here to resolve.</p> <p>11 Are there any pretrial issues we need to take</p> <p>12 up? Mr. Walker, I hear you have something.</p> <p>13 MR. WALKER: Yes, Your Honor, I do. In fact,</p> <p>14 I'm appearing here only to deal with the issue of the</p> <p>15 deposit of the stock certificate in question following</p> <p>16 your order of January 23rd where Nevada Agency was</p> <p>17 dismissed and discharged in this matter. However, in</p> <p>18 that order you indicated that the plaintiff shall deposit</p> <p>19 the certificate with the court, and I brought the</p> <p>20 certificate for that purpose, Your Honor, but I also</p> <p>21 remember, when we had our pretrial conference, I brought</p> <p>22 the certificate then, and you said, you know, why don't</p> <p>23 you hold onto it and the Court will come up with the</p> <p>24 disposition.</p>	<p>Page 9</p> <p>1 NATCO is happy to hold the certificate if it's</p> <p>2 deemed deposited for purposes of the discharge, Your</p> <p>3 Honor. However the Court wants to handle it, the</p> <p>4 certificate is here in my hand. I'm happy to hand it to</p> <p>5 the Court or I'm happy to hold it at the Court's</p> <p>6 direction.</p> <p>7 THE COURT: When he had the pretrial conference</p> <p>8 on December 7th of 2018, the issue of the discharge had</p> <p>9 not yet been resolved, Mr. Walker. You had filed on</p> <p>10 December 5th the motion for discharge, but my</p> <p>11 recollection was I didn't want it because that issue</p> <p>12 hadn't been fully briefed and submitted.</p> <p>13 You are correct that the issue now has been</p> <p>14 fully briefed. You filed the motion on December 5th.</p> <p>15 There was a nonopposition filed by Mr. Skarpelos on</p> <p>16 December 11th of 2018, and then Weiser Asset Management</p> <p>17 didn't file anything. You eventually then submitted the</p> <p>18 matter for the Court's consideration, and because there</p> <p>19 was no opposition, the Court granted the motion.</p> <p>20 Mr. Anderson, on behalf of Mr. Skarpelos, what</p> <p>21 would you like to do with the actual document itself?</p> <p>22 What I would anticipate is allowing Mr. Walker to simply</p> <p>23 provide it to the Court. At the end of the case we can</p> <p>24 turn it over to whoever is supposed to get it. Of</p>

<p style="text-align: right;">Page 10</p> <p>1 course, that presumes that there's no appeal. If there's</p> <p>2 an appeal of the Court's decision, then the Court would</p> <p>3 retain it.</p> <p>4 I think the Court should just retain the</p> <p>5 document until the end of the trial, but I also don't</p> <p>6 think that it's reasonable to have Mr. Walker have to</p> <p>7 hold onto it forever, and then theoretically we have to</p> <p>8 go get it from him. Now it can be deposited with the</p> <p>9 Court and made part of the record.</p> <p>10 In the end we would make a photocopy of both</p> <p>11 sides of it, assuming it needs to be given to somebody.</p> <p>12 We'll make a photocopy of both sides of it, and that will</p> <p>13 be in the order. The stock certificate itself, I would</p> <p>14 think, needs to go to the prevailing party once that</p> <p>15 issue has been resolved.</p> <p>16 MR. WALKER: I'm extremely happy to give the</p> <p>17 certificate to the Court today.</p> <p>18 MR. ANDERSON: Your Honor, Mr. Skarpelos is</p> <p>19 fine with the Court's preference.</p> <p>20 THE COURT: And on behalf of Weiser Asset</p> <p>21 Management?</p> <p>22 MR. NORK: Your Honor, Mr. Nork for Weiser</p> <p>23 Asset Management and Weiser Capital.</p> <p>24 I guess one thing to clarify, we did eventually</p>	<p style="text-align: right;">Page 11</p> <p>1 file a stipulation regarding discharge, which I think</p> <p>2 crossed paths at the same time that Mr. Walker's motion</p> <p>3 was submitted, so the parties did stipulate as to the</p> <p>4 disposition of the stock certificate and as to the</p> <p>5 dismissal of NATCO. Be that as it may, I'm happy with</p> <p>6 the stock certificate being in Your Honor's possession</p> <p>7 for the pendency of this case.</p> <p>8 THE COURT: Mr. Walker, mission accomplished.</p> <p>9 MR. WALKER: Very good. I think both counsel</p> <p>10 have seen the certificate and I'm happy to give it to the</p> <p>11 Court at this point.</p> <p>12 THE COURT: I notice it came with a colorful</p> <p>13 sheet you could put over the top of it so nothing bad</p> <p>14 happens with it, making a contribution to justice.</p> <p>15 MR. WALKER: I'm very much happy to do it.</p> <p>16 THE COURT: The cover as well. Thank you very</p> <p>17 much.</p> <p>18 So that will given be given to the Court. The</p> <p>19 clerk is instructed not to place anything on it, and by</p> <p>20 "it" I mean the stock certificate itself, no evidentiary</p> <p>21 stickers, but we'll indicate that the Court has received</p> <p>22 it, and now it is in the Court's custody.</p> <p>23 MR. WALKER: Your Honor, thank you very much.</p> <p>24 Good luck to all the parties.</p>
<p style="text-align: right;">Page 12</p> <p>1 THE COURT: Thank you very much for your</p> <p>2 assistance, Mr. Walker.</p> <p>3 (Mr. Walker exited the courtroom.)</p> <p>4 THE COURT: So now we are down to the competing</p> <p>5 interests of the cross-claimants, and we can begin the</p> <p>6 trial.</p> <p>7 Counsel, the Court has gone through the entire</p> <p>8 record of the file. I apologize that I forgot there was</p> <p>9 that issue with the stipulation that just got kind of</p> <p>10 mixed up, but it doesn't really matter at this point.</p> <p>11 The Court has reviewed the contents of the file. The</p> <p>12 Court has further reviewed the motion practice that has</p> <p>13 taken place in the case.</p> <p>14 Additionally, the Court has received and</p> <p>15 reviewed the January 23, 2019, file-stamped</p> <p>16 Defendant/Cross-Claimant Athanasios Skarpelos' Trial</p> <p>17 Statement. Additionally, the Court has received and</p> <p>18 reviewed the defendant Cross-Claimant Weiser's Trial</p> <p>19 Statement. I've gone through the pretrial motions, as I</p> <p>20 said, and so I'm familiar with those. I reviewed the</p> <p>21 pleadings that have brought this matter to the Court's</p> <p>22 attention.</p> <p>23 In essence, Mr. Skarpelos is seeking</p> <p>24 declaratory relief -- I need to slow down sometimes when</p>	<p style="text-align: right;">Page 13</p> <p>1 I speak -- declaratory relief, and Weiser Asset</p> <p>2 Management has brought a claim for declaratory relief and</p> <p>3 for breach of contract and for breach of the implied</p> <p>4 covenant of good faith and fair dealing.</p> <p>5 With the interpleader action, as the parties</p> <p>6 have acknowledged, the parties are both basically</p> <p>7 plaintiffs. It's an interesting position that the</p> <p>8 parties are in. During any trial the Court would always</p> <p>9 defer to the plaintiff to make the opening statement and</p> <p>10 to go forward in that fashion. Because both parties are</p> <p>11 plaintiffs, I think what I've decided to do is this. I</p> <p>12 need to go back and look.</p> <p>13 In order of preference for opening statement</p> <p>14 and to go forward, the Court is going to defer, then, to</p> <p>15 Mr. Skarpelos for the following reason: Mr. Skarpelos</p> <p>16 filed his Answer to the Amended Complaint and Cross-Claim</p> <p>17 on May 23rd of 2016, and the -- I'll just refer to them</p> <p>18 as "the Weiser litigants" -- the Weiser litigants filed</p> <p>19 their Answer and Cross-Claim on May 24th of 2016, so they</p> <p>20 filed first, unless there's something else that I've said</p> <p>21 in the past.</p> <p>22 MR. NORK: No, Your Honor, but we may be able</p> <p>23 to short-circuit that a little bit.</p> <p>24 I've consulted with counsel for Mr. Skarpelos.</p>

<p style="text-align: right;">Page 14</p> <p>1 By the way, my client Chris Livadas is here.</p> <p>2 THE COURT: Mr. Livadas, nice to meet you as</p> <p>3 well.</p> <p>4 And I think we've agreed upon an order of</p> <p>5 witnesses.</p> <p>6 THE COURT: Good. Okay.</p> <p>7 MR. NORK: Starting with Mr. Livadas, then</p> <p>8 Mr. Skarpelos, then Lambros Pedafronimos, and then</p> <p>9 perhaps Mr. Walker, and in light of that, I will be going</p> <p>10 first. I will defer to Mr. Anderson about whether and</p> <p>11 when he wants to give his opening statement.</p> <p>12 The other housekeeping matter is we've</p> <p>13 stipulated to quite a number of exhibits, and I'd like to</p> <p>14 put that on the record if I may.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. NORK: We have agreed to the admissibility</p> <p>17 and move for admission of the following exhibits: 1, 2,</p> <p>18 4, 7, 8, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27,</p> <p>19 28, 29, 30, 31, 32, 33, 34, 35, 36, 40, 46, 47, 48, 49,</p> <p>20 50, 51, 52, 53, 54, 55, 56, 57, 58, and that's it.</p> <p>21 THE CLERK: Counsel, I show that you have</p> <p>22 stipulated to Exhibit 60.</p> <p>23 MR. NORK: Six zero?</p> <p>24 THE CLERK: Yes.</p>	<p style="text-align: right;">Page 15</p> <p>1 MR. NORK: Is that right, Counsel? That's fine</p> <p>2 with me.</p> <p>3 MR. ANDERSON: No, not 60.</p> <p>4 THE COURT: So not 60, but with the</p> <p>5 identification of the stipulated exhibits, is that a</p> <p>6 correct statement, Mr. Anderson, not including Exhibit</p> <p>7 No. 60?</p> <p>8 MR. ANDERSON: Not including Exhibit No. 60,</p> <p>9 Mr. Nork did read the exhibits correct, and I would</p> <p>10 stipulate to the admission of those documents that he</p> <p>11 identified, the exhibits he identified.</p> <p>12 THE COURT: Those identified documents will be</p> <p>13 admitted.</p> <p>14 (Exhibit 1, 2, 4, 7, 8, 13, 14, 15, 16, 20, 21,</p> <p>15 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35,</p> <p>16 36, 40, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57,</p> <p>17 58 were admitted.)</p> <p>18 MR. ANDERSON: And, Your Honor, I would also</p> <p>19 agree with Mr. Nork that we had an understanding that his</p> <p>20 case would proceed first with Mr. Livadas, and then I</p> <p>21 don't believe he has any other witnesses. Then I plan to</p> <p>22 call Mr. Skarpelos, Mr. Pedafronimos and perhaps</p> <p>23 Mr. Walker, and I would defer my opening statement to the</p> <p>24 beginning of my case.</p>
<p style="text-align: right;">Page 16</p> <p>1 THE COURT: Okay. Any other pretrial matters</p> <p>2 on behalf of Weiser Asset Management?</p> <p>3 MR. NORK: No, Your Honor.</p> <p>4 THE COURT: Any pretrial matters on behalf of</p> <p>5 Mr. Skarpelos?</p> <p>6 MR. ANDERSON: No, Your Honor.</p> <p>7 THE COURT: Okay. Then let's go forward with</p> <p>8 opening statement.</p> <p>9 As I told the parties and I think they</p> <p>10 confirmed with my judicial assistant, feel free to make</p> <p>11 an opening statement if you choose to do so. I find it</p> <p>12 helpful, but I also appreciate the fact that it's a bench</p> <p>13 trial, so if you don't want to make an opening statement,</p> <p>14 don't feel like you're behind. At some point if you want</p> <p>15 to make an opening statement I would be happy to hear it.</p> <p>16 On behalf of Weiser, go ahead.</p> <p>17 MR. NORK: Thank you, Your Honor. And I would</p> <p>18 like to make an opening statement but only a brief one</p> <p>19 because I know the Court is familiar with the pleadings,</p> <p>20 and this is for all intents and purposes a fairly small</p> <p>21 trial, at least as far as the number of witnesses go.</p> <p>22 We're looking at three and a half witnesses, maybe.</p> <p>23 I'm Jeremy Nork on behalf of cross-claimant</p> <p>24 Weiser Asset Management. From time to time we'll be</p>	<p style="text-align: right;">Page 17</p> <p>1 referred to as WAM and Weiser Capital. This, as the</p> <p>2 Court correctly observed, is an interpleader action to</p> <p>3 determine the ownership of certain shares of stock in a</p> <p>4 company called Anavex Life Sciences, and over the next</p> <p>5 couple of days the Court will hear a lot about the</p> <p>6 intricacies of privately selling publicly traded stock.</p> <p>7 This Court will also hear terms like "broker-dealer,"</p> <p>8 "primary broker-dealer," "powers of attorney," "purchase</p> <p>9 and sale agreements."</p> <p>10 Notwithstanding those intricacies, reduced to</p> <p>11 its essence, this is really a simple case, and the</p> <p>12 evidence will bear that out. Mr. Skarpelos wanted to</p> <p>13 raise money by selling his stock, and my client helped</p> <p>14 him do that, putting \$250,000 into an account held by</p> <p>15 Mr. Skarpelos at Weiser Asset Management for that stock.</p> <p>16 Unfortunately, the evidence will also show that right</p> <p>17 about the same time that my client was endeavoring to</p> <p>18 sell Mr. Skarpelos's stock, Mr. Skarpelos filed an</p> <p>19 affidavit claiming that the stock certificates that he</p> <p>20 delivered to my client for the purpose of opening the</p> <p>21 account had been lost.</p> <p>22 Now, testimony will bear out whether or not</p> <p>23 that affidavit is true or false, but there's no doubt</p> <p>24 that because of that affidavit my client was prevented</p>

<p style="text-align: right;">Page 18</p> <p>1 from completing his purchase of Mr. Skarpelos's stock. 2 Specifically, my client was unable to thereafter sell the 3 stock because there was a dispute about his ownership. 4 Now, we are sitting in a court of equity 5 because it's an interpleader action, and the question is 6 this: Does the evidence demonstrate that Mr. Skarpelos's 7 account of Weiser Asset Management was credited with 8 \$250,000? If the answer is yes, then equity demands that 9 judgment be entered in favor of my client. 10 Thank you, Your Honor. 11 THE COURT: Thank you, Mr. Nork. You can call 12 your first witness. 13 MR. NORK: Mr. Livadas, please. 14 Your Honor, I'm excluding witnesses. We've 15 already discussed it. 16 17 CHRISTOS LIVADAS, 18 having been first duly sworn, 19 was examined and testified as follows: 20 21 DIRECT EXAMINATION 22 BY MR. NORK: 23 Q Good morning. 24 A Good morning.</p>	<p style="text-align: right;">Page 19</p> <p>1 Q Would you please state and spell your name for 2 the record. 3 A Christos Livadas, C-h-r-i-s-t-o-s, last name 4 L-i-v-a-d-a-s. 5 Q Mr. Livadas, what is your job or occupation? 6 A The job is now -- I'm the owner of a 7 broker-dealer, so I have the job of owner of the 8 broker-dealer. 9 Q What is the name of that broker-dealer? 10 A Weiser Asset Management. 11 Q And sometimes referred to as WAM; correct? 12 A Correct. 13 Q Could you briefly outline for the Court your 14 educational background? 15 A Educational background is high school and some 16 years' university, incomplete, and business commerce. 17 Q And where did you attend university? 18 A University of Calgary, Canada. 19 Q Okay. Did you obtain a degree? 20 A No. 21 Q After attending college, can you outline for 22 the Court your work history, please? 23 A After college, miscellaneous jobs, various 24 jobs, mostly service industry and so forth shortly after</p>
<p style="text-align: right;">Page 20</p> <p>1 college. Continue until now? 2 Q Yes, please. 3 A So miscellaneous jobs after college, and then 4 eventually got introduced into the -- I guess I'll call 5 it the business of public companies and so on and so 6 forth. 7 From there I was the co-founder of a company 8 called Stockhouse, which was a financial media-type news 9 company in Canada. That was in the late '90s, and after 10 I sold my interest in Stockhouse, then I went into more 11 of the venture capital business and helping raise capital 12 for companies. 13 Q And what year, approximately, was that? 14 A For which part? 15 Q After you completed the sale of Stockhouse. 16 A Oh, that was around 2000, 2001. 17 Q Okay. And how long did you work in the venture 18 capital area? 19 A So I'll call it freelance venture capital. 20 That would be essentially until the present. It's still 21 the type of business I do. 22 Q Okay. Now, there are three different entities 23 with the name "Weiser" in them. There's Weiser Asset 24 Management, there's Weiser Holdings, and then there's</p>	<p style="text-align: right;">Page 21</p> <p>1 what's we're calling Weiser Capital. 2 Can you please describe to the Court how you 3 became involved in all three of those and when? 4 A So Weiser Asset Management, which was 5 originally owned by a bank and trust in the Bahamas -- 6 should I look at the judge? I'm not sure where I should 7 be looking at. 8 THE COURT: Wherever you feel comfortable. 9 Sometimes what you'll see is I'm writing things down. 10 Don't think that I'm trying to take the record of these 11 proceedings. That's the court reporter's job. I'm just 12 making notes to myself. So I don't want you to feel I'm 13 not paying attention to you if you look at me and I'm not 14 looking at you. So you look wherever you want to, 15 whatever makes you most comfortable. 16 THE WITNESS: So Weiser Asset Management as a 17 broker-dealer which was owned by a bank and trust, I knew 18 the principals. Just through general associations I knew 19 the principals of the bank, and we did a deal where I 20 would help them build a business on the broker-dealer 21 side because it wasn't the key focus for them, and it was 22 doing some business, but not that much business and so on 23 and so forth. 24 So I did an agreement with them, which would be</p>

<p style="text-align: right;">Page 22</p> <p>1 referred to as an introducer's agreement or an agency</p> <p>2 agreement where I would help introduce business to the</p> <p>3 broker-dealer. So with that I established Weiser</p> <p>4 Capital, which is my company.</p> <p>5 BY MR. NORK:</p> <p>6 Q What year was that, sir?</p> <p>7 A That would have been, Weiser Capital, 2012,</p> <p>8 approximately.</p> <p>9 THE COURT: I hate to interrupt you. Mr. Nork,</p> <p>10 though, asked you when you became involved with Weiser</p> <p>11 Asset Management. You didn't give me a specific date.</p> <p>12 You described it, but you didn't say when that happened.</p> <p>13 THE WITNESS: Oh, got involved around 2011.</p> <p>14 Late 2010 to 2011 is when I first got involved with that</p> <p>15 group.</p> <p>16 THE COURT: Thank you.</p> <p>17 BY MR. NORK:</p> <p>18 Q So then you formed Weiser Capital?</p> <p>19 A Weiser Capital, about a year later or so.</p> <p>20 Q What services did Weiser Capital provide to</p> <p>21 Weiser Asset Management?</p> <p>22 A Introducing clients to Weiser Asset Management,</p> <p>23 and separately Weiser Capital was also -- the clients</p> <p>24 also consisted of corporate clients who need to raise</p>	<p style="text-align: right;">Page 23</p> <p>1 capital, so provided them advisory and capital-raising</p> <p>2 services.</p> <p>3 And then approximately 2014, end of 2013, 2014,</p> <p>4 then I negotiated a deal to acquire the broker-dealer,</p> <p>5 during which Weiser Holdings was incorporated, around the</p> <p>6 end of 2013, which then acquired Weiser Asset Management.</p> <p>7 Q Okay.</p> <p>8 A At the end of 2013, 2014?</p> <p>9 Q So the current owner of Weiser Asset Management</p> <p>10 is Weiser Holdings?</p> <p>11 A Correct.</p> <p>12 Q And Weiser Capital continues to provide</p> <p>13 referral service to Weiser Asset Management?</p> <p>14 A Yes.</p> <p>15 Q Does Weiser Capital only engage in business</p> <p>16 with Weiser Asset Management or does it provide other</p> <p>17 services as well?</p> <p>18 A No. It has multiple clients who are corporate</p> <p>19 clients. Not other broker-dealers, but corporate clients</p> <p>20 which hire us as an advisor for capital-raising and</p> <p>21 M and A services.</p> <p>22 Q What do you mean by "M and A services"?</p> <p>23 A If a company wants to do mergers or find</p> <p>24 acquisitions, we help them find acquisition targets, how</p>
<p style="text-align: right;">Page 24</p> <p>1 to structure the acquisition targets and put those deals</p> <p>2 together.</p> <p>3 Q Okay. And you said there was an agreement</p> <p>4 between Weiser Capital and WAM; correct?</p> <p>5 A Correct.</p> <p>6 Q And how was Weiser Capital compensated for the</p> <p>7 work it did for WAM?</p> <p>8 A It's compensated by getting a percentage of the</p> <p>9 commission fees, of the revenues that clients of Weiser</p> <p>10 which it has introduced generates at the firm.</p> <p>11 Q So give me an example of how that would work.</p> <p>12 A So typical -- it's a pretty standard introducer</p> <p>13 structure. Introducers will get anywhere -- typically,</p> <p>14 standard is about 20 percent revenue share on the</p> <p>15 commissions that are generated by the clients it has</p> <p>16 introduced to the broker-dealer.</p> <p>17 Q So if Weiser Capital introduced a client to</p> <p>18 Weiser Asset Management, Weiser Capital would receive a</p> <p>19 commission?</p> <p>20 A Correct.</p> <p>21 Q And if that client for Weiser Asset Management</p> <p>22 continued to buy and sell stock, would that continue to</p> <p>23 generate income for Weiser Capital?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 25</p> <p>1 Q How would that work?</p> <p>2 A How would it work in the sense of?</p> <p>3 Q So every time there's a sale?</p> <p>4 A Well, it's done typically quarterly. So</p> <p>5 quarterly the broker-dealer looks at all the revenue</p> <p>6 commission tables, etcetera, and then pays its</p> <p>7 introducers.</p> <p>8 Q And that arrangement existed from 2011, 2012 to</p> <p>9 the present; correct?</p> <p>10 A Correct.</p> <p>11 Q Now, you also testified that you acquired WAM</p> <p>12 in 2013, 2014?</p> <p>13 A Yes.</p> <p>14 Q Who was the prior owner of WAM?</p> <p>15 A Equity Bank and Trust.</p> <p>16 Q And how did you know Equity Bank and Trust?</p> <p>17 A I knew them -- I had just met them in Bahamas</p> <p>18 through friends. I had a relationship just amongst the</p> <p>19 business community.</p> <p>20 Q Okay. And Weiser Asset Management was a</p> <p>21 broker-dealer arm of Equity Bank and Trust?</p> <p>22 A Correct. It was a subsidiary of Equity.</p> <p>23 Q Do you recall when you completed the</p> <p>24 acquisition of WAM?</p>

<p style="text-align: right;">Page 26</p> <p>1 A It was between December 2013 and February 2014.</p> <p>2 Q Okay. When you acquired WAM, describe to the</p> <p>3 Court what, if any, documents you received as part of the</p> <p>4 acquisition.</p> <p>5 A So the documents we had received was basically</p> <p>6 a large storage facility with the transactional records</p> <p>7 of WAM, plus we had received files, what we call the KYC</p> <p>8 files, the actual client identification files which --</p> <p>9 Q What does "KYC" stand know?</p> <p>10 A Know Your Client, Know Your Client files, which</p> <p>11 is client identification, account openings, things like</p> <p>12 that.</p> <p>13 Q So that would be like bank account</p> <p>14 applications?</p> <p>15 A It would be the account opening application,</p> <p>16 passports, reference letters, documents that verify their</p> <p>17 residency, their residential address.</p> <p>18 Q Are these all documents that are provided by a</p> <p>19 customer in opening an account with WAM?</p> <p>20 A Absolutely, yes.</p> <p>21 Q So you received transactional records, Know</p> <p>22 Your Customer records. What else?</p> <p>23 A Various operating manuals, compliance manuals,</p> <p>24 the firm's audited financials, historical audited</p>	<p style="text-align: right;">Page 27</p> <p>1 financials. That pretty much summarizes.</p> <p>2 Q Did you receive any computer records?</p> <p>3 A Computer records, no. We received prints.</p> <p>4 Q Okay. What was printed out that you received</p> <p>5 from their computer system?</p> <p>6 A Everything in the sense of there's -- again,</p> <p>7 the KYC files, I don't know if that comes from the</p> <p>8 computer system or if it's hard copies, how that was</p> <p>9 originated, but we receive -- I can't tell you exactly</p> <p>10 everything that's there because it's a large storage --</p> <p>11 it's a large storage of paper essentially that has all</p> <p>12 the transactional records, their filings with the</p> <p>13 regulators, the company's books and records.</p> <p>14 Q Did you receive access to the prior owner's</p> <p>15 computer system?</p> <p>16 A No.</p> <p>17 Q When you say "transactional records," how was</p> <p>18 that sorted? Was it sorted on a transactional basis or</p> <p>19 on a customer basis?</p> <p>20 A Transactional.</p> <p>21 Q Did you receive any customer records or</p> <p>22 statements?</p> <p>23 A We received the statements for 2013, which are</p> <p>24 the closing statements for 2013.</p>
<p style="text-align: right;">Page 28</p> <p>1 Q And did you receive a 2013 closing statement</p> <p>2 for every customer of WAM?</p> <p>3 A Yes.</p> <p>4 Q Okay. Prior to acquiring WAM, did you have</p> <p>5 access to WAM's records?</p> <p>6 A I had access to basic records. I guess the way</p> <p>7 I would say it is I could request holdings, I could</p> <p>8 request certain information on certain clients, not all</p> <p>9 the clients. I couldn't access all of WAM's</p> <p>10 transactional records. So I could only access some basic</p> <p>11 client information just for the clients that I had</p> <p>12 introduced.</p> <p>13 Q So if you had introduced clients to WAM, you</p> <p>14 had the ability to access those clients' records?</p> <p>15 A Some parts of it.</p> <p>16 Q What do you mean by "some parts of it"?</p> <p>17 A Typically holdings, how much shares and cash</p> <p>18 they have is what I was allowed to ask.</p> <p>19 Q And how would you acquire that information?</p> <p>20 A I would ask either the CEO or the compliance</p> <p>21 officer or the broker, the official -- the registered</p> <p>22 broker of the firm.</p> <p>23 Q Okay. And how was that information provided to</p> <p>24 you?</p>	<p style="text-align: right;">Page 29</p> <p>1 A Depends how I asked for it. Typically I would</p> <p>2 just call and ask how many shares of XYZ does client ABC</p> <p>3 have or how much cash do they have.</p> <p>4 Q Okay. And you were allowed that information</p> <p>5 because you were the one who introduced that client to</p> <p>6 WAM?</p> <p>7 A Correct. And because I was dealing with the</p> <p>8 client relationship on an ongoing basis.</p> <p>9 Q For your clients, what was their primary source</p> <p>10 of contact with WAM? How did they contact WAM?</p> <p>11 A Mostly through me. Nearly all the time would</p> <p>12 be through me.</p> <p>13 Q And what do you mean by that?</p> <p>14 A If they wanted to do something, to make a trade</p> <p>15 or ask a question on their account, they would ask me.</p> <p>16 Q And then you in turn would ask someone at WAM?</p> <p>17 A Correct.</p> <p>18 Q So you have seen the storage facility that</p> <p>19 contains all of WAM's records?</p> <p>20 A Yes.</p> <p>21 Q And what is your title with respect to WAM now</p> <p>22 that you have acquired it?</p> <p>23 A My title now? I'm a risk advisor to the firm.</p> <p>24 Q And what is your title with Weiser Holdings?</p>

<p style="text-align: right;">Page 30</p> <p>1 A Director.</p> <p>2 Q So you're a director of Weiser Holdings and</p> <p>3 Weiser Holdings is a 100 percent owner of WAM?</p> <p>4 A Correct.</p> <p>5 Q Are you familiar with the documents that are</p> <p>6 kept in WAM's ordinary course of business?</p> <p>7 MR. ANDERSON: Objection, Your Honor. Vague as</p> <p>8 to time period.</p> <p>9 THE COURT: You can clarify the question.</p> <p>10 MR. NORK: I'll clarify.</p> <p>11 BY MR. NORK:</p> <p>12 Q Since the time of your acquisition of WAM, are</p> <p>13 you familiar with the documents kept in WAM's ordinary</p> <p>14 course of business?</p> <p>15 A Yes. The types of documents, yes.</p> <p>16 Q And you're familiar with the files kept at WAM</p> <p>17 from the time of your ownership forward?</p> <p>18 A Generally. I don't have a clear -- I don't do</p> <p>19 a whole detailed file structure.</p> <p>20 Q You haven't committed them to memory?</p> <p>21 A No.</p> <p>22 Q You're familiar with WAM's recordkeeping</p> <p>23 system?</p> <p>24 MR. ANDERSON: Same objection, Your Honor.</p>	<p style="text-align: right;">Page 31</p> <p>1 MR. NORK: Sorry.</p> <p>2 BY MR. NORK:</p> <p>3 Q From the time of your acquisition of WAM to the</p> <p>4 present, you are familiar with WAM's recordkeeping</p> <p>5 system?</p> <p>6 A Yes.</p> <p>7 Q And you've already established that you had the</p> <p>8 opportunity to review all of the files that were provided</p> <p>9 to you as part of your acquisition of WAM; is that</p> <p>10 correct?</p> <p>11 A Not all of the files, no. There's a lot of</p> <p>12 files. No, I haven't reviewed all of the files.</p> <p>13 Q I understand, but you're familiar with what was</p> <p>14 provided to you as part of your acquisition?</p> <p>15 A The general types of files.</p> <p>16 Q And have you had an opportunity to specifically</p> <p>17 review some of those historic documents?</p> <p>18 A Some. Yes, I've dug through some.</p> <p>19 Q Since the time of your acquisition of WAM, have</p> <p>20 you participated in audits of WAM?</p> <p>21 A No.</p> <p>22 Q Have you participated in audits of WAM's</p> <p>23 recordkeeping system?</p> <p>24 A No.</p>
<p style="text-align: right;">Page 32</p> <p>1 Q From the time of your acquisition of WAM, do</p> <p>2 you know WAM's procedures for generating and maintaining</p> <p>3 its records?</p> <p>4 A For generating its records?</p> <p>5 Q Yes.</p> <p>6 A Well, the records are generated by computer</p> <p>7 database system.</p> <p>8 Q And you're familiar with that system?</p> <p>9 A Yes.</p> <p>10 Q Now, you've used the term "broker-dealer." Can</p> <p>11 you generally describe for the court what a broker-dealer</p> <p>12 is and does?</p> <p>13 A A broker-dealer is a financial institution</p> <p>14 which is licensed by the Securities Commission to carry</p> <p>15 customer assets, which are typically cash and securities,</p> <p>16 and to trade, to execute trades on those assets.</p> <p>17 Q Are there different classes of broker-dealer?</p> <p>18 A Yes.</p> <p>19 Q And is WAM a broker-dealer?</p> <p>20 A Yes.</p> <p>21 Q What class is WAM?</p> <p>22 A It's a Class I broker-dealer.</p> <p>23 Q What does that class definition entitle WAM to</p> <p>24 do?</p>	<p style="text-align: right;">Page 33</p> <p>1 A So a Class I broker-dealer is permitted to do</p> <p>2 custodized assets for clients.</p> <p>3 Q What does that mean?</p> <p>4 A To actually hold them on its -- I won't say its</p> <p>5 balance sheet, but it's allowed to -- it's authorized to</p> <p>6 hold them under its risk, I guess is the easiest way I</p> <p>7 could describe it, whereas broker-dealers with lower</p> <p>8 classes of licenses aren't permitted to hold or to take</p> <p>9 the risk of holding the assets. They must put it with a</p> <p>10 prime broker-dealer or with a prime bank who takes the</p> <p>11 responsibility for the assets.</p> <p>12 Q Okay. So give me an example of how that class</p> <p>13 designation would apply for a customer of WAM. Let's say</p> <p>14 I'm a customer of WAM and I deliver a stock certificate</p> <p>15 to you. What would you as a Class I broker-dealer be</p> <p>16 allowed to do with that stock certificate?</p> <p>17 A If it's a physical certificate, to keep it in</p> <p>18 its vault, so to vault that certificate, and if it was</p> <p>19 delivered electronically, to post it to Weiser's account</p> <p>20 and take the responsibility for it.</p> <p>21 Q So it would be as if you had my balance of</p> <p>22 stock; correct?</p> <p>23 A Right.</p> <p>24 Q What is the advantage of an electronic version</p>

<p style="text-align: right;">Page 34</p> <p>1 of stock versus a physical stock certificate?</p> <p>2 A Oh, well, a paper certificate can't be</p> <p>3 transacted on easily. If a client wants to sell today,</p> <p>4 let's say, they can't transact with a paper certificate.</p> <p>5 Q What has to happen to a paper certificate</p> <p>6 before a client can sell it?</p> <p>7 A It has to go to a transfer agent to be cleared</p> <p>8 into the electronic DTC system.</p> <p>9 Q And I've heard the term "dematerialize." Is</p> <p>10 that the process you just described?</p> <p>11 A Correct.</p> <p>12 Q So a physical stock certificate goes to the</p> <p>13 transfer agent, it becomes converted into an electronic</p> <p>14 stock certificate, which then goes to WAM's balance;</p> <p>15 correct?</p> <p>16 A Correct.</p> <p>17 Q And then WAM can sell it or buy it as directed</p> <p>18 by its clients?</p> <p>19 A Correct.</p> <p>20 Q Approximately how many customers does WAM have</p> <p>21 presently?</p> <p>22 A Presently, I would classify the customers as</p> <p>23 two -- on two levels. One is if it is institutional</p> <p>24 customers, so we have institutional customers. So WAM</p>	<p style="text-align: right;">Page 35</p> <p>1 now has clients who are other broker-dealers as its</p> <p>2 clients, so that's as a prime broker now, and then it has</p> <p>3 its direct individual clients.</p> <p>4 So as it sits now, the client group that it's</p> <p>5 responsible for with the broker-dealers which it</p> <p>6 custodizes for, somewhere in the neighborhood of</p> <p>7 approximately 2,000 clients, thereabouts.</p> <p>8 Q When you acquired WAM in early 2014, how many</p> <p>9 customers did WAM have?</p> <p>10 A About a hundred.</p> <p>11 Q Now, you have also used the term "prime</p> <p>12 broker-dealer." What is a prime broker-dealer?</p> <p>13 A So prime broker-dealer is one who has full</p> <p>14 custodial rights of assets, but also one that -- the way</p> <p>15 we most differentiate it is that it also carries the cash</p> <p>16 balances for clients because it has relationships to</p> <p>17 prime banks to do so.</p> <p>18 Small broker-dealers typically cannot get a</p> <p>19 prime banking relationship, they can't take</p> <p>20 responsibility for the cash, so they go to a prime</p> <p>21 broker-dealer. So sometimes it's -- depending on the</p> <p>22 jurisdiction, it's because either their license doesn't</p> <p>23 allow them to carry the cash or because they're just not</p> <p>24 big enough for a prime bank to deal with them, so they'll</p>
<p style="text-align: right;">Page 36</p> <p>1 deal with a prime broker-dealer, and that's who carries</p> <p>2 their cash positions.</p> <p>3 Q Okay. So today does WAM have a relationship</p> <p>4 with a prime broker-dealer?</p> <p>5 A It does. And prime banks.</p> <p>6 Q So it also has relationships with prime banks?</p> <p>7 A Correct.</p> <p>8 Q At the time you acquired WAM in early 2014, did</p> <p>9 WAM have any relationships directly with prime banks?</p> <p>10 A No.</p> <p>11 Q Did WAM have relationships with prime</p> <p>12 broker-dealers?</p> <p>13 A Yes.</p> <p>14 Q Can you give the Court the names of some of</p> <p>15 those prime broker-dealers?</p> <p>16 A At the time we acquired it, it was Vermont,</p> <p>17 which is in the case, CIBC, Interactive Brokers, and then</p> <p>18 there was about three or four others.</p> <p>19 Q Okay. And did those prime broker-dealers then</p> <p>20 have relationships with prime banks?</p> <p>21 A Yes.</p> <p>22 Q And for Interactive Brokers as an example, do</p> <p>23 you recall, at the time you acquired WAM, who its prime</p> <p>24 bank was?</p>	<p style="text-align: right;">Page 37</p> <p>1 A No.</p> <p>2 Q For CIBC, at the time you acquired WAM, do you</p> <p>3 recall who its prime bank was?</p> <p>4 A CIBC, the broker-dealer end.</p> <p>5 Q And the bank is the same thing?</p> <p>6 A Yes.</p> <p>7 Q And for Vermont --</p> <p>8 V-e-r-d-m-o-n-t?</p> <p>9 A Correct.</p> <p>10 Q -- do you know who its prime bank was?</p> <p>11 A HSBC.</p> <p>12 Q HSBC.</p> <p>13 Walk me through an example of -- if I'm a</p> <p>14 customer of WAM and I sold my stock, how would the prime</p> <p>15 bank and the prime broker-dealer be involved?</p> <p>16 A If you sold your stock on the public market?</p> <p>17 Q No. If I directed WAM to sell my stock.</p> <p>18 A Are you talking in a private transaction or in</p> <p>19 the public markets?</p> <p>20 Q Let's take them each separately. Start with</p> <p>21 the private transaction.</p> <p>22 A Okay. So ask me the question again with a</p> <p>23 private transaction.</p> <p>24 Q How is the prime broker-dealer and the prime</p>

<p style="text-align: right;">Page 38</p> <p>1 bank involved in that transaction, if at all?</p> <p>2 A No. In a private transaction, if we have both</p> <p>3 the buyer and the selling clients on the private</p> <p>4 transaction, the prime broker and the prime bank are not</p> <p>5 involved because there's no transaction at their level.</p> <p>6 Q That transaction is contained entirely within</p> <p>7 WAM?</p> <p>8 A Correct.</p> <p>9 Q Okay. What if the buyer of the stock is not a</p> <p>10 WAM client? Then how are they involved?</p> <p>11 A If it's not a WAM client, then we will</p> <p>12 typically take the funds into escrow from the buyer,</p> <p>13 we'll have the funds in escrow, which are at the prime</p> <p>14 broker or the prime bank, and when the deal closes, the</p> <p>15 bank or the escrow release will happen to -- so the buyer</p> <p>16 will have the cash on escrow, the buyer will have the</p> <p>17 cash on escrow, and then when the seller assigns the</p> <p>18 certificate over, then the cash is released from escrow</p> <p>19 to the seller. Is that in the right order? Ask me if</p> <p>20 you need me to explain it again?</p> <p>21 Q I think I've got it. So the money gets</p> <p>22 escrowed from the buyer; the seller sells the stock and</p> <p>23 receives the money?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 39</p> <p>1 Q Now, if I'm a WAM client and I have money in my</p> <p>2 account with WAM, can I direct funds from that account to</p> <p>3 be wired to some other account?</p> <p>4 A Yeah.</p> <p>5 Q And how would the prime broker-dealer and the</p> <p>6 prime bank be involved in that process?</p> <p>7 A Well, we give the transfer request to the prime</p> <p>8 broker, and then the prime broker processes that forward</p> <p>9 with their prime bank.</p> <p>10 Q And then what happens?</p> <p>11 A And then the account which is on the</p> <p>12 instructions to receive the money, wherever that might</p> <p>13 be, receives the money.</p> <p>14 Q Okay. So let's say I wanted to give Frank</p> <p>15 LaForge some money out of my WAM account. I would make</p> <p>16 that request to you at WAM; correct?</p> <p>17 A Correct.</p> <p>18 Q And then you would instruct the prime</p> <p>19 broker-dealer?</p> <p>20 A Correct.</p> <p>21 Q To do what?</p> <p>22 A To send -- to send this balance of funds to</p> <p>23 Frank's account.</p> <p>24 Q Okay. And that prime broker-dealer makes that</p>
<p style="text-align: right;">Page 40</p> <p>1 instruction to the prime bank?</p> <p>2 A Correct.</p> <p>3 Q And then the prime bank sends the money to</p> <p>4 Frank's bank?</p> <p>5 A Yes.</p> <p>6 Q And so if we're talking about, as an example,</p> <p>7 Vermont being the prime broker-dealer and its bank being</p> <p>8 HSBC, the money would go from WAM to Vermont to HSBC to</p> <p>9 Frank LaForge's bank; correct?</p> <p>10 A Correct.</p> <p>11 Q Why couldn't the money go directly from WAM to</p> <p>12 Frank LaForge's bank?</p> <p>13 A Because WAM only has an account at the prime</p> <p>14 broker. So the prime broker actually holds WAM's money</p> <p>15 on its account, and its account is at its prime bank, so</p> <p>16 we don't have -- we don't have a bank to instruct to send</p> <p>17 money to.</p> <p>18 Q Okay. That's why you're relying on a prime</p> <p>19 broker-dealer?</p> <p>20 A Yes.</p> <p>21 Q Because you don't actually hold cash?</p> <p>22 A Right.</p> <p>23 Q You can tell me that I have an account that has</p> <p>24 cash in it; correct?</p>	<p style="text-align: right;">Page 41</p> <p>1 A Yes.</p> <p>2 Q Because I'm a WAM client, but you're not</p> <p>3 physically holding it?</p> <p>4 A Right.</p> <p>5 Q It's being held by the prime broker-dealer?</p> <p>6 A Yes.</p> <p>7 Q In this case Vermont?</p> <p>8 A Yes.</p> <p>9 Q And because it's not a bank, it has to instruct</p> <p>10 its bank to send the money to Frank LaForge?</p> <p>11 A Correct.</p> <p>12 Q All right. Now, we touched on this briefly,</p> <p>13 but I'd like to go into a little more detail.</p> <p>14 Let's talk about transactions between WAM</p> <p>15 clients. So one WAM client wants to sell its stock to</p> <p>16 another WAM client.</p> <p>17 You indicated that a prime broker-dealer and a</p> <p>18 prime bank are not involved at all; correct?</p> <p>19 A Correct.</p> <p>20 Q What if that request is being made by Weiser</p> <p>21 Capital? Do you understand me? So I ask you at Weiser</p> <p>22 Capital to find a buyer for my stock.</p> <p>23 A But you're a client of WAM?</p> <p>24 Q But I'm a client of WAM, correct.</p>

<p style="text-align: right;">Page 42</p> <p>1 How would that transaction go through?</p> <p>2 MR. ANDERSON: Objection. Vague as to time.</p> <p>3 BY MR. NORK:</p> <p>4 Q At any time. Has the process ever changed?</p> <p>5 A No.</p> <p>6 Q Okay. Then at any time?</p> <p>7 THE COURT: Overruled, then.</p> <p>8 THE WITNESS: So you're a client of WAM?</p> <p>9 BY MR. NORK:</p> <p>10 Q Yes, sir.</p> <p>11 A And you ask me because I'm your rep as Weiser</p> <p>12 Capital?</p> <p>13 Q Yes.</p> <p>14 A So if you're holding 100 shares of Apple,</p> <p>15 whatever it might be, and you say, "I want to sell these</p> <p>16 shares," then it happens one of two ways. If we don't</p> <p>17 have a buyer for those shares on the order book side, on</p> <p>18 the buy side, then the order goes to market. If we have</p> <p>19 a buyer on the buy side of our order book, then the</p> <p>20 transaction happens directly between us, say between --</p> <p>21 the firm's in the middle and it settles the trade between</p> <p>22 the buyer and the seller.</p> <p>23 THE COURT: So just to clarify, then, on the</p> <p>24 books on the buy side, that's just clients who say, I</p>	<p style="text-align: right;">Page 43</p> <p>1 would like to buy IBM or Coca-Cola or GM when these -- if</p> <p>2 they come up, I want to buy them? So you've got that</p> <p>3 list of buyers --</p> <p>4 THE WITNESS: Yeah.</p> <p>5 THE COURT: -- and now Mr. Nork is suggesting</p> <p>6 now I have somebody who wants to sell, the first thing</p> <p>7 you do is look at our list of buyers?</p> <p>8 THE WITNESS: Correct.</p> <p>9 THE COURT: Go ahead.</p> <p>10 BY MR. NORK:</p> <p>11 Q That keeps it all within WAM; correct?</p> <p>12 A Correct.</p> <p>13 Q And you indicated that it doesn't involve a</p> <p>14 prime bank or a prime broker-dealer; correct?</p> <p>15 A Correct.</p> <p>16 Q What, if any, documentation is required to</p> <p>17 memorialize that transaction?</p> <p>18 A None.</p> <p>19 Q What do you mean by that?</p> <p>20 A When somebody gives the order, there's no</p> <p>21 documentation that gets processed to execute the trade.</p> <p>22 Q And is that because they're both WAM customers?</p> <p>23 A There's no -- just in the brokerage business,</p> <p>24 when you give an order, there's no documentation.</p>
<p style="text-align: right;">Page 44</p> <p>1 Q So if I just call my stockbroker and say,</p> <p>2 "Please sell my Apple stock," you say there's no</p> <p>3 documentation?</p> <p>4 A No, not until after the trade is done. After</p> <p>5 the trade is done, then of course they'll put it to your</p> <p>6 account.</p> <p>7 Q Okay. And as I understand the transaction</p> <p>8 involving two WAM customers, the stock goes from the</p> <p>9 seller to Weiser Capital to the buyer; is that correct?</p> <p>10 A To Weiser Asset Management. If it's a listed</p> <p>11 security -- if it's a public security, it goes through</p> <p>12 Weiser Asset Management.</p> <p>13 Q Okay. And how long is it held by Weiser Asset</p> <p>14 Management?</p> <p>15 A For a microsecond, just -- it's simultaneous.</p> <p>16 Q The money and the stock is changing at</p> <p>17 approximately the same time?</p> <p>18 A But it never goes directly client to client.</p> <p>19 It has to always go through the broker.</p> <p>20 Q Okay. If I'm a Weiser client and I buy stock</p> <p>21 from a Weiser client, can I then immediately sell it?</p> <p>22 A If it's publicly traded, yeah.</p> <p>23 Q Okay. Is there a time restriction on my</p> <p>24 ability to sell it?</p>	<p style="text-align: right;">Page 45</p> <p>1 A If it doesn't have any restrictions from the</p> <p>2 securities commission, no.</p> <p>3 Q And what if there is a restriction?</p> <p>4 A Then you can't sell it.</p> <p>5 Q How long do I have to wait typically?</p> <p>6 A Every stock is different depending on the</p> <p>7 restrictions it has on it. If you're talking on a</p> <p>8 private transaction, it depends. It can go anywhere from</p> <p>9 zero to 12 months or more. The norm is 6 to 12 months on</p> <p>10 private transactions.</p> <p>11 If a certificate already has a legend on it and</p> <p>12 it's been issued under Rule 144 or other SEC rules that</p> <p>13 I'm not familiar with, but if it has a legend on it that</p> <p>14 says it cannot be sold in the private market and then you</p> <p>15 buy that certificate, then you still can't sell it for</p> <p>16 six months minimum, and it's usually six to twelve months</p> <p>17 that it can't be sold.</p> <p>18 Q Okay. So if I'm buying that kind of stock, I'm</p> <p>19 a Weiser client, there's no documentation of the order or</p> <p>20 of the sale or of the purchase, but I can't do anything</p> <p>21 with the stock for six months?</p> <p>22 A No. Not until the restriction is lifted from</p> <p>23 the certificate.</p> <p>24 Q And does Weiser need to do anything to get that</p>

<p style="text-align: right;">Page 46</p> <p>1 restriction lifted?</p> <p>2 A Yes. We have to put it through a transfer</p> <p>3 agent, to the issuer or the transfer agent and request</p> <p>4 that the certificate is either reissued as a certificate</p> <p>5 without the restriction or is put directly in electronic</p> <p>6 form to DTC, as we call it.</p> <p>7 Q And that's the dematerialization that we talked</p> <p>8 about before; correct?</p> <p>9 A Yes.</p> <p>10 Q So after six months Weiser can then go to the</p> <p>11 transfer agent and say either issue a new stock</p> <p>12 certificate in a new name or convert it to electronic</p> <p>13 form so that we can then sell it out in the open market?</p> <p>14 A Yeah. The point of dematerializing is not</p> <p>15 necessarily to just sell it out because you can</p> <p>16 dematerialize it and not sell it. It's to have it in</p> <p>17 electronic form because it's always preferred to have</p> <p>18 it or people generally prefer to have it in electronic</p> <p>19 form rather than holding the paper certificate.</p> <p>20 THE COURT: Just out of curiosity, what happens</p> <p>21 to the paper certificate once it's dematerialized?</p> <p>22 THE WITNESS: No idea. The transfer agent does</p> <p>23 something.</p> <p>24 THE COURT: Is it shredded or destroyed in some</p>	<p style="text-align: right;">Page 47</p> <p>1 way?</p> <p>2 THE WITNESS: No. I don't know. Because it</p> <p>3 goes to the transfer agent. I would imagine that the</p> <p>4 transfer agent -- this is my guess -- that the transfer</p> <p>5 agent keeps them and has somehow done -- I don't know --</p> <p>6 something.</p> <p>7 THE COURT: I don't want you to guess. I won't</p> <p>8 consider that answer because it's speculative. I was</p> <p>9 just curious.</p> <p>10 THE WITNESS: I don't know because it happens</p> <p>11 at the transfer agent level.</p> <p>12 BY MR. NORK:</p> <p>13 Q But one thing you do know, though, is when WAM</p> <p>14 is trying to dematerialize stock, it must sell the stock</p> <p>15 certificate to the transfer agent; correct?</p> <p>16 A Not sell it, no. We just send it.</p> <p>17 Q Send it?</p> <p>18 A Send it, yeah.</p> <p>19 Q So it gets delivered to the transfer agent, and</p> <p>20 that's the last WAM sees of the original stock</p> <p>21 certificate?</p> <p>22 A Correct.</p> <p>23 Q So in the scenario we just described where</p> <p>24 we've got two WAM clients doing a private sale of stock,</p>
<p style="text-align: right;">Page 48</p> <p>1 what happens if the seller doesn't deliver the stock?</p> <p>2 A Well, we usually don't do the transaction</p> <p>3 unless the firm is holding the stock. So it will always</p> <p>4 ask for the position to be there in order to do a</p> <p>5 transaction. It can't do a transaction if the stock is</p> <p>6 not there.</p> <p>7 Q Okay. So WAM is holding the physical stock</p> <p>8 certificate?</p> <p>9 A Right.</p> <p>10 Q Okay. What if there's an instance in which</p> <p>11 there's something wrong with the stock certificate or</p> <p>12 it's on hold or something has happened to that stock</p> <p>13 certificate? What happens to that sale?</p> <p>14 A Well, technically, the sale has already gone</p> <p>15 through because it's already been effected on the records</p> <p>16 of WAM, so one client is owning it and one client now is</p> <p>17 not owning it on the records of WAM.</p> <p>18 Q Does that potentially expose Weiser to any</p> <p>19 risk?</p> <p>20 A Yes, absolutely.</p> <p>21 Q How so?</p> <p>22 A Because the firm is responsible for the risk of</p> <p>23 custodizing the assets, so if your account says you own</p> <p>24 1,000 shares of something, we're responsible that you own</p>	<p style="text-align: right;">Page 49</p> <p>1 it. So then when you want to sell it, the firm has the</p> <p>2 liability to it when you sell it. It has to cover that</p> <p>3 liability.</p> <p>4 Q Okay. So if I buy stock from another Weiser</p> <p>5 client, a private sale, I wait my six months and I go to</p> <p>6 you at Weiser and say, "Okay, I'm ready to sell that</p> <p>7 stock now," and it's not on the books, what does Weiser</p> <p>8 have to do to cover itself?</p> <p>9 A It has to pay the client. If you're showing</p> <p>10 you have an asset worth \$1,000 in the account and you</p> <p>11 decide to -- to sell that asset, transfer that asset,</p> <p>12 Weiser has to cover that request.</p> <p>13 Q And they can cover it either by cash or by</p> <p>14 buying stock itself?</p> <p>15 A Right, buying stock itself and then -- buying</p> <p>16 stock itself to cover the position that's missing from</p> <p>17 the client's account.</p> <p>18 Q So if I bought a thousand shares of Apple in a</p> <p>19 private sale at Weiser and I wait my six months for the</p> <p>20 restriction and I come to you and say, "Okay, I'm ready</p> <p>21 to sell my thousand shares of Apple," and for whatever</p> <p>22 reason you don't have those 1,000 shares at your</p> <p>23 disposal, you have to either give me money or go out and</p> <p>24 by a thousand shares of Apple to cover my position?</p>

<p style="text-align: right;">Page 50</p> <p>1 A Correct.</p> <p>2 Q So we've discussed transactions between WAM</p> <p>3 clients. What about transactions between WAM clients and</p> <p>4 non-WAM clients? How is that different?</p> <p>5 A It's different also because -- for starters, it</p> <p>6 has more risk because you're dealing with a third party</p> <p>7 who you may not know or have any of their assets that you</p> <p>8 can deal with, say, if they screw up the trade.</p> <p>9 So that's where Weiser Capital comes in is</p> <p>10 Weiser Capital will broker the trade with the nonclient,</p> <p>11 and Weiser Capital will broker the trade because it</p> <p>12 doesn't have the same risk exposure that WAM does as a</p> <p>13 broker-dealer. It does have some exposure, but since</p> <p>14 Weiser Capital itself doesn't custodize assets, it's not</p> <p>15 a broker that custodizes assets, it can help mitigate</p> <p>16 some of the risk if transactions go wrong, which does</p> <p>17 happen.</p> <p>18 So if a client wants to sell -- if a WAM client</p> <p>19 wishes to sell their shares in the private transaction</p> <p>20 because they can't be sold publicly, then Weiser Capital</p> <p>21 will go out to source buyers to introduce into the deal,</p> <p>22 and if it finds a buyer for the stock, then the</p> <p>23 paperwork, the purchase and sale agreements and things</p> <p>24 like that, will get done with the outside buyer, the</p>	<p style="text-align: right;">Page 51</p> <p>1 non-WAM client, and then funds go into escrow and the</p> <p>2 deal closes, at which point the shares then get</p> <p>3 reassigned to the buyer, change of title or transferred</p> <p>4 over, however the buyer wants it. Many times the buyers</p> <p>5 will open accounts at WAM when a transaction closes</p> <p>6 because it makes it convenient.</p> <p>7 Q It makes it easy?</p> <p>8 A Yes.</p> <p>9 Q Because that way you can go through the process</p> <p>10 you just described of dematerializing the stock and</p> <p>11 having it held on the account of WAM; correct?</p> <p>12 A Right. So to make it simple, if buyer and</p> <p>13 seller are both there, WAM will do the transaction. If a</p> <p>14 buyer or a seller is outside of the firm, then Weiser</p> <p>15 Capital will help facilitate that transaction.</p> <p>16 Q Okay. And for sales that involve -- private</p> <p>17 sales that involve non-WAM clients, there's more</p> <p>18 documentation involved; correct?</p> <p>19 A Yes.</p> <p>20 Q And what documentation is required?</p> <p>21 A The purchase and sale agreements.</p> <p>22 Q Okay.</p> <p>23 A Because that outside buyer is agreeing to the</p> <p>24 price because -- an outside buyer or outside seller is</p>
<p style="text-align: right;">Page 52</p> <p>1 not a client of WAM, so it can't take a simple order</p> <p>2 because it's not a client. It's not bound. WAM can't</p> <p>3 hold them to the order and vice-versa. So it's typical</p> <p>4 in buying or selling anything; there will be a purchase</p> <p>5 and sale agreement if it's a non-WAM client.</p> <p>6 Q Okay. One thing I forgot to ask you, in</p> <p>7 transactions involving WAM clients, after the six-month</p> <p>8 period has elapsed and the purchaser is seeking to</p> <p>9 dematerialize the stock, what documentation is required</p> <p>10 to effect that other than the original stock certificate?</p> <p>11 A The purchasers never look to dematerialize.</p> <p>12 That's an automatic function that happens. The firm</p> <p>13 always dematerializes anything that it can so it can send</p> <p>14 it in electronic form naturally. So I'm sorry, I cut off</p> <p>15 your question.</p> <p>16 Q Thank you for correcting that.</p> <p>17 But once WAM, after the six months, is seeking</p> <p>18 to dematerialize the stock, what documentation is</p> <p>19 required other than the original stock certificate?</p> <p>20 A The stock power.</p> <p>21 Q Power of attorney?</p> <p>22 A Yes. We call it a stock power, a stock power</p> <p>23 of attorney, but, yes, a stock power of attorney, which</p> <p>24 it has to provide to the transfer agent with a</p>	<p style="text-align: right;">Page 53</p> <p>1 certificate.</p> <p>2 Q So when it's being sought to dematerialize the</p> <p>3 stock, the stock power and the stock certificate go to</p> <p>4 the transfer agent in cases of WAM clients -- correct? --</p> <p>5 transactions between WAM clients?</p> <p>6 A Yes. Any time a certificate has to be</p> <p>7 dematerialized -- sometimes we have non-WAM clients that</p> <p>8 want to clear their certificates, and the firm will help</p> <p>9 do that for them with a transfer agent because dealing</p> <p>10 with a transfer agent, I guess, sometimes is complicated.</p> <p>11 It's always a certificate and the stock power --</p> <p>12 Q Okay.</p> <p>13 A -- that are provided.</p> <p>14 Q And the purchase and sale agreement only comes</p> <p>15 into play when it's non-WAM clients who are purchasing</p> <p>16 stock?</p> <p>17 A Correct.</p> <p>18 Q Changing gears a little bit, when was the first</p> <p>19 time you met Mr. Skarpelos?</p> <p>20 A Around 1993, '94.</p> <p>21 Q How did you come about meeting him?</p> <p>22 A A common friend of ours introduced us, and we</p> <p>23 met, and Tom was involved in generally the stock market</p> <p>24 business of things.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q Okay. Let me stop you right there.</p> <p>2 Mr. Skarpelos's first name is Athanasios;</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q But he goes by "Tom"; correct?</p> <p>6 A Correct.</p> <p>7 Q And so you indicated that you met Tom through a</p> <p>8 mutual friend?</p> <p>9 A Yes.</p> <p>10 Q Where were you located at the time?</p> <p>11 A In Calgary, Canada.</p> <p>12 Q And was Mr. Skarpelos in Calgary as well?</p> <p>13 A I can't remember if he was living there or not,</p> <p>14 but that's where we met.</p> <p>15 Q And did you engage in any business or assist</p> <p>16 Mr. Skarpelos in any business at the time you met him?</p> <p>17 A Well, shortly after I met him, Tom introduced</p> <p>18 me to this business, actually. He was the first one who</p> <p>19 brought me into this business.</p> <p>20 Q "This" being the broker-dealer business?</p> <p>21 A Just generally the stock market business,</p> <p>22 finding investors for companies, raising capital. It's</p> <p>23 not the brokerage business, I would say, but the business</p> <p>24 around the stock market. I don't know how to describe or</p>	<p style="text-align: right;">Page 55</p> <p>1 define that, but Tom was involved with public companies,</p> <p>2 he was raising money for public companies, so he</p> <p>3 introduced me to that business.</p> <p>4 Q Okay. And what time period was this?</p> <p>5 A When did this begin?</p> <p>6 Q Yes, sir.</p> <p>7 A Not long after we met. Around 1994.</p> <p>8 Q Okay. And did you assist Mr. Skarpelos in</p> <p>9 raising money?</p> <p>10 A Yes. Well, I assisted in the early days, was</p> <p>11 introducing him to investors. I happen to know investors</p> <p>12 as well. I was always meeting new investors and</p> <p>13 introducing him to investors that might be interested in</p> <p>14 investing in companies that he was involved with.</p> <p>15 Q And what types of companies at that time was</p> <p>16 Mr. Skarpelos involved with?</p> <p>17 A Mostly mining companies.</p> <p>18 Q Okay. Were you successful in helping</p> <p>19 Mr. Skarpelos to raise money?</p> <p>20 A Yes, I believe so.</p> <p>21 Q And this continued for a couple years; is that</p> <p>22 correct?</p> <p>23 A This went on for somewhere three to five years</p> <p>24 from that initial time.</p>
<p style="text-align: right;">Page 56</p> <p>1 Q And then what, at some point you no longer were</p> <p>2 engaged in that business or --</p> <p>3 A No. I just got busy with other projects, and</p> <p>4 we just didn't have a project we would be working on</p> <p>5 together per se to raise capital for.</p> <p>6 Q Okay. Did you still keep in touch with</p> <p>7 Mr. Skarpelos even after you were done assisting him with</p> <p>8 the mining companies?</p> <p>9 A I think from time to time. I mean, there was a</p> <p>10 period of some small years when maybe we hadn't spoken</p> <p>11 for two or three years or something, but for the most</p> <p>12 part, generally over the period from '94 to almost</p> <p>13 present, yes.</p> <p>14 Q And then at some point later you again</p> <p>15 reengaged with Mr. Skarpelos in raising funds; is that</p> <p>16 correct?</p> <p>17 A Correct.</p> <p>18 Q And what was the company that Mr. Skarpelos was</p> <p>19 asking you to help raise funds for?</p> <p>20 A Anavex.</p> <p>21 Q What did you understand Anavex to be?</p> <p>22 A A biotech research company.</p> <p>23 Q What year was this?</p> <p>24 A 2007.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q In 2007 who did you understand the officers and</p> <p>2 directors of Anavex to be?</p> <p>3 A In 2007 Harvey Lalach was the CEO and director.</p> <p>4 Actually, I can't remember if he was CEO. One gentleman,</p> <p>5 an officer, was Harvey Lalach. I can't remember who the</p> <p>6 CEO was or who other directors were at that time.</p> <p>7 Q Okay. And who initiated the conversation</p> <p>8 between you and Mr. Skarpelos about raising funds for</p> <p>9 Anavex?</p> <p>10 A It was actually a friend of Tom's who first</p> <p>11 told me about Anavex, that Tom was working on Anavex and</p> <p>12 can you help Tom raise some funds for Anavex. So he put</p> <p>13 us together, and Tom explained the company to me and</p> <p>14 asked me if I could help him raise funds.</p> <p>15 Q So what physically did you do to assist him?</p> <p>16 A Well, a few things. For starters, we helped</p> <p>17 raise capital directly into the company, into Anavex,</p> <p>18 and, also, Tom at that time had some stock, and we</p> <p>19 discussed him selling some stock to also raise capital.</p> <p>20 Q He had some stock in Anavex?</p> <p>21 A Correct.</p> <p>22 Q So in 2007 you assisted Mr. Skarpelos in</p> <p>23 selling Anavex stock?</p> <p>24 A '07 or '08, somewhere thereabouts.</p>

<p style="text-align: right;">Page 58</p> <p>1 Q Do you recall in '07 or '08 who the purchaser 2 of the Anavex stock was?</p> <p>3 MR. ANDERSON: Objection. Relevance.</p> <p>4 THE COURT: Mr. Nork, what's the relevancy?</p> <p>5 MR. NORK: It shows the beginning of their 6 business relationship in selling stock of Anavex, which 7 is the subject matter of this lawsuit.</p> <p>8 THE COURT: Mr. Anderson.</p> <p>9 MR. ANDERSON: Your Honor, he testified already 10 that he helped arrange to have Mr. Skarpelos sell some 11 stock. I don't know if it matters who the buyer is.</p> <p>12 THE COURT: Overruled. You can answer that 13 question. Go ahead.</p> <p>14 BY MR. NORK:</p> <p>15 Q Do you recall who the buyer was?</p> <p>16 A There was a couple of buyers. One was Amsbach, 17 which I recall from the documentation.</p> <p>18 MR. NORK: May I approach?</p> <p>19 THE COURT: Yes.</p> <p>20 BY MR. NORK:</p> <p>21 Q Mr. Livadas, I've handed you a binder, and that 22 is the binder of trial exhibits in this case, and I 23 wonder if you could turn, please, to Exhibit 5. 24 Do you have that in front of you?</p>	<p style="text-align: right;">Page 59</p> <p>1 A Yes.</p> <p>2 Q This document, there's a term we lawyers use 3 called a Bates stamp, which is a --</p> <p>4 A Can I get my glasses? They're in my left or 5 right outside pocket.</p> <p>6 THE COURT: You can go get them.</p> <p>7 MR. NORK: It might be faster. I can't find 8 them.</p> <p>9 BY MR. NORK:</p> <p>10 Q So as I mentioned, there's a term called a 11 Bates stamp which is an alphanumeric code that we lawyers 12 use to refer to page numbers, and you see there's a Bates 13 stamp on the lower right-hand corner of the first page 14 that says WEISER 000316?</p> <p>15 A Yes.</p> <p>16 Q And that indicates that this document came from 17 Weiser.</p> <p>18 A Okay.</p> <p>19 Q And is this a document you've seen prior to 20 today?</p> <p>21 A Is this a document --</p> <p>22 Q Is this a document you have seen prior to 23 today?</p> <p>24 A Yes.</p>
<p style="text-align: right;">Page 60</p> <p>1 Q And where was this document located when you 2 saw it?</p> <p>3 A Prior to today?</p> <p>4 Q Yes, sir.</p> <p>5 A The last time I saw it was at our depositions.</p> <p>6 Q I understand, but when you initially found it 7 to produce it in this case --</p> <p>8 A Oh, okay. I found it in my email records, if I 9 remember correctly.</p> <p>10 Q Okay. So this is in your personal email 11 records as an attachment?</p> <p>12 A Yes.</p> <p>13 MR. NORK: Move to admit Exhibit 5.</p> <p>14 MR. ANDERSON: Your Honor, again, I don't 15 believe it's relevant. He talked about the transaction. 16 I don't know why an agreement that was dated six years 17 before the events at issue has any relevance to the 18 transaction that we're taking about here in this case.</p> <p>19 THE COURT: Mr. Nork, now you've got me a 20 little bit confused. I thought he was just going to 21 answer the question of who the transaction was, but 22 what's the relevance of this document?</p> <p>23 MR. NORK: Well, this document, Your Honor, is 24 eerily similar to the stock sale agreement that was</p>	<p style="text-align: right;">Page 61</p> <p>1 ultimately entered into later in this case, so it shows, 2 again, a pattern of Mr. Skarpelos selling stock vis-a-vis 3 these stock purchase agreements using Mr. Livadas. I 4 mean --</p> <p>5 THE COURT: As we think about it, Mr. Anderson, 6 relevance simply means that the existence of a fact in 7 issue would be more or less likely with the item, so I 8 guess it's relevant.</p> <p>9 MR. ANDERSON: Your Honor, now he's saying it 10 shows a habit, so he's trying to introduce it as habit 11 evidence, and I don't think he's met the requirements for 12 that as well.</p> <p>13 THE COURT: Well, that's not the response. 14 It's relevant. I understand the relevance of it now. 15 There may be a number of other objections that can be 16 made to the document, but the Court finds that it is 17 relevant under 48.015.</p> <p>18 Now, do you have any other objections you want 19 to make, Mr. Anderson?</p> <p>20 MR. ANDERSON: Your Honor, if the Court finds 21 it relevant, I guess I would also add an authenticity or 22 foundation argument because it's not signed by the buyer. 23 It's got one signature on it.</p> <p>24 THE COURT: Mr. Nork, I don't think you've laid</p>

<p style="text-align: right;">Page 62</p> <p>1 really sufficient foundation in order to establish where 2 this document came from. So far all I've heard from 3 Mr. Livadas is that it was attached to some email 4 somewhere. 5 MR. NORK: It was -- it was in his email 6 folder. It was produced by Weiser in this case, so it's 7 the only place it came from. It did not come from 8 Mr. Skarpelos, it came from Mr. Livadas, and as he 9 testified, it was part of -- he was engaged with 10 Mr. Skarpelos in 2007 in selling Anavex stock to raise 11 money for Anavex, which you will find six years later to 12 be the same thing. It's relevant, Your Honor, because it 13 demonstrates that that's how these individuals conducted 14 business. 15 THE COURT: I'm not disagreeing with you. I've 16 overruled the relevance objection. I think it is 17 relevant. I think you need to lay some more foundation 18 about where it came from and exactly what it is, but 19 assuming it is what you're suggesting it is and that you 20 can lay the proper foundation from where it came, I'm 21 still not clear about that. 22 It is relevant. There's no question that it's 23 relevant as you've explained it, and based on my 24 familiarity with the case, I understand now why it is</p>	<p style="text-align: right;">Page 63</p> <p>1 relevant, but now we're talking about this specific 2 document and whether or not it's admissible. I think you 3 need to lay some more foundation. 4 MR. NORK: Okay. 5 BY MR. NORK: 6 Q Mr. Livadas, could you further explain to the 7 Court where you located this document, where physically 8 it was located? 9 A I located it in my email. And also, if I can 10 add some more, if we're trying to establish foundation, 11 I'm not sure what that means, but this transaction is 12 also filed with the Securities Commission as well. 13 Q I understand that, but let's talk about this 14 document. 15 Where was your email folder maintained? 16 A Oh, my email folder is maintained on the 17 internet. 18 Q Do you have a cloud-based -- 19 A Yeah. Yeah. 20 Q You have a cloud-based email account? 21 A Correct. 22 Q And are you able to search that email account? 23 A Yes. 24 Q And did you search that email account and find</p>
<p style="text-align: right;">Page 64</p> <p>1 this document? 2 A Correct. 3 Q And then you provided it to your counsel; 4 correct? 5 A Correct. 6 Q You printed it out and provided it to your 7 counsel? 8 A Correct. 9 MR. NORK: Your Honor, I don't know what 10 additional foundation I can lay other than the fact he 11 had possession of it and provided it to his counsel. 12 THE COURT: Mr. Anderson. 13 MR. ANDERSON: Your Honor, as I understand the 14 testimony, he located it in an email. The email is not 15 part of the exhibit even though it's attached to an email 16 apparently. The email is not offered into evidence, he 17 didn't testify who sent it to him, still hasn't 18 identified why the buyer hasn't signed it, but if it was 19 sent in an email from somebody else, then it's a hearsay 20 objection, too. 21 THE COURT: I'll allow you to lay some more 22 foundation, Mr. Nork, but Mr. Anderson's objection is, I 23 would suggest, well-founded and identifies certain things 24 that you haven't established. This is just in an email.</p>	<p style="text-align: right;">Page 65</p> <p>1 Who sent the email? How is he familiar with who sent the 2 email? When was the email sent? When did he receive it? 3 Was it contemporaneous with the date on this, which is 4 September 27th of 2007? Is Mr. Livadas -- and I 5 apologize if I mispronounce your name -- 6 THE WITNESS: Livadas. 7 THE COURT: Is Mr. Livadas familiar with the 8 signature on the last page? There's all kinds of things 9 you can do to lay some foundation, but all I know right 10 now is that this document was attached to some email that 11 I have no idea who the email was. It could have been 12 from me -- I'm just saying hypothetically -- or it could 13 have been from Mr. Skarpelos. I don't know. 14 MR. NORK: I understand your point. Thank you, 15 Your Honor. 16 THE COURT: Just here this is. So go ahead. 17 BY MR. NORK: 18 Q So turning to the second-to-last page of this 19 document, do you see the signature above the signature 20 line for Athanasios Skarpelos? 21 A Yes. 22 Q Do you recognize that signature? 23 A Yes. 24 Q Are you familiar with Mr. Skarpelos's</p>

<p style="text-align: right;">Page 66</p> <p>1 signature?</p> <p>2 A Yes.</p> <p>3 Q How are you familiar with Mr. Skarpelos's</p> <p>4 signature?</p> <p>5 A From other documents that I've seen him sign.</p> <p>6 Q Okay.</p> <p>7 A Various other transactions.</p> <p>8 Q And do you recall approximately when via email</p> <p>9 you received this document?</p> <p>10 A I recall receiving it not long after the dating</p> <p>11 of the document. I think it was in October of 2007.</p> <p>12 Q And do you recall who you received it from?</p> <p>13 A From Tom.</p> <p>14 Q Do you recall why it was you received it from</p> <p>15 Tom?</p> <p>16 A I received it because he was executing this</p> <p>17 document and because I had found potential buyers for</p> <p>18 this stock.</p> <p>19 Q Okay. So did you play any part in negotiating</p> <p>20 the sale that is evidenced in this document?</p> <p>21 A Yes.</p> <p>22 Q And were you the one who contacted the buyer,</p> <p>23 Amsbach?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 67</p> <p>1 Q And --</p> <p>2 THE COURT: That's A-m-s-b-a-c-h, Amsbach</p> <p>3 Overseas Incorporated, which is listed on Schedule A on</p> <p>4 page 319. Go ahead.</p> <p>5 BY MR. NORK:</p> <p>6 Q So you played a role in negotiating this sale;</p> <p>7 correct?</p> <p>8 A Yes.</p> <p>9 Q And then Mr. Skarpelos sent this document to</p> <p>10 you as part of the sale?</p> <p>11 A Correct.</p> <p>12 Q And do you recognize his signature at the</p> <p>13 bottom of the second-to-last page?</p> <p>14 A Yes.</p> <p>15 MR. NORK: I move to admit, Your Honor.</p> <p>16 THE COURT: Do you have any other questions,</p> <p>17 Mr. Anderson?</p> <p>18 MR. ANDERSON: Your Honor, I would just add</p> <p>19 that he's testifying to the contents of an email that</p> <p>20 attaches this, and that email is not in evidence.</p> <p>21 THE WITNESS: I can also --</p> <p>22 THE COURT: Don't talk.</p> <p>23 Mr. Nork.</p> <p>24 MR. NORK: It doesn't matter. It lays the</p>
<p style="text-align: right;">Page 68</p> <p>1 foundation for his ownership. It could have just been an</p> <p>2 email from Tom saying, what do you think about this? The</p> <p>3 fact of the matter is it came into the possession of</p> <p>4 Mr. Livadas as a result of his doing business with</p> <p>5 Mr. Skarpelos and he recognizes the signature.</p> <p>6 THE COURT: I just have one question of you</p> <p>7 before I rule on the objection.</p> <p>8 Did you -- and by "you" I mean your business --</p> <p>9 prepare this document, forward it to Mr. Skarpelos for</p> <p>10 his signature, and then he forwarded it back to you, or</p> <p>11 alternatively, is this something that he, himself,</p> <p>12 prepared and just sent to you? Put another way, where</p> <p>13 did the document itself come from before it was signed?</p> <p>14 THE WITNESS: I know that me or my business did</p> <p>15 not create this document, so I'm not sure who generated</p> <p>16 it, but I did not create the draft or was not involved in</p> <p>17 drafting it.</p> <p>18 THE COURT: Give me, then, some explanation as</p> <p>19 to how it came to be in your possession, some more</p> <p>20 detailed explanation about why Mr. Skarpelos just</p> <p>21 prepared this document and emailed it to you in its</p> <p>22 signed form.</p> <p>23 THE WITNESS: So what I recall, I recall</p> <p>24 discussing finding buyers for his shares. I told him I</p>	<p style="text-align: right;">Page 69</p> <p>1 needed a purchase and sale agreement. From there I don't</p> <p>2 know who drafted it. I know I didn't draft it because</p> <p>3 I'm not capable of drafting these things. And I told him</p> <p>4 I needed the executed purchase and sale agreement to</p> <p>5 finalize the transaction.</p> <p>6 THE COURT: And you've already testified that</p> <p>7 you are the person who found Amsbach Overseas</p> <p>8 Incorporated as the purchaser for the shares; correct?</p> <p>9 THE WITNESS: Correct.</p> <p>10 THE COURT: Well, under those circumstances,</p> <p>11 Mr. Anderson, I'm going to admit it over objection. The</p> <p>12 witness has testified he didn't even prepare it, that</p> <p>13 your client prepared it and forwarded it to him, so it's</p> <p>14 clearly a statement or an admission of a party opponent.</p> <p>15 You can cross-examine him on it. I don't know</p> <p>16 what weight I'll give it. I'll give it the appropriate</p> <p>17 weight at the time, but at this point the Court does find</p> <p>18 that it's relevant under NRS 48.015 and it's admissible.</p> <p>19 I think there's been enough foundation laid about where</p> <p>20 it came from.</p> <p>21 And I've never seen a case, Mr. Anderson, or a</p> <p>22 rule of evidence that supports the proposition that in</p> <p>23 order to admit this, you'd also need to see the email</p> <p>24 chain that it was associated with. Even if there's some</p>

<p style="text-align: right;">Page 70</p> <p>1 question about its authenticity, certainly you can argue</p> <p>2 that or you can raise it on cross-examination, but at</p> <p>3 this point I'll admit the exhibit, so Exhibit 5 is</p> <p>4 admitted over objection.</p> <p>5 MR. NORK: Thank you, Your Honor.</p> <p>6 (Exhibit 5 was admitted.)</p> <p>7 BY MR. NORK:</p> <p>8 Q So for Exhibit 5 you found a buyer for the</p> <p>9 stock; correct?</p> <p>10 A Correct.</p> <p>11 Q And to your knowledge what was the next step</p> <p>12 after you received this stock purchase agreement?</p> <p>13 A The next step was for Tom to then issue the</p> <p>14 shares in the name of the buyer, so to provide a stock</p> <p>15 certificate that would be issued in the name of the</p> <p>16 buyer.</p> <p>17 Q Okay. And on the first page of this document,</p> <p>18 stock was sold for approximately \$1.6 million US;</p> <p>19 correct?</p> <p>20 A Yes, sir.</p> <p>21 Q And, again, this was part of your ongoing</p> <p>22 relationship with Mr. Skarpelos in raising funds for</p> <p>23 Anavex?</p> <p>24 A Correct, yes. It was either raising funds for</p>	<p style="text-align: right;">Page 71</p> <p>1 Tom, who might be investing in Anavex or not, or -- we</p> <p>2 raised funds for Anavex directly for the company from</p> <p>3 investors and also by selling shares which might be</p> <p>4 reinvested into the company as well again.</p> <p>5 Q Okay. And in that case the money would go to</p> <p>6 Tom, and then he would be free to reinvest it into the</p> <p>7 company?</p> <p>8 A The funds would go wherever they would be</p> <p>9 directed to go, so at seller's direction.</p> <p>10 Q Okay. Would you turn, please, to Exhibit 6.</p> <p>11 Exhibit 6 is a two-page exhibit, again, with a</p> <p>12 Weiser Bates stamp in the lower right-hand corner;</p> <p>13 correct?</p> <p>14 A That's right. 314?</p> <p>15 Q Yes, sir.</p> <p>16 A This is the email that it was essentially</p> <p>17 attached to.</p> <p>18 THE COURT: Hold on a second.</p> <p>19 Mr. Nork, you just identified Exhibit 6 as a</p> <p>20 two-page exhibit. Mine is one page. The one I've got on</p> <p>21 the bench is a single page.</p> <p>22 MR. NORK: I'm sorry. There's a copying error</p> <p>23 on my part. It is a single page, Your Honor.</p> <p>24 THE COURT: I just wanted to make sure I wasn't</p>
<p style="text-align: right;">Page 72</p> <p>1 missing something. All it is is identified by Weiser</p> <p>2 Bates stamp 314. That's the whole exhibit?</p> <p>3 MR. NORK: Yes, Your Honor.</p> <p>4 THE COURT: Okay. That's what I have on the</p> <p>5 bench.</p> <p>6 BY MR. NORK:</p> <p>7 Q And it says under "Attachments," it says</p> <p>8 "Affiliate Stock Purchase Agreement September 27, 2007";</p> <p>9 correct?</p> <p>10 A Correct.</p> <p>11 Q And for Exhibit 5, what is the date of the</p> <p>12 Affiliate Stock Purchase Agreement?</p> <p>13 A The date of the email or the date --</p> <p>14 Q No, sir. Go back to Exhibit 5.</p> <p>15 A Oh. September 27th.</p> <p>16 Q Okay. So as you indicated, this email is the</p> <p>17 one that enclosed the stock purchase agreement that we</p> <p>18 talked about in Exhibit 5; correct?</p> <p>19 A It was part of this thread. I can't say if it</p> <p>20 was this email, but it was this email thread.</p> <p>21 Q Okay. And who is this email from?</p> <p>22 A This is from Tom Skarpelos.</p> <p>23 Q And who is it to?</p> <p>24 A To myself.</p>	<p style="text-align: right;">Page 73</p> <p>1 Q Okay. And how can you tell it's to you?</p> <p>2 A Because it has my -- I thought it had my email</p> <p>3 address. Yeah, there's me, my name.</p> <p>4 Q Okay. And you located this email how?</p> <p>5 A Searching through my emails, email box.</p> <p>6 Q And this is on the cloud-based email server we</p> <p>7 talked about before?</p> <p>8 A Right.</p> <p>9 Q So this is your document, you received it.</p> <p>10 What was the date that you received this email?</p> <p>11 A October 1st.</p> <p>12 Q Okay.</p> <p>13 A 2007.</p> <p>14 MR. NORK: Move to admit Exhibit 6.</p> <p>15 MR. ANDERSON: Relevance, Your Honor.</p> <p>16 Objection on that basis.</p> <p>17 THE COURT: Mr. Nork, a relevance objection.</p> <p>18 MR. NORK: I think we've already addressed</p> <p>19 relevance in the capacity of the Affiliate Stock Purchase</p> <p>20 Agreement. Again, it has to do with the way that these</p> <p>21 individuals did business with respect to raising money by</p> <p>22 selling Anavex stock.</p> <p>23 THE COURT: I think it is relevant because it</p> <p>24 provides the information that Mr. Anderson suggested was</p>

<p style="text-align: right;">Page 74</p> <p>1 missing regarding Exhibit 5, and so it's relevant. So</p> <p>2 based on the objection only being relevance, the Court</p> <p>3 will admit it.</p> <p>4 MR. NORK: Thank you, Your Honor.</p> <p>5 (Exhibit 6 was admitted.)</p> <p>6 BY MR. NORK:</p> <p>7 Q Now, this email from Tom to you, October 1,</p> <p>8 2007, it references the attachment of the Affiliate Stock</p> <p>9 Purchase Agreement; correct?</p> <p>10 A Correct.</p> <p>11 Q And then the note says, "Hi Bud, I sent the</p> <p>12 rest of papers to Harvey. I sing this tell the director</p> <p>13 to sing and cope one" -- I think he means "copy," but it</p> <p>14 says "cope" -- "for me, and tell me when you can send the</p> <p>15 money. It's very urgent. I have to pay lots of stuff</p> <p>16 ASAP. Otherwise I'm having problem [as read]."</p> <p>17 Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Does that refresh your recollection as to any</p> <p>20 conversations you had with Mr. Skarpelos in or about this</p> <p>21 time frame regarding his need for money?</p> <p>22 A Yes.</p> <p>23 Q What was that?</p> <p>24 A That he has a need for money, and we discussed</p>	<p style="text-align: right;">Page 75</p> <p>1 that the easiest way -- the fastest way to raise it would</p> <p>2 be if he sold some of his shares.</p> <p>3 Q Then there's a reference to bank information at</p> <p>4 the bottom of this Exhibit 6.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q And what is that for?</p> <p>8 A That is the account where he requested the</p> <p>9 funds be sent to.</p> <p>10 Q Okay. And was that being sent to his bank</p> <p>11 account?</p> <p>12 A I can't -- well, it says Casad, which is a</p> <p>13 corporation.</p> <p>14 Q So it wasn't being sent to his personal bank</p> <p>15 account?</p> <p>16 A Personal, no.</p> <p>17 Q It was being sent to a company called Casad?</p> <p>18 A Correct.</p> <p>19 Q And do you recall actually having the</p> <p>20 \$1.6 million actually sent to Casad?</p> <p>21 A It wouldn't have been me dealing with it. It</p> <p>22 would have been on the seller's side and the seller's</p> <p>23 bank -- I'm sorry -- the buyer's side. It would be the</p> <p>24 buyer's side bank dealing with that.</p>
<p style="text-align: right;">Page 76</p> <p>1 Q Did you provide this bank information to the</p> <p>2 buyer's side?</p> <p>3 A Yes.</p> <p>4 Q Do you as you sit here today have any</p> <p>5 recollection as to why Mr. Skarpelos urgently needed</p> <p>6 money in October 2007?</p> <p>7 A 2007 was the beginning of the financial crisis.</p> <p>8 I remember it clearly. It was -- a lot of us were having</p> <p>9 financial crises around that time. So things were not</p> <p>10 good in the market. There was a lot of volatility. Of</p> <p>11 course, a lot of bad news was starting to emerge. I</p> <p>12 think around that time, I think, was when Bear Stearns</p> <p>13 was starting to go under. So generally things were tough</p> <p>14 around this point.</p> <p>15 And the company, Anavex, had very, very little</p> <p>16 money. There was also a laboratory which is involved</p> <p>17 with Anavex that also does research for Anavex that also</p> <p>18 needed money. So things were tight and things were not</p> <p>19 so good in the marketplace, and there was a need for</p> <p>20 money.</p> <p>21 Q Okay. And you assisted Mr. Skarpelos in</p> <p>22 raising funds for the company?</p> <p>23 A Correct.</p> <p>24 Q Okay. Now, at some point after 2007</p>	<p style="text-align: right;">Page 77</p> <p>1 Mr. Skarpelos opened an account at WAM; correct?</p> <p>2 A Correct.</p> <p>3 Q And what is your recollection of the</p> <p>4 circumstances leading up to Mr. Skarpelos opening an</p> <p>5 account at WAM?</p> <p>6 A The circumstances? The particular</p> <p>7 circumstances, I suggested to him that it would be nice</p> <p>8 for him to open an account at WAM.</p> <p>9 Q And why is that?</p> <p>10 A Because I was introducing clients to WAM, and</p> <p>11 Tom and I had been friends for a long time, doing</p> <p>12 business together, so I thought it would be nice for him</p> <p>13 to have an account at WAM.</p> <p>14 Q And you made that suggestion to other clients</p> <p>15 of yours; correct?</p> <p>16 A Yes.</p> <p>17 Q And other friends of yours?</p> <p>18 A Yes.</p> <p>19 Q Okay. And so did you put Mr. Skarpelos in</p> <p>20 touch with WAM?</p> <p>21 A Correct.</p> <p>22 Q And how did you do that?</p> <p>23 A I think it was by email. I believe I made an</p> <p>24 email introduction or I exchanged contact details between</p>

<p style="text-align: right;">Page 78</p> <p>1 an officer of WAM and Skarpelos.</p> <p>2 Q And other than making the introduction, did you</p> <p>3 take any further steps to assist Mr. Skarpelos in opening</p> <p>4 his WAM account?</p> <p>5 A Directly, no.</p> <p>6 Q Okay. After you acquired WAM, did you have the</p> <p>7 opportunity to review the account-opening paperwork</p> <p>8 submitted by Mr. Skarpelos as part of opening an account</p> <p>9 at WAM?</p> <p>10 A Yes.</p> <p>11 Q Can you turn please --</p> <p>12 Actually, Your Honor, if I may, what time do</p> <p>13 you take your morning break?</p> <p>14 THE COURT: 15 minutes.</p> <p>15 BY MR. NORK:</p> <p>16 Q Can you turn, please, to Exhibit 2, which is a</p> <p>17 document already admitted into evidence.</p> <p>18 THE COURT: Exhibit 2 has been admitted by</p> <p>19 stipulation.</p> <p>20 BY MR. NORK:</p> <p>21 Q What is Exhibit 2, Mr. Livadas?</p> <p>22 A It's an account opening application form.</p> <p>23 Q And if you can turn, please, to the last page</p> <p>24 of Exhibit 2.</p>	<p style="text-align: right;">Page 79</p> <p>1 A Where it says "Review and submit this</p> <p>2 application"?</p> <p>3 Q Yes, sir.</p> <p>4 A Yes.</p> <p>5 Q You see Mr. Skarpelos's name is printed?</p> <p>6 A Yes.</p> <p>7 Q And do you recognize the signature?</p> <p>8 A Yes.</p> <p>9 Q Quick question. Do you recognize the signature</p> <p>10 under "Internal Weiser Asset Management Approval" --</p> <p>11 excuse me -- "Weiser Management Approval"?</p> <p>12 A Yes. It looks like the compliance officer's</p> <p>13 signature.</p> <p>14 Q And what's the compliance officer's name?</p> <p>15 A Oddie is the last name, Charlie or Charles</p> <p>16 Oddie.</p> <p>17 Q Okay. And you see below the signature of</p> <p>18 Weiser Asset Management -- excuse me -- Weiser Management</p> <p>19 Approval, there's an account number?</p> <p>20 A Yes.</p> <p>21 Q Is that the account number of Mr. Skarpelos's</p> <p>22 account or is that some other number?</p> <p>23 MR. ANDERSON: Objection. Calls for</p> <p>24 speculation.</p>
<p style="text-align: right;">Page 80</p> <p>1 THE COURT: Well, if he knows.</p> <p>2 BY MR. NORK:</p> <p>3 Q Do you know?</p> <p>4 A These --</p> <p>5 THE COURT: Just so you know, the objection is</p> <p>6 speculation. I don't want you to guess on what that</p> <p>7 number is. If you know what the number is --</p> <p>8 THE WITNESS: I know what these numbers are</p> <p>9 for. I can describe what these numbers are for.</p> <p>10 THE COURT: Overrule the objection. Go ahead.</p> <p>11 THE WITNESS: So new clients receive a client</p> <p>12 number, which is like a client account, and separately</p> <p>13 they receive actual holding account numbers, so this is a</p> <p>14 client account number.</p> <p>15 BY MR. NORK:</p> <p>16 Q This is a number that identifies the client?</p> <p>17 A The client, yes.</p> <p>18 Q This is not the number that identifies the</p> <p>19 client's account?</p> <p>20 A No.</p> <p>21 Q Okay. Then flipping to the first page of</p> <p>22 Exhibit 2, please.</p> <p>23 THE COURT: Before we move away from Exhibit 2,</p> <p>24 just so I'm clear, is the account officially opened on</p>	<p style="text-align: right;">Page 81</p> <p>1 May 31st of 2011, when Mr. Skarpelos signs this,</p> <p>2 presumably, and it's forwarded to you, or is it</p> <p>3 officially opened on October 13th of 2011 when Mr. -- is</p> <p>4 it Oddie? -- when Mr. Oddie signs it? Then is it open?</p> <p>5 I generally try not to jump in and ask questions.</p> <p>6 MR. NORK: No. Feel free.</p> <p>7 THE COURT: I just want to know when the</p> <p>8 account is officially -- when it's opened.</p> <p>9 THE WITNESS: The way we do it right now is</p> <p>10 it's opened --</p> <p>11 THE COURT: I don't care the way you do it</p> <p>12 right now. I want to know what happened then.</p> <p>13 THE WITNESS: I wasn't so involved back then.</p> <p>14 THE COURT: So you don't know the answer to</p> <p>15 that question?</p> <p>16 THE WITNESS: Not back then, no.</p> <p>17 THE COURT: Go ahead.</p> <p>18 BY MR. NORK:</p> <p>19 Q Turning to the first page of Exhibit 2, there</p> <p>20 are some check marks indicating that as part of opening</p> <p>21 the individual account there was a completed identity</p> <p>22 verification form and a copy of passport?</p> <p>23 Do you see that?</p> <p>24 A Yes.</p>

<p style="text-align: right;">Page 82</p> <p>1 Q And what's the purpose of providing that</p> <p>2 information?</p> <p>3 A It's required for regulatory purposes to obtain</p> <p>4 this information to meet the new client rules,</p> <p>5 requirements.</p> <p>6 Q Is this the Know Your Customer information that</p> <p>7 you referenced before?</p> <p>8 A Yes.</p> <p>9 Q The second page of Exhibit 2 indicates that</p> <p>10 this is being opened as an individual account; correct?</p> <p>11 A Correct.</p> <p>12 Q And that Mr. Skarpelos has no other accounts</p> <p>13 with WAM?</p> <p>14 A Correct.</p> <p>15 Q The third page, what is that?</p> <p>16 A 354?</p> <p>17 Q Yes, sir.</p> <p>18 A That's the information template with the</p> <p>19 client's first and last name, contact details and so</p> <p>20 forth.</p> <p>21 Q Okay. The next page is blank; correct?</p> <p>22 A Correct.</p> <p>23 Q The next page, 358, there's some check marks at</p> <p>24 the top indicating that Mr. Skarpelos is an officer,</p>	<p style="text-align: right;">Page 83</p> <p>1 director or 10 percent or more shareholder of Anavex Life</p> <p>2 Sciences; correct?</p> <p>3 THE COURT: That's actually not the next page.</p> <p>4 You skipped -- you went from 355, you skipped 356 and</p> <p>5 357.</p> <p>6 MR. NORK: I'm on 356.</p> <p>7 THE COURT: Gotcha, but then you said 358.</p> <p>8 That's why I'm a little bit confused.</p> <p>9 MR. NORK: That's my eyesight, Your Honor. I</p> <p>10 apologize.</p> <p>11 BY MR. NORK:</p> <p>12 Q 356, it indicates that Mr. Skarpelos is an</p> <p>13 officer, director or 10 percent shareholder of Anavex;</p> <p>14 correct?</p> <p>15 A Yes.</p> <p>16 Q The next page, 357, is generally an indication</p> <p>17 of how much Mr. Skarpelos intends to use the account;</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q What does that generally mean for WAM's</p> <p>21 purposes? How does that direct WAM's activities?</p> <p>22 A When they're describing how much in the</p> <p>23 portfolio their activity level?</p> <p>24 Q Yes, sir.</p>
<p style="text-align: right;">Page 84</p> <p>1 A This helps set the risk parameters for</p> <p>2 compliance and also the long-term portfolio asset</p> <p>3 management. So if there was an asset manager who helps</p> <p>4 manage the client's asset, they use this so they can</p> <p>5 model their portfolio and how they're going to manage the</p> <p>6 money for the client and how much risk to take or not to</p> <p>7 take.</p> <p>8 Q Okay. The next page, this one is actually 358.</p> <p>9 It has some additional information about Mr. Skarpelos's</p> <p>10 financial experience; correct?</p> <p>11 A Yes.</p> <p>12 Q The next page is 359. Do you have that?</p> <p>13 A Yes.</p> <p>14 Q So the top section, section 4, says, "Please</p> <p>15 tell us how you are funding this account. Check all that</p> <p>16 apply." And what boxes are checked?</p> <p>17 A It says, "Funds from another account" and</p> <p>18 "Other," which is funded with a certificate of AVXL.</p> <p>19 Q What does it mean to fund an account at WAM</p> <p>20 with a stock certificate?</p> <p>21 A That means you're putting your shares on</p> <p>22 account.</p> <p>23 Q What is the point of putting shares on account?</p> <p>24 A That means the firm then has custody of the</p>	<p style="text-align: right;">Page 85</p> <p>1 shares, and the point of that is that you can transact in</p> <p>2 the security if it's free traded as far as the public</p> <p>3 market side goes. That's the top level point.</p> <p>4 Q Okay. Does it establish a level of equity in</p> <p>5 the account?</p> <p>6 A Yes. Yes, of course, it sets the equity of the</p> <p>7 account.</p> <p>8 Q And what does that mean?</p> <p>9 A Well, the equity account, it means the value of</p> <p>10 the account should the account need to be liquidated.</p> <p>11 Q And under what circumstances would the account</p> <p>12 need to be liquidated?</p> <p>13 A Oh, if the account owed the firm money and if</p> <p>14 the firm called for payment of that balance.</p> <p>15 Q That stock would be on deposit to satisfy that?</p> <p>16 A Correct. Yes. Yes.</p> <p>17 Q The next section is section 5, "Tell us how you</p> <p>18 want to work with us."</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And under the heading "Borrowing Money to Buy</p> <p>22 Securities (buying on margin, please read carefully)," it</p> <p>23 states the following: "You will have a cash account</p> <p>24 unless you choose to have a margin loan account</p>

<p style="text-align: right;">Page 86</p> <p>1 customarily known as a margin account. To help you</p> <p>2 decide whether a margin loan account is right for you,</p> <p>3 please read this information in the Margin Loan</p> <p>4 Agreement."</p> <p>5 And then it says, "In a cash account you pay</p> <p>6 for your securities in full at the time of purchase. In</p> <p>7 a margin loan account, we may lend you a portion of the</p> <p>8 purchase price. This is called buying securities on</p> <p>9 margin." And then there's an example of that situation,</p> <p>10 and at the bottom the box is checked "No, I do not want</p> <p>11 the ability to borrow funds in my account, which means I</p> <p>12 will have a cash account."</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q What does having a cash account entitle the</p> <p>16 account holder to do?</p> <p>17 A To withdraw cash from their account.</p> <p>18 Q And --</p> <p>19 A I didn't understand the question exactly as far</p> <p>20 as "entitle."</p> <p>21 Q Well, first of all, explain to me the</p> <p>22 distinction between a margin account and cash account.</p> <p>23 A Okay. So a margin account allows the client to</p> <p>24 borrow cash to buy more securities, and that has specific</p>	<p style="text-align: right;">Page 87</p> <p>1 parameters depending on the value and the type of</p> <p>2 security that's on an account. So if it's a marginable</p> <p>3 stock, marginable stocks, by regulatory regulations,</p> <p>4 firms can give 25 to 75 percent margin or lend against</p> <p>5 that under certain parameters on stocks that have margin.</p> <p>6 Q For the account held by Mr. Skarpelos, did he</p> <p>7 ever acquire stock on margin?</p> <p>8 A No.</p> <p>9 Q Okay. Then you were explaining what a cash</p> <p>10 account is.</p> <p>11 A Right.</p> <p>12 Q What can an account holder do if he has a cash</p> <p>13 account with WAM?</p> <p>14 A Well, he can only buy stocks if he has cash on</p> <p>15 account, and of course he can deposit and withdraw cash</p> <p>16 from the accounts.</p> <p>17 Q And how does an account holder with a cash</p> <p>18 account withdraw cash?</p> <p>19 A He puts the request in to transfer funds.</p> <p>20 Q And does WAM then sell the stock that's on</p> <p>21 deposit to cover that?</p> <p>22 A No, not necessarily. And it wouldn't do it</p> <p>23 without an instruction from the client.</p> <p>24 Q So what happens to the client's balance if he</p>
<p style="text-align: right;">Page 88</p> <p>1 asks for money to be withdrawn in a cash account that is</p> <p>2 secured -- not secured -- but that was funded by a</p> <p>3 certificate?</p> <p>4 A It goes into an overdrawn balance.</p> <p>5 Q So it goes into a negative balance?</p> <p>6 A Correct.</p> <p>7 Q And to your understanding did that happen in</p> <p>8 this case?</p> <p>9 A Yes.</p> <p>10 Q That money was withdrawn and the balance went</p> <p>11 into negative?</p> <p>12 A Correct.</p> <p>13 Q Turn, please, to Exhibit 8.</p> <p>14 THE COURT: This has not been admitted; is that</p> <p>15 correct?</p> <p>16 MR. NORK: This has been admitted, Your Honor.</p> <p>17 THE COURT: It has? Oh, I'm looking at the</p> <p>18 earlier list. I apologize. 8 is admitted.</p> <p>19 BY MR. NORK:</p> <p>20 Q What is Exhibit 8, Mr. Livadas?</p> <p>21 A It's the Know Your Client forms that are filled</p> <p>22 out. The firm completes its compliance review so it</p> <p>23 knows the client better.</p> <p>24 Q So this is the section that was referred to in</p>	<p style="text-align: right;">Page 89</p> <p>1 Exhibit 2 -- right -- the Know Your Customer information?</p> <p>2 A Yes.</p> <p>3 Q And this is the actual Know Your Customer</p> <p>4 information that was provided; correct?</p> <p>5 A Correct.</p> <p>6 Q So the first page is just a description of the</p> <p>7 account holder; correct?</p> <p>8 A Yes.</p> <p>9 Q The second page contains a signature.</p> <p>10 Do you recognize that signature?</p> <p>11 A Yes.</p> <p>12 Q Whose is it?</p> <p>13 A It looks like Tom's.</p> <p>14 Q What is the third page?</p> <p>15 A Tom's passport.</p> <p>16 Q And there's a certification at the lower</p> <p>17 left-hand corner.</p> <p>18 What is that certification?</p> <p>19 A That certification is that the client presented</p> <p>20 an original copy of their passport, so it's a</p> <p>21 certification that this is a copy of an original.</p> <p>22 Q Okay. And why is it signed and stamped by --</p> <p>23 why is it signed by Equity Trust Bahamas?</p> <p>24 A Because Tom went there to have them certify the</p>

<p style="text-align: right;">Page 90</p> <p>1 original.</p> <p>2 Q What is the next page, 365?</p> <p>3 A This looks like a utility bill.</p> <p>4 Q Okay. And is that common in providing Know</p> <p>5 Your Customer information?</p> <p>6 A Yes. Because we're required to have proof of</p> <p>7 residency, which is usually a utility bill or bank</p> <p>8 statement.</p> <p>9 Q And the next page is a terrible copy, but can</p> <p>10 you tell what that is?</p> <p>11 A It's a reference letter from a bank.</p> <p>12 Q And is that typically required under Know Your</p> <p>13 Customer requirements?</p> <p>14 A Yes.</p> <p>15 THE COURT: Mr. Livadas, if I can ask you a</p> <p>16 question about the utility bill.</p> <p>17 THE WITNESS: Yes.</p> <p>18 THE COURT: I don't mean to be presumptuous,</p> <p>19 but I assume that you read Greek?</p> <p>20 THE WITNESS: Decently.</p> <p>21 THE COURT: I mean, I look at that and I can't</p> <p>22 read it at all, so I was just kind of curious</p> <p>23 miscellaneous how you figured out that was a utility</p> <p>24 bill.</p>	<p style="text-align: right;">Page 91</p> <p>1 THE WITNESS: Yeah. It has the utility</p> <p>2 company's logo on it.</p> <p>3 THE COURT: Okay. As I looked at it, I didn't</p> <p>4 know how you got there, so as they say, it all looks</p> <p>5 Greek to me. There's an old saying. No offense</p> <p>6 intended, sir. I didn't understand anything there.</p> <p>7 Why don't we at this point -- I think you've</p> <p>8 gone through Exhibit 8; is that correct?</p> <p>9 MR. NORK: Except the last page, Your Honor.</p> <p>10 BY MR. NORK:</p> <p>11 Q 367, what is page 367?</p> <p>12 A Yes.</p> <p>13 Q What is it?</p> <p>14 A A copy of the bank statement.</p> <p>15 Q Is that also required under the Know Your</p> <p>16 Customer requirements?</p> <p>17 A No, not required because we'll take either a</p> <p>18 utility bill or a bank statement or a phone bill. So it</p> <p>19 just adds to the Know Your Client. You have options with</p> <p>20 how many you can submit.</p> <p>21 MR. NORK: Thank you.</p> <p>22 Now is a good time, Your Honor.</p> <p>23 THE COURT: Thank you. We will take a</p> <p>24 15-minute recess.</p>
<p style="text-align: right;">Page 92</p> <p>1 (A recess was taken.)</p> <p>2 THE COURT: We're back on the record in</p> <p>3 CV15-02259.</p> <p>4 From this point forward I think I'm going to</p> <p>5 call it Skarpelos vs. Weiser. It's a little bit easier</p> <p>6 and makes a little more sense in my mind.</p> <p>7 And so, everybody, we are back on the record.</p> <p>8 Everybody is present. Mr. Livadas is still on the</p> <p>9 witness stand, and we had just concluded discussing</p> <p>10 Exhibit No. 8.</p> <p>11 Go ahead, Mr. Nork.</p> <p>12 MR. NORK: Thank you, Your Honor.</p> <p>13 BY MR. NORK:</p> <p>14 Q One thing, as we were wrapping up before the</p> <p>15 break, you mentioned that it's possible for a cash</p> <p>16 account at WAM to go into debit; correct?</p> <p>17 A Correct.</p> <p>18 Q And is that a common occurrence?</p> <p>19 A Fairly common. The client might transfer or</p> <p>20 withdraw cash and take it as a loan. It's kind of</p> <p>21 like -- we call it an overdraw position, not a margin</p> <p>22 position.</p> <p>23 Q Okay.</p> <p>24 A So it happens.</p>	<p style="text-align: right;">Page 93</p> <p>1 Q And it happens, but at least in this case WAM</p> <p>2 had the Anavex stock certificate on deposit?</p> <p>3 A Correct.</p> <p>4 Q So a debit position is different than a</p> <p>5 negative equity position; correct?</p> <p>6 A Yes. Negative equity means there isn't enough</p> <p>7 equity to cover the borrowings. So even if all of the</p> <p>8 shares were sold, there wouldn't be enough to cover the</p> <p>9 debit.</p> <p>10 Q And is that commonplace, to go into the</p> <p>11 negative equity position?</p> <p>12 A Very rarely, because the firm will try to</p> <p>13 manage the risk of the account and sell the securities</p> <p>14 before it goes negative equity, long before negative</p> <p>15 equity.</p> <p>16 Q Okay. So as long as there's enough value on</p> <p>17 deposit in the account to cover the debit, that is not as</p> <p>18 much of a concern to WAM?</p> <p>19 A Correct. Margin can go 25 to 75 percent</p> <p>20 negative, let's call it. On cash accounts it's small,</p> <p>21 5 percent, 10 percent the firm will typically give to</p> <p>22 allow negative, but 5 to 10 percent versus 75 percent for</p> <p>23 margin.</p> <p>24 Q Okay.</p>

<p style="text-align: right;">Page 94</p> <p>1 THE COURT: Mr. Nork, maybe you can cover this</p> <p>2 with Mr. Livadas. If the value in the account is the</p> <p>3 amount of the security and the security value fluctuates,</p> <p>4 I'm not quite sure how we know exactly what the value of</p> <p>5 the account is. It might be approximate, but I don't</p> <p>6 know if that's important to the analysis or not.</p> <p>7 MR. NORK: That's a good question, Your Honor.</p> <p>8 BY MR. NORK:</p> <p>9 Q The example the Court just gave, is that why</p> <p>10 the cash account is only allowed to go to 5 to</p> <p>11 10 percent?</p> <p>12 A It's allowed to go to 5 to 10 percent because</p> <p>13 typically the securities are not marginable, as we call</p> <p>14 them. What happens with marginable securities is the</p> <p>15 exchange or the prime banks will actually lend liquidity</p> <p>16 to the firm against it. If it's a cash account or a cash</p> <p>17 nonmarginable security, that means it's the firm itself</p> <p>18 taking the risk on lending the capital --</p> <p>19 Q Okay.</p> <p>20 A -- or allowing it to be in the negative</p> <p>21 position on it.</p> <p>22 And the values -- to answer your question, the</p> <p>23 values are monitored almost now hourly. As the account</p> <p>24 value moves, that's how much your credit margin moves</p>	<p style="text-align: right;">Page 95</p> <p>1 with it in real time.</p> <p>2 THE COURT: So I think the analysis or the</p> <p>3 example that you gave earlier this morning, we were</p> <p>4 talking about -- everyone wants to use Apple stock</p> <p>5 because we presume Apple stock is a solid stock. The</p> <p>6 value of the shares of Apple stock that one owns</p> <p>7 fluctuates constantly based on what the value of the</p> <p>8 stock is at any given moment?</p> <p>9 THE WITNESS: Correct.</p> <p>10 THE COURT: But that fluctuation is very minor,</p> <p>11 I would assume, assuming that something awful doesn't</p> <p>12 happen like iPhones all of a sudden around the world</p> <p>13 catch fire and now the value of Apple stock goes</p> <p>14 plummeting. So then the value of that person's account,</p> <p>15 based only on those stocks, might crater?</p> <p>16 THE WITNESS: Correct.</p> <p>17 THE COURT: "Crater" is a nontechnical term,</p> <p>18 but --</p> <p>19 THE WITNESS: It's happened. They crater.</p> <p>20 THE COURT: -- they crater.</p> <p>21 So the value of someone's account does have a</p> <p>22 small amount of variance in it just based on at any given</p> <p>23 point in time what the value of the stock is?</p> <p>24 THE WITNESS: Correct.</p>
<p style="text-align: right;">Page 96</p> <p>1 THE COURT: You have a general understanding of</p> <p>2 what the stock is over time by just looking at any --</p> <p>3 THE WITNESS: Yeah. But the brokerage system</p> <p>4 will look at it in real time. So let's say this morning</p> <p>5 at 10 o'clock, if it's worth \$10,000, it knows that the</p> <p>6 client has \$5,000 it can borrow against Apple, but if the</p> <p>7 value drops to \$9,000 even one minute later, then the</p> <p>8 amount of credit available to the client drops in that</p> <p>9 same ratio, whatever that number would be.</p> <p>10 THE COURT: I think I understand. Thank you.</p> <p>11 MR. NORK: Thank you, Your Honor.</p> <p>12 BY MR. NORK:</p> <p>13 Q I want to change gears a little bit.</p> <p>14 Do you know a person by the name of Lambros</p> <p>15 Pedafronimos?</p> <p>16 A Yes.</p> <p>17 Q And I'm going to refer to him as Lambros just</p> <p>18 for ease of pronunciation.</p> <p>19 Who is Lambros?</p> <p>20 A Lambros is Tom's nephew.</p> <p>21 Q How do you know Lambros?</p> <p>22 A I met Lambros through Tom, and of course I've</p> <p>23 known Lambros for many years in my circle of friends and</p> <p>24 associates.</p>	<p style="text-align: right;">Page 97</p> <p>1 Q How long have you known Lambros?</p> <p>2 A I probably met Lambros sometime around 1996,</p> <p>3 '97, '95.</p> <p>4 Q To your knowledge did Lambros ever open an</p> <p>5 account with WAM?</p> <p>6 A No.</p> <p>7 Q Has Lambros ever personally been a client of</p> <p>8 Weiser Capital?</p> <p>9 A No.</p> <p>10 Q Have you done any business dealings with</p> <p>11 Lambros individually?</p> <p>12 A Only on business related to Tom.</p> <p>13 Q And that's why I specified my question whether</p> <p>14 you did business with Lambros without the involvement of</p> <p>15 Tom. Did you ever do that?</p> <p>16 A No.</p> <p>17 Q Did you ever conduct business with Tom through</p> <p>18 Lambros?</p> <p>19 A Most of the time.</p> <p>20 Q What do you mean by "most of the time"?</p> <p>21 A Most of the time. I would say at least more</p> <p>22 than half the time, when we were arranging -- almost</p> <p>23 arranging anything, transactions, contracts, and even</p> <p>24 business that might be involved around the public</p>

<p style="text-align: right;">Page 98</p> <p>1 company, let's say, a lot of it was coordinated by 2 Lambros. 3 Q And -- 4 A And Lambros would coordinate between Tom and I. 5 Q Okay. And your communications with Lambros, 6 was that via email? 7 A Yes. 8 Q Was it via telephone? 9 A Yes. 10 Q Was it in person? 11 A Yes. 12 Q Did you ever come to understand why many of 13 your business dealings with Tom went through Lambros? 14 A Why? 15 Q Yes, sir. 16 A Well, a few reasons. Lambros was just more 17 organized at getting things done than Tom. He's kind of 18 like Tom's assistant, essentially, and Lambros, being 19 younger, was more quicker or savvy at communicating in 20 various forms. 21 Q Whether it's a text or an email or something 22 like that? 23 A Yes. 24 Q He was faster with the phone than Tom was?</p>	<p style="text-align: right;">Page 99</p> <p>1 A Right. 2 Q And we've already discussed Tom's desire to 3 sell stock back in 2007. 4 Do you know if any of those communications went 5 through Lambros? 6 A I don't remember if any of them were or not at 7 that time. 8 Q Okay. Did there ever come a time where almost 9 all your communications regarding Tom's business was 10 through Lambros? 11 A Oh, for all? Yes, that would be after Tom 12 became ill. 13 Q Okay. And do you recall what time frame it was 14 that Mr. Skarpelos got sick? 15 A I remember it was springtime. I can't 16 remember, without looking, what year that was now. I 17 forget. 18 Q Springtime of some year? 19 A Yes. 20 Q While he was sick, you primarily communicated 21 through Lambros to get to Tom? 22 A Correct. 23 Q Can you turn, please, to Exhibit 9? 24 You see Exhibit 9 has the Weiser Bates stamp in</p>
<p style="text-align: right;">Page 100</p> <p>1 the lower right-hand corner? 2 A Yes. 3 Q And you see Exhibit 9 has the stamp of Equity 4 Trust Bahamas Ltd.? 5 A Correct. 6 Q When did you first see this document? 7 A When I was looking through the files to find 8 the documentation for this case. 9 Q Okay. Is this Exhibit 9 part of the account 10 opening documentation for Mr. Skarpelos's account? 11 A It was in that file with the account -- with 12 the Skarpelos account opening documentation. It was in 13 that package together. 14 MR. NORK: Move to admit Exhibit 9. 15 THE COURT: Mr. Anderson. 16 MR. ANDERSON: Your Honor, I guess based on 17 his -- based on his testimony that it was within the WAM 18 records, I don't have any objection at this time. 19 THE COURT: Exhibit 9 will be admitted. 20 (Exhibit 9 was admitted.) 21 BY MR. NORK: 22 Q Now, this appears to be Know Your Customer 23 information that is a copy of Mr. Lambros's passport; 24 correct?</p>	<p style="text-align: right;">Page 101</p> <p>1 A Correct. 2 Q And if you were to turn to Exhibit 8, page 364, 3 it's very similar to the documentation that Mr. Skarpelos 4 provided; correct? 5 A Correct. 6 Q Which is a copy of the passport and then the 7 stamp of Equity Trust Bahamas at the bottom? 8 A Correct. 9 Q And in fact, it's dated the same, both Equity 10 Trust Bahamas stamps are the same, May 31, 2011; correct? 11 A Correct. 12 Q What is your understanding as to why Lambros 13 provided Know Your Customer information for 14 Mr. Skarpelos's account? 15 MR. ANDERSON: Your Honor, I'm going to object. 16 It calls for speculation. I think he said he wasn't 17 involved in the process. 18 THE COURT: I think that's -- it would either 19 be speculative or it would be hearsay unless you can lay 20 some additional foundation, Mr. Nork. I'll sustain the 21 objection and allow you to ask additional questions. 22 MR. NORK: Thank you, Your Honor. 23 BY MR. NORK: 24 Q Subsequent to the account opening, did Lambros</p>

<p style="text-align: right;">Page 102</p> <p>1 make requests of you regarding Mr. Skarpelos's account?</p> <p>2 MR. ANDERSON: Objection. Hearsay.</p> <p>3 MR. NORK: That wouldn't be hearsay.</p> <p>4 THE COURT: He can answer that question. He</p> <p>5 didn't ask what the requests were. He just asked, did he</p> <p>6 make requests, so I'll overrule the objection.</p> <p>7 THE WITNESS: Yes.</p> <p>8 BY MR. NORK:</p> <p>9 Q And what kind of requests was Lambros making of</p> <p>10 you regarding Tom's account?</p> <p>11 MR. ANDERSON: Same objection.</p> <p>12 THE COURT: Now I'll sustain the objection.</p> <p>13 You're asking him a hearsay -- the response would be</p> <p>14 hearsay.</p> <p>15 MR. NORK: Well --</p> <p>16 THE COURT: Unless -- well, go ahead.</p> <p>17 MR. NORK: Let me rephrase it, then.</p> <p>18 BY MR. NORK:</p> <p>19 Q Lambros communicated with you regarding Tom's</p> <p>20 account; correct?</p> <p>21 A Yes.</p> <p>22 Q If a third party is communicating with WAM</p> <p>23 regarding a WAM account, does WAM require Know Your</p> <p>24 Customer information of that third party?</p>	<p style="text-align: right;">Page 103</p> <p>1 A Yes.</p> <p>2 MR. ANDERSON: Objection. Vague as to time.</p> <p>3 THE COURT: I'll overrule the objection,</p> <p>4 Mr. Anderson. I think I understand the nature of the</p> <p>5 questioning. It's not vague.</p> <p>6 BY MR. NORK:</p> <p>7 Q Go ahead.</p> <p>8 THE COURT: So an average person can't call in</p> <p>9 and say, "I would like to talk to you about</p> <p>10 Mr. Skarpelos's account"?</p> <p>11 THE WITNESS: Correct.</p> <p>12 THE COURT: But can Mr. Skarpelos identify</p> <p>13 people that you are allowed to talk to about his account?</p> <p>14 THE WITNESS: Correct.</p> <p>15 THE COURT: Go ahead, Mr. Nork.</p> <p>16 BY MR. NORK:</p> <p>17 Q Is this what Exhibit 9 was provided for, to</p> <p>18 allow communications between Lambros and WAM?</p> <p>19 MR. ANDERSON: Objection. Calls for</p> <p>20 speculation. He testified he wasn't involved.</p> <p>21 MR. NORK: Well, he's --</p> <p>22 THE COURT: I'll sustain the objection.</p> <p>23 MR. NORK: Okay.</p> <p>24 THE COURT: I'm going to sustain the objection</p>
<p style="text-align: right;">Page 104</p> <p>1 because he wasn't involved in the preparation of this so</p> <p>2 he couldn't testify why it occurred, I don't think.</p> <p>3 MR. NORK: Okay. That's fine, Your Honor. I</p> <p>4 will ask it a different way.</p> <p>5 BY MR. NORK:</p> <p>6 Q You've indicated already that third parties</p> <p>7 provide Know Your Customer information to WAM so they can</p> <p>8 communicate with WAM about a WAM client's account;</p> <p>9 correct?</p> <p>10 A Correct.</p> <p>11 Q Okay. That's good enough for me.</p> <p>12 Can you turn, please, to Exhibit 1, which is</p> <p>13 already admitted.</p> <p>14 What is Exhibit 1?</p> <p>15 A Anavex stock certificate.</p> <p>16 Q What number?</p> <p>17 A 0753.</p> <p>18 Q And how many shares of stock are represented by</p> <p>19 this stock certificate number?</p> <p>20 A 6,633,332.</p> <p>21 Q Can you tell on the face of this stock</p> <p>22 certificate whether or not it is restricted?</p> <p>23 A Yes. In the upper left-hand corner, the legend</p> <p>24 says, "The shares represented by this certificate have</p>	<p style="text-align: right;">Page 105</p> <p>1 not been registered."</p> <p>2 Q Okay. So is this the kind of stock certificate</p> <p>3 that is restricted, where you have to wait six months</p> <p>4 before it can be dematerialized?</p> <p>5 A Correct.</p> <p>6 Q Is this the stock certificate or is this one of</p> <p>7 the stock certificates that Mr. Skarpelos deposited to</p> <p>8 open his WAM account?</p> <p>9 A Correct.</p> <p>10 Q Can you turn, please, to Exhibit 4, which has</p> <p>11 already been admitted.</p> <p>12 What is Exhibit 4?</p> <p>13 A Anavex stock certificate number 0660 for</p> <p>14 92,500.</p> <p>15 Q The 92,500 is the number of shares of stock;</p> <p>16 correct?</p> <p>17 A Correct.</p> <p>18 Q And this is stock certificate number 660;</p> <p>19 correct?</p> <p>20 A Correct.</p> <p>21 Q And is this one restricted as well?</p> <p>22 A Yes.</p> <p>23 Q Okay. Is this another stock certificate that</p> <p>24 was deposited by Mr. Skarpelos to open his WAM account?</p>

<p style="text-align: right;">Page 106</p> <p>1 A Yes.</p> <p>2 Q Now, are you aware that one of the issues in</p> <p>3 this case is whether or not a WAM account was ever in</p> <p>4 fact opened for Mr. Skarpelos?</p> <p>5 A Yes. I recently became aware of that.</p> <p>6 Q Okay. Can you turn, please, to Exhibit 12.</p> <p>7 Do you see this is a Weiser document as</p> <p>8 indicated in the lower right-hand corner?</p> <p>9 A Number 345?</p> <p>10 Q Yes.</p> <p>11 A Yes.</p> <p>12 Q This is an email to you from Lambros; correct?</p> <p>13 A Correct.</p> <p>14 Q What is the date of the email?</p> <p>15 A December 21, 2012.</p> <p>16 Q And how did you locate this email?</p> <p>17 A Searching my email box.</p> <p>18 Q Okay.</p> <p>19 MR. NORK: Move to admit Exhibit 12.</p> <p>20 MR. ANDERSON: Your Honor, I'd object on the</p> <p>21 grounds of foundation and hearsay with respect --</p> <p>22 THE COURT: Sustained on the hearsay. Go</p> <p>23 ahead.</p> <p>24 MR. NORK: Well --</p>	<p style="text-align: right;">Page 107</p> <p>1 THE COURT: Unless you can explain to me how</p> <p>2 it's not hearsay. We could get to the foundation issues</p> <p>3 momentarily, but on its face it's hearsay because I just</p> <p>4 glanced at it and it's an email from Lambros</p> <p>5 Pedafronimos, it's not an email from Mr. Skarpelos, so</p> <p>6 it's not an admission of a party opponent.</p> <p>7 MR. ANDERSON: Your Honor, I also meant to add</p> <p>8 a relevancy objection. I apologize.</p> <p>9 THE COURT: I'm not even focused on the</p> <p>10 relevance. It's just hearsay.</p> <p>11 MR. NORK: Your Honor, I can ask him questions</p> <p>12 about what, if anything, he did in response to this email</p> <p>13 and not rely upon the truth of the matter asserted in the</p> <p>14 email.</p> <p>15 THE COURT: You can do that, but then that's</p> <p>16 not admissible.</p> <p>17 MR. NORK: Well, it's admissible in that he</p> <p>18 received an email from Lambros on December 21, 2012. I</p> <p>19 mean regardless of the content, we talked about his</p> <p>20 testimony where --</p> <p>21 THE COURT: Hold on, Mr. Nork.</p> <p>22 It's true that you can ask him questions about</p> <p>23 what he did as a result of receiving this email.</p> <p>24 However, that doesn't mean that the email itself becomes</p>
<p style="text-align: right;">Page 108</p> <p>1 admissible and it's not hearsay.</p> <p>2 I think that people frequently rely on the</p> <p>3 response to a hearsay objection, it's not offered for the</p> <p>4 truth of the matter asserted, it's offered for the effect</p> <p>5 upon the listener, and I agree then it's not hearsay, but</p> <p>6 then the finder of fact doesn't need to know what the</p> <p>7 statement really is. Did you receive a statement from</p> <p>8 Mr. Pedafronimos on December 21st of 2012? Yes, I did.</p> <p>9 As a result of that statement, what did you do? You can</p> <p>10 do that.</p> <p>11 MR. NORK: And I will do that, Your Honor.</p> <p>12 THE COURT: Go ahead. I'm going to sustain the</p> <p>13 objection. I think that the statement -- excuse me --</p> <p>14 Exhibit 12, the email, is hearsay, and so I'll sustain</p> <p>15 the objection, but you can ask him what he did as a</p> <p>16 result of receiving this, and certainly the witness can</p> <p>17 look at this and say, I remember getting this and then I</p> <p>18 did X.</p> <p>19 MR. NORK: Fair enough, Your Honor. I will ask</p> <p>20 that question. Thank you.</p> <p>21 BY MR. NORK:</p> <p>22 Q So Exhibit 12, you recall receiving this email?</p> <p>23 A Yes.</p> <p>24 Q And what did you do in response to receiving</p>	<p style="text-align: right;">Page 109</p> <p>1 this email?</p> <p>2 A This email ties to another email, and I'm not</p> <p>3 sure which -- which request it is.</p> <p>4 Q Well, we'll get to that, but I want to focus</p> <p>5 first on what did you do in response to receiving this</p> <p>6 email?</p> <p>7 A So following this email I contacted the firm --</p> <p>8 Q Which firm?</p> <p>9 A That would have been WAM.</p> <p>10 -- to then contact Vermont to check the</p> <p>11 beneficiary details in the transfer and to add or check</p> <p>12 the beneficiary. There it is, yeah, the beneficiary</p> <p>13 name. Right, add the beneficiary name to the transfer.</p> <p>14 Q So you were in the process of doing a money</p> <p>15 transfer; correct?</p> <p>16 A Correct.</p> <p>17 Q And you received this email and had to take</p> <p>18 some additional steps to finalize that transfer?</p> <p>19 A Yes.</p> <p>20 Q Okay. Do you recall from what account the</p> <p>21 money was transferred?</p> <p>22 A The money was transferred from Tom's account.</p> <p>23 Q Okay. And do you know where the money was</p> <p>24 sent? Do you recall where the money was sent?</p>

<p style="text-align: right;">Page 110</p> <p>1 A To the beneficiary here, Dina Pedafronimos.</p> <p>2 Q Okay. So is this an example of money being</p> <p>3 withdrawn from Tom's account at WAM?</p> <p>4 A Yes.</p> <p>5 Q And does this refresh your recollection that</p> <p>6 you were communicating with Lambros regarding many of the</p> <p>7 transactions concerning Tom's WAM account?</p> <p>8 A Yes.</p> <p>9 Q Can you turn, please, to Exhibit 19? Do you</p> <p>10 have it?</p> <p>11 A Yes.</p> <p>12 Q This is an email from Lambros to you; correct?</p> <p>13 A Correct.</p> <p>14 Q Do you recall receiving this email?</p> <p>15 A Yes.</p> <p>16 Q And what did you do in response to receiving</p> <p>17 this email?</p> <p>18 A I submitted the transfer request for funds to</p> <p>19 be transferred to Nicholas Pedafronimos's accounts from</p> <p>20 Tom's balance.</p> <p>21 Q Does this refresh your recollection of another</p> <p>22 example in which funds were being transferred out of</p> <p>23 Mr. Skarpelos's WAM account?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 111</p> <p>1 Q And that request was being made by Lambros?</p> <p>2 A Correct.</p> <p>3 Q Can you turn, please, to Exhibit 18? Do you</p> <p>4 have it?</p> <p>5 A Yes.</p> <p>6 Q And Exhibit 18 is an email again from Lambros</p> <p>7 to you titled "Quadruple Bypass"?</p> <p>8 A Correct.</p> <p>9 Q Do you recall receiving this email?</p> <p>10 A Absolutely, yes.</p> <p>11 Q And what did you do in response to receiving</p> <p>12 this email?</p> <p>13 A I sent a request in to send funds to the</p> <p>14 account I was instructed.</p> <p>15 Q And is this yet another example of Lambros</p> <p>16 requesting funds to be transferred out of the WAM -- out</p> <p>17 of Tom's WAM account to another bank?</p> <p>18 A Yes.</p> <p>19 Q Can you turn, please, to Exhibit 59.</p> <p>20 THE COURT: 59 is admitted; correct?</p> <p>21 MR. NORK: It is not.</p> <p>22 THE COURT: I knew 60 wasn't, but I couldn't</p> <p>23 remember 59.</p> <p>24 /////</p>
<p style="text-align: right;">Page 112</p> <p>1 BY MR. NORK:</p> <p>2 Q So if you could, please, compare Exhibit 18 to</p> <p>3 Exhibit 59.</p> <p>4 MR. ANDERSON: Your Honor, I'm going to object.</p> <p>5 Exhibit 18 hasn't been admitted into evidence, and I</p> <p>6 don't know what they're intending to offer this for. I</p> <p>7 don't know what the purpose is in comparing them. I</p> <p>8 guess I'd establish a relevance objection.</p> <p>9 THE COURT: What's the --</p> <p>10 MR. NORK: All I'm trying to show is that</p> <p>11 Exhibit 59 is a continuation of a thread that started in</p> <p>12 Exhibit 18. I can do that without 18.</p> <p>13 THE COURT: Okay.</p> <p>14 BY MR. NORK:</p> <p>15 Q So let's go to 59.</p> <p>16 You know how with email threads, you have to</p> <p>17 read them from the bottom up?</p> <p>18 A Yes.</p> <p>19 Q So the first email is the email from Lambros to</p> <p>20 you that we've already seen entitled "Quadruple Bypass"</p> <p>21 and providing bank transfer information; correct?</p> <p>22 A Correct.</p> <p>23 Q Then the next email up is from you to someone</p> <p>24 named Rainbow; correct?</p>	<p style="text-align: right;">Page 113</p> <p>1 A Correct.</p> <p>2 Q And the subject is "Transfer request for</p> <p>3 quadruple bypass."</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q And the narrative there is "Hi R. Can you</p> <p>7 transfer 20,000" -- "20K as shareholder withdrawal to</p> <p>8 details below as soon as possible. Tom had a heart</p> <p>9 attack and is waiting for funds to stay alive."</p> <p>10 MR. ANDERSON: Your Honor, I'm going to object</p> <p>11 to counsel treating an email that hasn't been admitted</p> <p>12 into evidence. He hasn't established a foundation for</p> <p>13 the witness. There's numerous hearsay objections</p> <p>14 littered throughout this document, so I think he should</p> <p>15 try to establish a foundation to get this document</p> <p>16 admitted before he has the witness testify to its</p> <p>17 contents.</p> <p>18 THE COURT: Mr. Anderson, while I think that</p> <p>19 the objection is technically correct, I would note that</p> <p>20 there's not a jury present and I'm able to parse these</p> <p>21 things out, so I'll overrule the objection.</p> <p>22 As we discussed in the order that I wrote</p> <p>23 regarding motions in limine in bench trials, oftentimes</p> <p>24 there are things you have to look through and kind of</p>

<p style="text-align: right;">Page 114</p> <p>1 parse through as the judge and then disregard certain</p> <p>2 things and consider others. So while we're flipping to,</p> <p>3 like, Exhibit 18 or 19, I can look at them, but then I</p> <p>4 either consider them or I don't consider them in my final</p> <p>5 analysis, so I haven't admitted 18 or 19.</p> <p>6 I would note that the bottom portion of 60 on</p> <p>7 page Bates stamp page 321 is one of those exhibits. So</p> <p>8 then I don't consider that. The next thing up is</p> <p>9 something that Mr. Livadas --</p> <p>10 Did you write that? Is that -- you wrote that</p> <p>11 to Rainbow?</p> <p>12 THE WITNESS: Are we on 59?</p> <p>13 THE COURT: Correct, on page 321.</p> <p>14 THE WITNESS: Yes.</p> <p>15 THE COURT: "Can you transfer 20,000..."</p> <p>16 Did you write that?</p> <p>17 THE WITNESS: Correct. Yes.</p> <p>18 THE COURT: So I'll consider that as a</p> <p>19 nonhearsay. I won't consider the bottom portion because</p> <p>20 at that point, then, Mr. Anderson, I think it comes in</p> <p>21 not as hearsay there, but as the effect upon the</p> <p>22 listener, the effect being he sent this to Rainbow. So</p> <p>23 it's different than admitting it under 18 just as a</p> <p>24 standalone document.</p>	<p style="text-align: right;">Page 115</p> <p>1 So I think it can be admitted there. The Court</p> <p>2 will parse that out and admit it for the effect upon the</p> <p>3 listener as it pertains to Exhibit 59 and that he sent</p> <p>4 the \$20,000 share withdrawal. So we're up to that</p> <p>5 portion that is admissible.</p> <p>6 Now, the next thing I'm assuming you're going</p> <p>7 to object to is the email from Rainbow to someone else as</p> <p>8 hearsay.</p> <p>9 MR. ANDERSON: That's correct, Your Honor. And</p> <p>10 if I can just briefly state, I understand the realities</p> <p>11 of a bench trial and what Your Honor said. I'm</p> <p>12 preserving the record as I'm required to do for my</p> <p>13 client, but I understand what the Court has said and I</p> <p>14 will sit down now.</p> <p>15 THE COURT: I'm not suggesting, Mr. Anderson,</p> <p>16 that you're being an obstructionist or making</p> <p>17 inappropriate evidentiary objections, because I've</p> <p>18 sustained some of them. I think they're appropriate. I</p> <p>19 think this is the first time where I can say, well, I</p> <p>20 need to start looking at that and maybe being able to</p> <p>21 parse through it a little bit.</p> <p>22 So why don't we get to where Rainbow sends</p> <p>23 something to someone by the name of Alana Wheaton on</p> <p>24 April 26th of 2013.</p>
<p style="text-align: right;">Page 116</p> <p>1 Is your objection to that hearsay?</p> <p>2 MR. ANDERSON: Yes, Your Honor.</p> <p>3 THE COURT: Okay. Mr. Nork.</p> <p>4 MR. NORK: I'm going to move for the admission</p> <p>5 of 59. As to the language that Mr. Livadas wrote to</p> <p>6 Rainbow, I understand that the -- while Mr. Livadas was</p> <p>7 copied on the two subsequent -- excuse me -- the three</p> <p>8 subsequent emails that formed that email thread, the</p> <p>9 operative language here that I would like to focus on is</p> <p>10 what Christos wrote to Rainbow and why.</p> <p>11 THE COURT: The Court will admit Exhibit 59</p> <p>12 over objection. Wait. Prior to doing that, let me ask</p> <p>13 one additional question of Mr. Livadas in aid of my</p> <p>14 ruling.</p> <p>15 The last thing that you see on the top of the</p> <p>16 first page marked 320 is from you; is that correct,</p> <p>17 Mr. Livadas?</p> <p>18 THE WITNESS: On the top of the first page?</p> <p>19 THE COURT: Correct.</p> <p>20 THE WITNESS: That's from me to myself so I can</p> <p>21 get a copy of this email.</p> <p>22 THE COURT: So you're involved both in the</p> <p>23 beginning and the end; is that correct?</p> <p>24 THE WITNESS: Correct. This portion here was</p>	<p style="text-align: right;">Page 117</p> <p>1 me reforwarding it to myself in 2012 when -- sorry -- in</p> <p>2 2015 so I can get a proper copy of the document for the</p> <p>3 case. So the top shouldn't be -- the top is not part of</p> <p>4 the 2013 thread.</p> <p>5 THE COURT: Oh, I see. Because that is dated</p> <p>6 November 19th of 2015, and then the last thing that we</p> <p>7 see below that is April 27, 2013, at 1:17 a.m., Greenwich</p> <p>8 Mean Time plus 8, from Rainbow to you, and then an</p> <p>9 indication that something happened.</p> <p>10 THE WITNESS: Right.</p> <p>11 THE COURT: So, Counsel, just so everybody</p> <p>12 understands how I'll admit this, the Court will admit</p> <p>13 Exhibit 59 with the following limitation.</p> <p>14 I'm not going to admit it to establish that the</p> <p>15 \$20,000 actually was transferred. There's no evidence of</p> <p>16 that and that would be hearsay. I'll admit it to</p> <p>17 indicate that Mr. Livadas received the information from</p> <p>18 Lambros and took action in that he directed Rainbow to do</p> <p>19 something, Rainbow then does something, but, Mr. Nork, I</p> <p>20 can't admit it to establish that there actually was the</p> <p>21 \$20,000 transferred.</p> <p>22 MR. NORK: We'll get there, Your Honor.</p> <p>23 THE COURT: Okay. As long as you understand</p> <p>24 it's being admitted to show in my mind that the witness</p>

<p style="text-align: right;">Page 118</p> <p>1 received a request. As a result of the request, he</p> <p>2 directed someone internally to move money out of an</p> <p>3 account -- I don't know if that actually occurred or not</p> <p>4 as I sit here -- but then he received information back</p> <p>5 putatively that it occurred, and then he made this record</p> <p>6 and forwarded it to himself. That's how I read</p> <p>7 Exhibit 59.</p> <p>8 MR. NORK: Understood, Your Honor.</p> <p>9 THE COURT: Any objection to that?</p> <p>10 MR. ANDERSON: Other than the one I've already</p> <p>11 stated, no, Your Honor.</p> <p>12 THE COURT: So let's go ahead.</p> <p>13 MR. NORK: Thank you, Your Honor.</p> <p>14 (Exhibit 59 was admitted.)</p> <p>15 BY MR. NORK:</p> <p>16 Q In light of that instruction, Mr. Livadas,</p> <p>17 let's focus on the portion of the email that you wrote.</p> <p>18 Who is Rainbow?</p> <p>19 A Rainbow is a controller at the firm.</p> <p>20 Q When you say "the firm," that's WAM?</p> <p>21 A Correct. That's WAM.</p> <p>22 Q And what prompted you to ask for the transfer</p> <p>23 of \$20,000?</p> <p>24 A I had received messages, calls, etcetera, from</p>	<p style="text-align: right;">Page 119</p> <p>1 Lambros that Tom was in the hospital, had had a heart</p> <p>2 attack and was in the hospital and needed funds for bills</p> <p>3 and now was going to go for quadruple bypass and really,</p> <p>4 really, really urgently needed funds.</p> <p>5 Q And so what do you mean when you say to</p> <p>6 Rainbow, "Can you transfer 20,000 as shareholder</p> <p>7 withdrawal to details below"? What are you asking</p> <p>8 Rainbow to do?</p> <p>9 A I'm asking her to transfer the funds. I don't</p> <p>10 know why "shareholder" came to -- why I even used that</p> <p>11 word, but I'm asking her to transfer \$20,000 to these</p> <p>12 instructions.</p> <p>13 Q Okay. Then you further state, "as soon as</p> <p>14 possible. Tom had a heart attack and is waiting for</p> <p>15 payments to stay alive."</p> <p>16 A Correct.</p> <p>17 Q Did you come to that understanding as a result</p> <p>18 of your communications with Lambros?</p> <p>19 A Yes.</p> <p>20 Q So we see at least in December of 2012,</p> <p>21 April 2013, May of 2013 that you engage in communications</p> <p>22 with Lambros; correct?</p> <p>23 A Correct.</p> <p>24 Q Regarding transferring money out of Tom's</p>
<p style="text-align: right;">Page 120</p> <p>1 account?</p> <p>2 A Correct.</p> <p>3 Q As you sit here today, do you recall if there</p> <p>4 are further examples of Lambros requesting money to come</p> <p>5 out of Tom's account?</p> <p>6 A It was frequent. Not specific examples, but</p> <p>7 there was many times that Lambros or Tom would ask for</p> <p>8 funds to be sent and typically to Nicholas Pedafronimos's</p> <p>9 account.</p> <p>10 Q And if funds came out of Tom's WAM account,</p> <p>11 would that put that account into a debit position?</p> <p>12 A If it didn't have the funds, yes.</p> <p>13 Q But, again, there were still those stock</p> <p>14 certificates on deposit with WAM?</p> <p>15 A Yes.</p> <p>16 Q Okay. So you testified that in 2007 you began</p> <p>17 assisting Tom, Mr. Skarpelos, in raising money for</p> <p>18 Anavex.</p> <p>19 Did you continue to do so even after 2007?</p> <p>20 A For Tom or for the company?</p> <p>21 Q Well, let's start with for the company.</p> <p>22 A Yeah.</p> <p>23 Q And did you for Tom as well?</p> <p>24 A So I continued raising capital for Anavex, the</p>	<p style="text-align: right;">Page 121</p> <p>1 company. For Tom, from 2007, in between, no, not that I</p> <p>2 recall.</p> <p>3 Q Did there ever come a time that that changed</p> <p>4 and Tom asked you to raise money for him?</p> <p>5 A Yes. Around this time when he got sick.</p> <p>6 Q What time?</p> <p>7 A In the -- it would have been -- at the end of</p> <p>8 2012 the discussions started again. The discussions were</p> <p>9 always ongoing for the company and off and on for Tom.</p> <p>10 Q Okay. What specifically do you recall the</p> <p>11 conversations concerning in late 2012, early 2013</p> <p>12 regarding raising funds for Tom?</p> <p>13 A The discussion was that we couldn't raise funds</p> <p>14 for the company because it was in a pretty bad position,</p> <p>15 and Tom needed funds as well, so I suggested he sell some</p> <p>16 of his shares, which would help raise some money, whether</p> <p>17 it was for Tom or the company or Tom ran it through the</p> <p>18 company, whatever the case may be -- there was bills</p> <p>19 floating around everywhere -- so to sell some shares to</p> <p>20 get some cash, which would allow us to start trying to</p> <p>21 fix things with the company.</p> <p>22 Q Okay. And what shares of stock were you</p> <p>23 suggesting that Mr. Skarpelos sell?</p> <p>24 A His shares that he owns.</p>

<p style="text-align: right;">Page 122</p> <p>1 Q In Anavex?</p> <p>2 A Correct.</p> <p>3 Q The ones on deposit with WAM?</p> <p>4 A Correct. Those were all his shares.</p> <p>5 Q Did there come a time that you began to discuss</p> <p>6 how many shares were to be sold and for what amount?</p> <p>7 A Yes. I can't remember the dates exactly, but</p> <p>8 we discussed it frequently as to how much to sell and</p> <p>9 what price to sell. We were always debating or arguing</p> <p>10 over the price and amount of price.</p> <p>11 Q Did there ever come a time that you reached an</p> <p>12 agreement on how much to sell and for how much?</p> <p>13 A Yeah. We had agreed at a value of half a</p> <p>14 million dollars, assuming all of the shares.</p> <p>15 Q And "all" being how many?</p> <p>16 A All. And it was out of the 6.3 or 6.6 million,</p> <p>17 whatever that amount was.</p> <p>18 Q Let's go to Exhibit 1.</p> <p>19 A Yeah. The discussions always revolved around</p> <p>20 the one share position, 0753.</p> <p>21 Q Okay. That's Exhibit 1, 6.6 million shares of</p> <p>22 stock?</p> <p>23 A Correct.</p> <p>24 Q So it's your testimony that the discussion</p>	<p style="text-align: right;">Page 123</p> <p>1 concerned selling 6.6 million shares of stock for a half</p> <p>2 million dollars?</p> <p>3 A Correct.</p> <p>4 THE COURT: And it was occurring approximately</p> <p>5 when?</p> <p>6 THE WITNESS: When we were having those</p> <p>7 discussions?</p> <p>8 THE COURT: Correct.</p> <p>9 THE WITNESS: From late 2012 and onwards.</p> <p>10 BY MR. NORK:</p> <p>11 Q So what did you do, once the amount of shares</p> <p>12 and the dollar amount was agreed upon, to assist Tom in</p> <p>13 selling that stock?</p> <p>14 A So I went to find buyers for the stock.</p> <p>15 Q Okay. And where did you look?</p> <p>16 A First, just clients of WAM and also talking to</p> <p>17 parties that are not my clients, outside of WAM.</p> <p>18 Q When you discussed selling the stock with Tom,</p> <p>19 did it matter to Tom to whom the stock was sold?</p> <p>20 A No, not as far as I could tell.</p> <p>21 Q In a typical stock sale transaction, does the</p> <p>22 seller care who the buyer is?</p> <p>23 A Not usually, no.</p> <p>24 Q The only point is getting the money for the</p>
<p style="text-align: right;">Page 124</p> <p>1 stock; correct?</p> <p>2 A Most of the time, yeah.</p> <p>3 Q And did you understand that to be the case</p> <p>4 here?</p> <p>5 A Yes.</p> <p>6 Q Were you eventually able to find buyers for</p> <p>7 some or all of the stock?</p> <p>8 A Yes. We found buyers -- we found committed</p> <p>9 buyers for some and indicated buyers for some other. So</p> <p>10 we had committed and indicated buyers.</p> <p>11 Q Okay. And where did the committed -- where did</p> <p>12 the committed buyers come from?</p> <p>13 A They were existing clients of WAM.</p> <p>14 Q Okay. And how much were the committed buyers</p> <p>15 of WAM willing to pay and how much stock were they</p> <p>16 willing to purchase?</p> <p>17 A We offered it at \$500,000 equivalent value, so</p> <p>18 then the per-share price came out to whatever -- I can't</p> <p>19 remember exactly -- 8 cents, I think it was. So we</p> <p>20 offered it for 8 cents and we had buyers at 8 cents.</p> <p>21 Q Okay. How many shares of stock were they</p> <p>22 willing to purchase at 8 cents a share?</p> <p>23 A That first -- the first part was for</p> <p>24 approximately 50 percent of the position.</p>	<p style="text-align: right;">Page 125</p> <p>1 Q And do you recall approximately what time frame</p> <p>2 it was that you located these committed buyers to</p> <p>3 purchase approximately half of the 6.6 million shares for</p> <p>4 \$250,000?</p> <p>5 A We started to get the buy orders -- started in</p> <p>6 January, went through January, February, March, April,</p> <p>7 went all the way -- all the way through, throughout the</p> <p>8 year.</p> <p>9 Q And did WAM actually finalize those</p> <p>10 transactions?</p> <p>11 A It finalized some of the transactions.</p> <p>12 Q Okay. And explain, again, the process that WAM</p> <p>13 undertook to finalize that process.</p> <p>14 A So WAM had the request to sell shares --</p> <p>15 MR. ANDERSON: I'm going to object, Your Honor,</p> <p>16 on foundation.</p> <p>17 THE COURT: Mr. Nork.</p> <p>18 MR. NORK: He is an owner of WAM, has reviewed</p> <p>19 WAM's records and is familiar with this transaction.</p> <p>20 MR. ANDERSON: He testified he didn't acquire</p> <p>21 WAM until 2014, and I don't think Mr. Nork has laid a</p> <p>22 foundation that he was involved with WAM in this</p> <p>23 transaction at the time it occurred.</p> <p>24 THE COURT: Mr. Nork.</p>

<p style="text-align: right;">Page 126</p> <p>1 MR. NORK: I will lay that foundation.</p> <p>2 THE COURT: Go ahead. Lay that foundation.</p> <p>3 BY MR. NORK:</p> <p>4 Q What was your involvement in this transaction</p> <p>5 in early 2013 regarding the sale of Tom's stock?</p> <p>6 A Finding buyers for it.</p> <p>7 Q Okay. And who did you deal with?</p> <p>8 A Clients of WAM.</p> <p>9 Q Okay.</p> <p>10 A And nonclients of WAM.</p> <p>11 Q Okay. And once clients of WAM were located,</p> <p>12 what did you then do to make sure this transaction went</p> <p>13 through?</p> <p>14 A I made sure that the client of WAM had the</p> <p>15 capital to execute the transaction.</p> <p>16 Q And how did you do that?</p> <p>17 A And then -- by checking on the account balances</p> <p>18 of their accounts.</p> <p>19 Q Okay. And who did you do that through?</p> <p>20 A I did that through the parties, which would be</p> <p>21 either the broker or the CEO, whoever the staff was at</p> <p>22 WAM.</p> <p>23 Q Staff of who?</p> <p>24 A WAM.</p>	<p style="text-align: right;">Page 127</p> <p>1 Q So you dealt with the staff of WAM to confirm</p> <p>2 that the buyers had enough capital to buy?</p> <p>3 A Correct.</p> <p>4 Q And once you confirmed that, then what did you</p> <p>5 that do?</p> <p>6 A Yeah. Then I put through to execute the trade</p> <p>7 order.</p> <p>8 Q And what does that specifically mean?</p> <p>9 A That means that the firm settles the</p> <p>10 transaction of the buyer and the seller, closing the</p> <p>11 trade, which is the transaction.</p> <p>12 Q And what steps did you take in that regard?</p> <p>13 A What steps did I take?</p> <p>14 Q Yes. Who did you communicate with at WAM to</p> <p>15 make sure that that trade took place?</p> <p>16 A It would have been one of the brokers. I think</p> <p>17 it was Leo.</p> <p>18 THE COURT: Leo?</p> <p>19 THE WITNESS: A fellow -- a broker named Leo</p> <p>20 who is at the firm.</p> <p>21 BY MR. NORK:</p> <p>22 Q What's Leo's full name?</p> <p>23 A Leo Soursos.</p> <p>24 Q His first name is Elias; correct?</p>
<p style="text-align: right;">Page 128</p> <p>1 A Elias, yes.</p> <p>2 Q But he goes by "Leo"?</p> <p>3 A Correct.</p> <p>4 Q So you communicated with Mr. Soursos,</p> <p>5 S-o-u-r-s-o-s?</p> <p>6 A Yes.</p> <p>7 Q To make sure that the transaction went through?</p> <p>8 A Correct.</p> <p>9 MR. NORK: Your Honor, I think I've laid a</p> <p>10 foundation for that.</p> <p>11 THE COURT: I'll overrule the objection based</p> <p>12 on the foundation that's been laid. Go ahead.</p> <p>13 MR. NORK: Thank you.</p> <p>14 BY MR. NORK:</p> <p>15 Q Now, you talked about the terms being 3.3</p> <p>16 million shares for \$250,000; correct?</p> <p>17 A Correct.</p> <p>18 Q Do you know when, approximately, all of those</p> <p>19 3.3 million shares were finally sold?</p> <p>20 A Transacted? In April.</p> <p>21 Q April what?</p> <p>22 A Can I look at the records to find it? Well, I</p> <p>23 can't remember the exact date.</p> <p>24 Q You previously testified that it had to do with</p>	<p style="text-align: right;">Page 129</p> <p>1 approximately the time that Tom was sick; correct?</p> <p>2 A Correct.</p> <p>3 Q All right. So look at admitted Exhibit 59, if</p> <p>4 you would, and the second page.</p> <p>5 A I think it was just before going for the</p> <p>6 bypass, so I can't recall an exact date, but it would</p> <p>7 have been around the middle of April.</p> <p>8 Q April of what year?</p> <p>9 A 2013.</p> <p>10 Q Okay. April 2013 is when the last 3.3 million</p> <p>11 shares got sold?</p> <p>12 A Yes. That's the first 3.3.</p> <p>13 Q Yes. The first 3.3 to WAM clients?</p> <p>14 A Yes.</p> <p>15 Q Now, we talked this morning, earlier this</p> <p>16 morning about what documentation is needed for a sale of</p> <p>17 stock between WAM clients. What documentation is</p> <p>18 required?</p> <p>19 A None. Just the orders from the clients, which</p> <p>20 can be verbal, text messages, emails, any form that it</p> <p>21 comes in.</p> <p>22 Q Okay. And that's what happened in this case;</p> <p>23 correct?</p> <p>24 A Correct.</p>

<p style="text-align: right;">Page 130</p> <p>1 Q You found buyers who were WAM clients and you</p> <p>2 had a seller, Tom, who was a WAM client?</p> <p>3 A Correct.</p> <p>4 Q And, again, is this an instance where the</p> <p>5 shares go to Weiser and then to the buyers?</p> <p>6 A Well, Weiser's already holding the shares --</p> <p>7 right? -- in custody, so it credits from the seller's</p> <p>8 account to the buyer's account.</p> <p>9 Q Okay. Once that transaction goes through in</p> <p>10 April 2013, are the buyers then able to sell the stock</p> <p>11 that they purchased immediately?</p> <p>12 A No. Because it's restricted, so they have to</p> <p>13 wait the time period required until they can sell them.</p> <p>14 Q And you previously testified that's usually six</p> <p>15 months?</p> <p>16 A And to clarify, they can't sell them to the</p> <p>17 public market. They could sell them, again, privately if</p> <p>18 they wanted to, but they can't sell them to the public</p> <p>19 markets for six to twelve months.</p> <p>20 Q Okay. Now, you mentioned just a moment ago</p> <p>21 that the first 3.3 million was sold to WAM customers?</p> <p>22 A Yes.</p> <p>23 Q Were you still trying to sell the second</p> <p>24 3.3 million shares?</p>	<p style="text-align: right;">Page 131</p> <p>1 A Yes. We were still sourcing buyers.</p> <p>2 Q And when you say "sourcing buyers," what does</p> <p>3 that entail?</p> <p>4 A Trying to find buyers who would be interested</p> <p>5 in buying the stock.</p> <p>6 Q Okay. Can you turn, please, to Exhibit 21. Do</p> <p>7 you have it?</p> <p>8 A Yes.</p> <p>9 Q What is Exhibit 21?</p> <p>10 A It's an email from myself to Lambros.</p> <p>11 Q Okay. Where did you locate this email?</p> <p>12 A In my email box. No. Actually, this one, no,</p> <p>13 I didn't locate this one because I don't have Gmail. I</p> <p>14 don't think I submitted this one.</p> <p>15 Q Then I am not going to ask you questions about</p> <p>16 this one.</p> <p>17 THE COURT: It's admitted, is it not? You can</p> <p>18 ask him questions if you want to.</p> <p>19 MR. ANDERSON: Exhibit 21 is in, Your Honor.</p> <p>20 THE COURT: Pardon?</p> <p>21 MR. ANDERSON: Exhibit 21 is in.</p> <p>22 THE COURT: If you want to ask him questions</p> <p>23 about it, it's been admitted.</p> <p>24 /////</p>
<p style="text-align: right;">Page 132</p> <p>1 BY MR. NORK:</p> <p>2 Q Let's talk about Exhibit 21.</p> <p>3 It's an email from you to Lambros; correct?</p> <p>4 A Correct.</p> <p>5 Q And the subject line needs some explanation.</p> <p>6 This is in June of 2013. It says, "Did you get my text a</p> <p>7 few days ago re kinezi?" and "I need docs."</p> <p>8 A Yes.</p> <p>9 Q What is "kinezi"?</p> <p>10 A "Kinezi" is Greek for "Chinese."</p> <p>11 Q And what does this email refer to?</p> <p>12 A So it's referring to a text that I had sent him</p> <p>13 that I'm speaking to some potential Chinese investors and</p> <p>14 that I need documentation.</p> <p>15 Q Why are you asking Lambros for documentation?</p> <p>16 A Because Lambros helps coordinate the</p> <p>17 documentation on transactions related to Anavex.</p> <p>18 Q Okay. And you also indicate here that you have</p> <p>19 "a call with them late tonight."</p> <p>20 Who is "them"?</p> <p>21 A The Chinese investors.</p> <p>22 Q These Chinese investors, were these non-WAM</p> <p>23 clients?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 133</p> <p>1 Q Turn, please, to Exhibit 22. This is also</p> <p>2 admitted to evidence.</p> <p>3 This is a response from Lambros to your email;</p> <p>4 correct?</p> <p>5 A Correct.</p> <p>6 Q And what does he say?</p> <p>7 A "Yes. We're putting the docs in place."</p> <p>8 Q Who did you understand or did you have an</p> <p>9 understanding about who the "we" was who was putting the</p> <p>10 docs in place?</p> <p>11 A "We," I assumed him and Tom.</p> <p>12 Q You weren't preparing the documents?</p> <p>13 A Not that I recall.</p> <p>14 Q What documents were required for this sale to</p> <p>15 non-WAM customers?</p> <p>16 A The purchase and sale agreement.</p> <p>17 Q Anything else?</p> <p>18 A Specifically for them, for them specifically</p> <p>19 would be the purchase and sale agreement, but at the same</p> <p>20 time we also needed documentation to prepare to</p> <p>21 dematerialize the certificate.</p> <p>22 Q And what documentation is that?</p> <p>23 A Stock powers and some other things I don't</p> <p>24 recall, but the stock power was a key one.</p>

<p style="text-align: right;">Page 134</p> <p>1 Q The power of attorney?</p> <p>2 A Yeah.</p> <p>3 Q Turn, please, to Exhibit 23. This has also</p> <p>4 been admitted into evidence.</p> <p>5 You respond to Lambros's email saying, "Email</p> <p>6 me blank ones now so I can show them what they'll be</p> <p>7 looking like, etc."</p> <p>8 What does that mean?</p> <p>9 A So I'm preparing a whole package of the</p> <p>10 investments for the investors, and I'm needing him to</p> <p>11 send me the purchase and sale agreement so that I have</p> <p>12 that ready so that I can represent the transaction to the</p> <p>13 potential investors.</p> <p>14 Q Okay. Turn, please, to Exhibit 25, also</p> <p>15 admitted into evidence.</p> <p>16 A 25?</p> <p>17 Q 25.</p> <p>18 A 25, he emails me with the documents attached.</p> <p>19 Q So he responds to your email and says,</p> <p>20 "Attached, Bud." And there are attached to the back of</p> <p>21 this email the attachments he sent to you; correct?</p> <p>22 A Yes.</p> <p>23 Q As you sit here today, do you know where</p> <p>24 Lambros got these forms?</p>	<p style="text-align: right;">Page 135</p> <p>1 A Not that I recall.</p> <p>2 Q Do you recognize any of the names of the buyers</p> <p>3 and sellers of the stock under this draft stock sale and</p> <p>4 purchase agreement?</p> <p>5 A No.</p> <p>6 Q And you don't know where he got the form power</p> <p>7 of attorney?</p> <p>8 A The power of attorney, where he received this,</p> <p>9 I can't say. It's a pretty standard stock power.</p> <p>10 Q Okay. Please go to Exhibit 26.</p> <p>11 This is a continuation of the thread. So he,</p> <p>12 back in Exhibit 25, sent you the exhibits saying,</p> <p>13 "Attached, Bud," and you respond saying, "We need someone</p> <p>14 to complete the language on the Purchase and Sale</p> <p>15 Agreement. Do we have anyone on our end for that?"</p> <p>16 What did you mean by that?</p> <p>17 MR. ANDERSON: I just want to clarify. This is</p> <p>18 someone else sending the email.</p> <p>19 THE COURT: I think you have that backwards,</p> <p>20 Mr. Nork. It's from Lambros to Mr. Livadas.</p> <p>21 MR. NORK: You're absolutely correct, Your</p> <p>22 Honor. I apologize.</p> <p>23 THE COURT: I'll sustain the objection. You</p> <p>24 can rephrase the question.</p>
<p style="text-align: right;">Page 136</p> <p>1 MR. NORK: I'll rephrase the question.</p> <p>2 BY MR. NORK:</p> <p>3 Q Lambros is asking you --</p> <p>4 A Yeah.</p> <p>5 Q -- "Do we have anyone on our end for that?"</p> <p>6 What does he mean by that?</p> <p>7 A He's asking me if we have anybody on -- and</p> <p>8 "our end" means collectively all of us because we're</p> <p>9 working on the transaction together. So do we have</p> <p>10 somebody who's familiar enough, I think, with the</p> <p>11 documents to finish completing the language in them, in</p> <p>12 the purchase and sale agreement.</p> <p>13 Q Okay. It looks like the next communication is</p> <p>14 Exhibit 27.</p> <p>15 This is, again, from Lambros to you; correct?</p> <p>16 A Correct.</p> <p>17 Q Where he's sending you a copy of the purchase</p> <p>18 and sale agreement?</p> <p>19 A Correct.</p> <p>20 Q And as you sit here today, do you know if this</p> <p>21 version contained any changes from the first version he</p> <p>22 sent to you?</p> <p>23 A I don't recall.</p> <p>24 Q Okay. Exhibit 28, this one is from you to</p>	<p style="text-align: right;">Page 137</p> <p>1 Lambros; correct?</p> <p>2 A Correct.</p> <p>3 Q And it says, "Don't forget they need to be</p> <p>4 notarized. Courier originals to Bouts."</p> <p>5 Who is Bouts?</p> <p>6 A Bouts is Nick Boutsalis, who works at our</p> <p>7 company, which is the company that is the shareholder</p> <p>8 administration for Anavex.</p> <p>9 Q Nick Boutsalis?</p> <p>10 THE COURT: Ms. Reporter, Bouts is B-o-u-t-s.</p> <p>11 MR. NORK: And Nick Boutsalis is</p> <p>12 B-o-u-t-s-a-l-i-s; correct?</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. NORK:</p> <p>15 Q So you're telling Lambros they need to be</p> <p>16 notarized and the originals need to be sent to Bouts;</p> <p>17 correct?</p> <p>18 A Correct.</p> <p>19 Q The next exhibit, Exhibit 29, also already</p> <p>20 admitted, this is Lambros to you, saying, "Hi Bud.</p> <p>21 Please find attached the updated purchase and sale</p> <p>22 document with the figures that were discussed. This is</p> <p>23 the version that will be notarized. Cheers. L."</p> <p>24 Correct?</p>

<p style="text-align: right;">Page 138</p> <p>1 A Correct.</p> <p>2 Q Do you recall what figures were being discussed</p> <p>3 that are referenced in this Exhibit 29?</p> <p>4 A We didn't have figures because we weren't sure</p> <p>5 how much was going to be sold exactly. We just knew we</p> <p>6 had a goal, but we didn't know exactly what would be the</p> <p>7 exact figure that might actually be transacted.</p> <p>8 Q Okay. Turn, please, to Exhibit 33.</p> <p>9 This exhibit, which is admitted into evidence,</p> <p>10 is dated July 9th, approximately six days after the email</p> <p>11 we just looked at before, and this is from Lambros to</p> <p>12 you; correct?</p> <p>13 A Uh-huh.</p> <p>14 Q "Yes"?</p> <p>15 A Yes.</p> <p>16 Q And it says, "Hi Bud. Per our discussion,</p> <p>17 please find attached notarized copies. Regards."</p> <p>18 Correct?</p> <p>19 A Correct.</p> <p>20 Q And attached are notarized copies of the power</p> <p>21 of attorney and the sale and purchase agreement; correct?</p> <p>22 A Correct.</p> <p>23 Q Okay. Now, I'm going to ask you if you could</p> <p>24 turn, please, to Exhibit 25 and keep your place on</p>	<p style="text-align: right;">Page 139</p> <p>1 Exhibit 33.</p> <p>2 A Yes.</p> <p>3 Q 25 and 33. And compare the powers of attorney,</p> <p>4 if you could, between the two.</p> <p>5 A Yes.</p> <p>6 Q Do you see any difference between the power of</p> <p>7 attorney that was sent back in June and the one that is</p> <p>8 sent in mid-July other than the signature and notary</p> <p>9 stamp?</p> <p>10 A No. No.</p> <p>11 Q Okay. As you've already testified, the power</p> <p>12 of attorney is a fairly standard form; correct?</p> <p>13 A Yes.</p> <p>14 Q Okay. To your knowledge why was the power of</p> <p>15 attorney signed and notarized in blank?</p> <p>16 A Clients -- it's standard to send them to us in</p> <p>17 blank because -- for two main reasons: One, we don't</p> <p>18 know if it's going to be a WAM client or not a WAM</p> <p>19 client, and ultimately this -- when we're dematerializing</p> <p>20 a certificate, the stock power is written to the</p> <p>21 broker-dealer so he can dematerialize the stock</p> <p>22 certificate. So it's standard that they send them to us</p> <p>23 blank so that the firm can deal with dematerializing the</p> <p>24 certificate.</p>
<p style="text-align: right;">Page 140</p> <p>1 Q Okay. And the dematerializing becomes</p> <p>2 necessary at least after that six-month restriction</p> <p>3 period expires?</p> <p>4 A Correct.</p> <p>5 Q Now, still comparing Exhibit 25 to Exhibit 33,</p> <p>6 let's compare the stock sale and purchase agreement.</p> <p>7 Exhibit 25 is Lambros sending to you blank</p> <p>8 forms, the blank power of attorney and blank stock sale</p> <p>9 and purchase agreement; correct?</p> <p>10 A Correct.</p> <p>11 Q And Exhibit 33, the stock sale and purchase</p> <p>12 agreement, is signed and notarized; correct?</p> <p>13 A Correct.</p> <p>14 Q Now, if you take a look at section 1.1 of both</p> <p>15 documents, both stock sale and purchase agreements, one</p> <p>16 Exhibit 25 and one Exhibit 33, they both use language</p> <p>17 that the sale is, quote, effective as of the closing date</p> <p>18 close quote; correct?</p> <p>19 A Section 1.1?</p> <p>20 Q Yes, sir.</p> <p>21 It says, "On and subject to the terms and</p> <p>22 conditions of this agreement effective as of the closing</p> <p>23 date."</p> <p>24 A Yes. Yes.</p>	<p style="text-align: right;">Page 141</p> <p>1 Q They both use that same language; correct?</p> <p>2 A Correct.</p> <p>3 Q Section 1.2, the last sentence for both is the</p> <p>4 same, which says the purchase price shall be paid to the</p> <p>5 seller at the closing in cash; correct?</p> <p>6 A Correct.</p> <p>7 Q Section 1.3, the first sentence says the</p> <p>8 closing shall occur on -- and then other than the date,</p> <p>9 they both say or such other date as the parties here to</p> <p>10 may agree to, the closing date correct?</p> <p>11 A Correct.</p> <p>12 Q Skip ahead to section 4.1. They both include</p> <p>13 the same language under the heading entire agreement;</p> <p>14 correct?</p> <p>15 A Correct.</p> <p>16 Q And finally section 4.2, they both state that</p> <p>17 the agreement shall be governed by California law;</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q And so these terms that I just went over were</p> <p>21 in the purchase and sale agreement in the very first</p> <p>22 draft that was sent to you by Lambros in June, and they</p> <p>23 remained in the document when it was signed and notarized</p> <p>24 in July; correct?</p>

<p style="text-align: right;">Page 142</p> <p>1 A Correct.</p> <p>2 Q And for both power of attorney and the purchase</p> <p>3 and sale agreement, whose signature is there and</p> <p>4 notarized?</p> <p>5 A Tom's.</p> <p>6 Q And the stock sale and purchase agreement is</p> <p>7 also signed in blank; correct?</p> <p>8 A Correct.</p> <p>9 Q And why is that?</p> <p>10 A Because we don't know who the ultimate buyers</p> <p>11 are going to be on that transaction and for how much.</p> <p>12 Also, how it will be constructed, if it will be Weiser</p> <p>13 Capital acting as an intermediary or it might even end up</p> <p>14 at the firm, and so we leave it blank until we figure out</p> <p>15 the buyer's side.</p> <p>16 Q Okay. Can you turn, please, to Exhibit 30.</p> <p>17 Actually, turn to Exhibit 35.</p> <p>18 What's Exhibit 35? It's already admitted into</p> <p>19 evidence.</p> <p>20 A It's the stock power.</p> <p>21 Q And this stock power, it's filled out; correct?</p> <p>22 A Correct.</p> <p>23 Q And who is the transferee under the stock</p> <p>24 power?</p>	<p style="text-align: right;">Page 143</p> <p>1 A Weiser Bahamas, which is the same as Weiser</p> <p>2 Capital.</p> <p>3 Q Weiser Capital. That's your company; correct?</p> <p>4 A Correct.</p> <p>5 Q And do you recall what it was that the stock</p> <p>6 power was filled out with Weiser Capital as the</p> <p>7 transferee?</p> <p>8 A Because it was being -- because it was being</p> <p>9 submitted to dematerialize the certificate.</p> <p>10 Q And explain that some more. What do you mean</p> <p>11 by that?</p> <p>12 A So when it's submitted to the transfer agent,</p> <p>13 you fill it in when you're submitting it to the transfer</p> <p>14 agent so the transfer agent can then register the shares</p> <p>15 so they can be deposited in electronic form at the firm.</p> <p>16 Q So under normal circumstances this power of</p> <p>17 attorney would be sent to the transfer agent, here NATCO;</p> <p>18 correct?</p> <p>19 A Correct.</p> <p>20 Q The stock referenced in the power of attorney</p> <p>21 would be dematerialized; correct?</p> <p>22 A Correct.</p> <p>23 Q And then what would happen?</p> <p>24 A And then it would be in electronic form on</p>
<p style="text-align: right;">Page 144</p> <p>1 account of the broker-dealer.</p> <p>2 Q And which broker-dealer?</p> <p>3 A WAM.</p> <p>4 Q So did you fill in the date as well? Compare</p> <p>5 Exhibit 33 to Exhibit 35.</p> <p>6 A Excuse me. This was filled out by my office,</p> <p>7 not by me, if we're being specific.</p> <p>8 Q Well, let me ask you this: Do you know why the</p> <p>9 date of July 12, 2013, was selected?</p> <p>10 A Oh, why the date of July 12, '13? Not that I</p> <p>11 recall specifically. I can't remember why.</p> <p>12 Q Okay. Well, if we look at Exhibit 33, the</p> <p>13 notarized in blank copy was sent to you on July 9th;</p> <p>14 correct?</p> <p>15 A Correct, yeah.</p> <p>16 Q And so the date on the power of attorney is a</p> <p>17 couple days after that; correct?</p> <p>18 A Right. Correct.</p> <p>19 Q Now, if you could turn, please, to Exhibit 30,</p> <p>20 which is also admitted into evidence.</p> <p>21 So Exhibit 30, admitted into evidence, is just</p> <p>22 like the one that was attached to Exhibit 33 except it's</p> <p>23 filled out; correct?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 145</p> <p>1 Q And who filled it out?</p> <p>2 A This one, I filled it out.</p> <p>3 Q Okay. And why did you fill it out in the</p> <p>4 manner that you did?</p> <p>5 A So this stock purchase never happened, but we</p> <p>6 still need to have a PSA for AML reasons, so I filled --</p> <p>7 Q Hold it right there.</p> <p>8 What does AML mean?</p> <p>9 A Anti-money laundering reviews.</p> <p>10 Q Okay.</p> <p>11 A So for compliance. If we're then going to be</p> <p>12 depositing the stock at the prime broker or the prime</p> <p>13 custodian because ultimately it goes to DTC --</p> <p>14 Q What is DTC?</p> <p>15 A It's the central depository agency where all</p> <p>16 the shares in America sit.</p> <p>17 Q Okay.</p> <p>18 A So at DTC are other prime brokers as well, so</p> <p>19 if we're sending the shares to go on account at a prime</p> <p>20 broker, they like to see AML, KYC and AML compliance</p> <p>21 background to it, to show where the stock comes from, why</p> <p>22 did it come from, things like that.</p> <p>23 Q Was this document, Exhibit 30, necessary to</p> <p>24 effectuate the sale to the Weiser clients?</p>

<p style="text-align: right;">Page 146</p> <p>1 A No.</p> <p>2 Q Okay. Did the sale to the Chinese buyers ever</p> <p>3 go through?</p> <p>4 A No.</p> <p>5 Q Okay. So it's your testimony that this</p> <p>6 document, Exhibit 30, simply exists for anti-money</p> <p>7 laundering purposes?</p> <p>8 A Correct.</p> <p>9 Q Regarding what sale?</p> <p>10 A Actually, no sale. It's just backup paperwork</p> <p>11 to explain why the firm has the positions, why the</p> <p>12 positions are in the size that they are, and it's not a</p> <p>13 specific sale.</p> <p>14 Q Okay. Is the power of attorney, which is</p> <p>15 completed as Exhibit 35, is that necessary to effectuate</p> <p>16 the sale to the WAM clients that took place in</p> <p>17 April 2013?</p> <p>18 A For the WAM clients to effect it? I know we</p> <p>19 needed to dematerialize the certificate. Legally I don't</p> <p>20 know if it's required to effect the trade transaction.</p> <p>21 Q Fair enough. Let me ask it a different way.</p> <p>22 In order for the WAM clients who bought the</p> <p>23 stock in April 2013 to be able to then resell it, did you</p> <p>24 need the power of attorney?</p>	<p style="text-align: right;">Page 147</p> <p>1 A Yes.</p> <p>2 Q And that's because you needed it to</p> <p>3 dematerialize the stock; correct?</p> <p>4 A Correct.</p> <p>5 Q So the sale to the Chinese buyers ultimately</p> <p>6 never went through; correct?</p> <p>7 A Correct.</p> <p>8 Q The sale to the WAM clients went through in</p> <p>9 April 2013; correct?</p> <p>10 A Correct.</p> <p>11 Q You had the power of attorney in July of 2013</p> <p>12 to dematerialize the stock that was sold to the WAM</p> <p>13 clients?</p> <p>14 A Correct.</p> <p>15 Q And in a perfect world what would be the next</p> <p>16 steps, then, for purposes of allowing the WAM purchasers</p> <p>17 to do something with their stock?</p> <p>18 A So, then, the stock power and the stock</p> <p>19 certificate would go to the transfer agent so the</p> <p>20 transfer agent could turn it into electronic form, so</p> <p>21 then it's on account at the prime broker so that the</p> <p>22 shares can be transacted if the clients wish to do so.</p> <p>23 Q Okay. So let's go to Exhibit 41, please.</p> <p>24 This is an email from Nick Boutsalis to you;</p>
<p style="text-align: right;">Page 148</p> <p>1 correct?</p> <p>2 A Correct.</p> <p>3 Q Dated December 17, 2013?</p> <p>4 A Correct.</p> <p>5 Q And upon receipt of this email, what did you</p> <p>6 do?</p> <p>7 A I forwarded it to WAM's back office who</p> <p>8 processes these types of things.</p> <p>9 Q Okay. In December 2013 were efforts being made</p> <p>10 to dematerialize the 3.3 million shares of stock?</p> <p>11 A Yes.</p> <p>12 Q Okay. And as you previously testified, that</p> <p>13 involved sending the power of attorney and the original</p> <p>14 stock certificate to the transfer agent; correct?</p> <p>15 A Correct.</p> <p>16 Q Until or about December 17, 2013, had you</p> <p>17 become aware yet as to whether or not there was going to</p> <p>18 be any problem in dematerializing the 3.3 million shares</p> <p>19 of stock?</p> <p>20 A No.</p> <p>21 Q Okay. But in any event, in December 2013, that</p> <p>22 was at least after the six-month restriction period;</p> <p>23 correct?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 149</p> <p>1 Q So at least by December of 2013, assuming</p> <p>2 everything went well, at that time you'd be able to send</p> <p>3 the original power of attorney and the original stock</p> <p>4 certificate to NATCO to have Stock Certificate 753</p> <p>5 dematerialized so that the buyers, the WAM client buyers</p> <p>6 who bought it back in April of 2013, could then sell it?</p> <p>7 A Correct.</p> <p>8 Q The process I just described I prefaced by</p> <p>9 saying, "assuming all went well," but all did not go well</p> <p>10 in this case; correct?</p> <p>11 A Correct.</p> <p>12 Q And when did you learn that there was going to</p> <p>13 be a problem dematerializing the 3.3 million shares of</p> <p>14 stock that were sold in April 2013?</p> <p>15 A I believe shortly after this. I don't know if</p> <p>16 it was in December or January, but it was within, I</p> <p>17 think, a few weeks.</p> <p>18 Q December of 2013 or January 2014?</p> <p>19 A Yeah.</p> <p>20 Q And what did you learn in that time period?</p> <p>21 A Learned that there was a hold. I was told</p> <p>22 there was a hold on the certificate.</p> <p>23 Q Okay. Did you understand at that time what the</p> <p>24 hold was a result of?</p>

<p style="text-align: right;">Page 150</p> <p>1 A No.</p> <p>2 Q Okay. So what did you then do once you found</p> <p>3 out about the hold?</p> <p>4 A I was contacting Lambros. I think that was the</p> <p>5 first thing I started doing was contacting Lambros.</p> <p>6 Q Okay. And in late 2013, early 2014, were you</p> <p>7 still in regular communication with Tom and Lambros?</p> <p>8 A Lambros, fairly regular, fairly regular. Tom,</p> <p>9 not as much, very little.</p> <p>10 Q Okay. When did you first learn of the cause of</p> <p>11 the hold that you became aware of in late 2013, early</p> <p>12 2014?</p> <p>13 A Because I was told the cause of the hold --</p> <p>14 Q I'm asking when did you learn.</p> <p>15 A When I learned the cause of the hold was after</p> <p>16 we retained counsel sometime in 2015. It was much time</p> <p>17 later that we retained counsel, the firm retained counsel</p> <p>18 to look at the matter, deal with the matter, etcetera,</p> <p>19 with the transfer agent, and then we were informed that</p> <p>20 the certificate had been filed as a lost certificate.</p> <p>21 Q Okay. Turn, please, to Exhibit 14, which is</p> <p>22 admitted into evidence.</p> <p>23 Do you see that?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 151</p> <p>1 Q This is a document called an Affidavit of Lost</p> <p>2 Stock Certificate.</p> <p>3 A Correct.</p> <p>4 Q And it says, "I, Athanasios Skarpelos, hereby</p> <p>5 declare and affirm as follows."</p> <p>6 Do you see that? And then there are seven</p> <p>7 paragraphs of affirmations.</p> <p>8 A Yes.</p> <p>9 Q Affirmation No. 5 says that "The present status</p> <p>10 of the certificate is as follows:" And then handwritten</p> <p>11 there it says, "Lost."</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q And the stock certificates being referenced in</p> <p>15 this affidavit are Stock Certificates 661 and 753;</p> <p>16 correct?</p> <p>17 A 660.</p> <p>18 Q I'm sorry. 660 and 753; correct?</p> <p>19 A Correct.</p> <p>20 Q And on the second page of this exhibit is a</p> <p>21 notary stamp; correct?</p> <p>22 A The Greek one?</p> <p>23 Q Yes. Well, yes.</p> <p>24 A Yes. Yes. Yes. It's a lawyer's stamp.</p>
<p style="text-align: right;">Page 152</p> <p>1 Q Right. What is the signature date on this</p> <p>2 document?</p> <p>3 A March 23, 2013.</p> <p>4 Q In March of 2013 where was Stock Certificate</p> <p>5 753?</p> <p>6 THE COURT: Let me just ask a clarification</p> <p>7 question, if I could.</p> <p>8 I'm not sure if that's a 3 or an 8. You</p> <p>9 identified --</p> <p>10 THE WITNESS: Could be a 9.</p> <p>11 THE COURT: Or a 9, possibly. It says</p> <p>12 March 2nd, and then if I were to guess, I thought it was</p> <p>13 an 8. You say it's a 3 or a 9, but I want to make sure</p> <p>14 we're all talking about -- it's in March of 2013 --</p> <p>15 MR. NORK: The date doesn't matter, Your Honor,</p> <p>16 but you're right, it's hard to tell.</p> <p>17 THE COURT: It's just -- well, it's prior to</p> <p>18 the April transfers?</p> <p>19 MR. NORK: Correct. I'll just refer to it,</p> <p>20 Your Honor, as March of 2013.</p> <p>21 BY MR. NORK:</p> <p>22 Q In March of 2013 where was Stock Certificate</p> <p>23 753?</p> <p>24 A In the vault at WAM.</p>	<p style="text-align: right;">Page 153</p> <p>1 Q Had it ever left the vault at WAM since May of</p> <p>2 2011?</p> <p>3 A No.</p> <p>4 Q And in March of 2013 were you in regular</p> <p>5 communication with either Lambros and/or Tom?</p> <p>6 A Lambros, yes, but Tom not so much because he</p> <p>7 had become sick around then.</p> <p>8 Q Okay. Certainly leading up to March 2013 --</p> <p>9 A Yes.</p> <p>10 Q -- you were in communication with Tom?</p> <p>11 A Yes.</p> <p>12 Q And Tom had a way to reach you; correct?</p> <p>13 A Yes.</p> <p>14 Q Who was the primary contact that Tom had at</p> <p>15 WAM?</p> <p>16 A That would have been me.</p> <p>17 Q Okay. And so if he ever needed any information</p> <p>18 about WAM or about his account at WAM or about his stock</p> <p>19 at WAM, who did he communicate with?</p> <p>20 A With myself.</p> <p>21 Q And leading up to March of 2013, did you ever</p> <p>22 learn either from Lambros or Tom that there was a concern</p> <p>23 that that Stock Certificate 753 had been lost?</p> <p>24 A No. No.</p>

<p style="text-align: right;">Page 154</p> <p>1 Q And, in fact, in March of 2013 what were you 2 discussing doing for Tom?</p> <p>3 A Well, the discussion was prior to March. Tom 4 was pretty sick in March so we didn't have that much 5 discussion, though Lambros and I were discussing the 6 continuation of finding buyers for the stock certificates 7 and raising capital.</p> <p>8 Q So you were trying to sell the stock?</p> <p>9 A Yes.</p> <p>10 Q Did this Affidavit of Lost Certificate come as 11 a surprise to you?</p> <p>12 A Yes.</p> <p>13 Q Do you have any explanation as you sit here 14 today why Mr. Skarpelos would have executed this 15 affidavit?</p> <p>16 A No.</p> <p>17 MR. ANDERSON: Objection. Calls for 18 speculation.</p> <p>19 THE COURT: Sustained.</p> <p>20 BY MR. NORK:</p> <p>21 Q Let's turn, please, to Exhibit 15, which is 22 also admitted into evidence.</p> <p>23 What is Exhibit 15?</p> <p>24 A A Stop Transfer Order.</p>	<p style="text-align: right;">Page 155</p> <p>1 Q And what is the date of this document?</p> <p>2 A March 29, 2013.</p> <p>3 Q And does the 29 look sort of like the date on 4 the prior Exhibit 14, to the best of your ability? It's 5 hard to tell.</p> <p>6 THE COURT: That looks a little clearer to me 7 to be a 29.</p> <p>8 MR. NORK: Yeah.</p> <p>9 THE COURT: It's admitted. It is what it is.</p> <p>10 MR. NORK: Yes, it definitely is.</p> <p>11 BY MR. NORK:</p> <p>12 Q What do you understand this document to be, 13 Exhibit 15?</p> <p>14 A I requested a transfer agent to stop any 15 transfer requests on the certificates.</p> <p>16 Q So this is asking NATCO to prevent any 17 transfers of Stock Certificate 660 or 753; correct?</p> <p>18 A Correct.</p> <p>19 Q And who's requesting the stop transfer?</p> <p>20 A Tom Skarpelos.</p> <p>21 Q And what is the stamp in the lower right-hand 22 corner with the signature on it?</p> <p>23 A It looks like a lawyer's, attorney's stamp.</p> <p>24 Q What is the purpose of that?</p>
<p style="text-align: right;">Page 156</p> <p>1 A To be notarized. A notary.</p> <p>2 Q So at or about the same time that the affidavit 3 was executed, the Stop Transfer Order was also sent to 4 NATCO; correct?</p> <p>5 A Yes.</p> <p>6 Q Okay. You didn't learn about either of these 7 documents until well after the April 2013 sale; correct?</p> <p>8 A Yes. 2015. These documents are from 2016.</p> <p>9 Q Turn, please, if you would, to Exhibit 13.</p> <p>10 This is already admitted into evidence. What 11 is Exhibit 13?</p> <p>12 A It's an indemnity from Anavex, the issue 13 indemnifying NATCO, indemnifying NATCO if they reissue a 14 new certificate replacing the lost certificate.</p> <p>15 Q Okay. What is the date of this document?</p> <p>16 A January 10, 2013.</p> <p>17 Q So January 10, 2013, this Corporate Indemnity 18 is executed, and it says in the first recital at the very 19 top that the company has requested duplicate certificates 20 of stock for shares of common stock of the company to be 21 issued in replacement of the lost Certificates 660 and 22 753 which has been lost.</p> <p>23 Do you see that?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 157</p> <p>1 Q And this is in January, three months before the 2 Affidavit of Lost Certificate; correct?</p> <p>3 A Correct.</p> <p>4 Q How did the timing of this January 2013 5 Corporate Indemnity coincide with the request made of you 6 to try to sell 6.6 million shares of stock?</p> <p>7 A This is all around the same period of time.</p> <p>8 Q Were you aware at all that Anavex had executed 9 this Corporate Indemnity?</p> <p>10 A No, not at all.</p> <p>11 Q When did you find out about this Corporate 12 Indemnity?</p> <p>13 A After 2015.</p> <p>14 Q Okay. And this is a Corporate Indemnity to 15 NATCO; correct?</p> <p>16 A Correct.</p> <p>17 Q And it says below the line about a little more 18 than halfway down through the document, "And it further 19 be resolved that should the original certificate ever be 20 properly presented for transfer, NATCO is hereby 21 instructed to transfer and reissue such certificate, and 22 the company agrees it will take the appropriate actions 23 in regards to such certificate under the Uniform 24 Commercial Code," etcetera.</p>

<p style="text-align: right;">Page 158</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q To your recollection and understanding, were</p> <p>4 the original stock certificates for 753 presented to</p> <p>5 NATCO for transfer?</p> <p>6 A Yes.</p> <p>7 Q And this Corporate Indemnity notwithstanding,</p> <p>8 when it was presented for transfer to NATCO, was the</p> <p>9 stock 753 reissued?</p> <p>10 A No. When we submitted it, it wasn't reissued,</p> <p>11 but I think it had technically been already reissued.</p> <p>12 Q A replacement certificate had been?</p> <p>13 A Right.</p> <p>14 Q Okay. That's different than reissuing the</p> <p>15 original, though; correct?</p> <p>16 A I don't know.</p> <p>17 Q Okay. Well, let's look at Exhibit 16, which is</p> <p>18 also admitted into evidence.</p> <p>19 What does this show about the status of</p> <p>20 exhibit -- excuse me -- of Certificate 753 and 660?</p> <p>21 A If I'm reading correctly, it shows they were</p> <p>22 canceled.</p> <p>23 Q Correct. Canceled and then reissued as</p> <p>24 Certificate 975; correct?</p>	<p style="text-align: right;">Page 159</p> <p>1 A Correct.</p> <p>2 Q And, again, when did you become aware of this</p> <p>3 document?</p> <p>4 A After 2015.</p> <p>5 Q Between 2011 when the WAM account was opened</p> <p>6 and 2013 when the Affidavit of Lost Stock Certificate was</p> <p>7 submitted, did you ever have occasion to see</p> <p>8 Mr. Skarpelos in person?</p> <p>9 A Oh, yes, many times.</p> <p>10 Q Approximately how many times over that two-year</p> <p>11 period?</p> <p>12 A From 2011 to 2013?</p> <p>13 Q Yes, sir.</p> <p>14 A I would have to say at least 30, 40 times at</p> <p>15 least.</p> <p>16 Q And where on the planet did you see him in</p> <p>17 person?</p> <p>18 A Oh, many places. Hong Kong, Miami, Bahamas,</p> <p>19 Greece. Many places.</p> <p>20 Q And also during that same two-year period,</p> <p>21 spring of 2011 to spring of 2013, did you have occasion</p> <p>22 to see Lambros in person?</p> <p>23 A Yes.</p> <p>24 Q Approximately how many times did you see him?</p>
<p style="text-align: right;">Page 160</p> <p>1 A At least as many, if not twice as many, as Tom.</p> <p>2 Q And where on the planet did you see him?</p> <p>3 A Everywhere. Yeah, we went -- Lambros and I</p> <p>4 were actually in Iceland in the fall of 2012.</p> <p>5 Q You were in Iceland together?</p> <p>6 A No. That was maybe 2013. We were in</p> <p>7 Iceland -- yeah, late 2013. Lambros was very frequently</p> <p>8 all over Europe and Bahamas and Hong Kong.</p> <p>9 Q Okay. And during that same two-year period,</p> <p>10 did you have occasion to speak with or exchange emails</p> <p>11 with Tom?</p> <p>12 A From 2011 --</p> <p>13 Q Spring 2011 to spring 2013.</p> <p>14 A Yes. Yes.</p> <p>15 Q How many times, approximately?</p> <p>16 A Must have had many dozens, a hundred plus.</p> <p>17 Q Okay. Same question regarding Lambros. How</p> <p>18 many times did you speak with or exchange e-mails or</p> <p>19 texts with him during that two-year period?</p> <p>20 A A hundred plus.</p> <p>21 Q Can you turn, please, to Exhibit 60.</p> <p>22 Exhibit 60 is an email from you to you;</p> <p>23 correct?</p> <p>24 A Yes. Yes. Yes.</p>	<p style="text-align: right;">Page 161</p> <p>1 Q And generally can you describe what the content</p> <p>2 is of this email?</p> <p>3 A It's screenshots -- it's a screenshot of the</p> <p>4 emails -- of email correspondence that I had with Tom.</p> <p>5 Q And did you take these screenshots yourself?</p> <p>6 A Yes.</p> <p>7 Q So you copied them and then pasted them into an</p> <p>8 email?</p> <p>9 A Correct.</p> <p>10 Q And then you sent it to yourself?</p> <p>11 A Yes.</p> <p>12 MR. NORK: Move to admit Exhibit 60.</p> <p>13 MR. ANDERSON: Objection, Your Honor. Hearsay</p> <p>14 and best evidence rule.</p> <p>15 THE COURT: How is it the best evidence rule?</p> <p>16 MR. ANDERSON: That's a good question.</p> <p>17 THE COURT: I'll overrule the objection on the</p> <p>18 best evidence rule. I don't think the best evidence rule</p> <p>19 has any application to the objection. But regarding the</p> <p>20 hearsay objection --</p> <p>21 MR. NORK: Your Honor, this is actually the</p> <p>22 rare instance where it is not being offered for the truth</p> <p>23 of the matter asserted. This is simply to show ongoing</p> <p>24 communication between Christos Livadas and Tom Skarpelos</p>

<p style="text-align: right;">Page 162</p> <p>1 during the time frame we've just been talking about.</p> <p>2 THE COURT: And based on that, Mr. Anderson,</p> <p>3 what's the hearsay objection?</p> <p>4 MR. ANDERSON: Well, it is an out-of-court</p> <p>5 statement offered to prove the truth of the matter</p> <p>6 asserted, which is he sent hundreds or whatever number of</p> <p>7 emails are in here. He's already testified that he sent</p> <p>8 some emails. The emails apparently aren't included in</p> <p>9 this exhibit binder or we'd have a lot more documents,</p> <p>10 and so it's basically hearsay to establish that he's</p> <p>11 communicating with Tom, but he's already testified to</p> <p>12 that fact.</p> <p>13 THE COURT: So, then, I guess the argument is</p> <p>14 that it's not hearsay; it's needlessly cumulative under</p> <p>15 48.035.</p> <p>16 MR. ANDERSON: I still think it's both.</p> <p>17 THE COURT: Well, the Court will admit it as</p> <p>18 nonhearsay. The Court is not admitting the screenshots</p> <p>19 to support the truth of the matter asserted, and by the</p> <p>20 truth of the matter asserted, I mean what is identified</p> <p>21 in the subject matter line on each email. I'm not going</p> <p>22 to look at those and say, that's what this email was</p> <p>23 about because I have no idea. So it's not being offered</p> <p>24 for the truth of the matter asserted, that is, that there</p>	<p style="text-align: right;">Page 163</p> <p>1 was an email that addressed the identified issue.</p> <p>2 It will be admitted simply to demonstrate that</p> <p>3 there was communication of some form between Mr. Livadas</p> <p>4 and Mr. Skarpelos during the identified periods of time,</p> <p>5 and so the Court will admit it for that limited purpose.</p> <p>6 (Exhibit 60 was admitted.)</p> <p>7 THE COURT: It is now noon, Mr. Nork, so we're</p> <p>8 going to take a break, but I always -- I add syllables to</p> <p>9 your name, Mr. Livadas, and I apologize.</p> <p>10 THE WITNESS: Livadas is good.</p> <p>11 THE COURT: I think I said LAD-DE-VOS a second</p> <p>12 ago, so I don't know why I throw an extra D in there, but</p> <p>13 I apologize to you for mispronouncing your name on a</p> <p>14 couple occasions.</p> <p>15 The question I had -- and possibly it's</p> <p>16 something you're going to address as you continue to</p> <p>17 question Mr. Livadas -- is I'm unsure, as I've now looked</p> <p>18 through the exhibits that have been admitted, how</p> <p>19 Mr. Skarpelos would know to contact Nevada Agency</p> <p>20 Transfer Company in the first place. Was that someplace</p> <p>21 that always was used or -- let me just take a step back.</p> <p>22 I'm flipping through my exhibit book and talking at the</p> <p>23 same time, which is not efficient.</p> <p>24 Exhibit 13, 14, 15 and 16 all involve the</p>
<p style="text-align: right;">Page 164</p> <p>1 contact between Mr. Skarpelos and Nevada Agency and</p> <p>2 Transfer Company regarding the Indemnity in 13, the lost</p> <p>3 stock certificates in 14, and then the Stop Transfer in</p> <p>4 15.</p> <p>5 As I'm sitting here, I don't know how</p> <p>6 Mr. Skarpelos knows he needs to contact that agency out</p> <p>7 of all the other transfer agencies in the world to send</p> <p>8 this information to. If the deal is going on in April,</p> <p>9 selling the internal shares to WAM clients, I'm just not</p> <p>10 quite sure as I sit here. If you want to address that</p> <p>11 when we come back after lunch --</p> <p>12 MR. NORK: I'll address it when we come back</p> <p>13 because I'm not sure I can get it in through Mr. Livadas,</p> <p>14 but we for sure can get it in through Mr. Skarpelos.</p> <p>15 THE COURT: Yeah. I just didn't know how he</p> <p>16 would know to send it off to them.</p> <p>17 So, Counsel, we will be in recess until</p> <p>18 approximately 1:15, and at that point we will continue</p> <p>19 with direct examination.</p> <p>20 Court is in recess.</p> <p>21 (The midday recess was taken.)</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 165</p> <p>1 -oOo-</p> <p>2 RENO, NEVADA; MONDAY, JANUARY 28, 2019; 1:20 P.M.</p> <p>3 -oOo-</p> <p>4</p> <p>5 THE COURT: We'll go back on the record in</p> <p>6 Skarpelos vs. Weiser, et al., CV15-02259.</p> <p>7 Counsel, we're starting about five minutes</p> <p>8 late. It is totally my fault. I was sitting in my</p> <p>9 office typing an email to somebody when my judicial</p> <p>10 assistant tapped on the door and said, "Are you going to</p> <p>11 go back in?" and I looked up and saw what time it is. So</p> <p>12 I apologize if you were waiting here for five minutes</p> <p>13 because I told you we would start promptly at 1:15, and</p> <p>14 now it's about 1:19, so it was totally on me, and I</p> <p>15 apologize to everybody that you were sitting here waiting</p> <p>16 for me.</p> <p>17 Mr. Nork, you may continue your direct</p> <p>18 examination of Mr. Livadas.</p> <p>19 MR. NORK: Thank you, Your Honor.</p> <p>20</p> <p>21 DIRECT EXAMINATION</p> <p>22 (Resumed)</p> <p>23 BY MR. NORK:</p> <p>24 Q Mr. Livadas, I'd like to start off with kind of</p>

<p style="text-align: right;">Page 166</p> <p>1 where we left off just before our lunch break, and a 2 question was asked by the Court. 3 What is the connection between Anavex and 4 NATCO? Can you explain that for the Court? 5 A NATCO is Anavex's transfer agent, and they're 6 the ones responsible for managing and handling all the 7 issuances of share certificates. 8 THE COURT: For all cases, that's the only 9 people you use? 10 THE WITNESS: For Anavex. That's their 11 assigned transfer agent. 12 BY MR. NORK: 13 Q So any time Anavex buys or sells stock, it goes 14 through NATCO? 15 A Once they buy or sell, if they're issuing -- if 16 they're issuing or clearing a certificate, it goes 17 through NATCO. 18 Q Okay. Another topic that came up before the 19 break concerned the stock sale and purchase agreement, 20 which is Exhibit 30. 21 You testified that this stock sale and purchase 22 agreement was not required for the April 2013 sale of 23 3.3 million shares of stock; correct? 24 A Correct.</p>	<p style="text-align: right;">Page 167</p> <p>1 Q And you also testified that the sale to the 2 non-WAM Chinese investors did not go through; correct? 3 A Correct. 4 Q What was the purpose for completing and filling 5 out this document? 6 A It was completed to be put into the file, 7 particularly for AML, anti-money laundering purposes, as 8 I mentioned. So it closes up the file and the 9 transaction, and it's mostly for AML purposes. 10 Q And for anti-money laundering purposes, who 11 would be looking for this document? 12 A When the stock is later deposited to prime 13 brokers, so after the share certificate becomes 14 electronic and when we put with our main custodian, they 15 sometimes ask for these kinds of things. Later, when 16 clients want to trade, if they're trading a position 17 which hasn't been purchased from the market, they want to 18 know where the position come from, why did it come from 19 and that it's anti-money laundering, so they know you're 20 not, say, flipping certificates with terrorists and 21 things like that. 22 Q Okay. And then we also talked about examples 23 in which you received requests from Lambros asking for 24 you to -- you received requests from Lambros, and as a</p>
<p style="text-align: right;">Page 168</p> <p>1 result of those requests, you transferred money out of 2 Tom's WAM account to various other banks? 3 A Correct. 4 Q And these requests took place in April 2012 -- 5 excuse me -- December 2012, April 2013, May of 2013, is 6 what we've seen so far. 7 Other than money coming out of Tom's WAM 8 account and into some designated account, is there any 9 other explanation that you can think of for why Lambros 10 would be making these requests of you? 11 A No. 12 Q Then we also talked about your efforts to start 13 dematerializing the stock. 14 Can you remind the Court what dematerializing 15 is? 16 A That's when we take the paper certificate and 17 make it into electronic form so it can go to the central 18 depository. 19 Q And that's where we have to wait the six 20 months -- right? -- during the restricted period? 21 A At least. 22 Q At least. Okay. 23 THE COURT: And you only need to do that if 24 it's not a WAM account being -- a WAM customer being the</p>	<p style="text-align: right;">Page 169</p> <p>1 buyer and the seller; correct? 2 THE WITNESS: Sorry. Ask the question again. 3 THE COURT: Maybe I should go back through my 4 notes and look again to make sure I understand what 5 you're saying. 6 If it's a WAM buyer and a WAM seller, so 7 they're both your customers, do you need to 8 dematerialize -- 9 THE WITNESS: It's irrelevant on the 10 transaction side. It needs to become electronic so 11 anybody -- so anybody can deal with it after, to 12 eventually trade it on the public market. So it's like 13 paper cash. If you have paper cash, you take the paper 14 cash to the bank, they turn it into electronic so that 15 you can then transact on it with other people not in 16 cash. It has to become electronic. 17 BY MR. NORK: 18 Q So I guess more to the Court's question, the 19 actual transaction in April 2013 did not require 20 dematerialization? 21 A Right. No. 22 Q But after the restriction period expires, if 23 the buyer of that stock wants to then sell what he 24 bought, he can't tear off a portion of Certificate 753;</p>

<p style="text-align: right;">Page 170</p> <p>1 right? It needs to be converted into electronic stock; 2 correct? 3 A If he wishes to sell it on the public market. 4 Q Okay. And that's what dematerializing is; 5 correct? 6 A Correct. 7 Q It turns a physical stock certificate into the 8 electronic equivalent, which allows some or all of it to 9 be sold in the open market? 10 A Yeah. 11 Q Okay. And you began to undertake that process, 12 as you testified, in late 2013, early 2014, and you 13 learned there was a hold or something concerning Stock 14 Certificate 753; correct? 15 A Correct. 16 Q And we went through the Affidavit of Lost 17 Certificate and related documents that had been prepared 18 by Mr. Skarpelos; correct? 19 A Correct. 20 Q The next example of you taking efforts to 21 dematerialize the stock, notwithstanding your belief that 22 there was a hold on it, was not until later in 2015. 23 What is your explanation for that delay? 24 A Correct. So once we discovered there was a</p>	<p style="text-align: right;">Page 171</p> <p>1 hold on it in 2014, I began to ask questions. I was 2 trying to get ahold of Lambros and Tom, but I didn't 3 really have Tom's number at that time, and mostly it was 4 usually through Lambros. So I wasn't getting clear 5 responses from Lambros as to why there's a hold on it, 6 and this went on a little bit back and forth for a few 7 months, and at that time there was no rush to -- nobody 8 was asking to be active on the shares. 9 Q What do you mean by that? 10 A To be active, to want to sell them. 11 Q Okay. So none of the buyers who had acquired 12 the stock in April 2013 were coming to you asking for the 13 stock to be dematerialized so they could then sell it? 14 A They never ask it be dematerialized. A client 15 only asks to transact. They don't understand the meaning 16 of dematerializing. 17 Q But none of them came to you and said, "I want 18 to now sell the stock I bought"? 19 A No. 20 Q And did that change? 21 A Yes. Then it changed in 2015. 22 Q And what happened in 2015 that caused the 23 change? 24 A Clients started asking about the status of the</p>
<p style="text-align: right;">Page 172</p> <p>1 company and the stock, and they were indicating they 2 wanted to become active in the stock. 3 Q Okay. And do you have an understanding of why 4 the clients showed an increased interest in selling the 5 stock in 2015? 6 A Because the price started to go up in 2015. 7 Q Okay. And what kind of a position did that put 8 Weiser Capital in? 9 A Well, it started -- it started creating 10 liabilities to Weiser Capital because -- I'm sorry -- 11 WAM -- I mix up the two myself -- but WAM. It starts 12 with liabilities for WAM because if a client requests to 13 sell the shares and the shares aren't there, Weiser has 14 that liability. It has to deliver that sell order and 15 that cash to the clients. 16 Q So if a buyer of Anavex stock who bought it in 17 April 2013, stock value is going up in 2015, and they 18 come to Weiser and say, "I'd like to sell my stock now," 19 and Weiser at the time doesn't have the stock to sell -- 20 right? -- because there's a hold on it, what are Weiser's 21 options to cover that request? 22 A It has to go into the market and buy the shares 23 to then fulfill the sell order. So when the client sells 24 it, it becomes Weiser buying it. Or to put it another</p>	<p style="text-align: right;">Page 173</p> <p>1 way, Weiser has to also -- or Weiser can sell short in 2 the market, which means the brokerage firm is taking what 3 we call a short position in the market, which then 4 increases its risk substantially as well. So when a 5 client says sell, we have to sell. So Weiser ends up 6 going short in the market and has to also give the 7 client -- has to credit that cash to the client. 8 THE COURT: Just in your analysis, the example 9 you just gave, would Weiser actually have to go and buy 10 the shares of Anavex in the market, or could you just 11 credit the account -- let's say I think I've bought the 12 shares, and I come to you now and I say I'd like to sell 13 them, and they're trading at \$100 a share and I have 10 14 shares. 15 THE WITNESS: Correct. 16 THE COURT: Couldn't you just put a thousand 17 dollars into my account? Do you actually have to buy the 18 shares to make it look like that trade has taken place? 19 THE WITNESS: We either have to buy them and 20 sell them, like we would buy them so that they're 21 credited to the firm's account, and then sell them so 22 that there's the matching sell transaction to match the 23 client. So that's one way. 24 Or we go into the market and sell short. If we</p>

<p style="text-align: right;">Page 174</p> <p>1 sell short into the market, it means you still owe that</p> <p>2 stock, not necessarily to the client, but you owe it to</p> <p>3 the market, and if you owe it to the market, at some</p> <p>4 point you have to pay it back to the market. And when it</p> <p>5 comes time to pay it back, it can range anywhere between</p> <p>6 one day to a long period of time. You never know when</p> <p>7 the market will call you to cover your shorts.</p> <p>8 THE COURT: There's a whole movie about that.</p> <p>9 THE WITNESS: And of course, if you go short,</p> <p>10 so if that client is wanting to sell at 6, 7, \$8 per</p> <p>11 share and if Weiser goes short at that price, okay, it's</p> <p>12 short, but if the price goes later to, let's say, \$20,</p> <p>13 then Weiser has even more exposure on the short side.</p> <p>14 THE COURT: Because when the call comes up, you</p> <p>15 have to pay it at 20, not 6?</p> <p>16 THE WITNESS: Yes, you have to go buy it back.</p> <p>17 At some point you're either buying it right away and</p> <p>18 giving it to the client or you're buying it later to</p> <p>19 cover the short at some point.</p> <p>20 THE COURT: So the big takeaway is, once the</p> <p>21 client begins to indicate that he or she or it wants to</p> <p>22 sell, you have a potential liability that you can't fix</p> <p>23 because either it's fixed at that moment or you have to</p> <p>24 go buy it?</p>	<p style="text-align: right;">Page 175</p> <p>1 THE WITNESS: Correct. Yeah. And you can't</p> <p>2 just credit it because then none of the accounts will</p> <p>3 balance in the firm. You have to credit it from</p> <p>4 somewhere. It has to come from something. So the firm's</p> <p>5 accounts will be out of balance. They won't close. They</p> <p>6 won't settle.</p> <p>7 THE COURT: Okay.</p> <p>8 BY MR. NORK:</p> <p>9 Q And did you, in fact, go out in the market and</p> <p>10 buy stock or buy shorts to cover in this case?</p> <p>11 A Yes. We did some, yes.</p> <p>12 Q Because you had already assured the buyers that</p> <p>13 they have owned the stock since April 2013?</p> <p>14 A Correct.</p> <p>15 THE COURT: But not a total coverage? You</p> <p>16 bought some of them? You shorted some of the stock?</p> <p>17 THE WITNESS: Shorted some. Either way we're</p> <p>18 still short. Whichever side we call it on, the firm is</p> <p>19 short.</p> <p>20 BY MR. NORK:</p> <p>21 Q Okay. So let's turn, please, to Exhibit 50,</p> <p>22 which is already admitted, and even though it's already</p> <p>23 admitted, there's a lot redacted on the first page.</p> <p>24 I want to focus on the second page, and this is</p>
<p style="text-align: right;">Page 176</p> <p>1 your email to Nick Boutsalis.</p> <p>2 A Number 50?</p> <p>3 Q Five zero, yes.</p> <p>4 A Five zero. Okay.</p> <p>5 Q And this is your email to Nick Boutsalis where</p> <p>6 it says, "Thank you for confirming your office received</p> <p>7 original Stock Certificate Number 753, the Stock Power</p> <p>8 and a copy of the passport of Athanasios Skarpelos on</p> <p>9 November 2013 and is in safekeeping. Please confirm</p> <p>10 receipt of this email and courier these to Anavex."</p> <p>11 What is the purpose of this request?</p> <p>12 A So the purpose of this request is to put the</p> <p>13 stock certificate in, again, to be cleared or</p> <p>14 dematerialized.</p> <p>15 Q And is this at or about the time frame that</p> <p>16 some of the April 2013 buyers were asking about selling</p> <p>17 their stock?</p> <p>18 A Correct.</p> <p>19 Q So you asked Nick to send this information to</p> <p>20 NATCO?</p> <p>21 A Correct.</p> <p>22 Q Turn, please, to Exhibit 48. This has also</p> <p>23 been admitted.</p> <p>24 This is a letter from Weiser to NATCO saying,</p>	<p style="text-align: right;">Page 177</p> <p>1 "Please find the stock certificate and have the</p> <p>2 restrictive legend removed."</p> <p>3 What was the purpose of this letter?</p> <p>4 A The purpose of this letter is to instruct -- to</p> <p>5 instruct the transfer agent to dematerialize the</p> <p>6 certificate and to put it in the custodial account, which</p> <p>7 is -- which is the same -- which would be part of the</p> <p>8 same package that would go with the email that went to</p> <p>9 Nick.</p> <p>10 Q Okay.</p> <p>11 A Because the firm -- the firm has to give</p> <p>12 specific account instruction to the transfer agent.</p> <p>13 Q So this is Weiser telling NATCO where they want</p> <p>14 the stock to go?</p> <p>15 A Correct.</p> <p>16 Q And that is State Street Bank?</p> <p>17 A Correct. Which is the firm's prime bank.</p> <p>18 Q Turn to Exhibit 54, which has already been</p> <p>19 admitted into evidence.</p> <p>20 What is Exhibit 54?</p> <p>21 A It's a letter from -- it's a letter from Nick</p> <p>22 Boutsalis informing NATCO that the Stock Certificate 753,</p> <p>23 etcetera, and the POA, as instructed by Weiser, is being</p> <p>24 submitted to them.</p>

<p style="text-align: right;">Page 178</p> <p>1 Q So this is basically Nick doing what you asked</p> <p>2 him to do the day before?</p> <p>3 A Correct.</p> <p>4 Q Okay. And submitting all the information to</p> <p>5 NATCO for the purpose of dematerializing that stock</p> <p>6 certificate?</p> <p>7 A Correct.</p> <p>8 Q And do you know what the response, if anything,</p> <p>9 was to this letter?</p> <p>10 A To this one specifically? I don't remember</p> <p>11 specifically what followed exactly.</p> <p>12 Q But they didn't dematerialize the stock, did</p> <p>13 they?</p> <p>14 A No.</p> <p>15 Q And that's where you became more aware of the</p> <p>16 dispute?</p> <p>17 A Correct.</p> <p>18 Q Turn, please, to Exhibit 44. Exhibit 44 and</p> <p>19 Exhibit 43 are the same document.</p> <p>20 Counsel and I have gone back and forth about</p> <p>21 which one is a better copy, and, frankly, I'm still</p> <p>22 undecided, but they're the same document, 43 and 44.</p> <p>23 Let's focus on 44.</p> <p>24 What is this document?</p>	<p style="text-align: right;">Page 179</p> <p>1 A This is an account statement.</p> <p>2 Q And it's an account statement for who?</p> <p>3 A For Tom Skarpelos.</p> <p>4 Q And what is the stated date range of this</p> <p>5 account statement?</p> <p>6 A February 1, 2013, to December 31, 2013.</p> <p>7 Q Okay. And when did you receive this document?</p> <p>8 A These were received -- well, when the firm --</p> <p>9 when I acquired the firm, they were in the files of the</p> <p>10 firm, so these were delivered at closing time when the</p> <p>11 firm was acquired.</p> <p>12 Q You previously testified about receiving 2013</p> <p>13 closing statements for all 60 to 100 existing WAM</p> <p>14 customers when you acquired WAM; correct?</p> <p>15 A Correct.</p> <p>16 Q And is this one of those 2013 closing</p> <p>17 statements?</p> <p>18 A Correct.</p> <p>19 Q And this is the 2013 closing statement for</p> <p>20 Mr. Skarpelos; correct?</p> <p>21 A Correct.</p> <p>22 Q And you received this and all the others when</p> <p>23 you acquired WAM; correct?</p> <p>24 A Correct.</p>
<p style="text-align: right;">Page 180</p> <p>1 Q And you acquired WAM in 2014; correct?</p> <p>2 A Correct. At the end of 2013, beginning 2014.</p> <p>3 Q Okay. As part of your due diligence in</p> <p>4 acquiring WAM, did you become aware of whether or not WAM</p> <p>5 had been audited for the year 2013?</p> <p>6 A Yes. WAM was audited in 2014 for 2013.</p> <p>7 Q Okay. So WAM was audited for 2013 after you</p> <p>8 had owned it?</p> <p>9 A Correct.</p> <p>10 Q And what were the results of that audit?</p> <p>11 MR. ANDERSON: Objection. Hearsay.</p> <p>12 MR. NORK: He was the owner. He just testified</p> <p>13 that he was the owner when the audit took place.</p> <p>14 MR. ANDERSON: I don't think he testified that</p> <p>15 WAM performed the audit on themselves. I think the</p> <p>16 testimony would deal with a third party, and the results</p> <p>17 produced by that third party are hearsay.</p> <p>18 THE COURT: I think that's true, Mr. Nork.</p> <p>19 I'll sustain the -- unless that's not accurate, but if it</p> <p>20 was some outside entity that conducted the audit of the</p> <p>21 business, then whatever that outside entity said would be</p> <p>22 hearsay.</p> <p>23 MR. NORK: Okay.</p> <p>24 /////</p>	<p style="text-align: right;">Page 181</p> <p>1 BY MR. NORK:</p> <p>2 Q Did you have to take any corrective actions as</p> <p>3 a result of the audit of the 2013 records?</p> <p>4 A No.</p> <p>5 Q This document, Exhibit 44, was maintained with</p> <p>6 all the other 2013 customer statements; correct?</p> <p>7 A Correct.</p> <p>8 Q And it was part of what you received when you</p> <p>9 acquired WAM?</p> <p>10 A Correct.</p> <p>11 Q And you had access to this -- was it a box of</p> <p>12 records? A file folder of records?</p> <p>13 A My staff pulled this from the records. I</p> <p>14 didn't go into the boxes or whatever they are.</p> <p>15 Q But you know where they're stored?</p> <p>16 A Yes. Yes. Yes.</p> <p>17 Q And do you have any reason to doubt the</p> <p>18 accuracy of this document?</p> <p>19 A No.</p> <p>20 Q Is WAM audited every year?</p> <p>21 A Every year, yes.</p> <p>22 Q And does that audit try to determine whether or</p> <p>23 not there are any accounting errors for the preceding</p> <p>24 year?</p>

<p style="text-align: right;">Page 182</p> <p>1 A That's the main purpose of the audit is to make 2 sure that all of the firm's accounts and the assets 3 balance. 4 Q And have you had to take any corrective action 5 as a result of any audits for any years for WAM? 6 A Corrective audits, yes. They find 7 discrepancies, and then it has to go and be searched why 8 there's a discrepancy amongst accounts. 9 Q Did you have to do any search like that for the 10 year 2013? 11 A No, not for 2013. 12 MR. NORK: Okay. Move to admit Exhibit 44. 13 MR. ANDERSON: A couple of objections, Your 14 Honor. First of all, I don't think a foundation has been 15 laid that this witness can testify to the contents of 16 this document. He testified he acquired ownership in 17 2014, but I think he wasn't involved at all in the 18 preparation of this document or involved at all in the 19 internal procedures of WAM at that time. I'd also object 20 on hearsay grounds. 21 THE COURT: Mr. Nork. 22 MR. NORK: Your Honor, as I indicated in my 23 trial statement in anticipation of the very objection 24 that has just arisen, I believe that this document,</p>	<p style="text-align: right;">Page 183</p> <p>1 Exhibit 44, falls squarely under the business records 2 exception rule. Mr. Livadas does not have to be the 3 author of this document. It simply has to be a document 4 that was prepared in the ordinary course of business, 5 that he knows where it's maintained, that it's a true and 6 correct copy of the original, and that's exactly what he 7 testified to. 8 He acquired this when he acquired WAM. There 9 were audits. He indicated he didn't have to take any 10 corrective actions, which goes to the accuracy of this 11 document, and if this document doesn't come under the 12 business records exception, I'm not sure what does 13 because this is exactly what is contemplated. It was in 14 the files, he knows where to access them in the files, he 15 owns the company, and I believe for that reason the 16 hearsay objection is not applicable. 17 MR. ANDERSON: Your Honor -- 18 THE COURT: With regard to the business record 19 exception. 20 MR. ANDERSON: Yes, Your Honor. Mr. Livadas 21 said that he obtained this document because someone on 22 his staff that he didn't identify pulled it from a stack 23 of records that apparently exist in a storage unit or 24 somewhere with hundreds or perhaps thousands of documents</p>
<p style="text-align: right;">Page 184</p> <p>1 that WAM left him. He didn't testify that he was 2 involved in the course of preparing any of these 3 documents. 4 If I had an opportunity to voir dire him, 5 Mr. Livadas is going to testify he didn't have any 6 involvement in 2011, '12 or '13 in the internal 7 operations of WAM. This is a document that somebody 8 found apparently, and he has no idea how it was prepared, 9 and if Your Honor would give me the opportunity to voir 10 dire him, I think I can establish that. 11 THE COURT: Sure. Go ahead. 12 13 VOIR DIRE EXAMINATION 14 BY MR. ANDERSON: 15 Q Mr. Livadas, you recall I took your deposition 16 in October of 2018; correct? 17 A Yes. 18 Q And on that day you testified in various 19 capacities. You testified on behalf of Weiser Asset 20 Management; correct? 21 A Correct. 22 Q You testified on behalf of Weiser Bahamas aka 23 Weiser Capital; correct? 24 A Correct.</p>	<p style="text-align: right;">Page 185</p> <p>1 Q And you also testified on behalf of Weiser 2 Holdings? 3 A Correct. 4 Q And you agreed with me at the time I took your 5 deposition that you had the knowledge to testify on 6 behalf of the subjects that we talked about that day? 7 A Correct. 8 Q And you answered my questions truthfully at 9 that time? 10 A Correct. 11 Q Okay. When you acquired ownership of WAM, that 12 was December 2014; correct? 13 A '13. 14 Q Well, didn't you state in your declaration in 15 support of your Opposition to Motion for Summary Judgment 16 that you acquired WAM in December of 2014? 17 A I recall it as December 2013. 18 Q Okay. 19 A Early 2014. 20 Q So your declaration that you wrote or that you 21 signed in April of 2018 is not accurate? 22 A In April of 2018? 23 THE COURT: Why don't you show it to him. 24 MR. ANDERSON: Yes, Your Honor. Would you like</p>

<p style="text-align: right;">Page 186</p> <p>1 it marked?</p> <p>2 THE COURT: No. If it's a prior inconsistent</p> <p>3 statement -- well, it's part of the record so I don't</p> <p>4 think we need to mark and admit it as a prior</p> <p>5 inconsistent statement because it is, as I said, part of</p> <p>6 the record. One moment. Let me pull it up here. I've</p> <p>7 got the whole packet.</p> <p>8 What day is it file-stamped again?</p> <p>9 MR. ANDERSON: Your Honor, I believe it was</p> <p>10 attached to their Opposition to Motion for Summary</p> <p>11 Judgment.</p> <p>12 THE COURT: April 12, 2018.</p> <p>13 MR. ANDERSON: I believe so.</p> <p>14 THE COURT: I've got it right here.</p> <p>15 MR. ANDERSON: May I approach the witness?</p> <p>16 THE COURT: Yes. Can you tell me what you're</p> <p>17 looking at?</p> <p>18 MR. ANDERSON: Yes, Your Honor. I'll be</p> <p>19 referring to paragraph 2.</p> <p>20 THE COURT: I see. Okay.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q Mr. Livadas, you are looking at Declaration of</p> <p>23 Christos Livadas in Support of Weiser's Opposition to</p> <p>24 Skarpelos's Motion for Summary Judgment and Motion in</p>	<p style="text-align: right;">Page 187</p> <p>1 Limine; correct?</p> <p>2 A Correct.</p> <p>3 Q Okay. And if you turn to the last page, which</p> <p>4 is page 6, that's your signature?</p> <p>5 A That is correct.</p> <p>6 Q Okay. And you signed it in April 2018?</p> <p>7 A Yes.</p> <p>8 Q I'm sorry. I didn't hear you.</p> <p>9 A Yes.</p> <p>10 Q And right above your signature you say, "I</p> <p>11 declare under penalty of perjury, under the law of the</p> <p>12 State of Nevada and the United States, that the foregoing</p> <p>13 is true and correct."</p> <p>14 A Correct.</p> <p>15 Q And you had a chance to review this document</p> <p>16 prior to your signing it?</p> <p>17 A Correct.</p> <p>18 Q Without telling me what you talked about with</p> <p>19 Mr. Nork, you had an opportunity to discuss this with</p> <p>20 counsel before it was filed?</p> <p>21 A Correct.</p> <p>22 Q And so in paragraph 2 you state that -- in the</p> <p>23 last sentence of paragraph 2, "I acquired WAM in</p> <p>24 December 2014 and founded Weiser Capital in May of 2011."</p>
<p style="text-align: right;">Page 188</p> <p>1 A That's what I recalled at the time.</p> <p>2 Q Okay. So now you're changing your mind?</p> <p>3 A From what I recall, because I was going through</p> <p>4 actually my audit yesterday and I saw audit notes</p> <p>5 yesterday that Weiser Holdings had done -- had contracted</p> <p>6 to the purchase in December 2013. I happened to see this</p> <p>7 as I'm going through an audit process.</p> <p>8 Q I asked you about those acquisition documents</p> <p>9 at your deposition; correct?</p> <p>10 A Correct.</p> <p>11 Q And you didn't provide those, did you?</p> <p>12 A Right. So if I'm permitted, I could check.</p> <p>13 Q I'm asking what you stated under oath in April</p> <p>14 of 2018.</p> <p>15 A Correct.</p> <p>16 Q I'm going to talk about a number of other</p> <p>17 things we talked about at the deposition, but you were</p> <p>18 not an employee of WAM prior to your acquiring ownership?</p> <p>19 A No.</p> <p>20 Q You were not an officer prior to your</p> <p>21 ownership?</p> <p>22 A No.</p> <p>23 Q You were not a director of WAM prior to your</p> <p>24 ownership?</p>	<p style="text-align: right;">Page 189</p> <p>1 A No.</p> <p>2 Q Your only involvement with WAM prior to when</p> <p>3 you acquired ownership in December 14th, according to</p> <p>4 your declaration, was basically as the owner of Weiser</p> <p>5 Capital?</p> <p>6 A Correct.</p> <p>7 Q And Weiser Capital's purpose was basically just</p> <p>8 to find clients for WAM?</p> <p>9 A Yes.</p> <p>10 Q So Weiser Capital would find people like Tom</p> <p>11 Skarpelos and bring them to WAM to do business?</p> <p>12 A Correct.</p> <p>13 Q But you don't know how WAM kept records prior</p> <p>14 to your acquiring ownership, do you?</p> <p>15 A Specifically, no, not in detail.</p> <p>16 Q And you don't know what WAM's recordkeeping</p> <p>17 process was, do you?</p> <p>18 A No.</p> <p>19 Q You don't know how WAM tracked and reported on</p> <p>20 client transactions from 2011 until December 2014?</p> <p>21 A How it tracked?</p> <p>22 Q Yes. How they tracked and reported on client</p> <p>23 transactions?</p> <p>24 A No, I can't say specifically.</p>

<p style="text-align: right;">Page 190</p> <p>1 Q You don't know; correct?</p> <p>2 A Correct.</p> <p>3 Q And WAM doesn't have any statements for</p> <p>4 Mr. Skarpelos's accounts for the years 2011 or 2012, does</p> <p>5 it?</p> <p>6 A It's supposed to have transaction records.</p> <p>7 Statements aren't kept for -- a firm does not keep</p> <p>8 statements.</p> <p>9 Q Well, your counsel is trying to introduce a</p> <p>10 statement right now. How does it not keep statements and</p> <p>11 still have a statement?</p> <p>12 A Because the statements were given as part of</p> <p>13 the closing when the firm was going in transition over to</p> <p>14 the new ownership, into our new system.</p> <p>15 Q My question, though, is, it doesn't have any</p> <p>16 statements for Mr. Skarpelos's account for 2011 or '12?</p> <p>17 A Not that I've seen.</p> <p>18 Q You've had an opportunity to look?</p> <p>19 A Correct.</p> <p>20 Q And they should be there -- correct? -- but</p> <p>21 they're not?</p> <p>22 A No, they shouldn't be there.</p> <p>23 Q You didn't testify in your deposition that they</p> <p>24 should be there?</p>	<p style="text-align: right;">Page 191</p> <p>1 A No. Transactions -- transaction records for a</p> <p>2 firm will be there. A firm does not print statements</p> <p>3 every month to keep in paper files.</p> <p>4 Q Are you saying that there's no obligation under</p> <p>5 Bahamas securities regulations for a broker-dealer to</p> <p>6 send account statements to the client?</p> <p>7 A To send client statements. So if a client</p> <p>8 requests a statement, then the firm has to put a</p> <p>9 statement together.</p> <p>10 Q I just want to make sure I understand this.</p> <p>11 Your testimony is that as a Class I broker-</p> <p>12 dealer under Bahamas securities regulations, WAM is not</p> <p>13 obligated to send client statements?</p> <p>14 A It's not obligated to send statements, no.</p> <p>15 THE COURT: Just to put a fine point on that,</p> <p>16 are you asking him whether there's an obligation to send</p> <p>17 a regular statement at some fixed time? Monthly?</p> <p>18 Quarterly? Semiannually? Yearly? Is that what you're</p> <p>19 trying to say?</p> <p>20 THE WITNESS: There's no obligation to send</p> <p>21 statements daily, quarterly, monthly.</p> <p>22 THE COURT: But is the point that you're trying</p> <p>23 to make, Mr. Livadas, that if a client asks, we have to</p> <p>24 send them a statement? Is that what you're saying?</p>
<p style="text-align: right;">Page 192</p> <p>1 THE WITNESS: Correct. And my point to the</p> <p>2 records is that a brokerage firm keeps transactions,</p> <p>3 records of all of its transactions, and to produce a</p> <p>4 statement, a statement is produced from records of</p> <p>5 transactions. So when you log into your bank accounts,</p> <p>6 the bank software will create a statement from a history</p> <p>7 of transactions.</p> <p>8 There is no statement that the bank keeps.</p> <p>9 There's no -- banks don't keep a statement and print out</p> <p>10 statements and keep statements in the file. Those are</p> <p>11 produced from transaction records.</p> <p>12 THE COURT: On a monthly basis?</p> <p>13 THE WITNESS: If you ask for it monthly, or you</p> <p>14 might ask for your statement for three months or you</p> <p>15 might ask for a one-year statement, you might ask for a</p> <p>16 two-year statement. Whatever it is, the system has to</p> <p>17 create the statement. You don't keep a statement.</p> <p>18 THE COURT: Go ahead, Mr. Anderson.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q The question I asked you earlier was -- and I</p> <p>21 think you answered yes -- WAM doesn't have any account</p> <p>22 statements for Mr. Skarpelos's account for 2011 and 2012;</p> <p>23 correct?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 193</p> <p>1 Q And I asked you if those should be there, but</p> <p>2 they're not, and what was your answer?</p> <p>3 A Statements should not be there.</p> <p>4 Q Okay. Did you testify at your deposition that</p> <p>5 the statements should be there?</p> <p>6 A I don't recall exactly what I testified at my</p> <p>7 deposition, but what I know is, again, that --</p> <p>8 THE COURT: Don't answer beyond that. The</p> <p>9 question was simply, did you testify to that at your</p> <p>10 deposition?</p> <p>11 THE WITNESS: I don't recall what I testified</p> <p>12 at the deposition.</p> <p>13 MR. ANDERSON: Your Honor, I'd request to open</p> <p>14 and publish Mr. Livadas's deposition.</p> <p>15 THE COURT: Mr. Nork, any objection?</p> <p>16 MR. NORK: No objection.</p> <p>17 THE COURT: So we'll do that.</p> <p>18 MR. ANDERSON: If I can approach the bench, I</p> <p>19 have a copy for you.</p> <p>20 THE COURT: Thank you.</p> <p>21 THE CLERK: The deposition of Christos Livadas</p> <p>22 dated October 23, 2018, opened and published.</p> <p>23 MR. ANDERSON: Your Honor, may I approach the</p> <p>24 witness?</p>

<p style="text-align: right;">Page 194</p> <p>1 THE COURT: You may.</p> <p>2 BY MR. ANDERSON:</p> <p>3 Q Mr. Livadas, I direct your attention to</p> <p>4 page 114, and let's start at line 18 of page 114, and I</p> <p>5 asked you the question: "And the only account statement</p> <p>6 I've seen is for the year 2013."</p> <p>7 Your answer: "Right."</p> <p>8 My question: "And that's the only one you're</p> <p>9 aware of; correct?"</p> <p>10 Answer: "Correct."</p> <p>11 A I'm sorry. What page?</p> <p>12 Q Page 114.</p> <p>13 A Okay.</p> <p>14 Q Do you want me to start over?</p> <p>15 A Yes, please.</p> <p>16 Q Page 114. If you look down, there's a series</p> <p>17 of numbers on the left-hand side that starts at line 18</p> <p>18 that I'm looking at.</p> <p>19 A Correct.</p> <p>20 Q And I ask you the question: "And the only</p> <p>21 account statement I've seen is for the year 2013."</p> <p>22 Your answer was "Right."</p> <p>23 My next question: "And that's the only one</p> <p>24 you're aware of; correct?"</p>	<p style="text-align: right;">Page 195</p> <p>1 Your answer: "Correct."</p> <p>2 Next question: "So as the owner of WAM and</p> <p>3 having acquired all their assets, there were no account</p> <p>4 statements for Mr. Skarpelos for the year 2011; correct?"</p> <p>5 "ANSWER: Not that I received.</p> <p>6 "QUESTION: Well, you're the owner of WAM;</p> <p>7 correct?</p> <p>8 "ANSWER: Yeah.</p> <p>9 "QUESTION: And based on this document</p> <p>10 retention policy that was part of Mr. Skarpelos's</p> <p>11 contract that you alleged, those records should still be</p> <p>12 there; correct?</p> <p>13 "ANSWER: Should be.</p> <p>14 "QUESTION: But they're not?</p> <p>15 "ANSWER: Correct."</p> <p>16 THE COURT: To be complete, it says, "Okay.</p> <p>17 But they're not?"</p> <p>18 MR. ANDERSON: I'm sorry, Your Honor.</p> <p>19 THE COURT: That's okay.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q So on page 115 of your deposition on</p> <p>22 October 23, 2018, you agreed with me that other account</p> <p>23 statements should be there, but they're not; correct?</p> <p>24 A No, that's not correct.</p>
<p style="text-align: right;">Page 196</p> <p>1 Q That's not what your testimony is?</p> <p>2 A No. Those records should be there, not the</p> <p>3 statements.</p> <p>4 Q Well, we were just talking about the statements</p> <p>5 in the bottom half of page 114 to the top of page 115.</p> <p>6 We were talking about the account statements.</p> <p>7 A When you say "records" to me, records and</p> <p>8 statements are not the same thing.</p> <p>9 THE COURT: Mr. Livadas and Mr. Anderson, but</p> <p>10 primarily for your benefit, sir, on cross-examination</p> <p>11 you're generally being challenged about the things you've</p> <p>12 said in the past.</p> <p>13 THE WITNESS: Understood.</p> <p>14 THE COURT: And oftentimes one has the desire</p> <p>15 to jump in and answer the question before it gets</p> <p>16 finished. My court reporter has to take down every</p> <p>17 single thing that you say and everything that</p> <p>18 Mr. Anderson says. She is incredibly talented, but what</p> <p>19 she cannot do is take down two people talking at the</p> <p>20 exact same time. And so while Mr. Anderson is asking you</p> <p>21 a question, please let him finish the question like</p> <p>22 you're doing with Mr. Nork, and then answer the question,</p> <p>23 and I promise you that I will make sure that you get a</p> <p>24 full opportunity to answer the question, but make sure</p>	<p style="text-align: right;">Page 197</p> <p>1 that he's finished with it, and then you begin your</p> <p>2 answer. Don't start talking at the same time.</p> <p>3 For example, I think I understood the</p> <p>4 distinction you're trying to make in your response</p> <p>5 beginning at line 5 of page 115. I also understand the</p> <p>6 distinction that Mr. Anderson is trying to draw my</p> <p>7 attention to. So you think there's an explanation to it.</p> <p>8 I'll let Mr. Anderson ask you the next question.</p> <p>9 Go ahead, Mr. Anderson.</p> <p>10 MR. ANDERSON: Thank you, Your Honor.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q And WAM doesn't also have account statements</p> <p>13 for Mr. Skarpelos's account for the years 2014 through</p> <p>14 the present; correct?</p> <p>15 A There are no account statements unless they're</p> <p>16 requested, and in this case closing statements were</p> <p>17 provided so that we had the closing year's data to begin</p> <p>18 the new year.</p> <p>19 Q So your answer to my question is no, WAM does</p> <p>20 not have statements for those years?</p> <p>21 A For?</p> <p>22 Q 2014 through 2018.</p> <p>23 A No. No, there is no statements.</p> <p>24 Q And WAM should have the records of all client</p>

<p style="text-align: right;">Page 198</p> <p>1 transactions in its possession; correct?</p> <p>2 A Correct.</p> <p>3 Q But it does not in this case; correct?</p> <p>4 A What do you mean?</p> <p>5 Q Well, didn't you testify at your deposition</p> <p>6 that WAM does not have records of all transactions on</p> <p>7 Mr. Skarpelos's account?</p> <p>8 A Please show me where that is.</p> <p>9 Q Yes. Would you turn to page 110 of your</p> <p>10 deposition, please.</p> <p>11 A Which line are you referring me to?</p> <p>12 MR. ANDERSON: Court's indulgence, please.</p> <p>13 THE COURT: Okay.</p> <p>14 MR. ANDERSON: I'll withdraw that last</p> <p>15 question, Your Honor.</p> <p>16 THE COURT: Disregard that question. He'll ask</p> <p>17 you another question.</p> <p>18 THE WITNESS: Am I allowed to speak or do I</p> <p>19 have to wait for a question?</p> <p>20 THE COURT: No, there's no question pending.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q Mr. Livadas, you're alleging in this case that</p> <p>23 there were a number of transactions that occurred on</p> <p>24 Mr. Skarpelos's account with WAM; correct?</p>	<p style="text-align: right;">Page 199</p> <p>1 A Correct.</p> <p>2 Q Okay. One of which is an alleged stock sale on</p> <p>3 April 2, 2013?</p> <p>4 A Correct.</p> <p>5 Q And several other transactions involving the</p> <p>6 withdrawal of money from his account; correct?</p> <p>7 A Correct.</p> <p>8 Q And WAM does not have records of those</p> <p>9 transactions; correct?</p> <p>10 A WAM would have records of transactions.</p> <p>11 Q Okay. Can you show me in the exhibit binder</p> <p>12 where those transaction records are?</p> <p>13 A In Exhibit --</p> <p>14 Q Strike that.</p> <p>15 You've produced, as WAM's owner, records of all</p> <p>16 the transactions that you think are available to WAM for</p> <p>17 this case?</p> <p>18 A I produced the statement.</p> <p>19 Q Okay. But you testified already that WAM</p> <p>20 doesn't keep statements.</p> <p>21 A But this statement, I testified that this</p> <p>22 statement -- are you going to let me finish or should I</p> <p>23 wait for her to type so you can start?</p> <p>24 THE COURT: Mr. Livadas, don't do that.</p>
<p style="text-align: right;">Page 200</p> <p>1 THE WITNESS: I'm sorry.</p> <p>2 THE COURT: Do not do that.</p> <p>3 THE WITNESS: I'm sorry.</p> <p>4 THE COURT: I control the process in this</p> <p>5 courtroom. Nobody else does. Listen to the question and</p> <p>6 answer the question.</p> <p>7 What's the next question, Mr. Anderson?</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q Mr. Livadas, you've made a distinction between</p> <p>10 statements, which you said WAM doesn't have any</p> <p>11 obligation to produce, and transaction records; correct?</p> <p>12 A Ask the question again, please.</p> <p>13 Q Yes. As I understand your testimony, you've</p> <p>14 made a distinction between account statements, which you</p> <p>15 said WAM does not have an obligation to produce to</p> <p>16 clients; correct?</p> <p>17 A Correct.</p> <p>18 Q And on the other hand, there are transaction</p> <p>19 records, which WAM does keep track of; correct?</p> <p>20 A Correct.</p> <p>21 Q So even if WAM doesn't produce an account</p> <p>22 statement, there should be records of a transaction that</p> <p>23 occurs; correct?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 201</p> <p>1 Q And what you're telling me is that the account</p> <p>2 statement is the only thing you could find in WAM's</p> <p>3 records that has transactions in it?</p> <p>4 A The only thing that I could find that has</p> <p>5 transactions in it?</p> <p>6 Q Did you produce to your counsel transaction</p> <p>7 records for Mr. Skarpelos's account?</p> <p>8 A I believe the only thing I produced was this</p> <p>9 statement that I recall.</p> <p>10 Q Okay. Thank you.</p> <p>11 You weren't involved in WAM's internal</p> <p>12 accounting procedures at all from 2011 to 2014; correct?</p> <p>13 A No.</p> <p>14 Q And you weren't involved in any way in the</p> <p>15 compilation of data or production of account statements</p> <p>16 at WAM prior to December 2014; correct?</p> <p>17 A Correct.</p> <p>18 Q In fact, you testified at your deposition that</p> <p>19 you believe WAM doesn't even keep account statements is</p> <p>20 what you just said?</p> <p>21 A Correct. Statements are not kept as</p> <p>22 statements, no.</p> <p>23 Q And you don't know if WAM had a computer system</p> <p>24 prior to December of 2014; correct?</p>

<p style="text-align: right;">Page 202</p> <p>1 A They had a computer system, but I wasn't</p> <p>2 familiar with it.</p> <p>3 Q Okay. You weren't physically present when</p> <p>4 Mr. Skarpelos submitted his WAM account application on</p> <p>5 May 31, 2011; correct?</p> <p>6 A Correct.</p> <p>7 Q Okay. And you weren't involved at all in WAM's</p> <p>8 account opening process in 2011; correct?</p> <p>9 A Only making the introduction. Nothing that I</p> <p>10 recall with the process of submitting KYC, etcetera.</p> <p>11 Q So basically your involvement was introducing</p> <p>12 Mr. Skarpelos to the Equity Trust people or the new WAM</p> <p>13 people?</p> <p>14 A Correct.</p> <p>15 Q And you weren't involved at all in preparing</p> <p>16 Tom's account opening form or in WAM's process of</p> <p>17 completing it; correct?</p> <p>18 A Correct.</p> <p>19 Q From the period of May 2011 to your acquiring</p> <p>20 ownership in December 2014, you were not involved in</p> <p>21 preparing or implementing any of WAM's policies or</p> <p>22 procedures governing their accounts with clients;</p> <p>23 correct?</p> <p>24 A Governing their accounts or procedures? Ask</p>	<p style="text-align: right;">Page 203</p> <p>1 that again.</p> <p>2 Q You weren't involved in the time period I</p> <p>3 indicated, which was May 2011 to December 2014, you were</p> <p>4 not involved in preparing or implementing any of WAM's</p> <p>5 policies or procedures governing their accounts with</p> <p>6 clients?</p> <p>7 A Policies and procedures, no.</p> <p>8 MR. ANDERSON: Thank you.</p> <p>9 Your Honor, I would maintain my objection on</p> <p>10 that ground.</p> <p>11 THE COURT: Mr. Livadas, answer something for</p> <p>12 me. As I understand your testimony right now, Exhibit</p> <p>13 No. 44, which is exactly the same as Exhibit No. 43, is a</p> <p>14 document that was in Mr. Skarpelos's file, if you will,</p> <p>15 when you purchased WAM; is that correct?</p> <p>16 THE WITNESS: Correct.</p> <p>17 THE COURT: And that in order to establish the</p> <p>18 equity or the value of everybody's account when you</p> <p>19 purchased WAM, your predecessors gave you an account</p> <p>20 statement like this for each client that they had?</p> <p>21 THE WITNESS: Correct.</p> <p>22 THE COURT: Basically when you're buying it,</p> <p>23 here's what you're buying or here's what we owe each</p> <p>24 person?</p>
<p style="text-align: right;">Page 204</p> <p>1 THE WITNESS: Correct. It's the --</p> <p>2 THE COURT: So, then, my question to you is</p> <p>3 this: Have you done anything to verify any of the</p> <p>4 information contained in this document to make sure that</p> <p>5 it's accurate? It may be -- just so everybody knows</p> <p>6 where I'm going, it may be a business record if there is</p> <p>7 some verification of what's there, yes, this is a</p> <p>8 business record, but if it's just we pulled this off the</p> <p>9 top of the file, this is just the last thing we received,</p> <p>10 but no one's verified any of the documents or the</p> <p>11 information contained in it, how is it a business record?</p> <p>12 MR. NORK: Your Honor, I think Mr. Livadas has</p> <p>13 already testified to that, which is there are audits done</p> <p>14 every year, and for year 2013 there were no discrepancies</p> <p>15 found in any of the audits, which means all of the</p> <p>16 records that Mr. Livadas acquired when he bought WAM were</p> <p>17 accurate, and that is the indicia.</p> <p>18 And, again, this Court is given broad</p> <p>19 discretion in determining who a qualified person is who</p> <p>20 can testify to business records and broad discretion in</p> <p>21 determining whether or not a document falls within the</p> <p>22 business records exception, and this is it. This is</p> <p>23 exactly what is contemplated by the business records</p> <p>24 exception. When a company is wholesale bought by</p>	<p style="text-align: right;">Page 205</p> <p>1 somebody new, that company should be able to rely upon</p> <p>2 those documents that were generated beforehand. Even if</p> <p>3 Mr. Livadas is not the author of that document, he</p> <p>4 testified where it was located, he testified how it was</p> <p>5 acquired, and he testified through the audit testimony</p> <p>6 that it is accurate. That meets the prima facie showing</p> <p>7 of the business records exception, Your Honor.</p> <p>8 THE COURT: Mr. Anderson, it's your objection.</p> <p>9 I'll give you the final thought.</p> <p>10 MR. ANDERSON: Your Honor, the applicable</p> <p>11 statute, NRS 51.135 sets forth that "A memorandum,</p> <p>12 report, record or compilation of data, in any form, of</p> <p>13 acts, events, conditions, opinions or diagnoses, made at</p> <p>14 or near the time by, or from information transmitted by,</p> <p>15 a person with knowledge, all in the course of a regularly</p> <p>16 conducted activity, as shown by the testimony or</p> <p>17 affidavit of the custodian or other qualified person..."</p> <p>18 Now, Mr. Livadas clearly isn't the custodian of</p> <p>19 WAM. The question is whether he's a qualified person. I</p> <p>20 think his answers on voir dire demonstrated that he</p> <p>21 doesn't have any knowledge of how records were kept. He</p> <p>22 can't say whether these transactions that they want to</p> <p>23 rely on were entered at or near the time that they</p> <p>24 purport to be. He hasn't testified it was transmitted by</p>

<p style="text-align: right;">Page 206</p> <p>1 a person with knowledge because he wasn't involved, he 2 doesn't know who prepared it.</p> <p>3 "All in the course of a regularly conducted 4 activity." He's already said that he -- that they don't 5 prepare statements. This is not a regularly conducted 6 activity at WAM. They don't prepare statements and no 7 one has any explanation for why it's February 1st through 8 December 31st of 2013.</p> <p>9 If this is an audit being done by someone like 10 Grant Thornton, I would think they're going to want to 11 know what the entire year is, so I think this record 12 completely lacks any indicia of trustworthiness. I think 13 that he is not a qualified person under the law. He was 14 not at the business of WAM in the year it was generated. 15 He found it in a stack of documents, and I think he 16 testified that it wasn't in a client file. He said that 17 there weren't files kept by clients. He said they were 18 kept by transaction. So I think his testimony is 19 inconsistent. I don't think he's laid the foundation, 20 and I think this is inadmissible hearsay.</p> <p>21 THE COURT: I've reviewed NRS 51.135. The 22 Court finds that this document is admissible as a 23 business record under that statute.</p> <p>24 As Mr. Nork pointed out in his trial statement</p>	<p style="text-align: right;">Page 207</p> <p>1 and in the argument that he makes, the person testifying 2 does not have to be the custodian of records. He can be 3 a qualified person. The Court finds that there is an 4 indicia of reliability regarding the information 5 contained in the document and that it is a business 6 record pursuant to 51.135 and will admit Exhibit No. 44.</p> <p>7 Go ahead.</p> <p>8 MR. ANDERSON: Your Honor, just a quick 9 question. I think -- I wasn't sure if he was offering 10 both 43 and 44.</p> <p>11 MR. NORK: Can I do both, Your Honor? Because 12 they're identical, but the quality of copies is really 13 inconsistent.</p> <p>14 THE COURT: Maintain the same objection to 43, 15 Mr. Anderson?</p> <p>16 MR. ANDERSON: Yes, Your Honor.</p> <p>17 THE COURT: The Court will admit 43 and 44 18 because the parties stipulate that they are the same 19 document and there may be just some ease of reading of 20 one versus the other. So the Court will admit 43 for the 21 same reason it admits 44 over objection of Mr. Anderson.</p> <p>22 (Exhibits 43 and 44 were admitted.) 23 Go ahead. 24 MR. NORK: Thank you, Your Honor.</p>
<p style="text-align: right;">Page 208</p> <p>1 DIRECT EXAMINATION 2 (Resumed)</p> <p>3 BY MR. NORK:</p> <p>4 Q So let's focus on Exhibit 44, and if it's 5 easier for you -- 6 Do you have your glasses? 7 A Yes. 8 Q -- you can turn to Exhibit 43. 9 You've indicated already this is the statement 10 of account for Tom Skarpelos; correct? 11 A Correct. 12 Q And what I'd like to focus on is the second 13 page of this exhibit. 14 Now, you've already testified that it was your 15 understanding that requests were being made for funds to 16 be transferred out of Mr. Skarpelos's account and into 17 some other accounts during the years 2012 and 2013; 18 correct? 19 A Correct. 20 Q As an example -- well, actually, let me just go 21 through it. 22 What does this document show as the opening 23 balance in February 2013? 24 A It shows a debit of approximately \$140,000.</p>	<p style="text-align: right;">Page 209</p> <p>1 Q \$140,288; correct? 2 A The balance is \$140,800 something. 3 Q Okay. 4 THE COURT: Actually, it looks a lot easier to 5 read on 44. 6 THE WITNESS: Correct. \$140,288. 7 BY MR. NORK: 8 Q \$140,288. Okay. 9 Then there is some activity in or about 10 March 25, 2013. 11 Do you see that? 12 A Yes. 13 Q And what is the activity indicated on this 14 statement? 15 A A transfer of 10,000 euros. 16 Q And that's March of 2013; correct? 17 A Correct. 18 Q And then the next one looks like March 25, 19 2013, a wire out fee. Do you see that? 20 A Yes. 21 Q How much is that? 22 A \$125. 23 Q Then it shows April 2, 2013. What is the entry 24 on that line item?</p>

<p style="text-align: right;">Page 210</p> <p>1 A It's the sale of Anavex, shares of Anavex of</p> <p>2 3.3 million, approximately.</p> <p>3 Q So it says, "Stock sale Anavex Life Science</p> <p>4 Corp. 3,316,665"; correct?</p> <p>5 A 666. 65?</p> <p>6 THE COURT: 3,316,666, it looks like.</p> <p>7 Actually, no. Stop. It's a 6 or a 5.</p> <p>8 MR. NORK: It's either a 6 or a 5, and, Your</p> <p>9 Honor -- it's either a 6 or a 5.</p> <p>10 BY MR. NORK:</p> <p>11 Q And how much value is attributed to the account</p> <p>12 as a result of that stock transaction?</p> <p>13 A Net value, 249,580.</p> <p>14 Q Okay. What is the next line item?</p> <p>15 A It's a transfer for 15,000 euros.</p> <p>16 Q And that appears to be May 9th; correct?</p> <p>17 A Yes.</p> <p>18 THE COURT: Just so we're clear, the euros were</p> <p>19 always converted into dollars in the debit column?</p> <p>20 THE WITNESS: Correct.</p> <p>21 BY MR. NORK:</p> <p>22 Q So it shows 15,000 euros under the column</p> <p>23 "Activity," but when you get to "Debit," it's converted</p> <p>24 to U.S. dollars; correct?</p>	<p style="text-align: right;">Page 211</p> <p>1 A Correct.</p> <p>2 Q Okay. And that May 9th entry coincides with an</p> <p>3 email you received from Lambros; correct?</p> <p>4 A Correct. I assume so. I'd have to look at it,</p> <p>5 but I assume so.</p> <p>6 Q And then right below that is a wire out fee for</p> <p>7 another \$125,000; correct?</p> <p>8 A \$125.</p> <p>9 THE COURT: \$125.</p> <p>10 MR. NORK: Thank you everyone. \$125.</p> <p>11 BY MR. NORK:</p> <p>12 Q What is the next line item?</p> <p>13 A Another transfer for 15,033.90 euros.</p> <p>14 Q What does that convert to U.S. dollars?</p> <p>15 A 20,000.</p> <p>16 Q And do you recall, in or about late April 2013,</p> <p>17 your request for \$20,000 to go to Tom for his heart</p> <p>18 surgery?</p> <p>19 A Yes. April or May? January, February, March,</p> <p>20 April, May --</p> <p>21 Q It initiated in April; correct?</p> <p>22 A Something like this, yes.</p> <p>23 Q And then the next line is also May 22nd for a</p> <p>24 wire out fee of \$125; correct?</p>
<p style="text-align: right;">Page 212</p> <p>1 A Correct.</p> <p>2 Q Then the next, July 2, 2013, how much is that</p> <p>3 transaction?</p> <p>4 A 15,000 euros.</p> <p>5 Q And then another wire out fee that same date,</p> <p>6 \$125; correct?</p> <p>7 A Correct.</p> <p>8 Q Then what's the next withdrawal?</p> <p>9 A 15,000 euros.</p> <p>10 Q And similarly there's a wire out fee of \$125;</p> <p>11 correct?</p> <p>12 A Correct.</p> <p>13 Q And then what's the last one?</p> <p>14 A 7,500 euros.</p> <p>15 Q And that was on September 18, 2013?</p> <p>16 A Correct.</p> <p>17 Q And after the wire out fee is deducted on that</p> <p>18 same day, September 18, 2013, what is the remaining</p> <p>19 balance left as indicated in this document, Exhibit 44?</p> <p>20 A \$4,115.</p> <p>21 Q Based on the audits that have been conducted of</p> <p>22 WAM's records, do you have any reason to doubt the</p> <p>23 accuracy of this document?</p> <p>24 A No, I don't. Furthermore, I was asked if I</p>	<p style="text-align: right;">Page 213</p> <p>1 tried to verify some of these transactions. Besides the</p> <p>2 fact that I was pretty much involved in all of these</p> <p>3 transactions so I can attest I was involved in these</p> <p>4 transactions, I did also put requests through to the</p> <p>5 company's prime broker at the time to also try to provide</p> <p>6 me records further verifying that these transactions were</p> <p>7 done.</p> <p>8 Q Okay. And as a result of that inquiry, do you</p> <p>9 have any reason to doubt the accuracy of this account</p> <p>10 statement?</p> <p>11 A No.</p> <p>12 Q According to this document, sir, does this</p> <p>13 indicate that Mr. Skarpelos received something slightly</p> <p>14 less than \$250,000 on or about April 2, 2013?</p> <p>15 A Correct. His account was credited \$250,000</p> <p>16 less the commissions on the transaction, so it was the</p> <p>17 net of the transaction.</p> <p>18 Q And since that date, amounts have been</p> <p>19 withdrawn from that account; correct?</p> <p>20 A Correct.</p> <p>21 Q And we've already seen some emails that relate</p> <p>22 to withdrawal requests that coincide on or about the</p> <p>23 dates with some of these entries; correct?</p> <p>24 A Correct.</p>

<p style="text-align: right;">Page 214</p> <p>1 Q And then at the very bottom of this second</p> <p>2 page, there's a section entitled "Securities - US</p> <p>3 Dollars."</p> <p>4 Do you see that?</p> <p>5 A Of which?</p> <p>6 Q The second page, Exhibit 44. It says</p> <p>7 "Securities - USD" at the very bottom.</p> <p>8 A Is that page number 409?</p> <p>9 Q No. 408.</p> <p>10 A Yes. Yes. I'm sorry.</p> <p>11 Q What does that show?</p> <p>12 A That's the transactions on securities for the</p> <p>13 period.</p> <p>14 Q Okay. And what is the only transaction that's</p> <p>15 indicated during the period of February 1, 2013, through</p> <p>16 December 31, 2013?</p> <p>17 A The sale of the 3.3 million, approximately,</p> <p>18 securities of Anavex.</p> <p>19 Q And when was the date of that transaction?</p> <p>20 A April 2, 2013.</p> <p>21 MR. NORK: Thank you, sir. I have no further</p> <p>22 questions.</p> <p>23 THE COURT: Cross-examination, Mr. Anderson.</p> <p>24 MR. ANDERSON: Yes, Your Honor. Thank you.</p>	<p style="text-align: right;">Page 215</p> <p>1 Court's indulgence for one moment.</p> <p>2 THE COURT: Take your time, Mr. Anderson. It's</p> <p>3 easier to get everything in order than to go looking for</p> <p>4 it when you're cross-examining a witness.</p> <p>5</p> <p>6 CROSS-EXAMINATION</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q Mr. Livadas, I want to make sure I understand</p> <p>9 what you testified to on direct examination.</p> <p>10 During the year 2013 there were two</p> <p>11 transactions that were contemplated; is that correct?</p> <p>12 A It wasn't contemplated as two transactions. It</p> <p>13 happened to flow that way.</p> <p>14 Q Okay. One transaction was the April 2, 2013,</p> <p>15 stock sale that you just talked about; correct?</p> <p>16 A Correct.</p> <p>17 Q And then later on there was a possible sale to</p> <p>18 Chinese investors; correct?</p> <p>19 A Correct. And others, yes.</p> <p>20 Q And others. A non-WAM client?</p> <p>21 A And potentially WAM clients.</p> <p>22 Q Okay. And I just want to make sure I</p> <p>23 understand.</p> <p>24 Your testimony was that the July discussion</p>
<p style="text-align: right;">Page 216</p> <p>1 between you and Lambros and the subsequent purchase and</p> <p>2 sale agreement that was sent and then later executed,</p> <p>3 that related to the second transaction?</p> <p>4 A The purchase and sale agreement related to the</p> <p>5 second transaction.</p> <p>6 Q And your testimony was that that transaction</p> <p>7 never was consummated or never happened?</p> <p>8 A Correct.</p> <p>9 Q Okay. So what you're claiming now today in</p> <p>10 this trial is that the April 2, 2013, transaction is the</p> <p>11 one that Tom Skarpelos breached that caused damage? Or</p> <p>12 basically Tom Skarpelos breached the April 2, 2013,</p> <p>13 agreement?</p> <p>14 A I don't call it breached, no.</p> <p>15 Q Okay. Tom Skarpelos did not deliver the shares</p> <p>16 pursuant to the April 2, 2013, agreement?</p> <p>17 A The shares were already delivered.</p> <p>18 Q What are you claiming in this case?</p> <p>19 A What are we claiming? We went to clear the</p> <p>20 share certificate, and that told us that the share</p> <p>21 certificate was claimed lost, so I don't know what --</p> <p>22 besides that, we're stuck in the process of this. I</p> <p>23 don't know if I have claimed something.</p> <p>24 Q Who are you claiming owns the stock?</p>	<p style="text-align: right;">Page 217</p> <p>1 A I'm claiming that clients of Weiser own some of</p> <p>2 the stock.</p> <p>3 Q So your testimony today in court is that</p> <p>4 neither Weiser Asset Management nor Weiser Capital are</p> <p>5 the owners of the stock?</p> <p>6 A It would be the clients of Weiser Asset</p> <p>7 Management that are the owners of the stock.</p> <p>8 Q Okay. So Weiser Asset Management does not own</p> <p>9 the stock that's at issue in this lawsuit; correct?</p> <p>10 A Correct.</p> <p>11 Q And Weiser Capital also does not own the stock</p> <p>12 that's at issue in this lawsuit; correct?</p> <p>13 A Correct.</p> <p>14 Q And the April -- I'm sorry -- the July --</p> <p>15 actually, look at Exhibit 30, please.</p> <p>16 MR. NORK: I'm sorry. Which exhibit?</p> <p>17 MR. ANDERSON: Exhibit 30.</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q While you're turning to that, you testified at</p> <p>20 your deposition that you don't even know if those WAM</p> <p>21 clients still claim ownership of the stock; correct?</p> <p>22 A I'm not sure. If you can point me to the</p> <p>23 deposition --</p> <p>24 Q We'll get to that in a minute.</p>

<p style="text-align: right;">Page 218</p> <p>1 Exhibit 30, the stock sale and purchase 2 agreement that your counsel asked you about earlier, that 3 has a date of July 5, 2013; correct? 4 A Correct. 5 Q And it also has a written-in closing date of 6 September 30, 2013; correct? 7 A Correct. 8 Q You wrote those dates in? 9 A Correct. 10 Q And your testimony today is that this agreement 11 was for a transaction that never happened? 12 A Correct. 13 Q Okay. And I think you testified that the 14 reason you completed it was to lodge it with some entity. 15 I can't remember the name. 16 A Not to lodge it, but to basically complete the 17 file on the transaction in general so that we have a 18 record that could be used for AML purposes, which 19 sometimes these are asked for by counterparties like the 20 prime banks when you're depositing or trading the shares. 21 Q Which file were you completing? 22 A The file which goes with the stock certificate, 23 with the stock power to dematerialize the certificates. 24 So when -- if I --</p>	<p style="text-align: right;">Page 219</p> <p>1 Q Yes. I'm sorry. 2 A So when a certificate is dematerialized and 3 later may be traded, when the shares are traded later, 4 parties on the other side of the trades, the 5 counterparties or their brokers can ask where did these 6 shares come from. 7 Q So this purchase agreement and the stock power 8 that you looked at with your attorney, those were for 9 this July transaction that never occurred? 10 A Incorrect. So the purchase and sale agreement 11 was going to be for the second transaction. The stock 12 power is a separate document that would have gone with 13 the dematerialization of the certificate in general. 14 Q For the first transaction or the second? 15 A Any transaction, to dematerialize. 16 Q So as we went through these records, the only 17 stock power I saw even discussed with Mr. Skarpelos was 18 in June or July of 2013. 19 A I think it was with Lambros. 20 Q I'm sorry. With Mr. Skarpelos or Lambros, the 21 only discussion I saw regarding obtaining a stock power 22 was in June or July of 2013; correct? 23 A The only discussion we've seen, yes, was in 24 June 2013 for the stock power, yes.</p>
<p style="text-align: right;">Page 220</p> <p>1 Q You didn't obtain a stock power from 2 Mr. Skarpelos on or about April 2, 2013; correct? 3 A No. 4 Q And that's the date that you're claiming that 5 transaction that actually went through was consummated, 6 on April 2, 2013? 7 A Correct. 8 Q And at that point in time you didn't ask for a 9 stock power from Mr. Skarpelos? 10 A I don't have evidence that I asked. 11 Q Okay. And so what was the purpose of the stock 12 power that you did obtain from him? Was it for the first 13 transaction or the second transaction? 14 A Neither. It's to dematerialize the 15 certificate. 16 Q So the stock power you obtained from him, your 17 testimony is it was not for either transaction? 18 A It's to dematerialize the certificate. 19 Q Well, there's one certificate, but only half 20 the shares are at issue; correct? 21 A The two are unrelated. The two are unrelated. 22 Q Okay. I just want to understand your purpose 23 of obtaining the stock power in July as opposed to 24 earlier when the transaction actually happened?</p>	<p style="text-align: right;">Page 221</p> <p>1 A I believe I asked for it much earlier, but 2 there was no rush for it because it cannot be 3 dematerialized for six to twelve months. 4 Q And you and Lambros had email conversations 5 about the stock power and this apparently completely 6 unrelated stock sale and purchase agreement in the course 7 of the same emails? 8 A Yes. 9 Q Again, just so I'm clear because -- I've got to 10 be honest, a lot of this sounds like a new theory to me. 11 MR. NORK: Objection, Your Honor. 12 MR. ANDERSON: I'll withdraw that. I'm sorry. 13 THE COURT: Okay. 14 BY MR. ANDERSON: 15 Q Exhibit 30 is for a transaction that never 16 happened? 17 A Correct. 18 Q And I haven't seen any other documents produced 19 that reference any other July 2013 agreement. 20 A Correct. 21 Q Mr. Livadas, do you recall testifying at your 22 deposition that Exhibit 30 that we've been looking at was 23 actually related to the April 2nd transaction? 24 A Can you point me to it?</p>

<p style="text-align: right;">Page 222</p> <p>1 Q Of course. If you'd look at page 142, please.</p> <p>2 A Yes.</p> <p>3 Q I would direct your attention to, beginning at</p> <p>4 line 21, I asked you, "Okay. And is the 249,580 that's</p> <p>5 referenced in this statement, is that the payment</p> <p>6 pursuant to the purchase and sale agreement that's at</p> <p>7 issue in this case?</p> <p>8 "ANSWER: Yes."</p> <p>9 A Correct.</p> <p>10 Q Okay. And so this testimony that you gave was</p> <p>11 referring to the account statement that your counsel just</p> <p>12 looked at, Exhibit 44; correct?</p> <p>13 A I'm sorry. One second. I'm just reading it</p> <p>14 again.</p> <p>15 Q Yes.</p> <p>16 A Sorry. Go ahead.</p> <p>17 Q The number that I just discussed in your</p> <p>18 deposition at page 142, line 21, is that the same number</p> <p>19 that you were referring to as the stock sale in the</p> <p>20 account statement that's Exhibit 44?</p> <p>21 A Is that the number that I'm referring to in --</p> <p>22 Q Go ahead and look at Exhibit 44.</p> <p>23 A Yes.</p> <p>24 Q Okay. So when I asked you this question, you</p>	<p style="text-align: right;">Page 223</p> <p>1 understood that I was referring to the stock transaction</p> <p>2 of April 2, 2013, on Exhibit 44?</p> <p>3 A Ask the question again.</p> <p>4 Q In October of 2018, when I asked you that</p> <p>5 question about whether the 249,580 that's mentioned on</p> <p>6 Exhibit 44, is that the payment pursuant to the purchase</p> <p>7 and sale agreement at issue in this case, your answer was</p> <p>8 yes; correct?</p> <p>9 A Correct, that was my answer.</p> <p>10 Q Okay. And that's the purchase and sale</p> <p>11 agreement that's Exhibit 30; correct?</p> <p>12 A Correct.</p> <p>13 Q And I'll have you look at page 155, please.</p> <p>14 Court's indulgence for one moment, please.</p> <p>15 THE COURT: Okay.</p> <p>16 BY MR. ANDERSON:</p> <p>17 Q I'll have you look at page 178 instead.</p> <p>18 A Few moments ago we were looking at Exhibit 30</p> <p>19 and I asked you if you wrote in the date of September 30,</p> <p>20 2013, on there.</p> <p>21 Correct?</p> <p>22 A I wrote down, yes, September 30th.</p> <p>23 Q And you recall at your deposition, if you look</p> <p>24 at page 178, line 11, I asked you, "Did you understand</p>
<p style="text-align: right;">Page 224</p> <p>1 that the closing date under this agreement would be</p> <p>2 September 30, 2013?</p> <p>3 "ANSWER: That's what I wrote in there."</p> <p>4 And if you skip down to 17, I asked you, "Okay.</p> <p>5 Why did you write September 30, 2013, in there?"</p> <p>6 And you answered, "Because -- I wrote this date</p> <p>7 in there because we had already executed the transaction.</p> <p>8 Now we were preparing to dematerialize the share stock</p> <p>9 certificate."</p> <p>10 Was that your answer?</p> <p>11 A Yes.</p> <p>12 Q So the transaction that had already happened on</p> <p>13 April 2nd of 2013 that you were talking about in your</p> <p>14 deposition, at your deposition you were referencing</p> <p>15 Exhibit 30; correct?</p> <p>16 A Correct.</p> <p>17 Q Court's indulgence. I apologize.</p> <p>18 So you would agree with me, then, contrary to</p> <p>19 your testimony this morning, that Exhibit 30, the stock</p> <p>20 sale and purchase agreement, actually was related to the</p> <p>21 April 2, 2013, transaction; correct?</p> <p>22 A Related in what way?</p> <p>23 Q Well, you were attempting to paper the</p> <p>24 transaction that happened on April 2nd by way of</p>	<p style="text-align: right;">Page 225</p> <p>1 Exhibit 30?</p> <p>2 A I don't know what you mean by "paper" it.</p> <p>3 Q My point is, Exhibit 30 is to document the</p> <p>4 transaction, the stock sale that was already executed;</p> <p>5 correct?</p> <p>6 A To document it?</p> <p>7 Q Well, do you want me to go back and reread the</p> <p>8 testimony I just read to you?</p> <p>9 A Sure. Sure.</p> <p>10 Q Okay.</p> <p>11 A Because I said -- sorry. Are you going to read</p> <p>12 it or should I read it?</p> <p>13 THE COURT: Let him ask a question.</p> <p>14 BY MR. ANDERSON:</p> <p>15 Q Page 142, lines 21 through 25.</p> <p>16 A 142?</p> <p>17 Q Page 142, lines 21 through 25.</p> <p>18 We just talked about that, and your testimony</p> <p>19 was that the 249,580 that's identified on Exhibit 44 in</p> <p>20 the account statement, that's the payment that you're</p> <p>21 attempting to document by the purchase and sale agreement</p> <p>22 in this case.</p> <p>23 A I didn't say document or to paper it. I'm not</p> <p>24 sure what that --</p>

<p style="text-align: right;">Page 226</p> <p>1 Q I asked you, "And is the 249,580 that's 2 referenced in this statement, is that the payment 3 pursuant to the purchase and sale agreement that's at 4 issue in this case?" 5 And your answer was "Yes." 6 A Correct. 7 Q So I'm correct that Exhibit 30, which is the 8 only purchase and sale agreement related to the stock at 9 issue in this case, is being drafted up after the payment 10 of 249,580? 11 A It's been drafted after -- it's been completed 12 after the payments. 13 Q Okay. And so that's the payment that's -- I 14 apologize. 15 The payment that's referenced in this stock 16 sale and purchase agreement, Exhibit 30, had already been 17 made; correct? 18 A Correct. 19 Q This document did not relate to an 20 unconsummated transaction? 21 A It was going to be used for a future 22 transaction which didn't consummate. 23 Q Okay. But it also dealt with the transaction 24 that had already happened -- correct? -- according to</p>	<p style="text-align: right;">Page 227</p> <p>1 your testimony on October 23, 2018? 2 A It didn't deal with the transaction. It was 3 being completed so it could go to the file for the 4 portion of the transaction that was finished for 5 potential AML purposes. My apologies. Because the word 6 "pursuant" -- 7 Q That's okay. I want everybody to be clear. 8 I understood you to mean on October 23, 2008, 9 that the 249,580 that's referenced in the statement, that 10 was the payment pursuant to this purchase and sale 11 agreement in Exhibit 30. That was your testimony; 12 correct? 13 A I answered yes. My definition of "pursuant" 14 actually isn't that clear, but I did answer yes, so, yes, 15 I answered yes. 16 THE COURT: What page are you on again? 17 MR. ANDERSON: Your Honor, that was at 18 page 142. 19 THE COURT: 142. Hold on. 20 BY MR. ANDERSON: 21 Q And then if you'd turn to page 178, if you look 22 at starting at line 17, I asked you, "Okay. Why did you 23 write 'September 30, 2013,' in there? 24 "ANSWER: Because I wrote this date in there</p>
<p style="text-align: right;">Page 228</p> <p>1 because we had already executed the transaction." 2 Correct? 3 A Correct. 4 Q And the only transaction related to the stock 5 at issue that was actually executed was April 2nd; 6 correct? 7 A Correct. 8 Q So when you write September 30th in this 9 document, you're relating that to the April 2nd 10 transaction that was already executed? 11 A Correct. 12 THE COURT: Hold on a second. Mr. Anderson, 13 you've repeatedly read part of his answer, but not the 14 complete answer, so I'm just reviewing the complete 15 answer that he gave to your question. 16 MR. ANDERSON: That's fine, Your Honor. Thank 17 you. 18 THE COURT: Mr. Livadas, you're referencing a 19 second sale in that transaction as well. Is that the 20 sale to the potential Chinese buyers? 21 THE WITNESS: Potentially, yes. 22 THE COURT: And other people? 23 THE WITNESS: Yes. 24 THE COURT: Go ahead.</p>	<p style="text-align: right;">Page 229</p> <p>1 BY MR. ANDERSON: 2 Q If you'd look at page 185 -- and, actually, 3 let's look at page 184 before that. 4 At the bottom half of page 184, I was asking 5 you questions about whether there was a \$250,000 cash 6 payment delivered to Tom Skarpelos on September 30th; 7 correct? 8 A Correct. 9 Q And you indicated it was delivered previously 10 to September 30th. 11 A Correct. 12 Q And then if you turn to the next page, I asked 13 you, "Your position, I understand, is that the payment 14 was on April 2nd when the -- as the account statement 15 shows, that the stock was sold and his account was 16 credited? 17 "ANSWER: Correct." 18 And I asked you, "Okay. So was that considered 19 a cash payment to Mr. Skarpelos, the April 2nd?" 20 And after Mr. Nork's objection, you answered, 21 "We considered it a cash payment. It was not physical 22 cash, but it's considered a cash payment." 23 Correct? 24 A Correct.</p>

<p style="text-align: right;">Page 230</p> <p>1 Q If you turn to page 195 --</p> <p>2 MR. NORK: 195?</p> <p>3 MR. ANDERSON: 195.</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q -- as sort of a follow-up topic to what we were</p> <p>6 just talking about, which was the cash payment, on line 2</p> <p>7 I asked you, "I understand that. My question is, you as</p> <p>8 the owner of Weiser Capital could have said, 'Tom, I want</p> <p>9 to reference in here that you've already received the</p> <p>10 consideration.'</p> <p>11 "ANSWER: Sure.</p> <p>12 "QUESTION: Okay.</p> <p>13 "ANSWER: Yes, could have."</p> <p>14 And then it goes on to discuss the additional</p> <p>15 transactions again; correct?</p> <p>16 A Correct.</p> <p>17 Q Now, the agreement that you signed or the</p> <p>18 exhibit that you earlier claimed was not a consummated</p> <p>19 transaction was the July agreement that's Exhibit 30;</p> <p>20 correct?</p> <p>21 A It wasn't the July transaction. The agreements</p> <p>22 were put together in July to close sometime in the near</p> <p>23 future after the agreement was put together, which then</p> <p>24 that contemplated transaction didn't close.</p>	<p style="text-align: right;">Page 231</p> <p>1 Q Okay. But this is the only July agreement I'm</p> <p>2 aware of that discusses the sale of stock from</p> <p>3 Mr. Skarpelos to anybody.</p> <p>4 A Correct.</p> <p>5 Q And this document, Exhibit 30, purports to be</p> <p>6 between -- the front says Weiser Ltd. and the back page</p> <p>7 says Weiser Bahamas, which is also known as Weiser</p> <p>8 Capital; correct?</p> <p>9 A Correct.</p> <p>10 Q So this is a July agreement between</p> <p>11 Mr. Skarpelos and Weiser Capital?</p> <p>12 A Correct.</p> <p>13 Q Okay. Are you aware of any other July 2013</p> <p>14 agreements by which Mr. Skarpelos agreed to sell his</p> <p>15 stock to anybody?</p> <p>16 A No.</p> <p>17 Q Are you aware of any other July agreements</p> <p>18 where Mr. Skarpelos agreed to sell his stock to Weiser</p> <p>19 Asset Management?</p> <p>20 A Any other besides these, no.</p> <p>21 Q And specifically in July --</p> <p>22 A July, no.</p> <p>23 Q -- 2013?</p> <p>24 A No. No.</p>
<p style="text-align: right;">Page 232</p> <p>1 Q I'd like you to look at Exhibit 3, please.</p> <p>2 THE COURT: Just before you go off that,</p> <p>3 Mr. Anderson, you've caused some confusion in my mind.</p> <p>4 There was no deal to sell the stock to Weiser</p> <p>5 in any of its iterations in July of 2013?</p> <p>6 THE WITNESS: It was not to Weiser, but Weiser</p> <p>7 acting as the intermediary. Sometimes it gets listed as</p> <p>8 Weiser because we're the intermediary. Many times the</p> <p>9 broker of the deal will be the one that interfaces with</p> <p>10 both sides, so it's a technicality, but the technicality</p> <p>11 is that Weiser becomes -- and I'll give you the example</p> <p>12 with the stock certificate.</p> <p>13 Even though our clients own the shares, when</p> <p>14 the stock certificate goes to NATCO, it's in Weiser's</p> <p>15 name. It's the one interfacing in between. So</p> <p>16 everything most of the time ends up in the name of the</p> <p>17 broker.</p> <p>18 THE COURT: The question, though, that I have</p> <p>19 for you, based now on the cross-examination that</p> <p>20 Mr. Anderson has done, before he moves on to Exhibit 3 is</p> <p>21 this: You've already testified this morning that you</p> <p>22 sold half of the shares to a WAM client or clients.</p> <p>23 THE WITNESS: Correct.</p> <p>24 THE COURT: So that's done, that's where the</p>	<p style="text-align: right;">Page 233</p> <p>1 \$250,000 comes from in April 2013?</p> <p>2 THE WITNESS: Correct.</p> <p>3 THE COURT: So that's done.</p> <p>4 Now we're talking about this July deal, but</p> <p>5 there really is no July deal. There's never a sale that</p> <p>6 takes place. There's nobody out there, as you've already</p> <p>7 articulated, that's waiting for this contract to be</p> <p>8 consummated. They're waiting for their shares of Anavex</p> <p>9 as we sit here today, and you're not -- and by "you" I</p> <p>10 mean Weiser -- you've already testified you're not buying</p> <p>11 them either. You're not trying to purchase the shares.</p> <p>12 You were only acting as an intermediary for some other</p> <p>13 person who now is -- I'm just going to use the term is</p> <p>14 gone. They're not sitting there five years later waiting</p> <p>15 for their shares. Am I misunderstanding --</p> <p>16 THE WITNESS: There was buyers ready for the</p> <p>17 shares and the buyers had put the funds in escrow for</p> <p>18 this transaction.</p> <p>19 THE COURT: But as I understand your testimony,</p> <p>20 that money has now gone back out of escrow; you've given</p> <p>21 them the money back?</p> <p>22 THE WITNESS: Correct.</p> <p>23 THE COURT: So they're not a party in this</p> <p>24 case?</p>

<p style="text-align: right;">Page 234</p> <p>1 THE WITNESS: No. No.</p> <p>2 THE COURT: You're not suing, as you've just</p> <p>3 acknowledged, to get the shares yourself as Weiser in any</p> <p>4 of its iterations? You're not saying, you owe Weiser the</p> <p>5 shares because we purchased them, because you would</p> <p>6 assume, then, that there's an additional \$250,000</p> <p>7 somewhere in Mr. Skarpelos's account.</p> <p>8 I'm just kind of confused about the references</p> <p>9 to this additional sale. This is one of those few times</p> <p>10 where now I get to feel like a jury where the jury gets</p> <p>11 to ask questions of the witness, and so that's why I'm</p> <p>12 asking the questions, Counsel. And obviously, Mr. Nork,</p> <p>13 you'll get the opportunity to respond to the questions as</p> <p>14 well.</p> <p>15 But I just don't quite understand the</p> <p>16 statements that you've made at the beginning of</p> <p>17 cross-examination, which is you weren't buying them other</p> <p>18 than acting in your role as a conduit or intermediary.</p> <p>19 As you've described it earlier this morning, it might be</p> <p>20 nanoseconds that they're actually yours. You're just</p> <p>21 transferring them from one place to the next.</p> <p>22 So there really is no additional contract out</p> <p>23 there. The WAM clients purchased half of the shares of</p> <p>24 Stock Certificate 753 on April 2nd of 2013, and they paid</p>	<p style="text-align: right;">Page 235</p> <p>1 \$250,000, and almost all of it went to Mr. Skarpelos's</p> <p>2 account, and if I understand your testimony correctly,</p> <p>3 based on Exhibit 30, I think it is -- no, it's not 30,</p> <p>4 it's 44 -- based on Exhibit 44, Mr. Skarpelos is</p> <p>5 basically drawing that account down to about 5,000 bucks</p> <p>6 back then, 4,000 and change?</p> <p>7 THE WITNESS: Sure.</p> <p>8 THE COURT: So that April transaction has taken</p> <p>9 place. I guess I'm kind of circling back to the point</p> <p>10 that Mr. Anderson was asking. What are you suing for?</p> <p>11 Is it simply to get Stock Certificate 753 so it can be</p> <p>12 dematerialized and the owners who purchased on April 2nd</p> <p>13 of 2013 can get their half, their 3-plus-million shares?</p> <p>14 Is that it and that's all of it?</p> <p>15 THE WITNESS: There's two parts, I think, to</p> <p>16 answer your question.</p> <p>17 First, the broker does own the shares</p> <p>18 momentarily. It is only a nanosecond, but that</p> <p>19 nanosecond matters because we can't complete the</p> <p>20 transaction through. So even though we're showing the</p> <p>21 credit of ownership to the clients, the ownership, the</p> <p>22 process of ownership, we can't complete it as the broker</p> <p>23 because we didn't own it for that nanosecond to pass it</p> <p>24 through. So WAM or Weiser Capital is the buyer for that</p>
<p style="text-align: right;">Page 236</p> <p>1 initial second, and that's -- and we're stuck there</p> <p>2 because --</p> <p>3 THE COURT: And I'm going to just jump ahead a</p> <p>4 little bit to my knowledge of the trial statements. I</p> <p>5 believe it was in Mr. Anderson's trial statement.</p> <p>6 Now the issue is that the value of the shares</p> <p>7 of the stock, I'm assuming, have gone up.</p> <p>8 THE WITNESS: They're up a bit now, yes.</p> <p>9 THE COURT: I don't think you'd be fighting</p> <p>10 over the value of something that is less valuable than it</p> <p>11 was at the time. So now that the value of the shares has</p> <p>12 gone up, your position is we bought the shares and we</p> <p>13 were entitled to them even though we were going to</p> <p>14 immediately, in that nanosecond that we've described,</p> <p>15 move them to the other customer who is not trying to sue,</p> <p>16 doesn't want the shares now and has gotten their money</p> <p>17 back? Now you just think you're entitled to the shares</p> <p>18 because you're supposed to have them as the intermediary</p> <p>19 for that nanosecond? So all that would happen is that</p> <p>20 the escrow account would kick into place, the money that</p> <p>21 the Chinese people would have had would go arguably</p> <p>22 to Mr. Skarpelos, and then the shares would go from you</p> <p>23 right through the escrow account to the purchaser?</p> <p>24 THE WITNESS: The ultimate owners don't have a</p>	<p style="text-align: right;">Page 237</p> <p>1 reason to because we as the broker's intermediary,</p> <p>2 technically we sold them the shares because we buy and</p> <p>3 then we sell at the same time. So we've sold them the</p> <p>4 shares, we fulfilled our commitment as the broker to</p> <p>5 them. They received their credit on it, but we're stuck</p> <p>6 still receiving the front side of the transaction, and we</p> <p>7 can't receive the front side of the transaction unless --</p> <p>8 unless the certificate is dematerialized to us in</p> <p>9 electronic form.</p> <p>10 THE COURT: Okay. I think I kind of understand</p> <p>11 what you're saying.</p> <p>12 Go ahead, Mr. Anderson. I didn't mean to</p> <p>13 hijack your question.</p> <p>14 MR. ANDERSON: That's okay.</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q I'm still confused, Mr. Livadas.</p> <p>17 Right now neither WAM nor Weiser Capital are</p> <p>18 the owners of the stock; correct?</p> <p>19 A They're not the owners of the stock because the</p> <p>20 stock hasn't been cleared into Weiser.</p> <p>21 Q Okay. But you testified just in answering the</p> <p>22 judge's question that the stock went from Mr. Skarpelos's</p> <p>23 account on April 2nd to Weiser Asset Management for a</p> <p>24 nanosecond and then on to the ultimate buyer?</p>

<p style="text-align: right;">Page 238</p> <p>1 A That's what it's supposed to do, but it can't</p> <p>2 finish that process unless the certificate -- unless and</p> <p>3 until the certificate becomes electronic to cover our</p> <p>4 side of the transaction.</p> <p>5 Q So you're claiming now that Weiser Asset</p> <p>6 Management is the owner? I'm confused.</p> <p>7 A I'm not a legal professional to define what</p> <p>8 exactly is ownership. I can only describe the process so</p> <p>9 somebody can decide where ownership falls.</p> <p>10 Q I thought you testified earlier that Weiser</p> <p>11 Asset Management has liability because a third-party</p> <p>12 buyer paid for the stock and didn't get what they paid</p> <p>13 for.</p> <p>14 A We've given them what they paid for, which</p> <p>15 means we're short.</p> <p>16 Q So they put money into WAM?</p> <p>17 A Their clients have accounts with money.</p> <p>18 Q Who are these clients?</p> <p>19 A I can't disclose our clients.</p> <p>20 Q You're not going to tell us or this Court who</p> <p>21 these clients are?</p> <p>22 A I cannot disclose the clients. We're a</p> <p>23 financial institution. A financial institution needs</p> <p>24 permission to disclose its clients.</p>	<p style="text-align: right;">Page 239</p> <p>1 If you trade -- if you put in an order in for</p> <p>2 your Apple stock, to sell your hundred shares of Apple at</p> <p>3 JP Morgan and somebody else in their book buys the</p> <p>4 hundred shares, they're not going to tell you who. They</p> <p>5 would need various permissions and court orders to get</p> <p>6 that information of who bought that hundred shares.</p> <p>7 Q But you'd agree with me, if that person is</p> <p>8 claiming ownership, they'd be an important party to have</p> <p>9 in this lawsuit?</p> <p>10 A They claim ownership by virtue of us giving</p> <p>11 them ownership and crediting it to their account. So as</p> <p>12 far as the clients understand, they bought it, the</p> <p>13 transaction interfaces with WAM, with their broker, so</p> <p>14 they have the credit to their account.</p> <p>15 Now, if WAM now has ended up going short to the</p> <p>16 client, the client doesn't know, doesn't care, not their</p> <p>17 business. They've already received the credit, their</p> <p>18 benefit.</p> <p>19 Q Okay. So your testimony is that these clients</p> <p>20 that you won't name paid WAM for the stock; correct?</p> <p>21 A Uh-huh.</p> <p>22 THE COURT: Are you talking about the April</p> <p>23 deal?</p> <p>24 MR. ANDERSON: I'm talking about the April</p>
<p style="text-align: right;">Page 240</p> <p>1 deal.</p> <p>2 THE COURT: Just for clarification of the</p> <p>3 record, let's make sure that we're identifying the April</p> <p>4 deal, and then we'll call it the July deal, which is the</p> <p>5 one that did not happen.</p> <p>6 We know that the April deal took place because</p> <p>7 there's a credit on Mr. Skarpelos's ledger of</p> <p>8 approximately \$250,000. So for my ease of understanding</p> <p>9 what you're talking about, let's keep talking about</p> <p>10 either the April deal or the July deal of 2013.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q Let's focus on April 2, 2013.</p> <p>13 Exhibit 44 purports to show a \$250,000,</p> <p>14 approximately, credit to Mr. Skarpelos's account;</p> <p>15 correct?</p> <p>16 A Correct. Sorry. 44 is the account statement?</p> <p>17 Q The account statement.</p> <p>18 A Okay.</p> <p>19 Q So Mr. Skarpelos, according to you, got paid</p> <p>20 for the stock and then spent that money?</p> <p>21 A Yes.</p> <p>22 Q So \$250,000 that was paid for the stock is now</p> <p>23 gone. You've got a buyer that WAM instantaneously</p> <p>24 transferred ownership of the shares to by way of that</p>	<p style="text-align: right;">Page 241</p> <p>1 transaction that, according to you, doesn't have the</p> <p>2 stock that they bought?</p> <p>3 A WAM does not have the stock. The clients have</p> <p>4 the stock. Now, they may have sold the stock, but the</p> <p>5 clients ended up getting the stock.</p> <p>6 THE COURT: In April the person or persons who</p> <p>7 provided the \$250,000 received 3-plus-million shares of</p> <p>8 Anavex stock?</p> <p>9 THE WITNESS: Credited to their account.</p> <p>10 THE COURT: Credited to their account.</p> <p>11 Regardless of how you came up with it?</p> <p>12 THE WITNESS: Yes.</p> <p>13 THE COURT: So now I've got it.</p> <p>14 BY MR. ANDERSON:</p> <p>15 Q How do you credit to their account a paper</p> <p>16 stock certificate?</p> <p>17 A Because the stock certificate is in the vault,</p> <p>18 so it's shown as a credit to their account, the same way</p> <p>19 it shows as a credit on Tom's account, on the statement</p> <p>20 that shows a credit of shares, because it's been</p> <p>21 deposited to the vault.</p> <p>22 Q So the only record -- we don't have any record</p> <p>23 of their being credited that stock; correct?</p> <p>24 A We don't have a record?</p>

<p style="text-align: right;">Page 242</p> <p>1 Q You have not produced in this case a record of 2 WAM crediting this third party's account?</p> <p>3 A I have not been asked to produce other clients' 4 statements. If I was, I couldn't without the permission 5 of the client or the Court.</p> <p>6 Q So we don't know the name of the buyer?</p> <p>7 A No.</p> <p>8 Q And we don't have any record that WAM actually 9 credited their account?</p> <p>10 A You don't.</p> <p>11 Q Okay. Well, you haven't produced any in this 12 case; correct?</p> <p>13 A Here, no.</p> <p>14 Q Okay. "Here" meaning throughout the four years 15 of litigation that we've been in, you haven't produced a 16 record of WAM crediting that third-party buyer's account; 17 correct?</p> <p>18 A The first time that I was asked that I recall 19 was at the deposition, if I would produce. I told you 20 for me to produce I would need to have a local court 21 order or concession of the clients to produce their 22 account statements.</p> <p>23 Q Okay. So you credit their account on April 2nd 24 with the 3.3 million shares, and ultimately it comes to</p>	<p style="text-align: right;">Page 243</p> <p>1 pass that there's a problem with the stock certificate 2 and they can't actually acquire ownership through the 3 transfer agent; is that right?</p> <p>4 A WAM cannot. They can if we -- if WAM, again, 5 in this intermediary takes care of the imbalance either 6 by going short and buying the stock somewhere else and 7 then letting them sell it.</p> <p>8 Q So I'm still confused.</p> <p>9 Who owns the stock on April 2, 2013?</p> <p>10 A The clients who bought that stock.</p> <p>11 Q Okay. So the clients own the stock on April 2, 12 2013. When did the clients no longer own the stock?</p> <p>13 A They sold it at different times.</p> <p>14 Q To other people?</p> <p>15 A Correct.</p> <p>16 Q Okay.</p> <p>17 A Much time -- much time later.</p> <p>18 Q So at some point in time WAM got pressured to 19 deliver the certificate in order for these sales to other 20 parties to be able to be consummated; correct?</p> <p>21 A We had pressure -- yes, we had pressure to deal 22 with the issue of the imbalance because the 23 certificate -- the hold on the certificates created an 24 imbalance in Weiser's books.</p>
<p style="text-align: right;">Page 244</p> <p>1 Q Well, didn't it also create a problem for the 2 ultimate buyers, the WAM clients that then went on to 3 sell to somebody else?</p> <p>4 A No. I'll give you an example.</p> <p>5 Let's say, for example, somebody goes to the 6 bank and gives a counterfeit hundred dollar bill. That 7 counterfeit hundred dollar bill now is at the bank. 8 Somewhere in some other side of the transaction, the bank 9 has clients that own some of this hundred dollar bill, so 10 they've already credited to the clients the hundred 11 dollar bill and then realize, oh, this hundred dollar 12 bill is counterfeit.</p> <p>13 They're not going to subtract -- the other 14 clients of the bank are not going to have an issue 15 because the bank is holding a hundred dollar counterfeit 16 bill. That's the bank's problem to deal with the hundred 17 dollar counterfeit bill and go to correct that 18 counterfeit bill.</p> <p>19 Q So what you've saying, then, is that WAM made 20 it right with the ultimate buyer and the other people by 21 giving some sort of substitute for the shares that were 22 represented by Certificate 753?</p> <p>23 A Correct.</p> <p>24 Q Okay. So WAM acquired new shares to make it</p>	<p style="text-align: right;">Page 245</p> <p>1 right with these third parties?</p> <p>2 A I believe it mostly went short.</p> <p>3 Q Explain what that means.</p> <p>4 A It means that -- how can I explain it simple? 5 So let's say you don't own Apple. You can still go and 6 sell Apple yourself, Dane, you can go and sell Apple in 7 the market even though you don't own it. That makes you 8 short. So Weiser had to go short in the marketplace to 9 balance the sale requests from clients. That's the 10 easiest way I can explain it.</p> <p>11 Q So Weiser entered into transactions to somehow 12 get money or stock -- did Weiser get money or stock for 13 these short transactions?</p> <p>14 A When you sell short, you receive cash.</p> <p>15 Q So WAM made it right with these third parties 16 not by giving them shares of Anavex stock, but by giving 17 them cash?</p> <p>18 A It already credited the shares at the beginning 19 of the transaction. Later they wanted to sell. When 20 they wanted to sell and Weiser couldn't take it from the 21 inventory of 0753, whatever the certificate number was, 22 Weiser had to go short in the marketplace to match the 23 sale order of the client, putting the firm in its 24 electronic inventory short Anavex shares while it had</p>

<p style="text-align: right;">Page 246</p> <p>1 long inventory in physical certificate, which is what 2 it's trying to deal with the issue on. 3 Q So to make it right, these buyers -- these 4 buyers never got the shares of Certificate 753; correct? 5 A Nobody gets the shares of certificate. It get 6 credited to the account. It's like -- if I can give an 7 example, like on Tom's account here, it shows -- I 8 believe it's -- okay. On the front page it shows here 9 that he has these shares -- right? -- but he's not 10 holding those shares. Those shares are in the vault, but 11 it reflects on his account. It's a credit on account. 12 Q Okay. So you credited to this third-party 13 client's account shares of stock that ultimately you 14 could not deliver as transferrable, tradeable stock? 15 A Correct. 16 Q Okay. And you made it right by shorting other 17 stock and paying them cash? 18 A Well, we paid them cash to settle their trade, 19 yes. 20 Q So Weiser Asset Management, does it have any 21 records of these payments and these transactions? 22 A I'm sure it does. I could find the sale 23 transactions, short transactions. 24 Q Yeah. The short transactions wouldn't mention</p>	<p style="text-align: right;">Page 247</p> <p>1 the third-party client; correct? 2 A Those are Weiser's trades in the market. Yes, 3 it will show Weiser. 4 Q And those trades related to the dispute that 5 we're talking about here because you were attempting to 6 remedy the situation; correct? 7 A Correct. 8 Q And you didn't produce those documents to your 9 client or your counsel in this case, did you? 10 A Not that I'm aware of. I don't know if I was 11 asked for them. I don't think I was asked for them. 12 Q Let's look at Exhibit 3, please. 13 THE COURT: Before we get to Exhibit 3, now's 14 the time we normally would take our afternoon recess, so 15 if we're moving on to a different exhibit, maybe this 16 would be a good time to do it. 17 MR. ANDERSON: Yes, Your Honor. I was thinking 18 of asking a follow-up, but I decided not to. 19 THE COURT: If it's literally just one 20 follow-up, I'll let you do that, but lawyers are 21 notorious -- my favorite thing is a lawyer who says, "Can 22 I ask one additional question?" and my response always 23 is, "You just did." 24 MR. ANDERSON: In that case, Your Honor, I'll</p>
<p style="text-align: right;">Page 248</p> <p>1 wait -- 2 THE COURT: If you have one additional 3 question, I'll let you ask him. 4 MR. ANDERSON: I'll wait until after the break. 5 THE COURT: So we'll be in recess for 6 15 minutes. 7 (A recess was taken.) 8 THE COURT: We'll go back on the record in 9 Skarpelos vs. Weiser Asset Management, CV15-02259. 10 Mr. Anderson, you were doing cross-examination. 11 I would note to the parties that we will finish 12 right around 4:45 today to give everyone the opportunity 13 to clear the courtroom before the court staff begins the 14 mass exodus out the one door we all use to leave the 15 building. 16 MR. NORK: Thank you, Your Honor. 17 THE COURT: Right around 4:45 we'll wrap it up 18 so you guys can get out of here, and we'll start tomorrow 19 again at 8:30. 20 Go ahead, Mr. Anderson. 21 MR. ANDERSON: Thank you, Your Honor. 22 BY MR. ANDERSON: 23 Q Mr. Livadas, would you look at Exhibit 44, 24 please.</p>	<p style="text-align: right;">Page 249</p> <p>1 I think you testified earlier that WAM keeps 2 transaction records for all client transactions; correct? 3 A Correct. 4 Q And you said with regard to account statements, 5 that they don't keep account statements, they only 6 generate those if a client requests? 7 A Correct. 8 Q Do you have any evidence in this case that 9 Mr. Skarpelos ever requested Exhibit 44 be generated? 10 A That he requested it, no. 11 Q Okay. There are a number of transactions 12 listed on here that we've talked about. 13 Looking at the first entry on here, it says 14 February 1, 2013, and if you go over to the column that 15 says "Debit," there's a negative \$143,287.54. 16 Do you see that? 17 A Yes. 18 Q Now, you weren't involved with WAM at the time 19 that this account statement was generated; correct? 20 A I was involved as far as being an agent 21 representative and so forth. 22 Q And you had testified that you caused WAM to 23 execute a number of transactions on Mr. Skarpelos's 24 account; correct?</p>

<p style="text-align: right;">Page 250</p> <p>1 A Correct.</p> <p>2 Q And you testified that Mr. Skarpelos had a</p> <p>3 large negative balance that existed prior to this</p> <p>4 statement; correct?</p> <p>5 A Well, at the beginning of this statement, it</p> <p>6 had a negative balance, which I wouldn't call large.</p> <p>7 Q Okay. It's a relative term; right?</p> <p>8 A Yes.</p> <p>9 THE COURT: It seems large to me.</p> <p>10 THE WITNESS: Relative to the equity value, it</p> <p>11 was not so big.</p> <p>12 THE COURT: Okay.</p> <p>13 BY MR. ANDERSON:</p> <p>14 Q So it shows a debit on February 1st of 2013.</p> <p>15 Is that the transaction where \$140,287.54 left</p> <p>16 Mr. Skarpelos's account, on that date?</p> <p>17 A No. That would have been the opening balance,</p> <p>18 which would have been the result of more transactions</p> <p>19 prior to that.</p> <p>20 Q Okay. Why does it show as a debit?</p> <p>21 A Because I believe at the opening balance of</p> <p>22 this statement period it had a debit balance.</p> <p>23 Q It looks like the remainder of the debits on</p> <p>24 that transaction all relate to one transaction; right?</p>	<p style="text-align: right;">Page 251</p> <p>1 A Say that again.</p> <p>2 Q Sure. I'll rephrase it.</p> <p>3 If you look down that column, there are -- one,</p> <p>4 two, three, four, five, six, seven -- roughly eight or</p> <p>5 nine additional debits, specific debit amounts taken out</p> <p>6 of the account on that date; correct?</p> <p>7 A Yes.</p> <p>8 Q Why would there be an opening balance that</p> <p>9 lists a debit on February 1, 2013?</p> <p>10 A Because when you produce a statement, it shows</p> <p>11 the opening balance.</p> <p>12 Q Okay. Well, if you look over two other</p> <p>13 columns, there's a balance that's different than the</p> <p>14 debit.</p> <p>15 A It looks like it's a rounded balance.</p> <p>16 Q Okay. But there are no other rounded balances</p> <p>17 below that; correct?</p> <p>18 A Correct.</p> <p>19 Q Okay. And so you don't know why that 46 cent</p> <p>20 discrepancy exists on this statement, do you?</p> <p>21 A No.</p> <p>22 Q And I believe your testimony at deposition was</p> <p>23 that the large negative balance that Mr. Skarpelos had on</p> <p>24 February 1, 2013, had been existing for some time;</p>
<p style="text-align: right;">Page 252</p> <p>1 correct?</p> <p>2 A Correct.</p> <p>3 Q Multiple transactions over a period of 2011,</p> <p>4 2012?</p> <p>5 A Whatever that period before this, yes.</p> <p>6 Q Now, WAM doesn't have any transaction records</p> <p>7 for those transactions; correct?</p> <p>8 A The transaction records should be somewhere in</p> <p>9 WAM's transaction files.</p> <p>10 Q And if you had them, you would have produced</p> <p>11 them in this case?</p> <p>12 A If I could go digging through and go digging</p> <p>13 through to find them all, but it takes a lot of time to</p> <p>14 dig them all, and I don't recall if we were asked to find</p> <p>15 transactional records.</p> <p>16 Q Okay. Would it be fair to say you didn't look</p> <p>17 through all the documents that WAM has to locate</p> <p>18 documents that might be relevant; correct?</p> <p>19 A No.</p> <p>20 Q Sometimes when I say "Correct?" you answer</p> <p>21 "No." Let me just rephrase and make it clear.</p> <p>22 You did not look through WAM's records for all</p> <p>23 transactions related to Mr. Skarpelos's account; correct?</p> <p>24 A Correct. Yeah, I have not looked through all</p>	<p style="text-align: right;">Page 253</p> <p>1 of the transactions.</p> <p>2 Q Now, the first transaction after the opening</p> <p>3 balance is entitled "Transfer," and it's dated March 25,</p> <p>4 2013.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q 10,000 euros?</p> <p>8 A Correct.</p> <p>9 Q And as I understood your testimony on direct,</p> <p>10 that equates to 13,391.90 in U.S. dollars?</p> <p>11 A Correct.</p> <p>12 Q And it looks like there's a date of activity</p> <p>13 and a date of value; correct?</p> <p>14 A Yes. Yes.</p> <p>15 Q Now, WAM didn't produce any account records</p> <p>16 or -- I'm sorry -- any transaction records related to the</p> <p>17 March 25, 2013, transfer; correct?</p> <p>18 A We found some transaction records. I requested</p> <p>19 verification of these transactions from our prime broker,</p> <p>20 which were later found and I believe are in here</p> <p>21 somewhere.</p> <p>22 Q Okay. So WAM didn't have records itself?</p> <p>23 A WAM should have the records, but the file is</p> <p>24 large, so I went and put a request in to the prime broker</p>

<p style="text-align: right;">Page 254</p> <p>1 to see if they could also find records of these 2 transactions.</p> <p>3 Q So WAM should have records of this transaction, 4 but you either didn't look or couldn't find them; 5 correct?</p> <p>6 A I looked but did not go through all of the 7 records, and it was easier to ask the prime broker, 8 because they have much more sophisticated systems than 9 the paper records that we have, to try to find the -- to 10 find some more history or information on these 11 transactions.</p> <p>12 Q Okay. So your testimony is you had to go to a 13 third party to try to find information on transactions 14 that WAM should have records of that you couldn't find?</p> <p>15 A Correct.</p> <p>16 Q Okay. As I understand your testimony on 17 direct, you said that the records that WAM, when you 18 acquired it, were not organized by client, they were 19 organized by transaction; is that correct?</p> <p>20 A Transactions are -- yeah, just -- transactions, 21 yes.</p> <p>22 Q Okay. So if they're not organized by client 23 and they're organized by transaction, is it 24 chronological?</p>	<p style="text-align: right;">Page 255</p> <p>1 A It relates more to these -- there's transaction 2 numbers, but I would need these transaction numbers to be 3 able to find them easily in the old transaction history.</p> <p>4 Q Well, you have the transaction number right 5 here.</p> <p>6 A Right. So for these, I should be able to find 7 these, but I didn't --</p> <p>8 Q Okay.</p> <p>9 A -- on the WAM side files. I found them on the 10 prime broker's transaction records.</p> <p>11 Q Okay. Nothing in WAM's files?</p> <p>12 A Not that I found, no.</p> <p>13 Q And just so I understand, they're not organized 14 by client name or identity? They're organized by 15 transaction and I think you said by transaction number?</p> <p>16 A Right.</p> <p>17 Q So how can you quickly identify where in the 18 large stack of documents a transaction number might be? 19 Do you have --</p> <p>20 A Quickly is not possible the way that we 21 received the files.</p> <p>22 Q And this was something that was done before you 23 took over?</p> <p>24 A Correct.</p>
<p style="text-align: right;">Page 256</p> <p>1 Q Same question for the next one, March 25th 2 wire-out fee. There should be some record of that; 3 correct?</p> <p>4 A It usually just gets posted and -- yeah. There 5 should be something, yes.</p> <p>6 Q Well, you mean posted on a computer?</p> <p>7 A Yeah. Again, I know how we do it now. I don't 8 know how it was done then, so I keep -- I can only 9 reference to how I know things are done now.</p> <p>10 Q I understand.</p> <p>11 So with the wire-out fee, I mean, now would 12 there be some sort of record or documentation saying, 13 hey, WAM is taking a fee of X dollars for this 14 transaction?</p> <p>15 A It's in our computer database, yeah. We can 16 look it up through our computerized database to see the 17 transaction and the details and the fees and so on and so 18 forth.</p> <p>19 Q But back then, back in this time frame, 2013, 20 if WAM doesn't have a computer system or an ability to 21 track these statements, how would they go about tracking 22 this transaction?</p> <p>23 A Well, the transaction records are required by 24 the regulators to be kept, the transaction records. Now,</p>	<p style="text-align: right;">Page 257</p> <p>1 WAM previously had some kind of computer system. I don't 2 know what it was exactly, how it functioned, how great it 3 was, but they had their computer system, but the 4 regulators require us to keep a history of transaction 5 records.</p> <p>6 Now, they gave us the paper copies of all 7 these, but admittedly they're not that organized, but 8 we're also not required to keep them organized. If a 9 regulator wants to go in to find the transaction records, 10 the storage facility is there and they can go in and --</p> <p>11 Q You just give them the storage facility 12 documents and say have at it?</p> <p>13 A Correct.</p> <p>14 Q But what I'm focused on is -- and I guess the 15 answer is you don't know how they did it back then, 16 correct, in terms of tracking transactions?</p> <p>17 A No. I know they had a computer system, but I 18 don't know the details on it.</p> <p>19 Q When you acquired WAM, did you get that 20 computer system?</p> <p>21 A Huh-uh.</p> <p>22 Q What happened to it?</p> <p>23 A We transitioned to a new system because I 24 didn't care for their system, because the little I knew</p>

<p style="text-align: right;">Page 258</p> <p>1 about it, it wasn't great in the sense of what I wanted</p> <p>2 to have.</p> <p>3 Q I think you testified at your deposition that</p> <p>4 when you acquired WAM, the only information that was</p> <p>5 available that they provided you was static information</p> <p>6 from their system?</p> <p>7 A Correct. It was a static of data which gave us</p> <p>8 the start date to start our new system. So all the data</p> <p>9 starts fresh in the new system from the closing -- from</p> <p>10 the closing date of the data they gave us.</p> <p>11 Q You didn't have the ability to get into their</p> <p>12 system and do historical reviews of their documents?</p> <p>13 A No.</p> <p>14 Q And would it also follow that if you didn't</p> <p>15 have the ability to do that, the auditor wouldn't have</p> <p>16 the ability to do that?</p> <p>17 A I can't say the auditor would have the ability</p> <p>18 or not with their system. The auditor might have had the</p> <p>19 ability with their system. I didn't. I wasn't getting</p> <p>20 into their system. I didn't care for their system. I</p> <p>21 wanted the start data which was already audited, we</p> <p>22 knew -- as far as we can know because the auditor signs</p> <p>23 it off, but the company's accounts are all balanced,</p> <p>24 which means to us everything is good. So we start with</p>	<p style="text-align: right;">Page 259</p> <p>1 that cutoff date moving forward.</p> <p>2 Q Let's look at the April 2, 2013, entry.</p> <p>3 A Yes.</p> <p>4 Q Now, I think you testified a few minutes ago</p> <p>5 that this is the only record that WAM has of that stock</p> <p>6 sale in writing?</p> <p>7 A Yes. This is the record.</p> <p>8 Q This is the only record?</p> <p>9 A This is the record that -- I say record. It's</p> <p>10 a reference record.</p> <p>11 Q Okay. It's a record of another record?</p> <p>12 A Well, a statement is a summary of records.</p> <p>13 Q Okay. So there must have existed at some point</p> <p>14 in time documents from which whoever prepared this</p> <p>15 statement gets this information and then enters it into</p> <p>16 this account statement?</p> <p>17 A Records on stock trades don't get -- how do I</p> <p>18 say -- when it comes to fund transfers, those get</p> <p>19 actually more records because there's counterparties in</p> <p>20 between, so you end up with records that relate to other</p> <p>21 counterparty activities from the prime broker, prime</p> <p>22 bank, etcetera.</p> <p>23 For trades, you don't have and you wouldn't</p> <p>24 see, like, printed records for a trade because those end</p>
<p style="text-align: right;">Page 260</p> <p>1 up -- if it goes to the public market, that record is</p> <p>2 with your prime broker. If it ends up here, you know you</p> <p>3 have it on your balances.</p> <p>4 Q Well, how does this person who created this</p> <p>5 know there was a sale on April 2, 2013?</p> <p>6 A I don't know if it's a person who created this</p> <p>7 or if it's a computer that created this.</p> <p>8 Q Okay. So if there was a computer that created</p> <p>9 this, at some point in time there must have been a</p> <p>10 computer entry --</p> <p>11 A It would have had -- it's database record,</p> <p>12 correct.</p> <p>13 Q So your testimony is that when there's a stock</p> <p>14 sale, if it's a private sale, there's no records</p> <p>15 generated?</p> <p>16 A Not in paper printout form. The regulators</p> <p>17 require -- when it comes to funds transfer transactions,</p> <p>18 they like to see -- the regulator is much more sensitive</p> <p>19 about cash-type transactions, so they like to see some</p> <p>20 record history on that.</p> <p>21 When it comes to trades, there's not really</p> <p>22 paper for them. They have the database, and they gave us</p> <p>23 the closing statements of all their accounts and what</p> <p>24 their holdings were.</p>	<p style="text-align: right;">Page 261</p> <p>1 Q But the bottom line is that you didn't find</p> <p>2 anything in WAM's records to demonstrate in writing this</p> <p>3 alleged April 2nd transaction other than this statement;</p> <p>4 correct?</p> <p>5 A As far as I recall, I was asked to find the</p> <p>6 cash transaction records. I wasn't asked to find a</p> <p>7 record, historical record of --</p> <p>8 Q I'm not really concerned what you were asked to</p> <p>9 find. You did look through the records?</p> <p>10 A For cash transactions.</p> <p>11 Q You didn't look through the records of WAM to</p> <p>12 see if there was actually anything evidencing this stock</p> <p>13 sale of April 2nd?</p> <p>14 A No.</p> <p>15 Q And all we have is this Exhibit 44; correct?</p> <p>16 A All we have as far as --</p> <p>17 Q The only thing we have in writing that</p> <p>18 demonstrates a stock sale on April 2nd of 2013 is</p> <p>19 Exhibit 44?</p> <p>20 A Yes. Correct.</p> <p>21 Q And I guess Exhibit 43, which is identical?</p> <p>22 A Yes.</p> <p>23 Q So there's no evidence of Tom giving you an</p> <p>24 order to make this transaction; correct?</p>

<p style="text-align: right;">Page 262</p> <p>1 A Evidence to do the order? No.</p> <p>2 Q I want to be clear. I understand you testified</p> <p>3 that he did. I'm just focusing on there's no written</p> <p>4 direction from Tom?</p> <p>5 A Correct. No written.</p> <p>6 Q No written direction from Tom to you saying do</p> <p>7 this transaction; right?</p> <p>8 A Correct.</p> <p>9 Q No written direction from Tom to WAM saying</p> <p>10 please do this transaction; correct?</p> <p>11 A Written, no. Almost everything was always</p> <p>12 verbal because most of our discussions was verbal. He</p> <p>13 liked to -- Tom liked to have verbal discussions.</p> <p>14 Q But there was no written direction to WAM;</p> <p>15 correct?</p> <p>16 A Correct, no written.</p> <p>17 Q And there was also no written direction from</p> <p>18 Tom to Weiser Capital to do anything related to this</p> <p>19 transaction?</p> <p>20 A Written, no.</p> <p>21 Q And there's nothing in writing to demonstrate</p> <p>22 WAM's temporary ownership; correct?</p> <p>23 A In writing for temporary --</p> <p>24 Q I'm not sure you understand. I want to be</p>	<p style="text-align: right;">Page 263</p> <p>1 clear.</p> <p>2 As I understood your testimony earlier, the</p> <p>3 deal went as follows: Tom authorizes the sale of stock;</p> <p>4 WAM becomes the intermediary for, I think you said, a</p> <p>5 nanosecond; and then it goes to a third-party buyer;</p> <p>6 correct?</p> <p>7 A Correct.</p> <p>8 Q So there's nothing in writing showing that WAM</p> <p>9 was the nanosecond intermediary owner; correct?</p> <p>10 A No.</p> <p>11 Q And there's also nothing in writing that shows</p> <p>12 that there was a third-party buyer?</p> <p>13 A There would be -- there would be similar</p> <p>14 statements that there was a buyer.</p> <p>15 Q Did they ask for a statement?</p> <p>16 A The clients?</p> <p>17 Q Yes.</p> <p>18 A I don't know if they asked or not, but we</p> <p>19 received the statements of clients for that year for our</p> <p>20 transition.</p> <p>21 Q Okay. So there is a document out there that</p> <p>22 exists that shows a credit to an unknown party on</p> <p>23 April 2nd of 2013?</p> <p>24 A I'm pretty confident if I looked for it, yes.</p>
<p style="text-align: right;">Page 264</p> <p>1 There would be statements for all the clients this year</p> <p>2 which would reflect that.</p> <p>3 Q So you've never actually seen that document?</p> <p>4 A No.</p> <p>5 Q And you didn't look for it?</p> <p>6 A (No audible response.)</p> <p>7 Q Actually, I'm not sure I got an answer.</p> <p>8 You didn't look for that document; correct?</p> <p>9 A Correct. No.</p> <p>10 Q If you look at the statement, it has</p> <p>11 Mr. Skarpelos's name on it; correct?</p> <p>12 A Correct.</p> <p>13 Q And it has an account number that's listed</p> <p>14 below his name?</p> <p>15 A Correct.</p> <p>16 Q Would the third-party client buyer also -- if a</p> <p>17 statement was generated for them, would they also have</p> <p>18 their name and account number on there?</p> <p>19 A Yes.</p> <p>20 Q Now, you would agree with me it would be pretty</p> <p>21 easy just to redact that name and account number;</p> <p>22 correct?</p> <p>23 A How would you redact it?</p> <p>24 Q Take a Magic Marker or a Sharpie and black it</p>	<p style="text-align: right;">Page 265</p> <p>1 out.</p> <p>2 A Oh, yeah, we could black it out.</p> <p>3 Q And if you did that, no one would know who the</p> <p>4 buyer was? You wouldn't be violating any securities laws</p> <p>5 or anything; correct?</p> <p>6 A We would be violating confidentiality</p> <p>7 information. All of the activity of a client is</p> <p>8 confidential unless the client gives us permission to</p> <p>9 release any of their activity.</p> <p>10 Q Okay. Well, in theory you could black out all</p> <p>11 the other activity and leave that April 2nd transaction</p> <p>12 on there that everyone already knows about?</p> <p>13 A Yes. I guess if it doesn't have their account</p> <p>14 and everything else is gone, I think that would be</p> <p>15 allowed.</p> <p>16 Q So we don't have any written transaction</p> <p>17 records of the actual sale outside of this document? We</p> <p>18 don't have any transaction records of the third-party</p> <p>19 buyer either depositing money or receiving ownership of</p> <p>20 the shares; correct?</p> <p>21 A I believe we do. I don't know -- you don't.</p> <p>22 We do.</p> <p>23 Q Well, the Court doesn't have any to look at;</p> <p>24 correct?</p>

<p style="text-align: right;">Page 266</p> <p>1 A Correct.</p> <p>2 Q And there's really no evidence from which any</p> <p>3 of us can follow the money trail in this case; right?</p> <p>4 A Explain some more.</p> <p>5 Q Sure. That April 2, 2013, transaction shows a</p> <p>6 stock sale and a credit to Tom's account of \$249,580;</p> <p>7 right?</p> <p>8 A Correct.</p> <p>9 Q Which is \$420 less than the full purchase</p> <p>10 price?</p> <p>11 A Correct.</p> <p>12 Q Where did the \$420 go?</p> <p>13 A That would have been a transaction fee.</p> <p>14 Q And we don't have that record, do we?</p> <p>15 A On trades it gets -- it gets netted out. It's</p> <p>16 mixed into the trade, the net trade value.</p> <p>17 Q Well, the buyer deposited \$250,000; correct?</p> <p>18 A Well, they would have probably already had it</p> <p>19 in their accounts from whenever.</p> <p>20 Q So they deposit 250,000 at some point?</p> <p>21 A Or more.</p> <p>22 Q In any event, there's enough to consummate the</p> <p>23 purchase?</p> <p>24 A Right.</p>	<p style="text-align: right;">Page 267</p> <p>1 Q So at some point WAM takes a transaction fee of</p> <p>2 \$420; correct?</p> <p>3 A Correct.</p> <p>4 Q And there's no record of that?</p> <p>5 A I believe there would be a record.</p> <p>6 Q Well, we don't have it here today, do we?</p> <p>7 A Correct.</p> <p>8 Q And there's no written record of the deposit</p> <p>9 being made; correct?</p> <p>10 A Not in the court, no.</p> <p>11 Q And we don't have any evidence of the shorts</p> <p>12 you talk about that WAM made to make it right; correct?</p> <p>13 A Not in court, no.</p> <p>14 Q Not in court. And we also don't have any</p> <p>15 evidence that money actually went out of Skarpelos's</p> <p>16 account?</p> <p>17 A The evidence that I have found is the prime</p> <p>18 bank's -- from a prime broker and prime bank, some</p> <p>19 transaction records they had.</p> <p>20 Q Let's talk about that.</p> <p>21 You testified on direct that WAM does not hold</p> <p>22 cash; correct?</p> <p>23 A Correct.</p> <p>24 Q Okay. It utilizes the services of a prime</p>
<p style="text-align: right;">Page 268</p> <p>1 broker?</p> <p>2 A Yes.</p> <p>3 Q Okay. And that prime broker utilizes the</p> <p>4 services of a prime bank?</p> <p>5 A Correct.</p> <p>6 Q So if Mr. Skarpelos is going to withdraw money</p> <p>7 from his account or if you're going to be doing it on his</p> <p>8 behalf, you give the direction to --</p> <p>9 Well, first of all, Tom has to give the</p> <p>10 direction to you; correct?</p> <p>11 A Correct.</p> <p>12 Q Or Lambros?</p> <p>13 A Sure.</p> <p>14 Q And then you have to give the direction to WAM;</p> <p>15 correct?</p> <p>16 A Correct.</p> <p>17 Q There's nothing in writing from you to WAM</p> <p>18 saying, I want you to do these transactions here?</p> <p>19 A I found the one -- I believe I found the one,</p> <p>20 so we have one, I think. I don't know if there was more.</p> <p>21 Q Was that the email with Rainbow and --</p> <p>22 A Yes.</p> <p>23 Q Is Rainbow actually a WAM employee?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 269</p> <p>1 Q You didn't testify at your deposition that she</p> <p>2 was a Weiser Capital employee?</p> <p>3 A I'm not sure. If you could show me.</p> <p>4 Q We'll get to that later.</p> <p>5 How about Alana? Is she also a WAM employee?</p> <p>6 A She's been on and off.</p> <p>7 Q Well, at the time of that email we looked at, I</p> <p>8 take it she was a WAM employee?</p> <p>9 A I'm not sure. I would assume so.</p> <p>10 Q In any event, you contact someone at WAM, and</p> <p>11 we have one writing to show that. Then WAM, I guess,</p> <p>12 does something to send money out of his account with WAM?</p> <p>13 A Right.</p> <p>14 Q So WAM then instructs the prime broker to do a</p> <p>15 transaction where money goes out of Tom's account?</p> <p>16 A To go out of WAM's account. So WAM will debit</p> <p>17 Tom's account and ask the prime broker to transfer money</p> <p>18 to whoever the recipient is. So WAM debits the client's</p> <p>19 account, the prime broker debits WAM's account, the prime</p> <p>20 bank debits the prime broker's account, the Federal</p> <p>21 Reserve debits the prime bank, and finally it ends up at</p> <p>22 another bank.</p> <p>23 THE COURT: All in the blink of an eye?</p> <p>24 THE WITNESS: Not even, actually. It takes a</p>

<p style="text-align: right;">Page 270</p> <p>1 couple, three days, which is why you have value dates, 2 because sometimes it takes longer. 3 BY MR. ANDERSON: 4 Q So I want to make sure it's clear in my head. 5 Once WAM receives the direction from you, they 6 direct the prime broker to debit WAM's account? 7 A Correct. 8 Q And then the prime broker does that or directs 9 the prime bank to debit WAM's account, the prime bank? 10 A No. To debit the prime broker's account. So 11 everybody debits everybody's account until the cash at 12 the end balances, which is the Federal Reserve, actually, 13 debits it out and sends -- and then credits it to the 14 recipient's bank. 15 Q Okay. And, again, I'm not trying to be obtuse. 16 I just want to get through the order. 17 WAM directs the broker-dealer to debit WAM's 18 account, and then the broker-dealer then asks the prime 19 bank to debit the prime dealer's account, and then the 20 prime dealer asks the Federal Reserve to approve it, or 21 does it actually go to the Federal Reserve? 22 A At that point I'm lost. I'm not sure. 23 Q Okay. Well, at some point after the Federal 24 Reserve, then I think you said it goes to the customer's</p>	<p style="text-align: right;">Page 271</p> <p>1 account? 2 A Then it goes to the customer's bank. So all of 3 the money is at the Federal Reserve, and the prime banks 4 have accounts at the Federal Reserve, and they're 5 crediting and debiting their balance at the Federal 6 Reserve level while the primary banks are then 7 individually crediting and debiting their client 8 accounts. 9 Q Okay. So at some point the Federal Reserve 10 gives direction that allows the money that has been asked 11 to be debited from the WAM account be then credited to 12 the customer's account? 13 A Correct. Ultimately. 14 Q Okay. And so we don't have any records of WAM 15 actually directing the prime broker to debit WAM's 16 account for any of these transactions on Exhibit 44; 17 correct? 18 A All I have is the transactions I received from 19 the prime broker showing the debit of their account. 20 Q That's at the prime broker level. That's a 21 third party that's not WAM; correct? 22 A Correct. 23 Q WAM doesn't have any records for any of these 24 monetary transactions on here where it's requesting that</p>
<p style="text-align: right;">Page 272</p> <p>1 the prime broker debit WAM's account; correct? 2 A WAM will have it, but it's not in the court. 3 Q So they do have the records? They're just 4 not -- 5 A Correct. WAM will have its large ledger of its 6 debits. 7 Q Did you look for that document when you were 8 reviewing the records? 9 A That would be a huge -- there's a huge document 10 of all of WAM's intercustodial -- 11 Q So you didn't find anything that would show 12 that WAM actually made written direction to the prime 13 broker to debit WAM's account? 14 A The written request, no, I didn't look for the 15 written request. 16 Q Okay. And WAM doesn't also have any records of 17 the prime broker actually debiting WAM's account? 18 A It will be -- it will be in WAM's central 19 ledger. 20 Q Okay. And that's not been made available to 21 the Court; correct? 22 A No. 23 Q When WAM opens its account with a prime broker, 24 are there documents filled out to do that?</p>	<p style="text-align: right;">Page 273</p> <p>1 A Yes. 2 Q And when WAM asks to have its account debited 3 on behalf of a specific customer, say, for example, 4 Mr. Skarpelos, how does the prime bank know to attribute 5 that withdrawal specifically to Mr. Skarpelos? 6 A It doesn't -- a bank doesn't know which end 7 client it's for because a client of WAM's is a client of 8 WAM's, WAM is a client of the prime broker, and the prime 9 broker is a client of the bank. So nobody knows who the 10 end clients are on the end of each side through all the 11 intermediaries. 12 Q Okay. So really the only way we would know it 13 involves Mr. Skarpelos at all is at the WAM level? 14 A Correct. Correct. 15 Q And, again, the same sorts of questions. 16 So as we go up the chain from the prime broker 17 to the prime bank, the prime bank to the Federal Reserve, 18 and the Federal Reserve ultimately to the end customer, 19 WAM doesn't have any written records of those? 20 A Sorry. Say that again. 21 Q Sure. It was a mouthful. 22 As we look at the chain from the prime broker 23 to the prime bank, from the prime bank up to the Federal 24 Reserve, and then from the Federal Reserve to the</p>

<p style="text-align: right;">Page 274</p> <p>1 ultimate customer, WAM doesn't have any records of those 2 transactions; correct?</p> <p>3 A We only have parts of the record from the prime 4 broker to the -- part of the record, which is from the 5 prime broker to the prime bank.</p> <p>6 Q Okay. And as far as the rest of the chain, we 7 don't have any of that?</p> <p>8 A To the final end client, like where it ended 9 up?</p> <p>10 Q Yes.</p> <p>11 A No. That would be on the receiving client's 12 side.</p> <p>13 Q And there's no way -- once the request is made 14 from WAM to the prime broker, there's no way to track if 15 it's tied to a specific customer or client from that 16 level on because at the prime broker level you're dealing 17 strictly with WAM's account; correct?</p> <p>18 A Well, I think I understand your question. You 19 can trace money from beginning to end. That's when you 20 request a SWIFT trace. That's a special trace that has 21 to be requested, and a SWIFT trace can give you all of 22 those -- all those jumping points, if you do a SWIFT 23 trace.</p> <p>24 Q Did you do a request for a SWIFT trace in this</p>	<p style="text-align: right;">Page 275</p> <p>1 case?</p> <p>2 A No.</p> <p>3 Q At least nothing with respect to Mr. Skarpelos; 4 correct?</p> <p>5 A Correct. Not for a SWIFT trace, no.</p> <p>6 Q And so I guess my point is, the only way to 7 identify that Mr. Skarpelos was the one requesting money 8 would be at the WAM level; correct?</p> <p>9 A From whose --</p> <p>10 Q From his own account?</p> <p>11 A From whose perspective? I'm sorry. I didn't 12 catch that.</p> <p>13 Q I just want to make sure I understand. 14 At the WAM level is where Mr. Skarpelos, 15 through you, requests money?</p> <p>16 A Correct.</p> <p>17 Q And once WAM makes that request or processes 18 the transaction in its books and then makes the request 19 from the prime broker to carry it out, the prime broker 20 does not know that it's Mr. Skarpelos requesting the 21 money; correct?</p> <p>22 A Correct.</p> <p>23 Q It's WAM requesting the money?</p> <p>24 A Correct.</p>
<p style="text-align: right;">Page 276</p> <p>1 Q So in this case you're saying, on these 2 transactions here, that WAM sent all these requests to 3 the prime broker?</p> <p>4 A Correct.</p> <p>5 Q And we don't have those records; correct?</p> <p>6 A The record of the request to the prime broker, 7 no.</p> <p>8 Q And on down the chain, we wouldn't be able -- 9 let's say we had a document from the prime broker to the 10 prime bank. We wouldn't know it was related to 11 Mr. Skarpelos because you testified that it just comes 12 out of WAM's general account?</p> <p>13 A Correct.</p> <p>14 Q So with respect to everything down the chain, 15 there's no records of these transactions other than what 16 exists in Exhibit 44?</p> <p>17 A In the court or in the real world?</p> <p>18 Q In the court.</p> <p>19 A In the court, the whole chain, no. We wouldn't 20 have the whole chain, no.</p> <p>21 Q We don't have anything other than Exhibit 44; 22 correct?</p> <p>23 A As far as?</p> <p>24 Q As far as the request to the broker, the</p>	<p style="text-align: right;">Page 277</p> <p>1 broker's request to the prime bank, the prime bank's 2 request to the Federal Reserve.</p> <p>3 A Well, we have the requests from Lambros.</p> <p>4 Q But that's at the initial level. That's him 5 asking you --</p> <p>6 A So we have some of the initial and some of the 7 middle --</p> <p>8 THE COURT: Hold on a second. Again, 9 gentlemen, you're starting to talk over one another. Let 10 him finish his question and then you can answer.</p> <p>11 Go ahead, Mr. Anderson.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q Lambros was asking you to make the request of 14 WAM; correct?</p> <p>15 A Correct.</p> <p>16 Q I'm focused on, after that request is made and 17 after WAM transacts the transactions that are listed in 18 Exhibit 44, there's no record of these being carried out 19 at any level beyond WAM; correct?</p> <p>20 A There is some records of it being carried out, 21 the prime broker, prime bank level in here, I believe.</p> <p>22 Q You think there are records?</p> <p>23 A I think I saw them in here.</p> <p>24 Q At the prime broker level?</p>

<p style="text-align: right;">Page 278</p> <p>1 A Yes.</p> <p>2 Q But there's no records that show it carrying</p> <p>3 out beyond the prime broker level; correct?</p> <p>4 A From the prime broker to the prime bank, yes.</p> <p>5 Q There is?</p> <p>6 A I believe I saw some.</p> <p>7 Q Let's focus on the level from Federal Reserve</p> <p>8 to the ultimate customer. There's no records to ever</p> <p>9 show that money requested by Mr. Skarpelos ever went into</p> <p>10 any account affiliated with him?</p> <p>11 A I think there's one record showing one of the</p> <p>12 transactions. I saw one at least. One or two are in</p> <p>13 here.</p> <p>14 Q You understand in this case that Weiser --</p> <p>15 well, your counsel has called Weiser in this case</p> <p>16 collectively Weiser Asset Management and Weiser Capital;</p> <p>17 correct?</p> <p>18 A Correct.</p> <p>19 Q You've seen the pleadings. You understand that</p> <p>20 they've been collectively referred to; correct?</p> <p>21 A Yes.</p> <p>22 Q Is that right?</p> <p>23 A Yes. Yes. Yes.</p> <p>24 Q And you're aware that in this case Weiser is</p>	<p style="text-align: right;">Page 279</p> <p>1 asserting a claim for declaratory relief that it is the</p> <p>2 owner of the stock?</p> <p>3 A Yes.</p> <p>4 Q And as I understood your testimony earlier, you</p> <p>5 were saying that WAM is now claiming it's the owner of</p> <p>6 the stock?</p> <p>7 A Sorry. Which Weiser are we -- I missed that.</p> <p>8 Q Your counsel has collectively referred to</p> <p>9 Weiser Asset Management and Weiser Capital as "Weiser"?</p> <p>10 A Collectively, right.</p> <p>11 Q And in some of the pleadings it does not</p> <p>12 distinguish who claims to be the actual buyer of the</p> <p>13 stock that's at issue.</p> <p>14 Now, my question to you is, as I understand</p> <p>15 from you a few minutes ago, you're testifying that WAM</p> <p>16 was the owner of the stock.</p> <p>17 A Well, there's multiple intermediaries. One is</p> <p>18 Weiser, Weiser Capital and WAM, because Weiser Capital</p> <p>19 interfaces also with WAM.</p> <p>20 Q So Weiser Capital at one moment was the owner?</p> <p>21 A How can I make it simple? Because I don't know</p> <p>22 how to define ownership in the transaction process of</p> <p>23 these -- of these trades. Weiser, WAM.</p> <p>24 And so I don't mix up the two transactions, in</p>
<p style="text-align: right;">Page 280</p> <p>1 the first transaction --</p> <p>2 Q Let me stop you there. There was only one</p> <p>3 transaction; right?</p> <p>4 A Right.</p> <p>5 Q So you're talking, as the Court requested,</p> <p>6 about the April 2nd transaction?</p> <p>7 A Right. The April 2nd transaction, I believe</p> <p>8 it's WAM that is the one that is making the claim.</p> <p>9 Q You sound unsure.</p> <p>10 A Yeah. Because I'm missing the legalities of</p> <p>11 it, but I guess I can only explain it by process, and in</p> <p>12 the process WAM was in the middle of the buy and sell</p> <p>13 transaction. That transaction closed, and it's WAM</p> <p>14 that's responsible to close the process in that</p> <p>15 transaction, and so to close the process in that</p> <p>16 transaction, it needs to dematerialize that certificate.</p> <p>17 So in my view where the issue lies is WAM is stuck with</p> <p>18 dematerializing the certificate, so it would be making</p> <p>19 the claim to those shares.</p> <p>20 Q So WAM is the owner of the shares?</p> <p>21 A Yes.</p> <p>22 Q Okay.</p> <p>23 A Yes.</p> <p>24 Q Not Weiser Capital?</p>	<p style="text-align: right;">Page 281</p> <p>1 A No. WAM.</p> <p>2 Q Let's look at Exhibit 3.</p> <p>3 Have you seen this document before?</p> <p>4 A Yes. Yes.</p> <p>5 Q And what is Montello Law?</p> <p>6 A It's an attorney for the firm.</p> <p>7 Q Okay. And if you'd turn to the second page, do</p> <p>8 you know who Ernesto Alvarez is?</p> <p>9 A He's one of the attorneys at Montello Law.</p> <p>10 Sorry. Second page, the purchase and sale agreement?</p> <p>11 Q I'm sorry. We're on Exhibit 3.</p> <p>12 A Oh, Exhibit 3.</p> <p>13 Q If you look at the second page of Exhibit 3,</p> <p>14 there's the name Ernesto Alvarez.</p> <p>15 A Yes.</p> <p>16 Q And he's an attorney with Montello Law?</p> <p>17 A Correct.</p> <p>18 Q And do you recognize his signature?</p> <p>19 A No.</p> <p>20 Q It looks like Weiser Asset Management was cc'd</p> <p>21 on this letter?</p> <p>22 A Yes.</p> <p>23 Q So Weiser Asset Management received this</p> <p>24 letter. Weiser Asset Management had a chance to discuss</p>

<p style="text-align: right;">Page 282</p> <p>1 the contents of this letter with Mr. Alvarez before it 2 was sent? 3 A Correct. 4 Q And did Weiser Asset Management authorize 5 Mr. Alvarez to send this letter? 6 A As far as I would recall, I would assume so. 7 MR. ANDERSON: Your Honor, I'd move to the 8 admission of Exhibit 3. 9 MR. NORK: No objection. 10 THE COURT: Exhibit 3 will be admitted. 11 (Exhibit 3 was admitted.) 12 BY MR. ANDERSON: 13 Q This letter, if you look at the first sentence, 14 it says, "We are writing on behalf of Weiser Asset 15 Management," and then they call it "Weiser," and it says, 16 "On or about July 12, 2013, Athanasios Skarpelos, seller, 17 sold 3,316,666 shares of common stock of Anavex Life 18 Sciences Corp." 19 Did I read that correctly? 20 A Correct. 21 Q So your attorney on October 30, '15, is telling 22 Nevada Agency and Transfer Company that WAM acquired the 23 stock as an owner on July 12, 2013; correct? 24 A That is what he wrote, yes.</p>	<p style="text-align: right;">Page 283</p> <p>1 Q And you had a chance to see this letter; 2 correct? 3 A I'm not sure if I saw the letter or if it went 4 to other counsel. I can't recall if I reviewed this 5 letter to clear this letter. 6 Q You were the owner of WAM at this point in 7 time; correct? 8 A I am the owner, but it also has its own legal 9 department, compliance office and so on and so forth, so 10 I don't carry out every single action. 11 Q You're telling us you don't think you were 12 involved in the discussion leading up to this letter? 13 A I know I was involved in the discussion and 14 sending some documents to the law firm. Did I review 15 this letter? I don't recall. 16 Q Was one of the documents you sent Exhibit 30? 17 A Yes, that is correct. 18 Q Okay. And I'd like you to look through this 19 letter. I don't see anywhere in this letter where 20 Mr. Alvarez claims WAM became the owner of the stock by 21 way of an April 2, 2013, transaction. 22 A Yeah. I see it says on or about July 12th, 23 which matches no dates to anything that I have. 24 Q It matches closely with the Exhibit 30 --</p>
<p style="text-align: right;">Page 284</p> <p>1 correct? -- which is one of the documents you just said 2 you sent to him? 3 A Well, Exhibit 30 has September 30th as a 4 closing date. The July 5th date would have been 5 impossible to put in there -- I'm sorry -- not impossible 6 to put in. The July 5th date would have been put in at a 7 much later date which, as we discussed during my 8 deposition, this was also an error because how can you do 9 a July 5th date when the document wasn't even notarized 10 until July 9th. 11 So there was an error on the date of the 12 agreement because it would have been impossible for me to 13 date it July 5th when I received the blank on July 9th, 14 so that was an error. And I believe the lawyer also used 15 a wrong date. I don't know why he referenced July 12th 16 to anything, so in my view he made an error on his 17 dating. 18 Q Sounds like a lot of mistakes were being made. 19 A Yes. 20 Q But in any event, this letter doesn't reference 21 at all any April 2, 2013, transaction? 22 A I don't see references to the purchase and sale 23 agreement or the April transaction. 24 Q I'm sorry?</p>	<p style="text-align: right;">Page 285</p> <p>1 A I don't see references to the purchase and sale 2 agreement or the April transaction. 3 Q Okay. But it does reference a July 12, 2013, 4 agreement -- correct? -- on the first paragraph? 5 A I don't see agreement. It says on July 12th 6 sold. I don't see that -- I don't see it referencing an 7 agreement. 8 Q Okay. You're absolutely correct. It doesn't 9 reference an agreement, but it does state that that's 10 when the sale took place? 11 A Correct. 12 Q And Exhibit 30, although it says July 5th, is 13 also in July of 2013; correct? 14 A That is correct. 15 Q Now, this letter from Mr. Alvarez doesn't say 16 anything about WAM being an intermediary; correct? 17 A Weiser Asset Management. Weiser Asset 18 Management is an intermediary. It's a broker-dealer. 19 Q Where does it say that in the letter? 20 A It doesn't say it in the letter. It references 21 the intermediary, which is Weiser Asset Management. 22 Q I'm sorry. Are you saying it says intermediary 23 in the letter? 24 A No. It references the intermediary.</p>

<p style="text-align: right;">Page 286</p> <p>1 Q Correct. It references WAM; right?</p> <p>2 A Right.</p> <p>3 Q But it doesn't say WAM is an intermediary?</p> <p>4 A No, it doesn't say that it is. It doesn't</p> <p>5 spell it out.</p> <p>6 Q It also doesn't say there's any third-party</p> <p>7 buyers out there, does it?</p> <p>8 A No. No.</p> <p>9 Q And it also doesn't say that WAM has liability</p> <p>10 to any third-party buyers because Skarpelos failed to</p> <p>11 deliver the stock?</p> <p>12 A Liability, no.</p> <p>13 Q And this letter is asking NATCO to register WAM</p> <p>14 as the owner of the disputed stock and not any</p> <p>15 third-party buyer; correct?</p> <p>16 A Correct.</p> <p>17 Q And this is two and a half years after the</p> <p>18 transaction?</p> <p>19 A Yes. Correct.</p> <p>20 Q Now, there's no documents at all that would</p> <p>21 demonstrate that prior to October 30th of 2015 WAM</p> <p>22 claimed to be the owner of the disputed stock; correct?</p> <p>23 A That it claimed to be the owner? Well, it was</p> <p>24 asking the transfer agent to register the shares and</p>	<p style="text-align: right;">Page 287</p> <p>1 deposit it to its prime bank's account in its name, which</p> <p>2 infers -- in general terms it infers ownership though</p> <p>3 it's acting in ownership as custodian.</p> <p>4 Q So you're claiming that WAM at some point</p> <p>5 claimed the transfer agent to be the owner of the stock?</p> <p>6 A It claimed -- it requested for the stock to be</p> <p>7 deposited -- to be cleared in its name. So if you, Dane,</p> <p>8 go to NATCO and say, "Hi, I have a stock certificate from</p> <p>9 Jeremy, I would like you to register this and clear this</p> <p>10 electronically to my account," you don't tell NATCO</p> <p>11 you're the owner. You say, "I would like to clear it to</p> <p>12 my account."</p> <p>13 Q But that prior request to NATCO that you're</p> <p>14 talking about, didn't that involve a customer? Didn't it</p> <p>15 indicate that you're doing it on behalf of a WAM</p> <p>16 customer?</p> <p>17 A I'm not sure what you're referring to.</p> <p>18 Q I'm just asking, do you recall?</p> <p>19 A That Weiser was doing it for a customer?</p> <p>20 Q Yes.</p> <p>21 A No.</p> <p>22 Q So your recollection is that WAM told NATCO</p> <p>23 prior to October 30, 2015, that WAM was the owner of the</p> <p>24 stock?</p>
<p style="text-align: right;">Page 288</p> <p>1 A It said, "Please clear it to our account." It</p> <p>2 says, "We are the owners." It said, "Please clear it to</p> <p>3 our account."</p> <p>4 Q That answers my questions. You didn't tell</p> <p>5 NATCO previously that WAM was the owner?</p> <p>6 A No.</p> <p>7 Q Look at Exhibit 46, please. And just quickly,</p> <p>8 this is already admitted into evidence.</p> <p>9 This is Mr. Alvarez writing to NATCO a couple</p> <p>10 of days later and asking NATCO to follow up on the prior</p> <p>11 letter; correct?</p> <p>12 A Correct.</p> <p>13 Q I'm sorry. Take your time and read it, by the</p> <p>14 way.</p> <p>15 A Correct.</p> <p>16 Q The last sentence starts with, "This is a</p> <p>17 time-sensitive issue, and therefore we reiterate our</p> <p>18 demand that you immediately place a stop transfer order</p> <p>19 on the replacement certificate and confirm to us you have</p> <p>20 done so."</p> <p>21 Is that what you considered a time-sensitive</p> <p>22 matter at that point in time?</p> <p>23 A Yeah, it was. In mid to late 2015 it became a</p> <p>24 time-sensitive matter, and I believe the reference here</p>	<p style="text-align: right;">Page 289</p> <p>1 as far as time-sensitive is because the lawyer is asking</p> <p>2 for a stop transfer on the replacement certificate</p> <p>3 because the attorney had discovered that the original</p> <p>4 Certificate 0756, if I have the number correct, had been</p> <p>5 replaced with a new one, and he was concerned that the</p> <p>6 new certificate would then be clearing to other</p> <p>7 ownership.</p> <p>8 Q Okay. Look at Exhibit 52, please, and, again,</p> <p>9 this letter from Mr. Alvarez, it again references a</p> <p>10 July 12, 2013, sale transaction whereby Mr. Skarpelos</p> <p>11 sold the 3.3 million shares of Anavex stock to Weiser?</p> <p>12 A Correct.</p> <p>13 Q Weiser Asset Management; correct?</p> <p>14 A Correct.</p> <p>15 Q Again, there's nothing in this letter about any</p> <p>16 April 2, 2013, transaction; correct?</p> <p>17 A Correct.</p> <p>18 Q And did you, after you received the</p> <p>19 October 30th letter that's Exhibit 30, did you voice --</p> <p>20 I'm sorry, not Exhibit 30 -- the October 30th letter</p> <p>21 that's Exhibit 3, did you voice any objection and say,</p> <p>22 "Hey, that's not the right transaction, you've got the</p> <p>23 wrong date"?</p> <p>24 MR. NORK: Objection. That gets into</p>

<p style="text-align: right;">Page 290</p> <p>1 attorney-client privilege.</p> <p>2 THE COURT: Don't answer it.</p> <p>3 THE WITNESS: But I'd like to answer it.</p> <p>4 MR. ANDERSON: I'll rephrase it.</p> <p>5 THE COURT: Okay. I'll allow you to rephrase</p> <p>6 the question.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q After you received the October 30th letter, did</p> <p>9 you have any internal discussions at WAM and say, "Hey,</p> <p>10 that's not the right date. It's April 2nd, not</p> <p>11 July 12th"?</p> <p>12 A Yes.</p> <p>13 Q Okay. And did you produce those records in</p> <p>14 this case?</p> <p>15 A Discussion records?</p> <p>16 Q Well, let me ask you this: Were there any</p> <p>17 emails about that?</p> <p>18 A There were emails with the attorney --</p> <p>19 MR. NORK: Wait. Hold it. Stop.</p> <p>20 THE COURT: Your attorney is trying to advise</p> <p>21 you not to discuss anything you talked about with him.</p> <p>22 Mr. Anderson has asked you first, were there any</p> <p>23 discussions, and I think that resulted in your slight</p> <p>24 quizzical look on your face about records of discussions,</p>	<p style="text-align: right;">Page 291</p> <p>1 and then he was asking you, are there any emails not with</p> <p>2 your attorneys, but just internal emails at WAM about</p> <p>3 that.</p> <p>4 Is that correct, Mr. Anderson?</p> <p>5 MR. ANDERSON: Correct. Let me try an easier</p> <p>6 question.</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q Don't tell me about conversations with your</p> <p>9 attorney.</p> <p>10 Were there internal discussions at WAM, after</p> <p>11 the October 30th letter, where WAM employees or</p> <p>12 personnel, including yourself, said that letter has the</p> <p>13 wrong transaction date in it?</p> <p>14 A Our attorneys were copied on all of these</p> <p>15 emails that we had regarding --</p> <p>16 Q And I don't want to know what the attorneys</p> <p>17 found out. I'm just focusing on what information was</p> <p>18 exchanged internally at WAM.</p> <p>19 A Again, the attorneys were copied on our</p> <p>20 correspondence.</p> <p>21 THE COURT: Why don't we do this. I'm going to</p> <p>22 take a very brief recess and allow Mr. Livadas to discuss</p> <p>23 this with Mr. Nork and Mr. LaForge, and possibly Mr. Nork</p> <p>24 and Mr. LaForge can discuss it with Mr. Anderson and</p>
<p style="text-align: right;">Page 292</p> <p>1 Mr. Adams because we're walking a tightrope, and it's</p> <p>2 pretty clear Mr. Livadas is not clear about what he's</p> <p>3 supposed to say and not say regarding privileged or</p> <p>4 confidential communication. So I'm going to give you</p> <p>5 guys a couple minutes to discuss that, and when you're</p> <p>6 ready, let me know. Court is in recess.</p> <p>7 (A recess was taken.)</p> <p>8 THE COURT: We'll go back on the record in</p> <p>9 CV15-02259, Skarpelos vs. Weiser. All parties are</p> <p>10 present.</p> <p>11 Mr. Anderson, you may continue your</p> <p>12 cross-examination. The parties have said you're --</p> <p>13 Strike that. My court clerk has told me that you're</p> <p>14 ready to go, so I assume you've worked out any issues</p> <p>15 regarding answers that may touch on privileged or</p> <p>16 confidential information.</p> <p>17 MR. ANDERSON: Thank you, Your Honor. And I'll</p> <p>18 move on from that area just to avoid that issue.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q Mr. Livadas, you're aware that your counsel</p> <p>21 filed a cross-claim on your behalf for declaratory</p> <p>22 relief. We talked about that earlier; correct?</p> <p>23 A Yes.</p> <p>24 Q And in that cross-claim, paragraph 3 reads:</p>	<p style="text-align: right;">Page 293</p> <p>1 "In July" --</p> <p>2 A Excuse me. What exhibit?</p> <p>3 Q You don't have it. I'm going to read it to</p> <p>4 you. This is what your attorney wrote in the cross-claim</p> <p>5 that was filed on May 24, 2016.</p> <p>6 A Okay.</p> <p>7 Q And I'm sure if I read it incorrectly, counsel</p> <p>8 and the judge will let me know.</p> <p>9 Paragraph 3 reads: "In July 2013 Weiser and</p> <p>10 Skarpelos entered into a contract for the sale of a</p> <p>11 certain amount of stock. Skarpelos, the former owner of</p> <p>12 the stock, agreed to sell it to Weiser."</p> <p>13 Are you aware of any documents in this case</p> <p>14 that would suggest that Weiser ever took the position</p> <p>15 that the transaction actually happened on April 2nd of</p> <p>16 2013?</p> <p>17 A Ask the question again. Is there any documents</p> <p>18 that we took the position that it happened in April?</p> <p>19 Q Let me back up.</p> <p>20 The section I just read to you from your</p> <p>21 cross-claim indicates that the transaction upon which</p> <p>22 Weiser is relying was July of 2013; correct?</p> <p>23 A I'm sorry. I'm jet lag phasing out.</p> <p>24 Q I understand. I was jet lagged, too, when I</p>

<p style="text-align: right;">Page 294</p> <p>1 went that way for depositions.</p> <p>2 I just read from your cross-claim that your</p> <p>3 attorneys filed a document with this Court alleging that</p> <p>4 the transaction at issue was July 2013.</p> <p>5 A Yes.</p> <p>6 Q And I'm asking you if there's anything in</p> <p>7 writing where Weiser Asset Management or Weiser Capital</p> <p>8 ever claimed that the transaction was not in July of 2012</p> <p>9 but was actually -- I'm sorry -- July of 2013 but was</p> <p>10 actually in April of 2013?</p> <p>11 A Is there anything in these documents that it</p> <p>12 was April? Is that what you said?</p> <p>13 Q Correct.</p> <p>14 A Besides the account statement, not that I'm</p> <p>15 aware of.</p> <p>16 Q Okay. Would you look at Exhibit 50.</p> <p>17 A 50, five zero.</p> <p>18 Q I'm sorry. 50, five zero.</p> <p>19 I believe Mr. Nork asked you about this</p> <p>20 document on direct examination.</p> <p>21 If you look at the second page, that's the</p> <p>22 email exchange from you to Nick Boutsalis.</p> <p>23 A Yes.</p> <p>24 Q And the subject is "Submission request Anavex</p>	<p style="text-align: right;">Page 295</p> <p>1 Stock Certificate 0753"; correct?</p> <p>2 A Correct.</p> <p>3 Q And you sent this to Mr. Boutsalis on</p> <p>4 November 12th of 2015?</p> <p>5 A Correct.</p> <p>6 Q And why were you emailing Mr. Boutsalis?</p> <p>7 A Because he had some of the documentation, and</p> <p>8 Mr. Boutsalis's company is essentially the issuer, is</p> <p>9 Anavex, and they typically deal with or coordinate with</p> <p>10 transfer agents to deal with certificates being cleared.</p> <p>11 Q Okay. What original documents did</p> <p>12 Mr. Boutsalis have?</p> <p>13 A They had the stock certificate, stock -- I'm</p> <p>14 sorry -- I don't know if it's originals. It says here</p> <p>15 original stock certificate, stock power and copy of</p> <p>16 passport. I'm assuming these were not all originals.</p> <p>17 Some were originals, some not.</p> <p>18 Q Why are you assuming that?</p> <p>19 A Because -- well, it says copy of passport, so</p> <p>20 it wouldn't be an original. So they had the original</p> <p>21 stock certificate. That's the one that says original.</p> <p>22 Q Okay. It says original stock certificate,</p> <p>23 stock power and a copy of passport; correct?</p> <p>24 A Yes.</p>
<p style="text-align: right;">Page 296</p> <p>1 Q So --</p> <p>2 A So from the little bit I recall, they confirmed</p> <p>3 they had the stock certificate, the stock power and the</p> <p>4 copy of the passport.</p> <p>5 Q Okay. So your understanding of this email is</p> <p>6 that Mr. Boutsalis had the original stock certificate.</p> <p>7 Now, is that something that Weiser Asset</p> <p>8 Management sent to him at some point in time?</p> <p>9 A Yes.</p> <p>10 Q And it looks to me like you're also saying he</p> <p>11 has the original stock power.</p> <p>12 A That's what we interpreted this to mean, that</p> <p>13 they had the original stock power.</p> <p>14 Q And then the next sentence below says, "Please</p> <p>15 confirm receipt of this email and courier these items to</p> <p>16 Anavex's transfer agent."</p> <p>17 A Correct.</p> <p>18 Q This is from a weisercapital.bz email; correct?</p> <p>19 A Correct.</p> <p>20 Q How long did you have that account?</p> <p>21 A Oh, exactly, I'm not sure because I had Weiser</p> <p>22 Capital and Wamo and Weiser. I have various Weiser email</p> <p>23 addresses.</p> <p>24 Q Why are you sending Mr. Boutsalis an email from</p>	<p style="text-align: right;">Page 297</p> <p>1 your Weiser Capital account when this apparently involves</p> <p>2 a WAM claim of ownership?</p> <p>3 A Because this is the one that I used</p> <p>4 predominantly until last year, actually.</p> <p>5 Q Okay. And why did you stop using it?</p> <p>6 A Because now I have a shorter one called Wamo,</p> <p>7 which I like better.</p> <p>8 Q And it also indicates that they have a copy</p> <p>9 of Mr. Skarpelos's passport. It says, "On</p> <p>10 November 13th."</p> <p>11 Do you know what that means?</p> <p>12 THE COURT: It actually says, "On</p> <p>13 November 2013," not "November 13th."</p> <p>14 MR. ANDERSON: I'm sorry, Your Honor. Thank</p> <p>15 you. I'm not jet lagged, but --</p> <p>16 BY MR. ANDERSON:</p> <p>17 Q As I read this, basically it means that you're</p> <p>18 confirming with Mr. Boutsalis that he received those</p> <p>19 documents in November of 2013?</p> <p>20 A I'm not sure what this grammar means or what I</p> <p>21 was writing, I guess.</p> <p>22 Q Do you have an understanding of when you sent</p> <p>23 those documents to Mr. Boutsalis?</p> <p>24 A Different documents were sent at different</p>

<p style="text-align: right;">Page 298</p> <p>1 periods of time. They didn't go as one package. I think</p> <p>2 it was -- they had some of them from earlier on. The</p> <p>3 certificate we sent last, I guess, in 2015, I think.</p> <p>4 Q In any event, did Mr. Boutsalis execute your</p> <p>5 request in this email?</p> <p>6 A I believe -- yeah, I believe he sent everything</p> <p>7 to the transfer agent.</p> <p>8 Q Would you look at Exhibit 54, please.</p> <p>9 A Yes.</p> <p>10 Q And this indicates that Mr. Boutsalis is</p> <p>11 sending some of those items or all of them to NATCO.</p> <p>12 A Correct.</p> <p>13 Q Is this Mr. Boutsalis's typical letterhead?</p> <p>14 A I don't see a letterhead on this.</p> <p>15 Q Okay. Is that how Primoris Group typically</p> <p>16 sends correspondence, without any type of letterhead?</p> <p>17 A I have no idea.</p> <p>18 Q In any event, it looks like he sent it on</p> <p>19 November 13, 2015, and NATCO received it on November 16,</p> <p>20 2015; correct?</p> <p>21 A Correct.</p> <p>22 Q And included in this document is</p> <p>23 Mr. Skarpelos's passport on the next page?</p> <p>24 A Yes, correct.</p>	<p style="text-align: right;">Page 299</p> <p>1 Q And is that passport current as of the date of</p> <p>2 this letter?</p> <p>3 A I can't read it.</p> <p>4 Q Okay. I agree, it's hard to read.</p> <p>5 And then the next page is the stock</p> <p>6 certificate?</p> <p>7 A Yes.</p> <p>8 Q And this would have been the original stock</p> <p>9 certificate, as you discussed earlier; correct?</p> <p>10 A Correct.</p> <p>11 Q And the next page is the original power of</p> <p>12 attorney that Mr. Boutsalis had in his possession;</p> <p>13 correct?</p> <p>14 A I guess so, yeah. I'm assuming this is a</p> <p>15 photocopy of everything he sent in that.</p> <p>16 Q Well, the letter we looked at earlier suggests</p> <p>17 that he was sending originals.</p> <p>18 A Everything I'm looking at is a copy, so I can't</p> <p>19 say.</p> <p>20 Q You don't know whether Mr. Boutsalis had the</p> <p>21 original or not?</p> <p>22 A I don't know. I don't even know if it was the</p> <p>23 original share certificate because I can only -- I'm</p> <p>24 assuming he sent it.</p>
<p style="text-align: right;">Page 300</p> <p>1 Q I understand you weren't involved in sending</p> <p>2 the letter itself, but this is what Mr. Boutsalis sent to</p> <p>3 NATCO on November 16th of 2015 on your behalf to support</p> <p>4 Weiser's claim to be the owner of the stock?</p> <p>5 A Correct. Correct.</p> <p>6 Q At this point in time that power of attorney is</p> <p>7 still blank; correct?</p> <p>8 A Yes.</p> <p>9 Q Would you look at Exhibit 55, please.</p> <p>10 A 55, yes. The Montello Law letter?</p> <p>11 Q Pardon me?</p> <p>12 A That's the letter from Montello?</p> <p>13 Q Yes.</p> <p>14 A Yes.</p> <p>15 Q This appears to be another follow-up letter</p> <p>16 from Mr. Montello to NATCO making a demand on behalf of</p> <p>17 WAM as the owner of the stock at issue; correct?</p> <p>18 A Correct.</p> <p>19 Q Okay. And Mr. Alvarez says, "WAM is a</p> <p>20 protected purchaser because it purchased a certificated</p> <p>21 security for value," and he's demanding that NATCO</p> <p>22 register the shares to WAM; correct?</p> <p>23 A Correct.</p> <p>24 Q Now, this letter doesn't say anything about</p>	<p style="text-align: right;">Page 301</p> <p>1 Weiser Capital, does it?</p> <p>2 A No. No.</p> <p>3 Q And it also doesn't say that anyone else is</p> <p>4 claiming to be the owner of the stock; correct?</p> <p>5 A Correct.</p> <p>6 Q Okay. And this letter also does not correct</p> <p>7 the prior letters that say that the transaction by which</p> <p>8 WAM acquired ownership was July 12, 2013; correct?</p> <p>9 A Correct. He keeps referring to it as the same</p> <p>10 date as was in his original letter.</p> <p>11 Q Would you look at Exhibit 56, please.</p> <p>12 A Yes.</p> <p>13 Q And this appears to be an email from a</p> <p>14 gentleman by the name of Bill Simonitsch,</p> <p>15 S-i-m-o-n-i-t-c-h -- I'm sorry -- -t-s-c-h to Lewis</p> <p>16 Montello; correct?</p> <p>17 A Correct.</p> <p>18 Q Now, Lewis Montello was also with the Montello</p> <p>19 Law Firm that was your attorney in this matter; correct?</p> <p>20 A Yes. Yes.</p> <p>21 Q And Mr. Simonitsch, who is that?</p> <p>22 A I didn't know who he was, but I know the</p> <p>23 K&L Gates -- yeah, I think K&L Gates is attorney for</p> <p>24 Anavex.</p>

<p style="text-align: right;">Page 302</p> <p>1 Q So Mr. Simonitsch, you believe, is an attorney 2 that is somehow involved in representing Anavex? 3 A Correct. 4 Q And this is sent on November 17, 2015; correct? 5 A Correct. 6 Q And the subject is "Transfer of shares of 7 Anavex Life Science." 8 A Yes. 9 Q Do you know why your attorney was reaching out 10 to Anavex's attorney? 11 A The issue -- I'm not sure. I wouldn't know. 12 Q Well, it looks like in this email that there 13 was a discussion between Mr. Simonitsch and Mr. Montello 14 where Mr. Montello indicated he would send a fully 15 executed power of attorney and a copy of the fully 16 executed July 12, 2013, sale transaction between 17 Skarpelos and Weiser. 18 Do you see that? 19 A Yes. 20 Q And I'd like you to look at Exhibit 57, please. 21 Now, this is also an email from -- it starts 22 with an email from Mr. Simonitsch to Mr. Alvarez on 23 November 18, 2015, which is just one day after 24 Exhibit 56; correct?</p>	<p style="text-align: right;">Page 303</p> <p>1 A Correct. 2 Q Now, Mr. Alvarez, it looks like, sent, in 3 response to Mr. Simonitsch's request, a copy of the stock 4 power and the stock sale and purchase agreement; correct? 5 A Correct. 6 Q Now, do you know which stock sale and purchase 7 agreement was sent to Mr. Simonitsch by your attorney? 8 A I can only assume. 9 Q Okay. Are you aware of any other purchase and 10 sale agreement besides the July 2013 one that is 11 Exhibit 30? 12 A No. 13 Q So Mr. Alvarez was sending Mr. Simonitsch a 14 copy of the July 2013 purchase and sale agreement which 15 is Exhibit 30? 16 A Why do you refer to it as July 13th. 17 Q I'm sorry. July 2013. 18 A Yes. Yes. Yes. 19 Q So Mr. Alvarez is sending Mr. Simonitsch a copy 20 of the stock sale and purchase agreement that is 21 Exhibit 30; correct? 22 A Correct. 23 Q And also a stock power. Do you know which 24 stock power he's sending him?</p>
<p style="text-align: right;">Page 304</p> <p>1 A I'm not sure because based on just the previous 2 correspondence, the stock power looks like it was already 3 going from the issuer to the transfer agent, if I got my 4 dates correct here. It looks like it was sent to NATCO. 5 Q And NATCO received that on November 16th of 6 2013; correct? 7 A Yes. 8 Q And so Mr. Simonitsch, if you look at 9 Exhibit 56, is asking for a copy of a fully executed 10 power of attorney -- correct? -- the stock power? 11 A I'm sorry. Refer me back. 56? Yes. Yes. 12 Yes. 13 Q And it looks like -- 14 A Yes. 15 Q I'm sorry. You were reading. 16 And then in Exhibit 57 Mr. Alvarez is sending 17 Mr. Simonitsch the fully executed stock power; correct? 18 A All it says is stock power, so I don't know if 19 it's an executed stock power. 20 Q In any event, that's what Mr. Simonitsch 21 requested in Exhibit 56? 22 A Yes. 23 Q And you don't know whether the copy that 24 Mr. Alvarez sent Mr. Simonitsch on November 18th was the</p>	<p style="text-align: right;">Page 305</p> <p>1 fully executed copy? 2 A I don't know. I don't recall. 3 Q And then if you look at Exhibit 58, please, it 4 looks like Mr. Simonitsch is responding, "Thank you again 5 for providing this backup," which I take to mean he's at 6 that point received a fully executed stock power and 7 stock purchase agreement. 8 Is that fair? 9 A I don't know since it went to NATCO, so that 10 confused me. 11 Q And he also asks your attorney, "Do you also 12 have proof that you can provide me showing that the 13 purchase price was paid and received?" 14 Do you see that? 15 A Yes. 16 Q Do you know whether your attorney ever sent him 17 that information? 18 A I have no idea. 19 Q Okay. Did you ever provide your attorney a 20 document -- let me clarify that. 21 Did you ever provide Mr. Alvarez a document 22 that you believed the purchase price had been paid and 23 received? 24 A Yes. I believe that was the account statement.</p>

<p style="text-align: right;">Page 306</p> <p>1 THE COURT: When you say "the account 2 statement," you're talking about the April 2nd -- 3 THE WITNESS: The account statement that had 4 the transactions with the April 2nd. 5 THE COURT: Not anything in July? 6 THE WITNESS: "Anything" as in? 7 THE COURT: Anything regarding the July deal. 8 THE WITNESS: Well, the July -- the July deal 9 was being formed in July to happen later in the year. 10 THE COURT: Okay. 11 BY MR. ANDERSON: 12 Q It looks to me like what Mr. Simonitsch is 13 requesting is documentation of a deal and proof of 14 payment for the purpose of transferring shares? 15 A Yes. 16 Q Okay. And the only deal that had ever been 17 executed where shares could be transferred was the 18 April 2, 2013, deal; correct? 19 A Correct. 20 Q Now, we talked a little bit earlier about 21 Weiser Capital and WAM alleging in this lawsuit to be 22 Weiser claiming ownership. 23 Are you aware that Weiser Asset Management 24 originally was the only named Weiser entity?</p>	<p style="text-align: right;">Page 307</p> <p>1 A I wasn't clear in the details of who was -- 2 which one was named or if it was both or one. I got them 3 mixed up myself in the technicalities of what was being 4 asked for and from whom. 5 Q Okay. To your knowledge you've already 6 testified about the April 2, 2013, transaction and WAM 7 being the owner pursuant to that. 8 Why would Weiser Capital have a claim to 9 ownership of stock? 10 A Why would it have a claim? Well, by the time 11 late 2015 had come, WAM was already getting the exposure 12 to the clients and Weiser Capital was then also sharing 13 in some of that liability and exposure. We shift risks 14 and liabilities between the two, and that's part of the 15 reason why Weiser Capital exists actually in doing deals, 16 because it helps buffer risk. 17 So we will shift the exposure and the risk 18 sometimes away from the broker-dealer to Weiser Capital 19 to take the risk, to keep the assets of the firm and its 20 clients safer. 21 Q But this transaction that's at issue was a WAM 22 seller and a WAM buyer; correct? 23 A That was -- 24 Q Is that correct?</p>
<p style="text-align: right;">Page 308</p> <p>1 A In 2013 -- sorry. Say that again. 2 Q Sure. The April 2, 2013, transaction was a WAM 3 seller and WAM buyer? 4 A In 2013, yes. 5 Q I should clarify. Both the buyer and seller 6 were customers of WAM? 7 A Correct. 8 Q And I thought you testified earlier that when 9 there's internal trades between WAM clients, that Weiser 10 Capital doesn't get involved in those? 11 A Not at the order-taking stage, no. But if I 12 may continue, WAM and Weiser Capital will shift risks 13 between them throughout a period of time if needed. 14 Q Okay. 15 A So two years later -- I'll try not to make it 16 technical, but two years later Weiser Capital was 17 absorbing some of the risk, the hedge risk, the short 18 risk from WAM. Weiser Capital was agreeing to take some 19 of that hedge risk from WAM. 20 Q How does that make it an owner? 21 A Because in the end WAM gets to decide where to 22 complete the transaction to. So, again, if everything 23 worked perfectly, if everything was executed perfectly in 24 the transaction and the POA and the transfer agent</p>	<p style="text-align: right;">Page 309</p> <p>1 completing the whole process, it would have all happened 2 in nanoseconds. It would have been all finished if it 3 hadn't -- if it was finished properly. If the issues 4 hadn't arisen, now, WAM is the owner, it's the broker, 5 it's the custodian. It can reassign where it's going to 6 put the trade ultimately, because if it's already taken 7 care of the client, the original client buyers, now the 8 client buyers are covered and WAM is remaining stuck as 9 the owner, but it can assign that right over to another 10 client or to another entity. 11 Q Okay. In this case did it assign ownership to 12 Weiser Capital? 13 A It was -- it was being discussed, and it has 14 moved back and forth between the two to manage its risks. 15 Q Okay. Does Weiser Capital own any of the 16 3.1 million shares? 17 A I will say right now it's sitting back with 18 WAM. WAM, I believe, is the entity now. 19 Q Okay. Do you recall at your deposition that 20 you told me that Weiser Capital was the intermediary 21 owner of the stock, not WAM? Do you recall that? 22 A I don't. Sure, if you show it to me, it might 23 be correct, if you want to bring it up. 24 Q Okay. Let's look at Exhibit -- I'm sorry.</p>

<p style="text-align: right;">Page 310</p> <p>1 Let's look at your deposition transcript at page 149.</p> <p>2 If you'd look at line 18, I say or ask, "Sure.</p> <p>3 I think you testified earlier that Weiser Capital was an</p> <p>4 intermediary for an ultimate buyer under the transactions</p> <p>5 we're talking about in this lawsuit; right?"</p> <p>6 And you said, "Right."</p> <p>7 A That was in the context of -- from what I see</p> <p>8 here, it's in the context of the second transaction with</p> <p>9 the Chinese, if I'm not mistaken, because this is all</p> <p>10 about the Chinese transaction.</p> <p>11 Q Okay. But there were no ultimate buyers in</p> <p>12 that transaction? I said here there was an intermediary</p> <p>13 for the ultimate buyer, and you said, "Right."</p> <p>14 THE COURT: But above that it's talking about</p> <p>15 the kinezi, k-i-n-e-z-i, which you told me is "Chinese"</p> <p>16 in Greek, "the kinezi buyers," so the context is</p> <p>17 different than you're describing.</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q Would you look at page 200, please.</p> <p>20 We're referencing Exhibit 25 in the deposition,</p> <p>21 which I'll represent to you is Exhibit 30 in this trial</p> <p>22 binder.</p> <p>23 I asked you the question at line 6, "So based</p> <p>24 on Exhibit 25, Weiser Capital is the owner of the stock</p>	<p style="text-align: right;">Page 311</p> <p>1 at issue; correct?</p> <p>2 "ANSWER: It was the intermediary, so at a</p> <p>3 point it was the owner.</p> <p>4 "QUESTION: Okay. At what point was it no</p> <p>5 longer the owner?</p> <p>6 "ANSWER: So this agreement was processed --</p> <p>7 processed or dated inaccurately. It was -- or it was no</p> <p>8 longer the owner in April."</p> <p>9 And if you go down from that, I asked you what</p> <p>10 "dated inaccurately" meant, and you stated, "Well, partly</p> <p>11 the date that I put. July 5th closing, I don't know what</p> <p>12 the exact legal definitions of closing are because the</p> <p>13 transaction technically closed on April through a trade</p> <p>14 order when Tom put the trade transaction, gave us the</p> <p>15 trade order."</p> <p>16 So I was asking you about what is now</p> <p>17 Exhibit 30, and your answer was the transaction happened</p> <p>18 in April, and I don't know why I put July 5th there.</p> <p>19 A Correct. But then you were asking about Weiser</p> <p>20 Capital being the owner, and I said yeah, at that point</p> <p>21 it was the owner, but in April it would no longer be the</p> <p>22 owner.</p> <p>23 Q So your testimony in your deposition was that</p> <p>24 in reference to this agreement, which is trial</p>
<p style="text-align: right;">Page 312</p> <p>1 Exhibit 30, Weiser Capital was the intermediary, so at a</p> <p>2 point it was the owner; correct?</p> <p>3 A I'm mixing up -- pursuant to the agreement,</p> <p>4 yes, correct.</p> <p>5 Q So you told me at your deposition in October</p> <p>6 that with regard to the April stock sale, April of 2013,</p> <p>7 that Weiser Capital was the intermediary buyer; correct?</p> <p>8 A It was an intermediary -- I think that's what I</p> <p>9 meant there, that it was an intermediary. It was also an</p> <p>10 intermediary in the transaction. I believe that's what I</p> <p>11 was trying to explain.</p> <p>12 Q Well, here you're saying that the transaction</p> <p>13 technically closed in April, and you don't know why you</p> <p>14 wrote July 5th on Exhibit 30.</p> <p>15 A Right.</p> <p>16 Q Okay.</p> <p>17 A Correct.</p> <p>18 Q So how can Weiser Capital and Weiser Asset</p> <p>19 Management both be intermediaries on this April 2nd deal?</p> <p>20 A Because Weiser Capital can also be between --</p> <p>21 Weiser Capital can also be between a seller and WAM or it</p> <p>22 can also be between a buyer and WAM. So a transaction</p> <p>23 can go from a seller to Weiser Capital to WAM, the</p> <p>24 broker, to then the buyer or the other way around.</p>	<p style="text-align: right;">Page 313</p> <p>1 Q But you testified earlier that the way it</p> <p>2 worked on April 2nd was that it went from Mr. Skarpelos</p> <p>3 to Weiser Asset Management to the ultimate buyer.</p> <p>4 So how is it that Weiser Capital was also</p> <p>5 involved? You told me on October 23, 2018, that Weiser</p> <p>6 Capital was the intermediary. You didn't say WAM.</p> <p>7 A Correct. And I believe I was referring to the</p> <p>8 discussion -- I may have mixed up between Weiser Capital</p> <p>9 and WAM or I may have even mixed up the transactions and</p> <p>10 which one it was acting as an intermediary.</p> <p>11 Q So who was an intermediary?</p> <p>12 A Well, WAM is definitely an intermediary because</p> <p>13 it's the broker.</p> <p>14 Q So your testimony is different today than it</p> <p>15 was on October 23rd of 2018?</p> <p>16 A That is correct. My Weiser Capital was</p> <p>17 incorrect. I was meaning to mean WAM, and that's what I</p> <p>18 believe I tried to explain in the section 12, 13, 14</p> <p>19 because I said it was no longer the owner in April.</p> <p>20 So you are correct, I did say a few sections</p> <p>21 above pursuant to the agreement that it was the owner of</p> <p>22 the stock, and then I explained it was no longer the</p> <p>23 owner in April.</p> <p>24 Q Well, I think you said -- if you look at</p>

<p style="text-align: right;">Page 314</p> <p>1 page 202, line 3, you said, "On April 2nd it passed 2 through to whoever the final buyers are"; correct? 3 A Correct. 4 Q Okay. And your testimony today, which is 5 different than your testimony then, is that Weiser 6 Capital was not involved at all? 7 A I can't say it was not involved at all. 8 Q Well, it was not an intermediary in this 9 transaction? 10 A I can't say 100 percent for sure. WAM was 11 definitely an intermediary, I remember that for sure. I 12 can't remember in the April transaction if Weiser Capital 13 was an intermediary. 14 Q I think you indicated on page 203 that you 15 didn't know who the current owner of the stock was at 16 that point. 17 A The current owner, can you show me where that 18 is? 19 Q Well, I asked you starting at line 11 on 20 page 203, "Is the ultimate buyer that acquired the stock 21 after that instantaneous moment that Weiser had it in 22 April, does that buyer still claim to be the owner of the 23 stock? 24 "ANSWER: At that time, yes. Whether they own</p>	<p style="text-align: right;">Page 315</p> <p>1 it now or not, I would have to check if they had sold it 2 or not." 3 A Correct. 4 Q So on October 23rd of 2018, you didn't know if 5 the ultimate buyers who were supposed to have this 6 transaction were still claiming any ownership in it? 7 A Correct. I'd have to check to see if they 8 still owned shares. 9 Q If Weiser Asset Management had done something 10 to make it right with these ultimate buyers, why wouldn't 11 you have told me that at that time? 12 A I don't know if I was asked or not asked, and 13 you were asking me a lot of -- you were asking me a lot 14 of questions to orient you to the way the business works, 15 so for me to try to explain how Weiser hedges its risk 16 and has to short and has to balance the client accounts I 17 think would have made it a very long day. 18 Q Okay. So in any event, when I asked you the 19 question, "Does that buyer still claim to be the owner of 20 the stock," you didn't tell me, "Well, Weiser Asset 21 Management made it right by shorting its position and 22 giving the buyer some sort of credit"; correct? 23 A That's internal to Weiser. You asked me about 24 the -- as the person who bought that stock, do they still</p>
<p style="text-align: right;">Page 316</p> <p>1 own it, and I said I don't know, I have to check. 2 Because you're asking if they still own it, not what 3 Weiser did for some clients who may have sold it. 4 Q Now -- 5 THE COURT: Mr. Anderson, are you about to go 6 into a new subject matter because we're right about -- 7 MR. ANDERSON: I'm sorry, Your Honor. Time 8 flies when you're having fun. I will start a new 9 section. 10 THE COURT: Okay, Counsel. Then we will 11 reconvene at 8:30 a.m. tomorrow. The rule of exclusion 12 has been invoked. I would advise counsel to make sure 13 they discuss the rule of exclusion with their respective 14 witnesses to make sure that the witnesses aren't 15 interacting with each other about their conversations 16 here in court. So it would be inappropriate for one 17 witness to start talking to another witness about his or 18 her testimony in court. That's what the rule of 19 exclusion contemplates. 20 So I don't know who the witnesses are. I don't 21 know what interaction they have with each other. I would 22 just note that everyone has to be mindful of their 23 responsibilities towards the rule of exclusion when we 24 come back tomorrow at 8:30 a.m., and at that time I will</p>	<p style="text-align: right;">Page 317</p> <p>1 see you again, sir. 2 Court is in recess. 3 (Proceedings adjourned at 4:48 p.m.) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

<p style="text-align: right;">Page 318</p> <p>1 STATE OF NEVADA) 2) ss. 3 COUNTY OF WASHOE) 4 5 I, PEGGY B. HOOGS, Certified Court Reporter in 6 and for the State of Nevada, do hereby certify: 7 That the foregoing proceedings were taken by me 8 at the time and place therein set forth; that the 9 proceedings were recorded stenographically by me and 10 thereafter transcribed via computer under my supervision; 11 that the foregoing is a full, true and correct 12 transcription of the proceedings to the best of my 13 knowledge, skill and ability. 14 I further certify that I am not a relative nor 15 an employee of any attorney or any of the parties, nor am 16 I financially or otherwise interested in this action. 17 I declare under penalty of perjury under the 18 laws of the State of Nevada that the foregoing statements 19 are true and correct. 20 Dated this 27th day of March, 2020. 21 22 /s/ Peggy B. Hoogs 23 _____ 24 Peggy B. Hoogs, CCR #160, RDR</p>	<p style="text-align: right;">Page 319</p> <p>1 HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE 2 Litigation Services is committed to compliance with applicable federal 3 and state laws and regulations ("Privacy Laws") governing the 4 protection and security of patient health information. Notice is 5 hereby given to all parties that transcripts of depositions and legal 6 proceedings, and transcript exhibits, may contain patient health 7 information that is protected from unauthorized access, use and 8 disclosure by Privacy Laws. Litigation Services requires that access, 9 maintenance, use, and disclosure (including but not limited to 10 electronic database maintenance and access, storage, distribution/ 11 dissemination and communication) of transcripts/exhibits containing 12 patient information be performed in compliance with Privacy Laws. 13 No transcript or exhibit containing protected patient health 14 information may be further disclosed except as permitted by Privacy 15 Laws. Litigation Services expects that all parties, parties' 16 attorneys, and their HIPAA Business Associates and Subcontractors will 17 make every reasonable effort to protect and secure patient health 18 information, and to comply with applicable Privacy Law mandates, 19 including but not limited to restrictions on access, storage, use, and 20 disclosure (sharing) of transcripts and transcript exhibits, and 21 applying "minimum necessary" standards where appropriate. It is 22 recommended that your office review its policies regarding sharing of 23 transcripts and exhibits - including access, storage, use, and 24 disclosure - for compliance with Privacy Laws. 25 © All Rights Reserved. Litigation Services (rev. 6/1/2019)</p>

#	\$20,000 115:4 117:15,21 118:23 119:11 211:17	0660 105:13	93:21,22 94:11, 12 96:5 156:16, 17 173:13	110 198:9
#160 1:24		07 57:24 58:1		114 194:4,12,16 196:5
\$	\$249,580 266:6	0753 3:10 104:17 122:20 245:21 295:1	10,000 209:15 253:7	115 195:21 196:5 197:5
\$1,000 49:10	\$250,000 17:14 18:8 125:4 128:16 213:14, 15 229:5 233:1 234:6 235:1 240:8,13,22 241:7 266:17	0756 289:4	10/1/07 3:17	118 6:6
\$1.6 70:18 75:20		08 57:24 58:1	10/28/13 5:7	11th 9:16
\$10,000 96:5		1	10/30/15 3:12	12 45:9 106:6,19 108:14,22 144:9,10 184:6 186:12 190:16 282:16,23 285:3 289:10 301:8 302:16 313:18
\$100 173:13	\$4,115 212:20	1 3:9 14:17 15:14 74:7 104:12,14 122:18,21 179:6 214:15 249:14 251:9, 24	100 3:22 30:3 42:14 179:13 314:10	12/31/13 5:8
\$125 209:22 211:8,9,10,24 212:6,10	\$420 266:9,12 267:2	1,000 48:24 49:22	11 223:24 314:19	12th 283:22 284:15 285:5 290:11 295:4
\$125,000 211:7	\$5,000 96:6	1-10 1:15	11/12/15 5:15, 17,19	13 3:23 14:18 15:14 144:10 156:9,11 163:24 164:2 184:6 185:13 298:19 313:18
\$140,000 208:24	\$500,000 124:17	1.1 140:14,19	11/13/15 5:20, 21,22,23	13,391.90 253:10
\$140,287.54 250:15	\$8 174:10	1.2 141:3	11/16/15 6:1	13th 81:3
\$140,288 209:1, 6,8	\$9,000 96:7	1.3 141:7	11/17/15 6:2	
\$140,800 209:2	-	1/10/13 3:23	11/18/15 6:3	
\$143,287.54 249:15	-t-s-c-h 301:15	10 1:11 83:1,13	11/19/15 6:5,6,8	
\$20 174:12	0		11/2/15 5:12	
	000316 59:14		11/3/15 5:14	

297:10,13 303:16	155 223:13	1994 55:7	2,000 35:7	203:3 252:3
14 4:1 14:18 15:14 150:21 155:4 163:24 164:3 313:18	16 4:4 14:18 15:14 158:17 163:24 298:19	1996 97:2	20 4:5 14:18 15:14 24:14 174:15	2011-2013 6:8
142 222:1,18 225:15,16,17 227:18,19	163 6:8	19th 117:6	20,000 113:7 114:15 119:6 211:15	2012 22:7 25:8 106:15 107:18 108:8 117:1 119:20 121:8, 11 123:9 160:4 168:4,5 190:4 192:22 208:17 252:4 294:8
144 45:12	16th 300:3 304:5	1:15 164:18 165:13	200 310:19	2013 23:3,6,8 25:12 26:1 27:23,24 28:1 115:24 117:4,7 119:21 121:11 126:5 129:9,10 130:10 132:6 144:9 146:17, 23 147:9,11 148:3,9,16,21 149:1,6,14,18 150:6,11 152:3, 4,14,20,22 153:4,8,21 154:1 155:2 156:7,16,17 157:4 159:6,12, 21 160:6,7,13 166:22 168:5 169:19 170:12 171:12 172:17 175:13 176:9, 16 179:6,12,16, 19 180:2,5,6,7 181:3,6 182:10, 11 185:17 188:6 194:6,21 199:3 204:14
149 310:1	17 148:3,16 224:4 227:22 302:4	1:17 117:7	2000 20:16	
14th 189:3	178 223:17,24 227:21	1:19 165:14	2001 20:16	
15 3:9,11,13,18, 20,23 4:1,3,4,5, 7,8,10,11,13, 14,16,17,19,20, 22,23 5:1,2,4,5, 7,12,14,15,17, 19,20,21,22,23 6:1,2,3,5 14:18 15:14 78:14 154:21,23 155:13 163:24 164:4 248:6 282:21	18 3:4 111:3,6 112:2,5,12 114:3,5,23 194:4,17 212:15,18 302:23 310:2	1:20 165:2	2007 56:24 57:1, 3,22 62:10 65:4 66:11 72:8 73:13 74:8 76:6,7,24 99:3 120:16,19 121:1	
15,000 210:15, 22 212:4,9	184 3:5 229:3,4	1st 73:11 206:7 250:14	2008 227:8	
15,033.90 211:13	185 229:2	2	2010 22:14	
15-minute 91:24	18th 304:24	2 3:11 14:17 15:14 78:16,18, 21,24 80:22,23 81:19 82:9 89:1 186:19 187:22, 23 199:3 209:23 212:2 213:14 214:20 215:14 216:10, 12,16 220:2,6 223:2 224:21 230:6 240:12 243:9,11 259:2 260:5 266:5 283:21 284:21 289:16 306:18 307:6 308:2	2011 22:13,14 25:8 81:1,3 101:10 153:2 159:5,12,21 160:12,13 184:6 187:24 189:20 190:4, 16 192:22 195:4 201:12 202:5,8,19	
	19 110:9 114:3,5			
	195 230:1,2,3			
	1993 53:20			

206:8 208:17, 23 209:10,16, 19,23 211:16 212:2,15,18 213:14 214:15, 16,20 215:10, 14 216:10,12, 16 218:3,6 219:18,22,24 220:2,6 221:19 223:2,20 224:2, 5,13,21 227:23 231:13,23 232:5 233:1 234:24 235:13 240:10,12 243:9,12 249:14 250:14 251:9,24 253:4, 17 256:19 259:2 260:5 261:18 263:23 266:5 282:16, 23 283:21 284:21 285:3, 13 289:10,16 293:9,16,22 294:4,9,10 297:13,19 301:8 302:16 303:10,14,17 304:6 306:18 307:6 308:1,2,4 312:6	16,19 187:24 189:20 197:13, 22 201:12,16, 24 202:20 203:3 2015 117:2,6 150:16 156:8 157:13 159:4 170:22 171:21, 22 172:5,6,17 286:21 287:23 288:23 295:4 298:3,19,20 300:3 302:4,23 307:11 2016 13:17,19 156:8 293:5 2018 9:8,16 184:16 185:21, 22 186:12 187:6 188:14 193:22 195:22 197:22 223:4 227:1 313:5,15 315:4 2019 1:21 7:2 12:15 165:2 202 314:1 203 314:14,20 207 5:8,10 208 3:5	20K 113:7 21 4:7 14:18 15:14 106:15 107:18 131:6,9, 19,21 132:2 222:4,18 225:15,17 215 3:6 21st 108:8 22 4:8 14:18 15:15 133:1 22nd 211:23 23 4:10 12:15 14:18 15:15 134:3 152:3 193:22 195:22 227:1,8 313:5 23rd 8:16 13:17 313:15 315:4 24 4:11 14:18 15:15 293:5 249,580 210:13 222:4 223:5 225:19 226:1, 10 227:9 24th 13:19 25 4:13 14:18	15:15 87:4 93:19 134:14, 16,17,18 135:12 138:24 139:3 140:5,7, 16 209:10,18 225:15,17 253:3,17 310:20,24 250,000 266:20 25th 256:1 26 4:14 14:18 15:15 135:10 26th 115:24 27 4:16 14:18 15:15 72:8 117:7 136:14 27th 65:4 72:15 28 1:21 4:17 7:2 14:19 15:15 136:24 165:2 282 3:12 29 4:19 14:19 15:15 137:19 138:3 155:2,3,7 2nd 152:12 221:23 224:13, 24 228:5,9	229:14,19 234:24 235:12 237:23 242:23 261:3,13,18 263:23 265:11 280:6,7 290:10 293:15 306:2,4 312:19 313:2 314:1 <hr/> 3 <hr/> 3 3:12 152:8,13 232:1,20 247:12,13 281:2,11,12,13 282:8,10,11 289:21 292:24 293:9 314:1 3,316,665 210:4 3,316,666 210:6 282:17 3-plus-million 235:13 241:7 3.1 309:16 3.3 128:15,19 129:10,12,13 130:21,24 148:10,18 149:13 166:23 210:2 214:17 242:24 289:11 3/28/13 4:1
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3/29/13 4:3	32 4:23 14:19 15:15	15:16	44 5:10 178:18, 22,23 181:5 182:12 183:1 203:13 207:6, 10,17,21,22 208:4 209:5 212:19 214:6 222:12,20,22 223:2,6 225:19 235:4 240:13, 16 248:23 249:9 261:15, 19 271:16 276:16,21 277:18	5
30 4:20 14:19 15:15 142:16 144:19,21 145:23 146:6 159:14 166:20 217:15,17 218:1,6 221:15, 22 223:11,18, 19 224:2,5,15, 19 225:1,3 226:7,16 227:11,23 230:19 231:5 235:3 282:21 283:16,24 284:3 285:12 287:23 289:19, 20 303:11,15, 21 310:21 311:17 312:1, 14	320 116:16	364 101:2		5 3:15 58:23 60:13 70:3,6,8 72:11,14,18 74:1 85:17 93:21,22 94:10, 12 151:9 197:5 210:7,8,9 218:3
	321 114:7,13	365 90:2		
	33 5:1 14:19 15:15 138:8 139:1,3 140:5, 11,16 144:5,12, 22	367 91:11		
		4		
	34 5:2 14:19 15:15	4 3:13 14:18 15:14 84:14 105:10,12		5,000 235:5
	345 106:9	4,000 235:6		5/24/13 4:5
	35 5:4 14:19 15:15 142:17, 18 144:5 146:15	4.1 141:12	46 5:12 14:19 15:16 251:19 288:7	5/30/11 3:18
30th 223:22 228:8 229:6,10 284:3 286:21 289:19,20 290:8 291:11	354 82:16	4.2 141:16	47 5:14 14:19 15:16	5/31/11 3:20,22
	355 83:4	4/4/13 4:4	48 5:15 14:19 15:16 176:22	50 5:19 14:20 15:16 124:24 175:21 176:2 294:16,17,18
31 4:22 14:19 15:15 101:10 179:6 202:5 214:16	356 83:4,6,12	40 5:7 14:19 15:16 159:14	48.015 61:17 69:18	500 2:5
	357 83:5,16	408 214:9	48.035 162:15	51 5:20 14:20 15:16
314 71:14 72:2	358 82:23 83:7 84:8	409 214:8	49 5:17 14:19 15:16	51.135 205:11 206:21 207:6
319 67:4	359 84:12	41 147:23	4:45 248:12,17	52 5:21 14:20 15:16 289:8
31st 81:1 206:8	36 5:5 14:19	43 5:8 178:19,22 203:13 207:10, 14,17,20,22 208:8 261:21	4:48 317:3	524000 1:23
				53 5:22 14:20

15:16	71:10,11,19 73:14 74:5 75:4 174:10,15 187:4 210:7,8,9 310:23	7	8	95 97:3
54 5:23 14:20 15:16 177:18, 20 298:8	6,633,332 104:20	7 3:18 14:18 15:14 174:10	8 3:20 14:18 15:14 88:13,18, 20 91:8 92:10 101:2 117:8 124:19,20,22 152:8,13	97 97:3
5441 2:11	6.3 122:16	7,500 212:14	89505 2:6	975 158:24
55 6:1 14:20 15:16 300:9,10	6.6 122:16,21 123:1 125:3 157:6	7/12/13 5:4,5	89511 2:11	9th 138:10 144:13 210:16 211:2 284:10, 13
56 6:2 14:20 15:16 301:11 302:24 304:9, 11,21	6/24/13 4:7,8,10, 11,13	7/2/13 4:16,17	8:30 248:19 316:11,24	A
57 6:3 14:20 15:16 302:20 304:16	6/25/13 4:14	7/3/13 4:19	8:37 7:2	A-M-S-B-A-C-H 67:2
58 6:5 14:20 15:17 305:3	60 6:8 14:22 15:3,4,7,8 111:22 114:6 160:21,22 161:12 163:6 179:13	7/5/13 4:20	9	a.m. 7:2 117:7 316:11,24
59 6:6 111:19, 20,23 112:3,11, 15 114:12 115:3 116:5,11 117:13 118:7, 14 129:3	65 210:5	7/9/13 4:22,23 5:1	9 3:22 99:23,24 100:3,9,14,19, 20 103:17 152:10,11,13	ABC 29:2
5th 9:10,14 284:4,6,9,13 285:12 311:11, 18 312:14	660 105:18 151:17,18 155:17 156:21 158:20	70 3:15	9/24/07 3:13	ability 28:14 44:24 86:11 155:4 256:20 258:11,15,16, 17,19
6	661 151:15	74 3:17	9/27/07 3:15	able 13:22 63:22 113:20 115:20 124:6 130:10 146:23 149:2 205:1 243:20 255:3,6 276:8
6 3:17 45:9	666 210:5	75 87:4 93:19,22	90s 20:9	above 65:19 187:10 310:14
		753 149:4 151:15,18 152:5,23 153:23 155:17 156:22 158:4,9, 20 169:24 170:14 176:7 177:22 234:24 235:11 244:22 246:4	92,500 105:14, 15	
		7th 9:8	94 53:20 56:12	

313:21	11,13,23,24	14 240:14,16,	accuracy	188:8
absolutely	86:1,2,5,7,11,	17 241:9,10,15,	181:18 183:10	acquisitions
26:20 48:20	12,15,16,17,22,	18,19 242:2,9,	212:23 213:9	23:24
111:10 135:21	23 87:2,6,10,	16,22,23 246:6,	accurate 180:19	acting 142:13
285:8	12,13,15,17,18	7,11,13 249:4,	185:21 204:5,	232:7 233:12
absorbing	88:1 89:7 92:16	5,19,24 250:16	17 205:6	234:18 287:3
308:17	93:13,17 94:2,	251:6 252:23	acknowledged	313:10
access 27:14	5,10,16,23	253:15 259:16	13:6 234:3	action 8:3 13:5
28:5,6,9,10,14	95:14,21 97:5	264:13,18,21	acquire 23:4	17:2 18:5
181:11 183:14	100:9,10,11,12	265:13 266:6	28:19 87:7	117:18 182:4
accomplished	101:14,24	267:16 268:7	125:20 243:2	283:10
11:8	102:1,10,20,23	269:12,15,16,	acquired 23:6	actions 1:17
according	103:10,13	17,19,20 270:6,	25:11 26:2	157:22 181:2
189:3 213:12	104:8 105:8,24	9,10,11,18,19	29:22 35:8	183:10
226:24 240:19	106:3 109:20,	271:1,11,12,16,	36:8,16,23 37:2	active 171:8,10
241:1	22 110:3,7,23	19 272:1,13,17,	78:6 171:11	172:2
account 3:11	111:14,17	23 273:2	179:9,11,14,23	activities 83:21
5:9,10 17:14,21	118:3 120:1,5,	274:17 275:10	180:1 181:9	259:21
18:7 26:11,13,	9,10,11 126:17	276:12 278:10	182:16 183:8	activity 83:23
15,19 29:15	130:8 144:1	287:1,10,12	185:11,16	205:16 206:4,6
33:19 39:2,3,	145:19 147:21	288:1,3 294:14	187:23 189:3	209:9,13
11,15,23 40:13,	153:18 159:5	296:20 297:1	195:3 204:16	210:23 253:12
15,23 44:6	168:2,8,24	305:24 306:1,3	205:5 244:24	265:7,9,11
48:23 49:10,17	173:11,17,21	account-	254:18 257:19	acts 205:13
51:11 63:20,22,	177:6,12 179:1,	opening 78:7	258:4 282:22	actual 9:21 26:8
24 75:8,11,15	2,5 190:16	accounting	301:8 314:20	80:13 89:3
77:1,5,8,13	191:6 192:21,	181:23 201:12	acquiring 28:4	169:19 265:17
78:4,8,22	22 194:5,21	accounts 51:5	180:4 188:18	279:12
79:19,21,22	195:3,22 196:6	82:12 87:16	189:14 202:19	actually 33:4
80:12,13,14,19,	197:12,13,15	93:20 110:19	acquisition	
24 81:8,21	198:7,24 199:6	126:18 175:2,5	23:24 24:1	
82:10 83:17	200:14,21	182:2,8 190:4	25:24 26:4	
84:15,17,19,22,	201:1,7,15,19	192:5 202:22,	30:12 31:3,9,	
23 85:5,7,9,10,	202:4,8,16	24 203:5	14,19 32:1	
	203:18,19	208:17 238:17		
	208:10,16	258:23 260:23		
	210:11 213:9,	266:19 271:4,8		
	15,19 222:11,	315:16		
	20 225:20			
	229:14,15			
	234:7 235:2,5			
	236:20,23			
	237:23 239:11,			

40:14,21 54:18 57:4,10 75:19, 20 78:12 83:3 84:8 94:15 117:15,20 118:3 125:9 131:12 138:7 142:17 146:10 160:4 161:21 173:9,17 188:4 208:20 209:4 210:7 217:15 220:5,24 221:23 224:20 227:14 228:5 229:2 234:20 242:8 243:2 259:19 261:12 264:3,7 267:15 268:23 269:24 270:12,21 271:15 272:12, 17 293:15 294:9,10 297:4, 12 307:15 Adams 2:5 7:22, 24 292:1 add 61:21 63:10 67:18 107:7 109:11,13 163:8 additional 64:10 84:9 101:20,21 109:18 116:13 230:14 234:6,9, 22 247:22 248:2 251:5	Additionally 12:14,17 address 26:17 73:3 163:16 164:10,12 addressed 73:18 163:1 addresses 296:23 adds 91:19 adjourned 317:3 administration 137:8 admissibility 14:16 admissible 63:2 69:18 107:16, 17 108:1 115:5 206:22 admission 14:17 15:10 69:14 107:6 116:4 282:8 admit 60:13 67:15 69:11,23 70:3 73:14 74:3 100:14 106:19	115:2 116:11 117:12,14,16, 20 161:12 162:17 163:5 182:12 186:4 207:6,17,20 admits 207:21 admitted 3:9 15:13,17 70:4,6 74:5 78:17,18 88:14,16,18 100:19,20 104:13 105:11 111:20 112:5 113:11,16 114:5 115:1 117:24 118:14 129:3 131:17, 23 133:2 134:4, 15 137:20 138:9 142:18 144:20,21 150:22 154:22 155:9 156:10 158:18 163:2,6, 18 175:22,23 176:23 177:19 207:22 282:10, 11 288:8 admittedly 257:7 admitting 114:23 162:18 advantage 33:24	advise 290:20 316:12 advisor 23:20 29:23 advisory 23:1 affidavit 4:1 17:19,23,24 151:1,15 154:10,15 156:2 157:2 159:6 170:16 205:17 Affiliate 3:15 72:8,12 73:19 74:8 affiliated 278:10 affirm 151:5 Affirmation 151:9 affirmations 151:7 after 19:21,23, 24 20:3,9,15 44:4 46:10 52:7,17 54:17 55:7 56:7 66:10 70:12 76:24 78:6 99:11 120:19 138:10	140:2 144:17 148:22 149:15 150:15 156:7 157:13 159:4 164:11 167:13 169:11,22 180:7 212:17 226:9,11,12 229:20 230:23 248:4 253:2 270:23 277:16, 17 286:17 289:18 290:8 291:10 302:23 314:21 afternoon 247:14 again 27:6 37:22 38:20 56:14 60:14 61:2 70:21 71:4,11 73:20 111:6 120:13 121:8 125:12 130:4,17 136:15 159:2 169:2,4 176:13 186:8 193:7 200:12 203:1 204:18 221:9 222:14 223:3 227:16 230:15 243:4 248:19 251:1 256:7 270:15 273:15, 20 277:8 289:8, 9,15 291:19 293:17 305:4 308:1,22 317:1
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

against 87:4 94:16 96:6	185:4 195:22 231:14,18 293:12	140:15 230:21 231:14,17	27:11 28:8,9 29:11,19 31:8, 11,12 38:1 41:12,18 43:11 62:2 65:8,9 72:1 84:15 86:21 90:22 91:4 93:7 95:12 99:9,11 112:10 122:4,14,15,16 124:7 125:7 128:18 129:3 136:8 145:15 149:9 152:14 157:7,8,10 160:8 163:24 164:7 166:6,8 170:8 178:4 179:13,22 181:6 182:2,14, 17,18 192:3 195:3 197:24 198:6 199:15 201:12 202:7, 15 204:15 205:15 206:3 213:2 235:1,14 236:19 248:14 249:2 250:24 252:13,14,17, 22,24 254:6 257:6 258:8,23 260:23 261:15, 16 264:1 265:7, 10 268:9 269:23 271:2, 18 272:10 273:10,13 274:21,22 276:2 284:21 286:20 291:14 292:9 295:16 298:11 304:18	309:1,2 310:9 314:6,7 alleged 195:11 199:2 261:3 alleging 198:22 294:3 306:21 allow 35:23 64:21 93:22 101:21 103:18 121:20 290:5 291:22 allowed 28:18 29:4 33:5,16 94:10,12 103:13 198:18 265:15 allowing 9:22 94:20 147:16 allows 86:23 170:8 271:10 almost 56:12 94:23 97:22 99:8 235:1 262:11 alphanumeric 59:11 already 18:15 31:7 45:11 48:14,15 58:9
agencies 164:7	agreeing 51:23 308:18	agrees 157:22		
agency 1:10 7:5,14 8:3,16 22:1 145:15 163:19 164:1,6 282:22	agreement 3:16 4:21,24 5:3,11 21:24 22:1,2 24:3 52:5 53:14 60:16,24 69:1,4 70:12 72:8,12, 17 73:20 74:9 86:4 122:12 133:16,19 134:11 135:4, 15 136:12,18 138:21 140:6,9, 12,22 141:13, 17,21 142:3,6 166:19,22 216:2,4,13,16 218:2,10 219:7, 10 221:6,19 222:6 223:7,11 224:1,20 225:21 226:3,8, 16 227:11 230:17,19,23 231:1,10 281:10 284:12, 23 285:2,4,5,7, 9 303:4,7,10, 14,20 305:7 311:6,24 312:3 313:21	ahead 16:16 43:9 58:13 65:16 67:4 80:10 81:17 92:11 102:16 103:7,15 106:23 108:12 118:12 126:2 128:12 141:12 184:11 192:18 197:9 207:7,23 222:16,22 228:24 236:3 237:12 248:20 277:11		
agent 34:7,13 46:3,11,22 47:3,4,5,11,15, 19 52:24 53:4, 9,10 143:12,14, 17 147:19,20 148:14 150:19 155:14 166:5, 11 177:5,12 243:3 249:20 286:24 287:5 296:16 298:7 304:3 308:24		ahold 171:2		
agents 295:10		aid 116:13		
ago 130:20 132:7 163:12 223:18 259:4 279:15		aka 184:22		
agree 15:19 108:5 141:10 224:18 239:7 264:20 299:4		Alana 115:23 269:5		
		Alexander 2:15 5:14		
agreed 14:4,16 122:13 123:12	agreements 17:9 50:23 51:21 61:3	alive 113:9 119:15		
		all 11:24 16:20 21:3 25:5 26:18		

69:6 73:18 78:17 99:2 104:6,13 105:11 112:20 118:10 130:6 137:19 139:11 142:18 156:10 158:11 162:7, 11 175:12,22 177:18 199:19 204:13 206:4 208:9,14 213:21 216:17 224:7,12 225:4 226:16,24 228:1,10 230:9 232:21 233:6, 10 239:17 244:10 245:18 258:21 265:12 266:18 288:8 304:2 307:5,11 309:6 also 2:14 8:20 10:5 15:18 16:12 17:7,16 22:23,24 25:11 35:11,14,15 36:6 50:5 57:18,19 61:21 63:9,12 67:21 69:23 71:3 76:16,17 84:2 91:15 107:7 123:16 132:18 133:1,20 134:3, 14 137:19 142:7,12 144:20 154:22 156:3 158:18 159:20 167:1,	22 168:12 173:1,6 176:22 182:19 185:1 197:5,12 211:23 213:4,5 217:11 218:5 226:23 231:7 244:1 254:1 257:8 258:14 262:17 263:11 264:16,17 267:14 269:5 272:16 279:19 283:8 284:8,14 285:13 286:6,9 296:10 297:8 301:3,6,18 302:21 303:23 305:11 307:12 312:9,20,21,22 313:4 alternatively 68:11 although 285:12 Alvarez 5:12,14, 20,21,22 6:1,4, 5 281:8,14 282:1,5 283:20 285:15 288:9 289:9 300:19 302:22 303:2, 13,19 304:16, 24 305:21 always 13:8 44:19 46:17 48:3 52:13	53:11 55:12 121:9 122:9,19 163:8,21 210:19 247:22 262:11 Amended 13:16 America 145:16 AML 145:6,8,20 167:7,9 218:18 227:5 amongst 25:18 182:8 amount 94:3 95:22 96:8 122:6,10,17 123:11,12 293:11 amounts 213:18 251:5 Amsbach 58:16 66:23 67:2 69:7 analysis 94:6 95:2 114:5 173:8 Anavex 3:9,13, 15 17:4 56:20, 21 57:2,9,11, 12,17,20,23 58:2,6 62:10,11	70:23 71:1,2 73:22 76:15,17 83:1,13 93:2 104:15 105:13 120:18,24 122:1 132:17 137:8 156:12 157:8 166:3,10, 13 172:16 173:10 176:10 210:1,3 214:18 233:8 241:8 245:16,24 282:17 289:11 294:24 295:9 301:24 302:2,7 Anavex's 166:5 296:16 302:10 and/or 153:5 Anderson 2:4 3:5,6 7:18,21 9:20 10:18 14:10 15:3,6,8, 18 16:6 30:7,24 42:2 58:3,8,9 60:14 61:5,9, 19,20 64:12,13 67:17,18 69:11, 21 73:15,24 79:23 100:15, 16 101:15 102:2,11 103:2, 4,19 106:20 107:7 112:4 113:10,18 114:20 115:9, 15 116:2 118:10 125:15,	20 131:19,21 135:17 154:17 161:13,16 162:2,4,16 180:11,14 182:13 183:17, 20 184:14 185:24 186:9, 13,15,18,21 192:18,19 193:13,18,23 194:2 195:18, 20 196:9,18,20 197:6,8,9,10,11 198:12,14,21 200:7,8 203:8 205:8,10 207:8, 15,16,21 214:23,24 215:2,7 217:17, 18 221:12,14 223:16 225:14 227:17,20 228:12,16 229:1 230:3,4 232:3,20 235:10 237:12, 14,15 239:24 240:11 241:14 247:17,24 248:4,10,20,21, 22 250:13 270:3 277:11, 12 282:7,12 290:4,7,22 291:4,5,7,24 292:11,17,19 297:14,16 306:11 310:18 316:5,7 Anderson's
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

64:22 236:5	11:19 45:20,24 52:4,13 91:6 97:23 107:12 133:17 178:8 204:3 261:2,12 262:18 265:5 272:11 276:21 283:23 284:16 285:16 290:21 294:6,11 300:24 306:5,6, 7	210:16 300:15 301:13	approximate 94:5	239:22,24 240:3,6,10,12 241:6 242:23 243:9,11 259:2 260:5 261:3,13, 18 263:23 265:11 266:5 280:6,7 283:21 284:21,23 285:2 289:16 290:10 293:15, 18 294:10,12 306:2,4,18 307:6 308:2 311:8,13,18,21 312:6,13,19 313:2,19,23 314:1,12,22
another 41:16 49:4 68:12 84:17 105:23 109:2 110:21 111:15,17 166:18 172:24 198:17 211:7, 13 212:5 259:11 269:22 277:9 300:15 309:9,10 316:17	anywhere 24:13 45:8 174:5 283:19	Apple 42:14 44:2 49:18,21, 24 95:4,5,6,13 96:6 239:2 245:5,6	approximately 20:13 22:8 23:3 34:20 35:7 44:17 66:8 70:18 123:4 124:24 125:1,3 128:18 129:1 138:10 159:10, 24 160:15 164:18 208:24 210:2 214:17 240:8,14	
answering 237:21	apologies 227:5	applicable 183:16 205:10	April 115:24 117:7 119:21 125:6 128:20, 21 129:7,8,10 130:10 146:17, 23 147:9 149:6, 14 152:18 156:7 164:8 166:22 168:4,5 169:19 171:12 172:17 175:13 176:16 185:21, 22 186:12 187:6 188:13 199:3 209:23 211:16,19,20, 21 213:14 214:20 215:14 216:10,12,16 217:14 220:2,6 221:23 223:2 224:13,21,24 228:5,9 229:14, 19 233:1 234:24 235:8, 12 237:23	area 20:18 292:18
answers 205:20 288:4 292:15	apologize 12:8 65:5 83:10 88:18 107:8 135:22 163:9, 13 165:12,15 224:17 226:14	applications 26:14		arguably 236:21
anti-money 145:9 146:6 167:7,10,19		apply 33:13 84:16		argue 70:1
anticipate 9:22	apparently 64:16 162:8 183:23 184:8 221:5 297:1	appreciate 16:12		arguing 122:9
anticipation 182:23		approach 58:18 186:15 193:18, 23		argument 61:22 162:13 207:1
anybody 136:7 169:11 231:3, 15	appeal 10:1,2	appropriate 69:16 115:18 157:22		arisen 182:24 309:4
anyone 135:15 136:5 301:3	APPEARANCES 2:1	Approval 79:10, 11,19		arm 25:21
anything 9:17	appearing 8:14	approve 270:20		around 7:22 20:16 22:13 23:5 53:20
	appears 100:22			

54:24 55:7 76:9,12,14 95:12 97:2,24 121:5,19 122:19 129:7 153:7 157:7 248:12,17 312:24	19:10 20:23 21:4,16 22:11, 21,22 23:6,9, 13,16 24:18,21 25:20 44:10,12, 13 49:10,11 79:10,18 84:2, 3,4 184:19 217:4,6,8 231:19 237:23 238:5,11 246:20 248:9 278:16 279:9 281:20,23,24 282:4,14 285:17,21 289:13 294:7 296:7 306:23 312:18 313:3 315:9,20	assistant 16:10 98:18 165:10 assisted 55:10 57:22 76:21 assisting 56:7 120:17 associated 69:24 associates 96:24 associations 21:18 assume 90:19 95:11 211:4,5 234:6 269:9 282:6 292:14 303:8 assumed 133:11 assuming 10:11 62:19 95:11 115:6 122:14 149:1,9 236:7 295:16,18 299:14,24 assured 175:12 Athanasios 1:14 2:3 3:14	4:1,3 12:16 54:2 65:20 151:4 176:8 282:16 attached 62:3 64:15 65:10 71:17 134:18, 20 135:13 137:21 138:17, 20 144:22 186:10 attaches 67:20 attachment 60:11 74:8 attachments 72:7 134:21 attack 113:9 119:2,14 attempting 224:23 225:21 247:5 attend 19:17 attending 19:21 attention 12:22 21:13 194:3 197:7 222:3 attest 213:3	attorney 5:4,5 17:8 52:21,23 134:1 135:7,8 138:21 139:3,7, 12,15 140:8 142:2 143:17, 20 144:16 146:14,24 147:11 148:13 149:3 219:8 281:6,16 282:21 289:3 290:18,20 291:9 293:4 299:12 300:6 301:19,23 302:1,9,10,15 303:7 304:10 305:11,16,19 attorney's 155:23 attorney-client 290:1 attorneys 281:9 291:2,14,16,19 294:3 attribute 273:4 attributed 210:11 audible 264:6 audit 180:10,13, 15,20 181:3,22
arrange 58:10 arrangement 25:8 arranging 97:22,23 articulated 233:7 ASAP 74:16 asks 88:1 171:15 191:23 270:18,20 273:2 305:11 asserted 107:13 108:4 161:23 162:6,19,20,24 asserting 279:1 asset 1:13 2:8 3:2 5:10,12,16 7:9 9:16 10:20, 23 13:1 16:2,24 17:15 18:7	assets 32:15,16 33:2,9,11 35:14 48:23 50:7,14, 15 182:2 195:3 307:19 assign 309:9,11 assigned 166:11 assigns 38:17 assist 54:15 55:8 57:15 78:3 123:12 assistance 12:2			

182:1 188:4,7 205:5 206:9	AVXL 84:18	235:6,9 236:17 248:8 256:19 257:15 292:8 293:19 304:11 309:14,17 316:24	balanced 258:23	94:15 168:2 192:9 218:20 271:3,6
audited 26:24 180:5,6,7 181:20 258:21	aware 106:2,5 148:17 150:11 157:8 159:2 178:15 180:4 194:9,24 231:2, 13,17 247:10 278:24 292:20 293:13 294:15 303:9 306:23	background 19:14,15 145:21	balances 35:16 126:17 251:16 260:3 270:12	based 62:23 74:2 95:7,15,22 100:16,17 128:11 162:2 195:9 212:21 232:19 235:3,4 304:1 310:23
auditor 258:15, 17,18,22		backup 146:10 305:5	bank 21:5,17,19 25:15,16,21 26:13 33:10 35:24 36:24 37:3,5,10,15 38:1,4,14,15 39:6,9 40:1,3,4, 7,9,12,15,16 41:9,10,18 43:14 75:3,10, 14,23,24 76:1 90:7,11 91:14, 18 111:17 112:21 169:14 177:16,17 192:5,6,8 244:6,7,8,14,15 259:22 267:18 268:4 269:20, 21,22 270:9,14, 19 271:2 273:4, 6,9,17,23 274:5 276:10 277:1, 21 278:4	basic 28:6,10
audits 31:20,22 182:5,6 183:9 204:13,15 212:21	away 80:23 174:17 307:18	backwards 135:19		basically 13:6 26:5 162:10 178:1 189:4,7 202:11 203:22 216:12 218:16 235:5 297:17
authenticity 61:21 70:1	awful 95:11	bad 11:13 76:11 121:14		basis 27:18,19 29:8 73:16 192:12
author 183:3 205:3	B	Bahamas 1:14 2:8 3:2 21:5 25:17 89:23 100:4 101:7,10 143:1 159:18 160:8 184:22 191:5,12 231:7		Bates 59:3,11, 12 71:12 72:2 99:24 114:7
authorize 282:4	B-O-U-T-S 137:10	balance 33:5,21 34:14 39:22 85:14 87:24 88:4,5,10 110:20 175:3,5 182:3 208:23 209:2 212:19 245:9 250:3,6, 17,21,22 251:8, 11,13,15,23 253:3 271:5 315:16	bank's 244:16 267:18 277:1 287:1	bear 17:12,22 76:12
authorized 33:5	B-O-U-T-S-A-L-I-S 137:12		banking 35:19	became 21:3 22:10 99:12 106:5 150:11 178:15 283:20 288:23
authorizes 263:3	back 13:12 68:10 72:14 81:13,16 92:2,7 99:3 118:4 134:20 135:12 139:7 148:7 149:6 163:21 164:11,12 165:5,11 169:3 171:6 174:4,5, 16 178:20 225:7 231:6 233:20,21		banks 35:17 36:5,6,9,20	become 148:17
automatic 52:12				
available 96:8 199:16 258:5 272:20				
average 103:8				
avoid 292:18				

153:7 159:2 169:10,16 172:2 180:4	begins 174:21 248:13	55:20 60:15 77:23 149:15 182:24 183:15 186:9,13 201:8, 19 221:1 236:5 245:2 246:8 250:21 251:22 253:20 265:21 267:5 268:19 277:21 278:6 280:7 284:14 288:24 294:19 298:6 302:1 305:24 309:18 312:10 313:7, 18	216:22 231:20 294:14 303:10	bills 119:2 121:18
becomes 34:13 107:24 140:1 167:13 172:24 232:11 238:3 263:4	behalf 7:14,19 9:20 10:20 16:2,4,16,23 184:19,22 185:1,6 268:8 273:3 282:14 287:15 292:21 300:3,16		best 155:4 161:14,15,18	binder 58:21,22 162:9 199:11 310:22
before 34:6 46:8 60:17 68:7,13 73:7 80:23 82:7 92:14 93:14 105:4 113:16 129:5 138:11 157:1 166:1,18 178:2 187:20 196:15 229:3 232:2,20 247:13 248:13 252:5 255:22 281:3 282:1	behind 7:13 16:14		better 88:23 178:21 297:7	biotech 56:22
	being 11:6 40:7 41:5,20 53:2 54:20 74:2 75:10,14,17 82:10 98:18 110:2,22 111:1 114:22 115:16, 20 117:24 122:15 128:15 138:2 143:8 144:7 148:9 151:14 161:22 162:23 168:24 177:23 196:11 206:9 208:15 226:9 227:3 241:23 249:20 267:9 277:18, 20 284:18 285:16 295:10 306:9 307:3,7 309:13 311:20	believed 305:22	between 3:17, 18 8:5 24:4 26:1 41:14 42:20,21 50:2,3 53:5 57:8 77:24 86:22 98:4 103:18 121:1 129:17 139:4,6 159:5 161:24 163:3 164:1 166:3 174:5 200:9,14 216:1 231:6,10 232:15 259:20 302:13,16 307:14 308:9, 13 309:14 312:20,21,22 313:8	bit 13:23 53:18 60:20 83:8 92:5 96:13 115:21 171:6 236:4,8 296:2 306:20
beforehand 205:2		below 79:17 113:8 117:7 119:7 157:17 211:6 251:17 264:14 296:14	163:3 164:1 166:3 174:5 200:9,14 216:1 231:6,10 232:15 259:20 302:13,16 307:14 308:9, 13 309:14 312:20,21,22 313:8	black 264:24 265:2,10
began 120:16 122:5 170:11 171:1		bench 8:2 16:12 71:21 72:5 113:23 115:11 193:18	beyond 193:8 277:19 278:3	blank 4:23 5:2 82:21 134:6 139:15,17,23 140:7,8 142:7, 14 144:13 284:13 300:7
begin 12:5 55:5 197:1,17		beneficiary 109:11,12,13 110:1	big 35:24 174:20 250:11	blink 269:23
beginning 15:24 58:5 76:7 116:23 180:2 197:5 222:3 234:16 245:18 250:5 274:19	belief 170:21	benefit 196:10 239:18	bill 6:2 90:3,7, 16,24 91:18 244:6,7,9,11, 12,16,17,18 301:14	Bonds 5:4,6
	believe 15:21	Bernard 5:17		book 42:17,19 163:22 239:3
		besides 213:1		books 27:13 42:24 49:7 243:24 275:18
				borrow 86:11, 24 96:6

Borrowing 85:21	23 137:6,9,11 147:24 176:1,5 177:22 294:22 295:3,6,12 296:6,24 297:18,23 298:4,10 299:12,20 300:2	309:23	33:1,10,15 35:12,13,21 36:1,4 37:4,15, 24 39:5,19,24 40:7,19 41:5,17 43:14 50:13 54:20 139:21 144:1,2 191:5 270:17,18 285:18 307:18	building 248:15
borrowings 93:7	Boutsalis's 295:8 298:13	broad 204:18,20	broker-dealers 23:19 33:7 35:1,5,18 36:12,15,19	business 19:16 20:5,11,21 21:20,22 22:2 23:15 25:19 30:6,14 43:23 53:24 54:15,16, 18,19,20,21,23 55:3 56:2 58:6 62:14 68:4,8,14 73:21 77:12 97:10,12,14,17, 24 98:13 99:9 180:21 183:1,4, 12,18 189:11 204:6,8,11,20, 22,23 205:7 206:14,23 207:5 239:17 315:14
both 10:10,12 11:9 13:6,10 38:2 43:22 51:13 101:9 116:22 140:14, 15,16 141:1,3, 9,12,16 142:2 162:16 169:7 207:10,11 232:10 307:2 308:5 312:19	box 73:5 86:10 106:17 131:12 181:11	broker 28:21,22 35:2 38:4,14 39:8 40:14 44:19 50:10,11, 15 126:21 127:19 145:12, 20 147:21 213:5 232:9,17 235:17,22 237:4 239:13 253:19,24 254:7 259:21 260:2 267:18 268:1,3 269:14, 17,19 270:6,8 271:15,19,20 272:1,13,17,23 273:8,9,16,22 274:4,5,14,16 275:19 276:3,6, 9,24 277:21,24 278:3,4 309:4 312:24 313:13	brokerage 43:23 54:23 96:3 173:2 192:2	busy 56:3
bottom 67:13 75:4 86:10 101:7 112:17 114:6,19 196:5 214:1,7 229:4 261:1	boxes 84:16 181:14	breach 13:3	brokers 36:17, 22 127:16 145:18 167:13 219:5	buy 24:22 34:17 42:18,19,24 43:1,2 44:20 45:15 49:4 85:21 86:24 87:14 125:5 127:2 166:15 172:22 173:9, 17,19,20 174:16,24 175:10 237:2 280:12
bought 49:18 146:22 149:6 169:24 171:18 172:16 173:11 175:16 204:16, 24 236:12 239:6,12 241:2 243:10 315:24	breached 216:11,12,14	broker's 237:1 255:10 269:20 270:10 277:1	brought 8:19,21 12:21 13:2 54:19	buyer 38:3,9,12, 15,16,22 41:22 42:17,19,22 44:9 50:22,24
bound 52:2	break 78:13 92:15 163:8 166:1,19 248:4	broker- 191:11	bucks 235:5	
Bouts 137:4,5, 6,10,16	brief 16:18 291:22	broker-dealer 17:7,8 19:7,8,9 21:17,20 22:3 23:4 24:16 25:5,21 32:10, 11,13,17,19,22	Bud 74:11 134:20 135:13 137:20 138:16	
Boutsalis 5:19,	briefed 9:12,14		buffer 307:16	
	briefly 19:13 41:12 115:10		build 21:20	
	bring 189:11			

51:3,4,12,14, 23,24 58:11,15 61:22 64:18 66:22 70:8,14, 16 123:22 127:10 169:1,6, 23 172:16 235:24 237:24 238:12 240:23 242:6 244:20 263:5,12,14 264:16 265:4, 19 266:17 279:12 286:15 307:22 308:3,5 310:4,13 312:7, 22,24 313:3 314:20,22 315:19,22	10 buying 45:18 49:14,15 52:4 85:22 86:8 131:5 172:24 174:17,18 203:22,23 233:10 234:17 243:6 buys 166:13 239:3 bypass 111:7 112:20 113:3 119:3 129:6 <hr/> C <hr/> C-H-R-I-S-T-O-S 19:3 Calgary 19:18 54:11,12 California 141:17 call 15:22 18:11 20:4,19 26:7 29:2 44:1 46:6 52:22 92:5,21 93:20 94:13 103:8 132:19 173:3 174:7,14 175:18 216:14 240:4 250:6	282:15 called 17:4 20:8 59:3,10 75:17 85:14 86:8 151:1 278:15 297:6 calling 21:1 calls 79:23 101:16 103:19 118:24 154:17 came 11:12 59:16 62:2,7,8, 18,20 68:3,19 69:20 119:10 120:10 124:18 166:18 171:17 241:11 can't 27:9 34:2, 4 35:19 45:4, 15,17,20 48:5 50:20 52:1,2 54:13 57:4,5 59:7 72:19 75:12 90:21 99:15 103:8 117:20 122:7 124:18 128:23 129:6 130:16, 18 135:9 144:11 169:24 174:22 175:1 189:24 205:22 218:15 235:19, 22 237:7 238:1, 19 243:2	258:17 283:4 299:3,18 314:7, 10,12 Canada 19:18 20:9 54:11 canceled 158:22,23 cannot 35:18 45:14 196:19 221:2 238:22 243:4 capable 69:3 capacities 184:19 capacity 73:19 capital 10:23 17:1 20:11,18, 19 21:1 22:4,7, 18,19,20,23 23:1,12,15 24:4,6,17,18,23 41:21,22 42:12 44:9 50:9,10, 11,14,20 51:15 54:22 56:5 57:17,19 94:18 97:8 120:24 126:15 127:2 142:13 143:2,3, 6 154:7 172:8, 10 184:23 187:24 189:5,	10 217:4,11 230:8 231:8,11 235:24 237:17 262:18 269:2 278:16 279:9, 18,20 280:24 294:7 296:22 297:1 301:1 306:21 307:8, 12,15,18 308:10,12,16, 18 309:12,15, 20 310:3,24 311:20 312:1,7, 18,20,21,23 313:4,6,8,16 314:6,12 Capital's 189:7 capital-raising 23:1,20 care 81:11 123:22 239:16 243:5 257:24 258:20 309:7 carefully 85:22 carried 277:18, 20 carries 35:15 36:1 carry 32:14 35:23 275:19 283:10
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

carrying 278:2	93:20 94:10,16 121:20 141:5 169:13,14,16 172:15 173:7 229:5,19,21,22 230:6 245:14, 17 246:17,18 261:6,10 267:22 270:11	certain 17:3 28:8 64:23 87:5 114:1 293:11	219:2,13 220:15,18,19 224:9 232:12, 14 234:24 235:11 237:8 238:2,3 241:16, 17 243:1,19,23 244:22 245:21 246:1,4,5 280:16,18 287:8 288:19 289:2,4,6 295:1,13,15,21, 22 296:3,6 298:3 299:6,9, 23	274:6 276:8,14, 19,20
Casad 75:12,17, 20		certainly 70:1 108:16 153:8		challenged 196:11
case 1:10 8:2 9:23 11:7 12:13 15:20,24 17:11 36:17 41:7 58:22 60:7,18 61:1 62:6,24 69:21 71:5 88:8 93:1 100:8 106:3 117:3 121:18 124:3 129:22 149:10 175:10 197:16 198:3,22 199:17 216:18 222:7 223:7 225:22 226:4,9 233:24 242:1, 12 247:9,24 249:8 252:11 266:3 275:1 276:1 278:14, 15,24 290:14 293:13 309:11	cash-type 260:19	certificate 3:10 4:2 8:4,5,15,19, 20,22 9:1,4 10:13,17 11:4, 6,10,20 33:14, 16,17,18 34:1, 2,4,5,12,14 38:18 45:11,15, 23 46:4,12,19, 21 47:15,21 48:8,11,13 52:10,19 53:1, 3,6,11 70:15 84:18,20 88:3 93:2 104:15,19, 22,24 105:2,6, 13,18,23 133:21 139:20, 22,24 143:9 146:19 147:19 148:14 149:4, 22 150:20 151:2,10 152:4, 22 153:23 154:10 155:17 156:14 157:2, 19,21,23 158:12,20,24 159:6 166:16 167:13 168:16 169:24 170:7, 14,17 176:7,13 177:1,6,22 178:6 216:20, 21 218:22		chance 187:15 281:24 283:1
	catch 95:13 275:12			change 51:3 96:13 171:20, 23 235:6
	cause 150:10, 13,15		certificated 300:20	changed 42:4 121:3 171:21
	caused 171:22 216:11 232:3 249:22		certificates 3:14 17:19 53:8 105:7 120:14 151:14,15 154:6 155:15 156:19,21 158:4 164:3 166:7 167:20 218:23 243:23 295:10	changes 136:21
	cc'd 281:20			changing 44:16 53:18 188:2
	CCR 1:24			Charles 79:15
	cent 251:19			Charlie 79:15
	central 145:15 168:17 272:18		certification 89:16,18,19,21	check 81:20 82:23 84:15 109:10,11 188:12 315:1,7 316:1
	cents 124:19, 20,22		certified 3:22	checked 84:16 86:10
	CEO 28:20 57:3, 4,6 126:21		certify 89:24	checking 126:17
cases 53:4 166:8			chain 69:24 273:16,22	Cheers 137:23
cash 28:17 29:3 32:15 35:15,20, 23 36:2 38:16, 17,18 40:21,24 49:13 85:23 86:5,12,15,17, 22,24 87:9,12, 14,15,17,18 88:1 92:15,20				

Chinese 132:10, 13,21,22 146:2 147:5 167:2 215:18 228:20 236:21 310:9, 10,15	23 230:18 286:22,23 287:5,6 294:8	270:4 283:5 287:9,11 288:1, 2 292:2 307:1	130:2 139:18, 19 149:5 171:14 172:12, 23 173:5,7,23 174:2,10,18,21 189:20,22 191:6,7,13,23 197:24 203:20 206:16 215:20 232:22 239:16 242:5 245:23 247:1,9 249:2,6 254:18,22 255:14 264:16 265:7,8 271:7 273:7,8,9 274:8,15 309:7, 8,10 315:16	147:8,13,22 164:9 167:16 171:24 172:4, 15 189:8 200:16 202:22 203:6 206:17 215:21 217:1,6, 21 232:13,22 234:23 235:21 238:17,18,19, 21,22,24 239:12,19 241:3,5 242:21 243:10,11,12 244:2,9,10,14 245:9 263:16, 19 264:1 273:10 307:12, 20 308:9 316:3
choose 16:11 85:24	claiming 17:19 216:9,18,19,24 217:1 220:4 238:5 239:8 279:5 287:4 301:4 306:22 315:6	cleared 34:7 176:13 237:20 287:7 295:10	clearer 155:6	clients' 28:14 242:3
Chris 14:1	claims 279:12 283:20	clearing 166:16 289:6	clearly 69:14 76:8 205:18	close 140:18 175:5 230:22, 24 280:14,15
Christos 3:3 4:6 18:17 19:3 116:10 161:24 186:23 193:21	clarification 152:6 240:2	clerk 11:19 14:21,24 193:21 292:13	client's 49:17 80:19 82:19 84:4 87:24 104:8 246:13 269:18 274:11	closed 280:13 311:13 312:13
chronological 254:24	clarify 10:24 30:9,10 42:23 130:16 135:17 305:20 308:5	client 14:1 17:13,17,20,24 18:2,9 24:17,21 26:8,10,11 28:11 29:2,5,8 34:3,6 35:4 38:10,11 39:1 41:2,15,16,23, 24 42:8 44:18, 20,21 45:19 48:16 49:5,9 50:18 51:1 52:1,2,5 69:13 80:11,12,14,16, 17 82:4 84:6 86:23 87:23 88:21,23 89:19 91:19 92:19 96:6,8 97:7 115:13 126:14	clients 22:22, 23,24 23:18,19 24:9,15 28:8,9, 11,13 29:9 33:2 34:18 35:1,2,3, 7,16 38:3 41:15 42:24 47:24 50:3,4 51:17 52:7 53:4,5,7, 15 77:10,14 80:11 123:16, 17 124:13 126:8,11 129:13,17,19 130:1 132:23 139:16 145:24 146:16,18,22	closely 283:24
CIBC 36:17 37:2,4	class 32:21,22, 23 33:1,12,15 191:11			closes 38:14 51:2,5 167:8
circle 96:23	classes 32:17 33:8			closing 27:24 28:1 127:10 140:17,22 141:5,8,10 179:10,13,16,
circling 235:9	classify 34:22			
circumstances 69:10 77:4,6,7 85:11 143:16	clear 30:18 53:8 62:21 80:24 171:4 210:18 216:19 221:9 227:7,14 248:13 252:21 262:2 263:1			
claim 13:2 217:21 239:10 279:1 280:8,19 297:2 300:4 307:8,10 314:22 315:19				
claimed 216:21,				

19 190:13 197:16,17 218:5 224:1 258:9,10 260:23 284:4 311:11,12	49:20 53:21 62:7 68:13 98:12 99:8 119:17 120:4 121:3 122:5,11 124:12 145:22 154:10 164:11, 12 167:18 172:18 173:12 175:4 183:11 219:6 307:11 316:24	24:15 213:16	community 25:19	12:4
cloud-based 63:18,20 73:6		commitment 237:4	companies 20:5,12 54:22 55:1,2,14,15,17 56:8	compilation 201:15 205:12
co-founder 20:7		committed 30:20 124:8,10, 11,12,14 125:2	company 1:10, 14 7:6,15 8:3 17:4 20:7,9 22:4 23:23 56:18,22 57:13, 17 71:2,4,7 75:17 76:15,22 98:1 120:20,21 121:1,9,14,17, 18,21 137:7 143:3 156:19, 20 157:22 163:20 164:2 172:1 183:15 204:24 205:1 282:22 295:8	Complaint 13:16
Coca-cola 43:1	comes 27:7 50:9 53:14 114:20 129:21 145:21 174:5, 14 233:1 242:24 259:18 260:17,21 276:11	common 53:22 90:4 92:18,19 156:20 282:17		complete 135:14 195:16 218:16 228:14 235:19,22 308:22
code 59:11 157:24		commonplace 93:10		completed 20:15 25:23 81:21 146:15 167:6 218:14 226:11 227:3
coincide 157:5 213:22		communicate 104:8 127:14 153:19		
coincides 211:2	comfortable 21:8,15	communicated 99:20 102:19 128:4		completely 206:12 221:5
collectively 136:8 278:16, 20 279:8,10	coming 168:7 171:12	communicating 98:19 102:22 110:6 162:11	company's 27:13 91:2 213:5 258:23	completes 88:22
college 19:21, 23 20:1,3	commerce 19:16	communication 136:13 150:7 153:5,10 161:24 163:3 292:4	compare 112:2 139:3 140:6 144:4	completing 18:1 136:11 167:4 202:17 218:21 309:1
colorful 11:12	Commercial 157:24		comparing 112:7 140:5	compliance 26:23 28:20 79:12,14 84:2 88:22 145:11, 20 283:9
column 210:19, 22 249:14 251:3	commission 24:9,19 25:6 32:14 45:2 63:12	communication s 98:5 99:4,9 103:18 119:18, 21	compensated 24:6,8	complicated
columns 251:13			competing 8:5	
come 8:23 43:2	commissions			

53:10	conduit 234:18	114:2,4,8,18,19	contacting 150:4,5	165:17 292:11 308:12
computer 27:2, 3,5,8,15 32:6 201:23 202:1 256:6,15,20 257:1,3,17,20 260:7,8,10	conference 8:21 9:7	consideration 9:18	contained 38:6 136:21 204:4, 11 207:5	continued 24:22 55:21 120:24
computerized 256:16	confident 263:24	consideration.' 230:10	contains 29:19 89:9	continues 23:12
concern 93:18 153:22	confidential 265:8 292:4,16	considered 229:18,21,22 288:21	contemplated 183:13 204:23 215:11,12 230:24	contract 13:3 195:11 233:7 234:22 293:10
concerned 123:1 166:19 261:8 289:5	confidentiality 265:6	consisted 22:24	contemplates 316:19	contracted 188:5
concerning 110:7 121:11 170:13	confirm 127:1 176:9 288:19 296:15	constantly 95:7	contemporaneo us 65:3	contracts 97:23
concession 242:21	confirmed 16:10 127:4 296:2	constructed 142:12	content 107:19 161:1	contrary 224:18
concluded 92:9	confirming 176:6 297:18	consulted 13:24	contents 12:11 67:19 113:17 182:15 282:1	contribution 11:14
conditions 5:11 140:22 205:13	confused 60:20 83:8 234:8 237:16 238:6 243:8 305:10	consummate 226:22 266:22	context 310:7,8, 16	control 200:4
conduct 97:17	confusion 232:3	consummated 216:7 220:5 230:18 233:8 243:20	continuation 112:11 135:11 154:6	controller 118:19
conducted 62:13 180:20 205:16 206:3,5 212:21	connection 166:3	contact 29:10 77:24 82:19 109:10 153:14 163:19 164:1,6 269:10	continue 20:1 24:22 120:19 163:16 164:18	convenient 51:6
	consider 47:8	contacted 66:22 109:7		conversation 57:7
				conversations 74:20 121:11 221:4 291:8 316:15

convert 46:12 211:14	corner 7:22 59:13 71:12 89:17 100:1 104:23 106:8 155:22	76:23 77:1,2, 15,21 82:10,11, 14,21,22 83:2, 14,18,19 84:10 85:16 88:6,12, 15 89:4,5,7 91:8 92:16,17 93:3,5,19 95:9, 16,24 99:22 100:5,24 101:1, 4,5,8,10,11 102:20 103:11, 14 104:9,10 105:5,9,16,17, 19,20 106:12, 13 109:15,16 110:12,13 111:2,8,20 112:21,22,24 113:1,19 114:13,17 115:9 116:16, 19,23,24 118:21 119:16, 22,23 120:2 122:2,4,23 123:3,8 124:1 127:3,24 128:3, 8,16,17 129:1, 2,23,24 130:3 132:3,4,24 133:4,5 134:21 135:21 136:15, 16,19 137:1,2, 12,17,18,24 138:1,12,18,19, 21,22 139:12 140:4,9,10,12, 13,18 141:1,2, 5,6,10,11,14, 15,18,19,24 142:1,7,8,21,22 143:3,4,18,19,	21,22 144:14, 15,17,18,23,24 146:8 147:3,4, 6,7,9,10,14 148:1,2,4,14, 15,23,24 149:7, 10,11 151:3,16, 18,19,21 152:19 153:12 155:17,18 156:4,7 157:2, 3,15,16 158:15, 23,24 159:1 160:23 161:9 166:23,24 167:2,3 168:3 169:1 170:2,5, 6,14,15,18,19, 24 173:15 175:1,14 176:18,21 177:15,17 178:3,7,17 179:14,15,18, 20,21,23,24 180:1,2,9 181:6,7,10 183:6 184:16, 20,21,23,24 185:3,7,10,12 187:1,2,5,13, 14,17,21 188:9, 10,15 189:6,12 190:1,2,19,20 192:1,23,24 194:9,10,19,24 195:1,4,7,12, 15,23,24 197:14 198:1,2, 3,24 199:1,4,6, 7,9 200:11,16, 17,19,20,23,24 201:12,16,17,	21,24 202:5,6, 8,14,17,18,23 203:15,16,21 204:1 208:10, 11,18,19 209:1, 6,16,17 210:4, 16,20,24 211:1, 3,4,7,21,24 212:1,6,7,11, 12,16 213:15, 19,20,23,24 215:11,15,16, 18,19 216:8 217:9,10,12,13, 21 218:3,4,6,7, 9,12 219:22 220:2,7,20 221:17,20 222:9,12 223:8, 9,11,12,21 224:15,16,21 225:5 226:6,7, 17,18,24 227:12 228:2,3, 6,7,11 229:7,8, 11,17,23,24 230:15,16,20 231:4,8,9,12 232:23 233:2, 22 237:18 239:20 240:15, 16 241:23 242:12,17 243:15,20 244:17,23 246:4,15 247:1, 6,7 249:2,3,7, 19,24 250:1,4 251:6,17,18 252:1,2,7,18, 20,23,24 253:8, 11,13,17 254:5, 15,19 255:24
converted 34:13 170:1 210:19,23	Corp 3:9 210:4 282:18			
coordinate 98:4 132:16 295:9	corporate 3:23 22:24 23:18,19 156:17 157:5,9, 11,14 158:7			
coordinated 98:1				
cope 74:13,14	corporation 1:10 75:13			
copied 116:7 161:7 291:14, 19	correct 9:13 15:6,9 19:11,12 23:11 24:4,5, 20,24 25:9,10, 22 29:7,17 30:4 31:10 33:22 34:11,15,16,19 36:7 37:9 38:8, 24 39:16,17,20 40:2,9,10,24 41:11,18,19,24 43:8,11,12,14, 15 44:9 46:8 47:15,22 50:1 51:11,18 53:4, 17 54:3,5,6 55:22 56:16,17 57:21 63:21 64:2,4,5,8 66:24 67:7,11 69:8,9 70:9,10, 19,24 71:13 72:9,10,18 74:9,10 75:18			
copies 27:8 138:17,20 207:12 257:6				
copy 3:22 74:13 81:22 89:20,21 90:9 91:14 100:23 101:6 116:21 117:2 136:17 144:13 176:8 178:21 183:6 193:19 295:15,19,23 296:4 297:8 299:18 302:15 303:3,14,19 304:9,23 305:1				
copying 71:22				

256:3 257:13, 16 258:7 260:12 261:4, 15,20,24 262:5, 8,10,15,16,22 263:6,7,9 264:8,9,11,12, 15,22 265:5,20, 24 266:1,8,11, 17 267:2,3,7,9, 12,22,23 268:5, 10,11,15,16 270:7 271:13, 17,21,22 272:1, 5,21 273:14 274:2,17 275:4, 5,8,16,21,22,24 276:4,5,13,22 277:14,15,19 278:3,17,18,20 281:17 282:3, 20,23 283:2,7, 17 284:1 285:4, 8,11,13,14,16 286:1,15,16,19, 22 288:11,12, 15 289:4,12,13, 14,16,17 291:4, 5 292:22 293:22 294:13 295:1,2,5,23 296:17,18,19 298:12,20,21, 24 299:9,10,13 300:5,7,17,18, 22,23 301:4,5, 6,8,9,16,17,19 302:3,4,5,24 303:1,4,5,21,22 304:4,6,10,17 306:18,19 307:22,24 308:7 309:23	311:1,19 312:2, 4,7,17 313:7, 16,20 314:2,3 315:3,7,22 correcting 52:16 corrective 181:2 182:4,6 183:10 correctly 17:2 60:9 158:21 235:2 282:19 correspondence 161:4 291:20 298:16 304:2 counsel 11:9 12:7 13:24 14:21 15:1 64:3,7,11 113:11 117:11 150:16,17 164:17 165:7 178:20 187:20 190:9 201:6 218:2 222:11 234:12 247:9 278:15 279:8 283:4 292:20 293:7 316:10, 12 counterfeit 244:6,7,12,15, 17,18	counterparties 218:19 219:5 259:19 counterparty 259:21 COUNTY 1:7 couple 17:5 55:21 58:16 144:17 163:14 182:13 270:1 288:9 292:5 courier 137:4 176:10 296:15 course 10:1 30:6,14 44:5 76:11 85:6 87:15 96:22 174:9 183:4 184:2 205:15 206:3 221:6 222:1 court 1:6 7:5,9, 13,21 8:1,9,19, 23 9:3,5,7,19, 23 10:2,4,9,17, 20 11:8,11,12, 16,18,21 12:1, 4,7,11,12,14,17 13:8,14 14:2,6, 15 15:4,12 16:1,4,7,19 17:2,5,7 18:4, 11 19:13,22 21:2,8,11 22:9,	16 26:3 30:9 32:11 36:14 42:7,23 43:5,9 46:20,24 47:7 58:4,8,12,19 59:6 60:19 61:5,13,16,20, 24 62:15 63:7 64:12,21 65:7, 16 67:2,16,22 68:6,18 69:6, 10,17 71:18,24 72:4 73:17,23 74:2 78:14,18 80:1,5,10,23 81:7,11,14,17 83:3,7 88:14,17 90:15,18,21 91:3,23 92:2 94:1,9 95:2,10, 17,20 96:1,10 100:15,19 101:18 102:4, 12,16 103:3,8, 12,15,22,24 106:22 107:1,9, 15,21 108:12 111:20,22 112:9,13 113:18 114:13, 15,18 115:1,13, 15 116:3,11,19, 22 117:5,11,12, 23 118:9,12 123:4,8 125:17, 24 126:2 127:18 128:11 131:17,20,22 135:19,23 137:10 152:6, 11,17 154:19 155:6,9 161:15, 17 162:2,13,17,	18 163:5,7,11 164:15,20 165:5 166:2,4,8 168:14,23 169:3 173:8,16 174:8,14,20 175:7,15 180:18 182:21 183:18 184:11 185:23 186:2, 12,14,16,20 191:15,22 192:12,18 193:8,15,17,20 194:1 195:16, 19 196:9,14,16 198:13,16,20 199:24 200:2,4 203:11,17,22 204:2,18 205:8 206:21,22 207:3,14,17,20 209:4 210:6,18 211:9 214:23 215:2 217:3 221:13 223:15 225:13 227:16, 19 228:12,18, 22,24 232:2,18, 24 233:3,19,23 234:2 235:8 236:3,9 237:10 238:20 239:5, 22 240:2 241:6, 10,13 242:5,20 247:13,19 248:2,5,8,13,17 250:9,12 265:23 267:10, 13,14 269:23 272:2,21 276:17,18,19 277:8 280:5
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

282:10 290:2,5, 20 291:21 292:6,8,13 294:3 297:12 306:1,5,7,10 310:14 316:5, 10,16,18 317:2	260:4,6,7,8 creating 172:9 credit 94:24 96:8 173:7,11 175:2,3 235:21 237:5 239:14, 17 240:7,14 241:15,18,19, 20 242:23 246:11 263:22 266:6 315:22	12:18 16:23 cross-claimants 12:5 cross- examination 3:6 70:2 196:10 214:23 215:6 232:19 234:17 248:10 292:12 cross-examine 69:15 cross- examining 215:4 crossed 11:2 CRR 1:24 cumulative 162:14 curiosity 46:20 curious 47:9 90:22 current 23:9 299:1 314:15, 17 custodial 35:14 177:6	custodian 145:13 167:14 205:17,18 207:2 287:3 309:5 custodize 50:14 custodized 33:2 custodizes 35:6 50:15 custodizing 48:23 custody 11:22 84:24 130:7 customarily 86:1 customer 26:19,22 27:19, 21 28:2 32:15 33:13,14 37:14 82:6 89:1,3 90:5,13 91:16 100:22 101:13 102:24 104:7 168:24 181:6 236:15 273:3, 18 274:1,15 278:8 287:14, 16,19 customer's 270:24 271:2, 12	customers 34:20,22,24 35:9 43:22 44:8 130:21 133:15 169:7 179:14 308:6 cut 52:14 cutoff 259:1 CV15-02259 1:10 7:5 92:3 165:6 248:9 292:9 <hr/> D <hr/> daily 191:21 damage 216:11 Dane 2:4 245:6 287:7 Daniels 3:19 data 197:17 201:15 205:12 258:7,8,10,21 database 32:7 256:15,16 260:11,22 date 22:11 65:3 72:11,13 73:10
Court's 9:5,18 10:2,19 11:22 12:21 169:18 198:12 215:1 223:14 224:17 courtroom 12:3 200:5 248:13 covenant 13:4 cover 11:16 49:2,8,12,13, 16,24 87:21 93:7,8,17 94:1 172:21 174:7, 19 175:10 238:3 coverage 175:15 covered 309:8 crater 95:15,17, 19,20 create 68:15,16 192:6,17 244:1 created 243:23	credited 18:7 173:21 213:15 229:16 241:9, 10,23 242:9 244:10 245:18 246:6,12 271:11 crediting 239:11 242:2, 16 271:5,7 credits 130:7 270:13 crises 76:9 crisis 76:7 cross-claim 13:16,19 292:21,24 293:4,21 294:2 cross-claimant			

106:14 128:23 129:6 140:17, 23 141:8,9,10 144:4,9,10,16 152:1,15 155:1, 3 156:15 179:4 212:5 213:18 214:19 218:3,5 220:4 223:19 224:1,6 227:24 250:16 251:6 253:12,13 258:8,10 259:1 284:4,6,7,9,11, 13,15 289:23 290:10 291:13 299:1 301:10 311:11	132:7 138:10 144:17 270:1 288:10 deal 8:14 21:19 23:4 35:24 36:1 38:14 50:8,21 51:2 126:7 139:23 150:18 164:8 169:11 180:16 227:2 232:4,9 233:4,5 239:23 240:1,4, 6,10 243:21 244:16 246:2 263:3 295:9,10 306:7,8,13,16, 18 312:19	debit 92:16 93:4,9,17 120:11 208:24 210:19,23 249:15 250:14, 20,22 251:5,9, 14 269:16 270:6,9,10,17, 19 271:15,19 272:1,13 debited 271:11 273:2 debiting 271:5,7 272:17 debits 250:23 251:5 269:18, 19,20,21 270:11,13 272:6 December 9:8, 10,14,16 26:1 106:15 107:18 108:8 119:20 148:3,9,16,21 149:1,16,18 168:5 179:6 185:12,16,17 187:24 188:6 189:3,20 201:16,24 202:20 203:3 206:8 214:16 Decently 90:20 decide 49:11	86:2 238:9 308:21 decided 13:11 247:18 decision 10:2 declaration 185:14,20 186:22 189:4 declaratory 12:24 13:1,2 279:1 292:21 declare 151:5 187:11 deducted 212:17 deemed 9:2 defendant 12:18 Defendant/ cross-claimant 12:16 Defendants 1:16 defer 13:9,14 14:10 15:23 define 55:1	238:7 279:22 definitely 155:10 313:12 314:11 definition 32:23 227:13 definitions 311:12 degree 19:19 delay 170:23 deliver 33:14 48:1 172:14 216:15 243:19 246:14 286:11 delivered 17:20 33:19 47:19 179:10 216:17 229:6,9 demand 288:18 300:16 demanding 300:21 demands 18:8 dematerialization 46:7 169:20 219:13
dated 60:16 101:9 117:5 138:10 148:3 193:22 253:3 311:7,10 dates 122:7 213:23 218:8 270:1 283:23 304:4 dating 66:10 284:17 day 1:20 174:6 178:2 184:18 185:6 186:8 212:18 302:23 315:17 days 17:5 55:10	dealer 191:12 270:20 dealer's 270:19 dealing 13:4 29:7 50:6 53:9 75:21,24 274:16 dealings 97:10 98:13 deals 24:1 307:15 dealt 127:1 226:23 debating 122:9			

dematerialize 34:9 46:16 47:14 52:9,11, 18 53:2 133:21 139:21 143:9 146:19 147:3, 12 148:10 169:8 170:21 177:5 178:12 218:23 219:15 220:14,18 224:8 280:16	demonstrates 62:13 261:18 department 283:9 depending 35:21 45:6 87:1 depends 29:1 45:8 deposit 8:15,18 85:15 87:15,21 93:2,17 120:14 122:3 266:20 267:8 287:1 deposited 9:2 10:8 105:7,24 143:15 167:12 241:21 266:17 287:7 depositing 145:12 218:20 265:19 deposition 184:15 185:5 188:9,17 190:23 193:4,7, 10,12,14,21 195:21 198:5, 10 201:18 217:20,23 221:22 222:18 223:23 224:14 242:19 251:22	258:3 269:1 284:8 309:19 310:1,20 311:23 312:5 depositions 60:5 294:1 depository 145:15 168:18 Dept 1:11 describe 21:2 26:2 32:11 33:7 54:24 80:9 161:1 238:8 described 22:12 34:10 47:23 51:10 149:8 234:19 236:14 describing 83:22 310:17 description 3:9 89:6 designated 168:8 designation 33:13 desire 99:2 196:14	desiring 8:3 destroyed 46:24 detail 41:13 189:15 detailed 30:19 68:20 details 77:24 82:19 109:11 113:8 119:7 256:17 257:18 307:1 determine 17:3 181:22 determining 204:19,21 diagnoses 205:13 difference 139:6 different 20:22 32:17 45:6 50:4,5 93:4 104:4 114:23 146:21 158:14 243:13 247:15 251:13 297:24 310:17 313:14 314:5	differentiate 35:15 dig 252:14 digging 252:12 diligence 180:3 Dina 110:1 dire 3:5 184:4, 10,13 205:20 direct 3:4,5 18:21 35:3 39:2 83:21 164:19 165:17,21 194:3 208:1 215:9 222:3 253:9 254:17 267:21 270:6 294:20 directed 34:17 37:17 71:9 117:18 118:2 directing 271:15 direction 9:6 71:9 262:4,6,9, 14,17 268:8,10, 14 270:5 271:10 272:12 directly 36:9
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

40:11 42:20 44:18 46:5 57:17 71:2 78:5	187:19 230:14 281:24 290:21 291:22,24 292:5 316:13	disposal 49:23	114:24 117:2 137:22 141:23 145:23 146:6 151:1 152:2 155:1,12 156:15 157:18 159:3 167:5,11 178:19,22,24 179:7 181:5,18 182:16,18,24 183:3,11,21 184:7 187:15 195:9 203:14 204:4,21 205:3 206:22 207:5, 19 208:22 212:19,23 213:12 219:12 225:3,6,21,23 226:19 228:9 231:5 263:21 264:3,8 265:17 272:7,9 276:9 281:3 284:9 294:3,20 298:22 305:20, 21	26:3,5,16,18 30:5,13,15 31:17 66:5 133:12,14 134:18 136:11 140:15 156:7,8 162:9 170:17 183:24 184:3 188:8 204:10 205:2 206:15 221:18 247:8 252:17,18 255:18 257:12 258:12 259:14 272:24 283:14, 16 284:1 286:20 293:13, 17 294:11 295:11 297:19, 23,24
director 30:1,2 57:3 74:12 83:1,13 188:23	discussed 18:15 50:2 57:19 74:24 99:2 113:22 122:8 123:18 137:22 138:2 219:17 222:17 284:7 299:9 309:13	disposition 8:24 11:4		
directors 57:2,6		dispute 18:3 178:16 247:4		
directs 270:8,17		disputed 286:14,22		
disagreeing 62:15		disregard 114:1 198:16		
discharge 9:2,8, 10 11:1	discusses 231:2	distinction 86:22 197:4,6 200:9,14		
discharged 8:17	discussing 68:24 92:9 154:2,5	distinguish 279:12		dollar 123:12 244:6,7,9,11, 15,17
disclose 238:19,22,24	discussion 121:13 122:24 138:16 154:3,5 215:24 219:21, 23 283:12,13 290:15 302:13 313:8	DISTRICT 1:6,8		dollars 122:14 123:2 173:17 210:19,24 211:14 214:3 253:10 256:13
discovered 170:24 289:3		docs 132:7 133:7,10	documentation 43:16,21,24 44:3 45:19 51:18,20 52:9, 18 58:17 100:8, 10,12 101:3 129:16,17 132:14,15,17 133:20,22 256:12 295:7 306:13	done 25:4 44:4, 5 47:5 50:24 56:7 97:10 98:17 188:5 204:3,13 206:9 213:7 232:20, 24 233:3 255:22 256:8,9 288:20 315:9
discrepancies 182:7 204:14	discussions 121:8 122:19 123:7 262:12, 13 290:9,23,24 291:10	document 9:21 10:5 59:2,16, 19,21,22 60:1, 22,23 61:16 62:2 63:2,7,14 64:1 65:10,19 66:9,11,17,20 67:9 68:9,13, 15,21 70:17 73:9 78:17 100:6 106:7 113:14,15		
discrepancy 182:8 251:20		dismissal 11:5	documents 3:21 15:10,12	
discretion 204:19,20	dismissed 8:17			
discuss 122:5				

door 165:10 248:14	duly 18:18	207:19 240:8	168:12 170:20	13,14,16,17,19, 22 5:1,7,19,22 6:2,3,5,6,8 60:8,10 62:3,5 63:9,15,16,20, 22,24 64:14,15, 16,19,24 65:1, 2,10,11 66:8 67:19,20 68:2 69:23 71:16 72:13,16,20,21 73:2,4,5,6,10 74:7 77:23,24 98:6,21 106:12, 14,16,17 107:4, 5,12,14,18,23, 24 108:14,22 109:1,2,6,7,17 110:12,14,17 111:6,9,12 112:16,19,23 113:11 115:7 116:8,21 118:17 131:10, 11,12 132:3,11 133:3 134:5,19, 21 135:18 138:10 147:24 148:5 160:22 161:2,4,8 162:21,22 163:1 165:9 176:1,5,10 177:8 211:3 221:4 268:21 269:7 294:22 296:5,15,18,22, 24 298:5 301:13 302:12, 21,22
doubt 17:23 181:17 212:22 213:9	duplicate 156:19	easier 92:5 208:5 209:4 215:3 254:7 291:5	eight 251:4	
down 12:4,24 21:9 115:14 157:18 194:16 196:16,19 223:22 224:4 235:5 251:3 276:8,14 311:9	during 13:8 23:5 159:20 160:9,19 162:1 163:4 168:20 208:17 214:15 215:10 284:7	easiest 33:6 75:1 245:10	either 28:20 35:22 46:4,11 49:13,23 70:24 91:17 101:18 114:4 126:21 153:5,22 156:6 173:19 174:17, 23 175:17 210:8,9 220:17 233:11 240:10 243:5 254:4 265:19	
dozens 160:16	E	easily 34:3 255:3		
draft 68:16 69:2 135:3 141:22	e-mails 160:18	easy 51:7 264:21	elapsed 52:8	
drafted 69:2 226:9,11	each 37:20 162:21 203:20, 23 273:10 316:15,21	educational 19:14,15	electronic 33:24 34:8,13 46:5, 12,17,18 52:14 143:15,24 147:20 167:14 168:17 169:10, 14,16 170:1,8 237:9 238:3 245:24	
drafting 68:17 69:3	earlier 88:18 95:3 129:15 192:20 218:2 220:24 221:1 230:18 234:19 238:10 249:1 263:2 279:4 292:22 298:2 299:9,16 306:20 308:8 310:3 313:1	eerily 60:24		
draw 197:6		effect 52:10 108:4 114:21, 22 115:2 146:18,20		
drawing 235:5		effected 48:15	electronically 33:19 287:10	
drops 96:7,8		effective 140:17,22	Elias 5:15 127:24 128:1	
DTC 34:8 46:6 145:13,14,18	early 35:8 36:8 55:10 121:11 126:5 150:6,11 170:12 185:19	effectuate 145:24 146:15	ELLIOTT 1:8	
due 180:3		efficient 163:23	email 3:17,18 4:5,7,8,10,11,	emailed 68:21
dug 31:18	ease 96:18	efforts 148:9		

emailing 295:6	232:16 260:2 269:21	218:14 306:24 309:10,18	essence 12:23 17:11	200:21 201:19 205:2 217:20 219:17 232:13 235:20 236:13 245:7 269:24 284:9 299:22 313:9
emails 73:5 116:8 129:20 134:18 160:10 161:4 162:7,8 213:21 221:7 290:17,18 291:1,2,15	engage 23:15 54:15 119:21	entries 213:23	essentially 20:20 27:11 71:16 98:18 295:8	
emerge 76:11	engaged 56:2 62:9	entry 209:23 211:2 249:13 259:2 260:10	establish 62:1 63:10 85:4 112:8 113:15 117:14,20 162:10 184:10 203:17	event 148:21 266:22 269:10 284:20 298:4, 18 304:20 315:18
employee 188:18 268:23 269:2,5,8	enough 35:24 69:19 93:6,8,16 104:11 108:19 127:2 136:10 146:21 266:22	equates 253:10	established 22:3 31:7 64:24 113:12	events 60:17 205:13
employees 291:11	entail 131:3	equity 18:4,8 25:15,16,21,22 85:4,6,9 89:23 93:5,6,7,11,14, 15 100:3 101:7, 9 202:12 203:18 250:10	et al 7:9 165:6	eventually 9:17 10:24 20:4 124:6 169:12
enclosed 72:17	entered 18:9 61:1 205:23 245:11 293:10	equivalent 124:17 170:8	etcetera 25:6 118:24 150:18 157:24 177:23 202:10 259:22	every 25:3 28:2 45:6 181:20,21 191:3 196:16 204:14 283:10
end 9:23 10:5, 10 23:3,6,8 37:4 116:23 121:7 135:15 136:5,8 142:13 180:2 259:20, 24 270:12 273:6,10,18 274:8,19 308:21	enters 259:15	Ernesto 5:12,14 281:8,14	Europe 160:8	everybody 92:7, 8 117:11 165:15 204:5 227:7 270:11
endeavoring 17:17	entire 12:7 141:13 206:11	error 71:22 284:8,11,14,16	euros 209:15 210:15,18,22 211:13 212:4,9, 14 253:7	everybody's 203:18 270:11
ended 239:15 241:5 274:8	entirely 38:6	errors 181:23	even 56:7 64:15 69:12,24 93:7 96:7 97:23 107:9 119:10 120:19 142:13 174:13 175:22	everyone 95:4 211:10 248:12 265:12 316:22
ends 173:5	entitle 32:23 86:15,20	escrow 38:12, 13,15,16,17,18 51:1 233:17,20 236:20,23		everything
	entitled 112:20 214:2 236:13, 17 253:3	escrowed 38:22		
	entity 180:20,21	ESQ 2:4,5,10,15		

27:6,10 149:2 196:17 215:3 232:16 258:24 262:11 265:14 276:14 298:6 299:15,18 308:22,23	exactly 27:9 62:18 86:19 94:4 122:7 124:19 138:5,6 178:11 183:6, 13 193:6 203:13 204:23 238:8 257:2 296:21	exchange 94:15 160:10,18 294:22	4,5,7,8,10,11, 13,14,16,17,19, 20,22,23 5:1,2, 4,5,7,8,10,12, 14,15,17,19,20, 21,22,23 6:1,2, 3,5,6,8 14:22 15:6,8,14 58:23 60:13 64:15 70:3,6,8 71:10, 11,19,20 72:2, 11,14,18 73:14 74:1,5 75:4 78:16,18,21,24 80:22,23 81:19 82:9 88:13,20 89:1 91:8 92:10 99:23,24 100:3, 9,14,19,20 101:2 103:17 104:12,14 105:10,12 106:6,19 108:14,22 110:9 111:3,6, 19 112:2,3,5, 11,12 114:3 115:3 116:11 117:13 118:7, 14 122:18,21 129:3 131:6,9, 19,21 132:2 133:1 134:3,14 135:10,12 136:14,24 137:19 138:3,8, 9,24 139:1 140:5,7,11,16 142:16,17,18 144:5,12,19,21, 22 145:23 146:6,15 147:23 150:21	151:20 154:21, 23 155:4,13 156:9,11 158:17,20 160:21,22 161:12 162:9 163:6,22,24 166:20 175:21 176:22 177:18, 20 178:18,19 181:5 182:12 183:1 199:11, 13 203:12,13 207:6 208:4,8, 13 212:19 214:6 217:15, 16,17 218:1 221:15,22 222:12,20,22 223:2,6,11,18 224:15,19 225:1,3,19 226:7,16 227:11 230:18, 19 231:5 232:1, 20 235:3,4 240:13 247:12, 13,15 248:23 249:9 261:15, 19,21 271:16 276:16,21 277:18 281:2, 11,12,13 282:8, 10,11 283:16, 24 284:3 285:12 288:7 289:8,19,20,21 293:2 294:16 298:8 300:9 301:11 302:20, 24 303:11,15, 21 304:9,16,21 305:3 309:24
everywhere 121:19 160:3	examination 3:4,5 18:21 164:19 165:18, 21 184:13 208:1 215:9 294:20	exchanged 77:24 291:18		
evidence 17:12, 16 18:6 61:11 64:16 67:20 69:22 78:17 112:5 113:12 117:15 133:2 134:4,15 138:9 142:19 144:20, 21 150:22 154:22 156:10 158:18 161:14, 15,18 177:19 220:10 249:8 261:23 262:1 266:2 267:11, 15,17 288:8	examined 18:19	excluding 18:14		
evidenced 66:20	example 24:11 33:12 36:22 37:13 40:6 86:9 94:9 95:3 110:2,22 111:15 170:20 173:8 197:3 208:20 232:11 244:4,5 246:7 273:3	exclusion 316:11,13,19, 23	excuse 79:11, 18 108:13 116:7 144:6 158:20 168:5 293:2	
evidencing 261:12	examples 120:4,6 167:22	execute 32:16 43:21 126:15 127:6 249:23 298:4	executed 69:4 154:14 156:3, 18 157:8 216:2 224:7 225:4 228:1,5,10 302:15,16 304:9,17,19 305:1,6 306:17 308:23	
evidentiary 11:20 115:17	except 91:9 144:22	executing 66:16		
exact 128:23 129:6 138:7 196:20 311:12	exception 183:2,12,19 204:22,24 205:7	exhibit 3:9,11, 12,13,15,17,18, 20,22,23 4:1,3,		

310:20,21,24 311:17 312:1, 14	143:10 146:11 166:4 245:3,4, 10 266:4 280:11 312:11 313:18 315:15	facilitate 51:15	202:2	fee 209:19 211:6,24 212:5, 10,17 256:2,11, 13 266:13 267:1
exhibits 3:7 14:13,17 15:5, 9,11 58:22 114:7 135:12 163:18 207:22	explained 57:13 62:23 313:22	facility 26:6 29:18 257:10, 11	familiarity 62:24	feel 16:10,14 21:8,12 81:6 234:10
exist 183:23	explaining 87:9	fact 8:13 16:12 61:6 64:10 68:3 101:9 106:4 108:6 154:1 162:12 175:9 201:18 213:2	far 16:21 62:2 85:2 86:19 123:20 168:6 239:12 249:20 258:22 261:5, 16 274:6 276:23,24 282:6 289:1	fees 24:9 256:17
existed 25:8 250:3 259:13	explanation 68:18,20 132:5 154:13 168:9 170:23 197:7 206:7	failed 286:10	fashion 13:10	fellow 127:19
existence 61:6	expose 48:18	fair 13:4 108:19 146:21 252:16 305:8	faster 59:7 98:24	few 57:16 98:16 132:7 149:17 171:6 223:18 234:9 259:4 279:15 313:20
existing 124:13 179:13 251:24	exposure 50:12, 13 174:13 307:11,13,17	fairly 16:20 92:19 139:12 150:8	fastest 75:1	fighting 236:9
exists 146:6 251:20 263:22 276:16 307:15	extra 163:12	faith 13:4	fault 165:8	figure 138:7 142:14
exited 12:3	extremely 10:16	fall 160:4	favor 18:9	figured 90:23
exodus 248:14	eye 269:23	falls 183:1 204:21 238:9	favorite 247:21	figures 137:22 138:2,4
experience 84:10	eyesight 83:9	false 17:23	February 26:1 125:6 179:6 206:7 208:23 211:19 214:15 249:14 250:14 251:9,24	file 9:17 11:1 12:8,11 30:19 100:11 167:6,8 181:12 192:10 203:14 204:9 206:16 218:17, 21,22 227:3
expires 140:3 169:22	F	familiar 12:20 16:19 30:5,13, 16,22 31:4,13 32:8 45:13 65:1,7,24 66:3 125:19 136:10	Federal 269:20 270:12,20,21, 23 271:3,4,5,9 273:17,18,23, 24 277:2 278:7	
explain 38:20 63:6 86:21 107:1 125:12	face 104:21 107:3 290:24			
	facie 205:6			

253:23	13	206:22 207:3	175:4 177:17 182:2	fixed 174:23 191:17
file-stamped 12:15 186:8	finalized 125:11	fine 10:19 15:1 104:3 191:15 228:16	firms 87:4	flies 316:8
filed 9:9,14,15 13:16,18,20 17:18 63:12 150:20 187:20 292:21 293:5 294:3	finally 128:19 141:16 269:21	finish 136:11 196:21 199:22 238:2 248:11 277:10	first 13:20 14:10 15:20 18:12,18 22:14 43:6 53:18 54:2,18 57:10 59:13 70:17 80:21 81:19 82:19 86:21 89:6 100:6 109:5 112:19 115:19 116:16,18 123:16 124:23 127:24 129:12, 13 130:21 136:21 141:7, 21 150:5,10 156:18 163:20 175:23 182:14 219:14 220:12 235:17 242:18 249:13 253:2 268:9 280:1 282:13 285:4 290:22	flipping 80:21 114:2 163:22 167:20
files 26:7,8,10 27:7 30:16 31:8,11,12,15 100:7 179:9 183:14 191:3 206:17 252:9 255:9,11,21	financial 20:8 32:13 76:7,9 84:10 238:23	finished 196:16 197:1 227:4 309:2,3	floating 121:19	floor 2:11
filings 27:12	financials 26:24 27:1	fire 95:13	flow 6:8 215:13	fluctuates 94:3 95:7
fill 143:13 144:4 145:3	find 16:11 23:23,24 41:22 59:7 62:11 63:24 69:17 100:7 123:14 124:6 128:22 131:4 137:21 138:17 157:11 177:1 182:6 189:8,10 201:2, 4 246:22 252:13,14 254:1,4,9,10, 13,14 255:3,6 257:9 261:1,5, 6,9 272:11	firm 3:12 24:10 28:22 29:23 48:3,22 49:1 51:14 52:12 53:8 84:24 85:13,14 88:22 93:12,21 94:16, 17 109:7,8 118:19,20 127:9,20 139:23 142:14 143:15 146:11 150:17 173:2 175:3,18 177:11 179:8,9, 10,11 190:7,13 191:2,8 192:2 245:23 281:6 283:14 301:19 307:19	fluctuation 95:10	focus 21:21 109:4 116:9 118:17 175:24 178:23 208:4, 12 240:12 278:7
filled 88:21 142:21 143:6 144:6,23 145:1, 2,6 272:24	finder 108:6	firm's 26:24 42:21 173:21	five 55:23 165:7,12 176:3, 4 233:14 251:4 294:17,18	focused 107:9 257:14 277:16
filling 167:4	finding 54:22 68:24 126:6 154:6		five-day 8:1	focusing 262:3 291:17
final 114:4 205:9 274:8 314:2	finds 50:22 61:16,20		fix 121:21 174:22	folder 62:6 63:15,16 181:12
finalize 69:5 109:18 125:9,				

follow 258:14 266:3 288:10	116:8 306:9	founded 187:24	front 58:24 231:6 237:6,7 246:8	76:22 84:17 86:11 87:19 110:18,22 111:13,16 113:9 119:2,4,9 120:8,10,12 121:12,13,15 208:15 233:17 260:17
follow-up 230:5 247:18,20 300:15	former 293:11	four 36:18 242:14 251:4	fulfill 172:23	further 12:12 63:6 78:3 119:13 120:4 157:18 213:6 214:21
followed 178:11	forms 88:21 98:20 134:24 140:8	frame 74:21 99:13 125:1 162:1 176:15 256:19	fulfilled 237:4	future 226:21 230:23
following 8:15 13:15 14:17 85:23 109:7 117:13	forward 13:10, 14 16:7 30:17 39:8 68:9 92:4 259:1	Frank 2:10 39:14 40:9,12 41:10	full 35:13 86:6 127:22 196:24 266:9	
follows 18:19 151:5,10 263:3	forwarded 68:10 69:13 81:2 118:6 148:7	Frank's 39:23 40:4	fully 9:12,14 302:14,15 304:9,17 305:1, 6	
foregoing 187:12	found 60:6,8 66:17 69:7 70:8 124:8 130:1 150:2 184:8 204:15 206:15 253:18,20 255:9,12 267:17 268:19 291:17	frankly 178:21	fun 316:8	G
forever 10:7		free 16:10 71:6 81:6 85:2	function 52:12	Gates 301:23
forget 99:17 137:3		freelance 20:19	functioned 257:2	gave 94:9 95:3 173:9 203:19 222:10 228:15 257:6 258:7,10 260:22 311:14
forgot 12:8 52:6	foundation 61:22 62:1,17, 20 63:3,10 64:10,22 65:9 68:1 69:19 101:20 106:21 107:2 113:12, 15 125:16,22 126:1,2 128:10, 12 182:14 206:19	frequent 120:6	fund 84:19 259:18	gears 53:18 96:13
form 3:11,20 46:6,13,17,19 52:14 68:22 78:22 81:22 129:20 135:6 139:12 143:15, 24 147:20 163:3 168:17 202:16 205:12 237:9 260:16		frequently 108:2 122:8 160:7	funded 84:18 88:2	general 21:18 31:15 96:1 218:17 219:13 276:12 287:2
formed 22:18		fresh 258:9	funding 84:15	generally 30:18
		friend 53:22 54:8 57:10	funds 38:12,13 39:2,22 51:1 56:15,19 57:8, 12,14 70:22,24 71:2,8 75:9	
		friends 25:18 77:11,17 96:23		

32:11 46:18 53:23 54:21 56:12 76:13 81:5 83:16,20 161:1 196:11	69:16 87:4 93:21 173:6 177:11 184:9 205:9 232:11 244:4 246:6 248:12 257:11 268:8,9,14 274:21 292:4	93:14 95:13 128:2 130:9 145:13 166:13, 16 174:11,12 183:10 218:22 230:14 232:14 244:5 260:1 263:5 269:15 270:24 271:2	Grant 206:10 granted 9:19 great 257:2 258:1 Greece 159:19 Greek 90:19 91:5 132:10 151:22 310:16 Greenwich 117:7 ground 203:10 grounds 106:21 182:20 group 22:15 35:4 298:15 guess 10:24 20:4 28:6 33:6 47:4,7 53:10 61:8,21 80:6 100:16 112:8 152:12 162:13 169:18 235:9 257:14 261:21 265:13 269:11 275:6 280:11 297:21 298:3 299:14 guys 248:18	292:5 <hr/> H <hr/> habit 61:10 half 16:22 97:22 122:13 123:1 125:3 196:5 220:19 229:4 232:22 234:23 235:13 286:17 halfway 157:18 hand 9:4 200:18 handed 58:21 handle 9:3 handling 166:6 handwritten 151:10 happen 34:5 38:15 50:17 55:11 88:7 95:12 143:23 236:19 240:5 306:9 happened 22:12 48:12 81:12 95:19 117:9 129:22 145:5
generate 24:23 249:6 generated 24:15 32:6 68:15 205:2 206:14 249:9, 19 260:15 264:17 generates 24:10 generating 32:2,4 gentleman 57:4 301:14 gentlemen 277:9 getting 24:8 98:17 108:17 123:24 171:4 241:5 258:19 307:11 give 10:16 11:10 14:11 22:11 24:11 33:12 36:14 39:7,14 43:24 49:23 68:18	given 10:11 11:18 95:8,22 190:12 204:18 233:20 238:14 gives 43:20 244:6 265:8 271:10 giving 174:18 239:10 244:21 245:16 261:23 315:22 glanced 107:4 glasses 59:4 208:6 GM 43:1 Gmail 131:13 goal 138:6 goes 34:12,14 42:18 44:8,11, 18 47:3 54:5 85:3 88:4,5	gone 12:7,19 48:14 91:8 178:20 219:12 233:14,20 236:7,12 240:23 265:14 good 7:16,17, 20,23,24 8:9 11:9,24 13:4 14:6 18:23,24 76:10,19 91:22 94:7 104:11 161:16 163:10 247:16 258:24 Gotcha 83:7 gotten 236:16 governed 141:17 governing 202:22,24 203:5 grammar 297:20		

171:22 188:6 215:13 216:7 218:11 220:24 221:16 224:12, 24 226:24 257:22 293:15, 18 309:1 311:17	head 270:4 heading 85:21 141:13 hear 8:12 16:15 17:5,7 187:8 heard 34:9 62:2 hearsay 64:19 101:19 102:2,3, 13,14 106:21, 22 107:2,3,10 108:1,3,5,14 113:13 114:21 115:8 116:1 117:16 161:13, 20 162:3,10,14 180:11,17,22 182:20 183:16 206:20 heart 113:8 119:1,14 211:17 hedge 308:17, 19 hedges 315:15 held 17:14 41:5 44:13 51:11 87:6 help 21:20 22:2 23:24 50:15	51:15 53:8 56:19 57:12,14 86:1 121:16 helped 17:13 57:16 58:10 helpful 16:12 helping 20:11 55:18 helps 84:1,3 132:16 307:16 here 7:10,12,14, 19 8:10,14 9:4 14:1 60:18 65:16 76:4 110:1 116:9,24 118:4 120:3 124:4 132:18 134:23 136:20 141:9 143:17 154:13 162:7 164:5,10 165:12,15 186:6,14 230:9 233:9 242:13, 14 246:7,8 247:5 248:18 249:12,13 253:20 255:5 260:2 267:6 268:18 271:24 276:2 277:21, 23 278:13 288:24 295:14 304:4 310:8,12 312:12 316:16	here's 203:23 hey 256:13 289:22 290:9 high 19:15 hijack 237:13 himself 68:11 118:6 hire 23:20 historic 31:17 historical 26:24 258:12 261:7 history 19:22 192:6 254:10 255:3 257:4 260:20 hold 8:23 9:1,5 10:7 33:4,6,8 40:21 48:12 52:3 71:18 107:21 145:7 149:21,22,24 150:3,11,13,15 170:13,22 171:1,5 172:20 227:19 228:12 243:23 267:21 277:8 290:19 holder 86:16	87:12,17 89:7 holding 33:9 41:3 42:14 46:19 48:3,7 80:13 130:6 244:15 246:10 holdings 20:24 23:5,10 28:7,17 29:24 30:2,3 185:2 188:5 260:24 holds 40:14 HOLLAND 2:9 honest 221:10 Hong 159:18 160:8 Honor 7:8,12, 17,20 8:13,20 9:3 10:18,22 11:23 13:22 15:18 16:3,6,17 18:10,14 30:7, 24 58:9 60:14, 23 61:9,20 62:12 64:9,13 65:15 67:15,18 70:5 71:23 72:3 73:15 74:4 78:12 83:9 88:16 91:9,22 92:12 94:7 96:11 100:16
----------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

101:15,22 104:3 106:20 107:7,11 108:11,19 112:4 113:10 115:9,11 116:2 117:22 118:8, 11,13 125:15 128:9 131:19 135:22 152:15, 20 161:13,21 165:19 182:14, 22 183:17,20 184:9 185:24 186:9,18 193:13,23 195:18 197:10 198:15 203:9 204:12 205:7, 10 207:8,11,16, 24 210:9 214:24 221:11 227:17 228:16 247:17,24 248:16,21 282:7 292:17 297:14 316:7	14:12 Howard 3:19 however 8:17 9:3 51:4 107:24 HSBC 37:11,12 40:8 huge 272:9 Huh-uh 257:21 hundred 35:10 160:16,20 239:2,4,6 244:6,7,9,10, 11,15,16 hundreds 162:6 183:24 hypothetically 65:12	305:18 identical 207:12 261:21 identification 15:5 26:8,11 identified 15:11, 12 64:18 71:19 72:1 152:9 162:20 163:1,4 225:19 identifies 64:23 80:16,18 identify 3:20 103:12 183:22 255:17 275:7 identifying 240:3 identity 81:21 255:14	44:21 130:11 236:14 288:18 implementing 202:21 203:4 implied 13:3 important 94:6 239:8 impossible 284:5,12 inaccurately 311:7,10 inadmissible 206:20 inappropriate 115:17 316:16 include 141:12 included 162:8 298:22 including 15:6,8 291:12 income 24:23 incomplete 19:16 inconsistent	186:2,5 206:19 207:13 incorporated 23:5 67:3 69:8 incorrect 219:10 313:17 incorrectly 293:7 increased 172:4 increases 173:4 incredibly 196:18 indemnifying 156:13 indemnity 3:23 156:12,17 157:5,9,12,14 158:7 164:2 INDEX 3:1 indicate 11:21 117:17 132:18 174:21 213:13 287:15 indicated 8:18 41:17 43:13 54:7 72:16
Honor's 11:6				
HONORABLE 1:8	I	III 2:15 5:14		
HOOGS 1:24	IBM 43:1	ill 99:12		
hospital 119:1,2	Iceland 160:4,5, 7	imagine 47:3		
hourly 94:23	idea 46:22 65:11 162:23 184:8 298:17	imbalance 243:5,22,24		
housekeeping		immediately		

104:6 106:8 124:9,10 182:22 183:9 203:3 208:9 209:13 212:19 214:15 229:9 302:14 314:14	information 28:8,11,19,23 29:4 73:24 75:3 76:1 82:2,4,6, 18 84:9 86:3 89:1,4 90:5 100:23 101:13 102:24 104:7 112:21 117:17 118:4 153:17 164:8 176:19 178:4 204:4,11 205:14 207:4 239:6 254:10, 13 258:4,5 259:15 265:7 291:17 292:16 305:17	314:21	intents 16:20	233:12 234:18 236:18 237:1 243:5 263:4,9 285:16,18,21, 22,24 286:3 309:20 310:4, 12 311:2 312:1, 7,8,9,10 313:6, 10,11,12 314:8, 11,13
indicates 59:16 82:9 83:12 293:21 297:8 298:10	informed 150:19	instantaneously 240:23	interacting 316:15	internal 79:10 164:9 182:19 184:6 201:11 290:9 291:2,10 308:9 315:23
indicating 81:20 82:24 172:1	informing 177:22	instead 223:17	interaction 316:21	internally 118:2 291:18
indication 83:16 117:9	initial 55:24 236:1 277:4,6	institution 32:13 238:23	Interactive 36:17,22	internet 63:17
indicia 204:17 206:12 207:4	initially 60:6	institutional 34:23,24	intercustodial 272:10	interplead 8:4
individual 1:14 35:3 81:21 82:10	initiated 8:2 57:7 211:21	instruct 39:18 40:16 41:9 177:4,5	interest 20:10 172:4	interpleader 8:2 13:5 17:2 18:5
individually 97:11 271:7	inquiry 213:8	instructed 11:19 111:14 157:21 177:23	interested 55:13 131:4	interpreted 296:12
individuals 62:13 73:21	instance 48:10 130:4 161:22	instruction 40:1 87:23 118:16 177:12	interesting 13:7	interrupt 22:9
indulgences 198:12 215:1 223:14 224:17	instantaneous	instructions 39:12 119:12	interests 8:5 12:5	into 17:14 20:4, 10 34:8,13 38:12 41:13 50:21 51:1 53:15 54:19 57:17 61:1 64:16 68:3
industry 19:24		instructs 269:14	interfaces 232:9 239:13 279:19	
infers 287:2		intended 91:6	interfacing 232:15	
		intending 112:6	intermediaries 273:11 279:17 312:19	
		intends 83:17	intermediary 142:13 232:7,8	

71:4,6 78:17 88:4,5,11 92:16 93:10 112:5 113:12 120:11 134:4,15 138:9 142:18 144:20, 21 147:20 150:22 154:22 156:10 158:18 161:7 167:6 168:8,17 169:14 170:1,7 172:22 173:17, 24 174:1 177:19 181:14 190:14 192:5 208:16 210:19 236:20 237:20 238:16 245:11 258:11,20 259:15 266:16 278:9 288:8 289:24 293:10 316:6	introducer's 22:1 introducers 24:13 25:7 introducing 22:22 55:11,13 77:10 202:11 introduction 77:24 78:2 202:9 inventory 245:21,24 246:1 investing 55:14 71:1 investments 134:10 investors 54:22 55:11,12,13 71:3 132:13,21, 22 134:10,13 167:2 215:18 invoked 316:12 involve 43:13 51:16,17 163:24 287:14 involved 21:3 22:10,13,14	37:15 38:1,5,10 39:6 41:18 51:18 53:23 55:1,14,16 68:16 76:16 81:13 97:24 101:17 103:20 104:1 116:22 125:22 148:13 182:17,18 184:2 201:11, 14 202:7,15,20 203:2,4 206:1 213:2,3 249:18, 20 283:12,13 300:1 302:2 308:10 313:5 314:6,7 involvement 97:14 126:4 184:6 189:2 202:11 involves 273:13 297:1 involving 44:8 52:7 199:5 iphones 95:12 irrelevant 169:9 issuances 166:7 issue 8:14 9:8, 11,13 10:15	12:9 46:11 60:17 61:7 70:13 156:12 163:1 217:9,12 220:20 222:7 223:7 226:4,9 228:5 236:6 243:22 244:14 246:2 279:13 280:17 288:17 292:18 294:4 300:17 302:11 307:21 311:1 issued 45:12 70:15 156:21 issuer 46:3 295:8 304:3 issues 8:11 106:2 107:2 292:14 309:3 issuing 166:15, 16 item 61:7 209:24 210:14 211:12 items 296:15 298:11 iterations 232:5 234:4	J January 1:21 7:2 8:16 12:15 125:6 149:16, 18 156:16,17 157:1,4 165:2 211:19 Jeremy 2:10 16:23 287:9 jet 293:23,24 297:15 job 1:23 19:5,6, 7 21:11 jobs 19:23,24 20:3 JP 239:3 judge 1:8 21:6 114:1 293:8 judge's 237:22 judgment 18:9 185:15 186:11, 24 judicial 1:6 16:10 165:9 July 138:10 141:24 144:9,
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

10,13 147:11 212:2 215:24 217:14 218:3 219:9,18,22 220:23 221:19 230:19,21,22 231:1,10,13,17, 21,22 232:5 233:4,5 240:4, 10 282:16,23 283:22 284:4,6, 9,10,13,15 285:3,5,12,13 289:10 290:11 293:1,9,22 294:4,8,9 301:8 302:16 303:10, 14,16,17 306:5, 7,8,9 311:11,18 312:14 jump 81:5 196:15 236:3 jumping 274:22 June 132:6 139:7 141:22 219:18,22,24 jurisdiction 35:22 jury 113:20 234:10 justice 11:14	K K&I 301:23 k-i-n-e-z-i 310:15 keep 33:17 56:6 138:24 190:7, 10 191:3 192:9, 10,17 199:20 200:19 201:19 240:9 249:5 256:8 257:4,8 307:19 keeps 43:11 47:5 192:2,8 249:1 301:9 kept 30:6,13,16 189:13 190:7 201:21 205:21 206:17,18 256:24 key 21:21 133:24 kick 236:20 Kietzke 2:11 kind 12:9 45:18 90:22 92:20 98:17 102:9 105:2 113:24	165:24 172:7 234:8 235:9 237:10 257:1 kinds 65:8 167:15 kinezi 132:7,9, 10 310:15,16 knew 21:17,18 25:17 111:22 138:5 257:24 258:22 knowledge 70:11 97:4 139:14 185:5 205:15,21 206:1 236:4 307:5 known 86:1 96:23 97:1 231:7 knows 80:1 88:23 96:5 164:6 183:5,14 204:5 265:12 273:9 Kong 159:18 160:8 KYC 26:7,9 27:7 145:20 202:10	L L-I-V-A-D-A-S 19:4 laboratory 76:16 lacks 206:12 LAD-DE-VOS 163:11 Laforge 2:10 7:18 39:15 41:10 291:23, 24 Laforge's 40:9, 12 lag 293:23 lagged 293:24 297:15 laid 61:24 69:19 125:21 128:9, 12 182:15 206:19 Lalach 57:3,5 Lambros 3:22 4:5 14:8 96:14, 17,19,20,21,22, 23 97:1,2,4,7,	11,14,18 98:2, 4,5,13,16,18 99:5,10,21 101:12,24 102:9,19 103:18 106:12 107:4,18 110:6, 12 111:1,6,15 112:19 117:18 119:1,18,22 120:4,7 131:10 132:3,15,16 133:3 134:24 135:20 136:3, 15 137:1,15,20 138:11 140:7 141:22 150:4,5, 7,8 153:5,6,22 154:5 159:22 160:3,7,17 167:23,24 168:9 171:2,4,5 211:3 216:1 219:19,20 221:4 268:12 277:3,13 Lambros's 100:23 134:5 Lane 2:11 language 116:5, 9 135:14 136:11 140:16 141:1,13 large 26:6 27:10,11 250:3, 6,9 251:23 253:24 255:18
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

272:5	283:14 300:10 301:19	97:21 119:20 140:2 148:22 149:1 159:14, 15 160:1 168:21,22 275:3 278:12	19,23 128:2	298:13,14,16
last 19:3 47:20 60:5 65:8 78:23 79:15 82:19 91:9 116:15 117:6 129:10 141:3 187:3,23 198:14 204:9 212:13 288:16 297:4 298:3	laws 265:4	leave 142:14 248:14 265:11	Leo's 127:22	letters 26:16 301:7
late 20:9 22:14 121:11 123:9 132:19 150:6, 11 160:7 165:8 170:12 211:16 288:23 307:11	lawsuit 58:7 217:9,12 239:9 306:21 310:5	ledger 240:7 272:5,19	less 61:7 213:14,16 236:10 266:9	letting 243:7
later 22:19 56:14 61:1 62:11 96:7 150:17 167:12, 15 170:22 174:12,18 215:17 216:2 219:3 233:14 243:17 245:19 253:20 269:4 284:7 288:10 306:9 308:15, 16	lawyer 247:21 284:14 289:1	left 59:4 153:1 166:1 184:1 212:19 250:15	let 54:1 102:17 116:12 144:8 146:21 152:6 163:21 186:6 196:21 197:8 199:22 208:20 225:13 247:20 248:3 252:21 277:9 280:2 290:16 291:5 292:6 293:8,19 305:20	level 38:5 47:11 83:23 85:3,4 271:6,20 273:13 274:16 275:8,14 277:4, 19,21,24 278:3, 7
lay 62:17,20 63:3 64:10,21 65:9 101:19 126:1,2	lawyer's 151:24 155:23	left-hand 89:17 104:23 194:17	letter 3:12 5:12, 14,15,17,20,21, 23 6:1 90:11 176:24 177:3,4, 21 178:9 281:21,24 282:1,5,13 283:1,3,5,12, 15,19 284:20 285:15,19,20, 23 286:13 288:11 289:9, 15,19,20 290:8 291:11,12 299:2,16 300:2, 10,12,15,24 301:6,10	levels 34:23
laundry 22:19 56:14 61:1 62:11 96:7 150:17 167:12, 15 170:22 174:12,18 215:17 216:2 219:3 233:14 243:17 245:19 253:20 269:4 284:7 288:10 306:9 308:15, 16	lawyers 59:2,11 247:20	legal 238:7 283:8 311:12	liabilities 172:10,12 307:14	Lewis 6:2 301:15,18
laundering 145:9 146:7 167:7,10,19	lays 67:24	legalities 280:10	liability 49:2,3 172:14 174:22 238:11 286:9, 12 307:13	license 35:22
law 3:12 141:17 187:11 206:13 281:5,9,16	leading 77:4 153:8,21 283:12	legally 146:19	licensed 32:14	licenses 33:8
	learn 149:12,20 150:10,14 153:22 156:6	legend 45:11,13 104:23 177:2	letterhead	lies 280:17
	learned 149:21 150:15 170:13	lend 86:7 87:4 94:15		Life 3:9 17:4
	least 16:21 93:1	lending 94:18		
		Leo 127:17,18,		

83:1 210:3 282:17 302:7	306:12	277:17	92:8 94:2 114:9 116:5,6,13,17 117:17 118:16 135:20 161:24 163:3,9,10,17 164:13 165:18, 24 183:2,20 184:5,15 186:22,23 191:23 193:21 194:3 196:9 198:22 199:24 200:9 203:11 204:12,16 205:3,18 215:8 221:21 228:18 237:16 248:23 291:22 292:2, 20	lodge 218:14,16
lifted 45:22 46:1	liked 262:13	Listen 200:5		log 192:5
light 14:9 118:16	likely 61:7	listener 108:5 114:22 115:3		logo 91:2
like 9:21 14:13 16:14,18 17:7 26:11,13 41:13 43:1 50:24 79:12 80:12 89:13 90:3 92:21 95:12 98:18,22 103:9 114:3 116:9 134:7 136:13 144:22 145:20, 22 155:3,23 165:24 167:21 169:12 172:18 173:12,18,20 182:9 185:24 189:10 196:21 203:20 206:9 208:12 209:18 210:6 211:22 218:19 221:10 232:1 234:10 246:6,7 250:23 251:15 253:12 259:24 260:18, 19 274:8 281:20 283:18 284:18 287:9, 11 290:3 296:10 297:7 298:18 302:12, 20 303:2 304:2, 4,13 305:4	limine 113:23 187:1	lists 251:9		long 20:17 44:13 45:5 55:7 66:10 77:11 93:14,16 97:1 117:23 174:6 246:1 296:20 315:17
	limitation 117:13	literally 247:19		long-term 84:2
	limited 163:5	litigants 13:18		longer 56:1 243:12 270:2 311:5,8,21 313:19,22
	line 65:20 132:5 157:17 162:21 194:4,17 197:5 198:11 209:24 210:14 211:12, 23 222:4,18 223:24 227:22 230:6 261:1 310:2,23 314:1, 19	litigation 242:15		looked 91:3 138:11 163:17 165:11 219:8 222:12 252:24 254:6 263:24 269:7 299:16
	lines 225:15,17	littered 113:14		
	liquidated 85:10,12	little 13:23 41:13 53:18 60:20 76:15 83:8 92:5,6 96:13 115:21 150:9 155:6 157:17 171:6 236:4 257:24 296:2 306:20	Livadas's 193:14	
	liquidity 94:15	Livadas 3:3,17 4:6,7,9,10,12, 13,15,16,17,19, 22 5:1,7,19 6:6, 8 14:1,2,7 15:20 18:13,17 19:3,5 58:21 61:3 62:3,8 63:6 65:4,6,7 68:4 78:21 88:20 90:15	living 54:13	
	list 43:3,7 88:18		loan 85:24 86:2, 3,7 92:20	
	listed 44:10 67:3 232:7 249:12 264:13		local 242:20	
			locate 106:16 131:11,13 252:17	looking 7:21 16:22 21:7,14 88:17 96:2 99:16 100:7 115:20 134:7 167:11 186:17, 22 194:18 215:3 221:22 223:18 249:13 299:18
			located 54:10 60:1 63:7,8,9 64:14 73:4 125:2 126:11 205:4	

looks 25:5 79:12 89:13 90:3 91:4 136:13 155:6, 23 209:4,18 210:6 250:23 251:15 253:12 281:20 296:10 298:18 302:12 303:2 304:2,4, 13 305:4 306:12 lost 4:1 17:21 150:20 151:1, 11 153:23 154:10 156:14, 21,22 157:2 159:6 164:2 170:16 216:21 270:22 lot 17:5 31:11 76:8,10,11 98:1 162:9 175:23 209:4 221:10 252:13 284:18 315:13 lots 74:15 lower 33:7 59:13 71:12 89:16 100:1 106:8 155:21 luck 11:24 lunch 164:11 166:1	<hr/> M <hr/> made 10:9 41:20 61:16 77:14,23 111:1 118:5 126:14 148:9 157:5 200:9,14 205:13 208:15 226:17 234:16 244:19 245:15 246:16 267:9, 12 272:12,20 274:13 277:16 284:16,18 315:17,21 Magic 264:24 main 139:17 167:14 182:1 maintain 203:9 207:14 maintained 63:15,16 181:5 183:5 maintaining 32:2 make 10:10,12 13:9 16:10,13, 15,18 29:14 39:15 51:12 61:19 71:24 102:1,6 126:12	127:15 128:7 152:13 168:17 169:4 173:18 182:1 191:10, 23 196:23,24 197:4 204:4 215:8,22 240:3 244:24 246:3 252:21 261:24 267:12 270:4 275:13 277:13 279:21 308:15, 20 315:10 316:12,14 makes 21:15 39:24 51:6,7 92:6 207:1 245:7 275:17, 18 making 11:14 21:12 78:2 102:9 115:16 168:10 202:9 280:8,18 300:16 manage 84:4,5 93:13 309:14 management 1:13 2:8 3:2 5:10,12,16 7:9 9:16 10:21,23 13:2 16:2,24 17:15 18:7 19:10 20:24 21:4,16 22:11, 21,22 23:6,9, 13,16 24:18,21	25:20 44:10,12, 14 79:10,11,18 84:3 184:20 217:4,7,8 231:19 237:23 238:6,11 246:20 248:9 278:16 279:9 281:20,23,24 282:4,15 285:17,18,21 289:13 294:7 296:8 306:23 312:19 313:3 315:9,21 manager 84:3 managing 166:6 manner 145:4 manuals 26:23 many 29:2 34:20 35:8 51:4 91:20 96:23 98:12 104:18 110:6 120:7 122:6,15 124:21 159:9, 10,18,19,24 160:1,15,16,18 232:8 March 125:6 152:3,4,12,14, 20,22 153:4,8, 21 154:1,3,4 155:2 209:10,	16,18 211:19 253:3,17 256:1 margin 85:22,24 86:1,2,3,7,9,22, 23 87:4,5,7 92:21 93:19,23 94:24 marginable 87:2,3 94:13,14 mark 186:4 marked 116:16 186:1 Marker 264:24 market 37:16 42:18 45:14 46:13 53:23 54:21,24 76:10 85:3 130:17 167:17 169:12 170:3,9 172:22 173:2,3,6,10,24 174:1,3,4,7 175:9 245:7 247:2 260:1 marketplace 76:19 245:8,22 markets 37:19 130:19 marks 81:20
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

82:23	211:2,19,20,23 219:3 241:4 292:11,15 293:5 308:12 313:8,9 316:3	258:24 297:11, 17,20	53:19,23 54:7, 14,16,17 55:7 61:11 96:22 97:2	166:23 210:2 214:17 242:24 289:11 309:16
mass 248:14		meant 107:7 311:10 312:9	Miami 159:18	mind 92:6 117:24 188:2 232:3
match 173:22 245:22	maybe 16:22 56:10 94:1 115:20 160:6 169:3 247:15	media-type 20:8	microsecond 44:15	mindful 316:22
matches 283:23,24		meet 14:2 82:4	mid 288:23	Mine 71:20
matching 173:22	mean 11:20 23:22 28:16 29:13 33:3 43:19 56:9 61:4 68:8 83:20 84:19 85:8 90:18,21 97:20 107:19,24 117:8 119:5 127:8 134:8 135:16 136:6 143:10 145:8 162:20 171:9 198:4 225:2 227:8 233:10 237:12 256:6, 11 296:12 305:5 313:17	meeting 53:21 55:12	mid-july 139:8	minimum 45:16
matter 8:17 9:18 12:10,21 14:12 58:7 67:24 68:3 107:13 108:4 123:19 150:18 152:15 161:23 162:5,19,20,21, 24 288:22,24 301:19 316:6		meets 205:6	midday 164:21	mining 55:17 56:8
matters 16:1,4 58:11 235:19		memorandum 205:11	middle 42:21 129:7 277:7 280:12	minor 95:10
may 11:5 13:17, 19,22 14:14 50:7 58:18 61:15 78:12 81:1 86:7 101:10 119:21 121:18 141:10 153:1 165:17 168:5 186:15 187:24 193:23 194:1 202:5,19 203:3 204:5,6 207:19 210:16	meaning 171:15 242:14 313:17	memorialize 43:17	might 39:12 42:15 55:13 59:7 71:1,3 92:19 94:5 95:15 97:24 138:7 142:13 192:14,15 234:19 252:18 255:18 258:18 309:22	minute 96:7 217:24
	means 61:6 63:11 74:13 84:21,24 85:9 86:11 93:6 94:17 127:9 136:8 173:2 174:1 204:15 238:15 245:3,4	memory 30:20	million 70:18 75:20 122:14, 16,21 123:1,2 125:3 128:16, 19 129:10 130:21,24 148:10,18 149:13 157:6	minutes 78:14 165:7,12 248:6 259:4 279:15 292:5
		mention 246:24		miscellaneous 19:23 20:3 90:23
		mentioned 59:10 92:15 130:20 167:8 223:5		mispronounce 65:5
		mergers 23:23		mispronouncin g 163:13
		messages 118:24 129:20		missed 279:7
		met 25:17		

missing 49:16 72:1 74:1 280:10	223:18 MONDAY 1:21 7:2 165:2	6:2 281:5,9,16 300:10,12,16 301:16,18 302:13,14	129:15,16 224:19 232:21 234:19	movie 174:8
mission 11:8			most 21:15 35:15 56:11 97:19,20,21 124:2 232:16 262:12	moving 247:15 259:1
mistaken 310:9	monetary 271:24	month 191:3		much 11:15,17, 23 12:1 21:22 27:1 28:17 29:3 83:17,22 84:6 93:18 94:24 122:8,12 124:14,15 138:5 142:11 150:9,16 153:6 154:4 209:21 210:11 212:2 213:2 221:1 243:17 254:8 260:18 284:7
mistakes 284:18	money 17:13 38:21,23 39:1, 12,13,15 40:3, 8,11,14,17 41:10 44:16 49:23 55:2,9,19 62:11 71:5 73:21 74:15,21, 24 76:6,16,18, 20 84:6 85:13, 21 88:1,10 109:14,21,22, 23,24 110:2 118:2 119:24 120:4,17 121:4, 16 123:24 168:1,7 199:6 233:20,21 236:16,20 238:16,17 240:20 245:12 265:19 266:3 267:15 268:6 269:12,15,17 271:3,10 274:19 275:7, 15,21,23 278:9	monthly 191:17, 21 192:12,13	mostly 19:24 29:11 55:17 167:9 171:3 245:2	
misunderstandi ng 233:15		months 45:9,16, 21 46:10 49:5, 19 52:17 105:3 130:15,19 157:1 168:20 171:7 192:14 221:3	motion 9:10,14, 19 11:2 12:12 185:15 186:10, 24	
mitigate 50:15		more 20:10 41:13 45:9 50:6 51:17 61:7 62:17 63:3,10 64:21 68:19 83:1 86:24 92:6 97:21 98:16,19 143:10 157:17 162:9 169:18 174:13 178:15 250:18 254:8, 10 255:1 259:19 260:18 266:4,21 268:20	motions 12:19 113:23	multiple 23:18 252:3 279:17
mix 172:11 279:24			mouthful 273:21	must 33:9 47:14 160:16 259:13 260:9
mixed 12:10 266:16 307:3 313:8,9			move 14:17 60:13 67:15 73:14 80:23 100:14 106:19 116:4 118:2 161:12 182:12 236:15 282:7 292:18	mutual 54:8
mixing 312:3		Morgan 239:3	moved 309:14	<hr/> N <hr/>
model 84:5	monitored 94:23	morning 7:16, 17,20,23,24 8:9 18:23,24 78:13 95:3 96:4	moves 94:24 232:20	name 19:1,3,9 20:23 46:12 54:2 65:5 70:14,15 73:3 79:5,14,15 82:19 96:14 109:13 115:23
moment 95:8 130:20 174:23 186:6 215:1 223:14 279:20 314:21	Montello 3:12			
momentarily 107:3 235:18				
moments				

127:22,24 163:9,13 218:15 232:15, 16 239:20 242:6 255:14 264:11,14,18, 21 281:14 287:1,7 301:14	304:4,5 305:9 naturally 52:14 nature 103:4 near 205:14,23 230:22 Nearly 29:11 necessarily 46:15 87:22 174:2 necessary 140:2 145:23 146:15 need 8:11 12:24 13:12 22:24 38:20 45:24 62:17 63:3 69:23 74:21,24 76:19 85:10,12 108:6 115:20 132:7,14 135:13 137:3, 15,16 145:6 146:24 168:23 169:7 186:4 239:5 242:20 255:2 needed 69:1,4 76:5,18 119:2,4 121:15 129:16 133:20 146:19 147:2 153:17	308:13 needing 134:10 needlessly 162:14 needs 10:11,14 132:5 164:6 169:10 170:1 238:23 280:16 negative 88:5, 11 93:5,6,11, 14,20,22 94:20 249:15 250:3,6 251:23 negotiated 23:4 negotiating 66:19 67:6 neighborhood 35:6 Neil 2:5 neither 217:4 220:14 237:17 nephew 96:20 net 210:13 213:17 266:16 netted 266:15	Nevada 1:6,10, 22 2:6,11 7:2,5, 14 8:3,16 163:19 164:1 165:2 187:12 282:22 318:1 never 44:18 52:11 69:21 145:5 147:6 171:14 174:6 216:7 218:11 219:9 221:15 233:5 246:4 264:3 new 3:11 46:11, 12 55:12 80:11 82:4 156:14 190:14 197:18 202:12 205:1 221:10 244:24 257:23 258:8,9 289:5,6 316:6,8 news 20:8 76:11 next 17:4 70:11, 13 82:21,23 83:3,16 84:8,12 85:17 90:2,9 112:23 114:8 115:6 136:13 137:19 147:15 170:20 194:23 195:2 197:8 200:7 209:18 210:14 211:12, 23 212:2,8 229:12 234:21 256:1 296:14	298:23 299:5, 11 nice 14:2 77:7, 12 Nicholas 110:19 120:8 Nick 5:19 137:6, 9,11 147:24 176:1,5,19 177:9,21 178:1 294:22 nine 251:5 nobody 171:7 200:5 233:6 246:5 273:9 non-wam 50:4 51:1,17 52:5 53:7,15 132:22 133:15 167:2 215:20 nonclient 50:10 nonclients 126:10 none 43:18 129:19 171:11, 17 175:2 nonhearsay 114:19 162:18
----------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

nonmarginable 94:17	106:19,24 107:11,17,21 108:11,19,21 111:21 112:1, 10,14 116:3,4 117:19,22 118:8,13,15 123:10 125:17, 18,21,24 126:1, 3 127:21 128:9, 13,14 132:1 135:20,21 136:1,2 137:11, 14 152:15,19, 21 154:20 155:8,10,11 161:12,21 163:7 164:12 165:17,19,23 166:12 169:17 175:8,20 180:12,18,23 181:1 182:12, 21,22 187:19 193:15,16 196:22 204:12 206:24 207:11, 24 208:3 209:7 210:8,10,21 211:10,11 214:21 217:16 221:11 230:2 234:12 248:16 282:9 289:24 290:19 291:23 294:19	normally 247:14	300:3 302:4,23 304:5,24	125:15 182:19
nonopposition 9:15		notarized 137:4, 16,23 138:17, 20 139:15 140:12 141:23 142:4 144:13 156:1 284:9	now's 247:13	objection 30:7, 24 42:2 58:3 62:16 64:20,22 68:7 69:11 70:4 73:16,17 74:2 79:23 80:5,10 100:18 101:21 102:2,6,11,12 103:2,3,19,22, 24 107:8 108:3, 13,15 112:8 113:19,21 116:1,12 118:9 128:11 135:23 154:17 161:13, 17,19,20 162:3 180:11 182:23 183:16 193:15, 16 203:9 205:8 207:14,21 221:11 229:20 282:9 289:21, 24
nontechnical 95:17		notary 139:8 151:21 156:1	NRS 69:18 205:11 206:21	
noon 163:7		note 74:11 113:19 114:6 248:11 316:22	number 14:13 16:21 61:15 79:19,21,22 80:7,12,14,16, 18 96:9 104:16, 19 105:13,15, 18 106:9 162:6 171:3 176:2,7 188:16 198:23 214:8 222:17, 18,21 245:21 249:11,23 255:4,15,18 264:13,18,21 289:4	
Nork 2:10 3:4,5 7:8,18,20 10:22 13:22 14:7,16, 23 15:1,9,19 16:3,17,23 18:11,13,22 22:5,9,17 30:10,11 31:1,2 42:3,9 43:5,10 47:12 58:4,5, 14,18,20 59:7,9 60:13,19,23 61:24 62:5 63:4,5 64:9,22 65:14,17 67:5, 15,23,24 70:5,7 71:19,22 72:3,6 73:14,17,18 74:4,6 78:15,20 80:2,15 81:6,18 83:6,9,11 88:16,19 91:9, 10,21 92:11,12, 13 94:1,7,8 96:11,12 100:14,21 101:20,22,23 102:3,8,15,17, 18 103:6,15,16, 21,23 104:3,5	Nork's 229:20	notes 21:12 169:4 188:4	numbers 59:12 80:8,9,13 194:17 255:2	objections 61:15,18 113:13 115:17 182:13
		nothing 11:13 202:9 255:11 262:21 263:8, 11 268:17 275:3 289:15	notice 11:12	
		notorious 247:21	numerous 113:13	
		notwithstanding 17:10 158:7 170:21	O	obligated 191:13,14
		November 117:6 176:9 295:4 297:10, 13,19 298:19	oath 188:13	obligation 191:4,16,20 200:11,15
	norm 45:9		object 101:15 106:20 112:4 113:10 115:7	observed 17:2
	normal 143:16			

obstructionist 115:16	occurs 200:23	57:5 78:1 82:24 83:13 188:20	114:7 116:13 118:10 122:20 127:16 131:12, 13,14,16 133:24 136:24 139:7,17 140:15,16 144:22 145:2 151:22 173:23 174:6 178:10, 21 179:16 186:6 194:8,23 196:14 199:2 206:7 207:20 209:18 212:13 215:1,14 216:11 220:19 222:13 223:14 232:9,15 234:9, 21 240:5 247:19,22 248:2,14 250:24 251:3 256:1 265:3 268:19,20 269:11 275:7 277:9 278:11, 12 279:17,20 280:2,8 281:9 283:16 284:1 289:5 295:21 297:3,6 298:1 302:23 303:10 307:2 313:10 316:16	134:6 166:6
obtain 19:19 82:3 220:1,12	October 66:11 73:11 74:7 76:6 81:3 184:16 193:22 195:22 223:4 227:1,8 282:21 286:21 287:23 289:19, 20 290:8 291:11 312:5 313:5,15 315:4	officer's 79:12, 14	ongoing 29:8 70:21 121:9 161:23	
obtained 183:21 220:16		officers 57:1	only 8:14 16:18 23:15 28:10 40:13 53:14 62:7 74:2 87:14 94:10 95:15 97:12 123:24 166:8 168:23 171:15 189:2 194:5,8,20,23 201:2,4,8 202:9 214:14 219:16, 21,23 220:19 226:8 228:4 231:1 233:12 235:18 238:8 241:22 249:5 256:8 258:4 259:5,8 261:17 273:12 274:3 275:6 280:2,11 299:23 303:8 306:16,24	
obtaining 219:21 220:23		official 28:21		
obtuse 270:15	Oddie 79:15,16 81:4	officially 80:24 81:3,8		
obviously 234:12	off 52:14 121:9 164:16 165:24 166:1 169:24 204:8 232:2 258:23 269:6	oftentimes 113:23 196:14		
occasion 159:7, 21 160:10		old 91:5 255:3		
occasions 163:14	offense 91:5	once 10:14 46:21 52:17 123:11 126:11 127:4 130:9 150:2 166:15 170:24 174:20 270:5 274:13 275:17		
occupation 19:5	offer 112:6	one 1:20 10:24 16:18 29:5 34:23 35:13,14 41:15 42:16 47:13 48:16 52:6 54:18 57:4 58:16 61:23 66:22 68:6 71:20 72:17 74:13 84:8 92:14 95:6 96:7 105:6,21 106:2	one's 204:10 one-year 192:15 ones 122:3	
occur 141:8	offered 64:16 108:3,4 124:17, 20 161:22 162:5,23			onwards 123:9
occurred 104:2 118:3,5 125:23 198:23 219:9	offering 207:9			open 46:13 51:5 77:8 81:4 97:4 105:8,24 170:9 193:13
occurrence 92:18	office 144:6 148:7 165:9 176:6 283:9			opened 77:1 80:24 81:3,8,10 82:10 106:4 159:5 193:22
occurring 123:4	officer 28:21			

opening 3:11 13:9,13 14:11 15:23 16:8,11, 13,15,18 17:20 26:15,19 77:4 78:3,8,22 81:20 100:10,12 101:24 202:8, 16 208:22 250:17,21 251:8,11 253:2	23 options 91:19 172:21 order 4:3 8:16, 18 10:13 13:13 14:4 38:19 42:17,18,19 43:20,24 45:19 48:4 52:1,3 62:1 69:23 113:22 127:7 146:22 154:24 156:3 172:14, 23 203:17 215:3 239:1 242:21 243:19 245:23 261:24 262:1 270:16 288:18 311:14, 15	original 47:20 52:10,19 89:20, 21 90:1 148:13 149:3 157:19 158:4,15 176:7 183:6 289:3 295:11,15,20, 21,22 296:6,11, 13 299:8,11,21, 23 301:10 309:7 originally 21:5 306:24 originals 137:4, 16 295:14,16, 17 299:17 originated 27:9 others 36:18 114:2 179:22 215:19,20 Otherwise 74:16 out-of-court 162:4 outline 19:13,21 outside 50:24 51:14,23,24 59:5 123:17 180:20,21 265:17	over 9:24 11:13 17:4 38:18 51:4 56:12 69:11 70:4 96:2 116:12 122:10 141:20 159:10 160:8 190:13 194:14 207:21 236:10 249:14 251:12 252:3 255:23 277:9 309:9 overdraw 92:21 overdrawn 88:4 overrule 80:10 102:6 103:3 113:21 128:11 161:17 overruled 42:7 58:12 62:16 Overseas 67:3 69:7 owe 174:1,2,3 203:23 234:4 owed 85:13 own 48:23,24 217:1,8,11 232:13 235:17, 23 243:11,12 244:9 245:5,7 275:10 283:8	309:15 314:24 316:1,2 owned 21:5,17 175:13 180:8 315:8 owner 19:6,7 23:9 25:14 30:3 125:18 180:12, 13 189:4 195:2, 6 199:15 230:8 238:6 263:9 279:2,5,16,20 280:20 282:23 283:6,8,20 286:14,22,23 287:5,11,23 288:5 293:11 300:4,17 301:4 307:7 308:20 309:4,9,21 310:24 311:3,5, 8,20,21,22 312:2 313:19, 21,23 314:15, 17,22 315:19 owner's 27:14 owners 217:5,7 235:12 236:24 237:18,19 288:2 ownership 17:3 18:3 30:17 68:1 182:16 185:11 188:18,21,24 189:3,14
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

190:14 202:20 217:21 235:21, 22 238:8,9 239:8,10,11 240:24 243:2 262:22 265:19 279:22 287:2,3 289:7 297:2 301:8 306:22 307:9 309:11 315:6	34:2,4,5 46:19, 21 168:16 169:13 191:3 224:23 225:2, 23 241:15 254:9 257:6 260:16,22	124:23 177:7 180:3 181:8 186:3,5 190:12 195:10 228:13 274:4 307:14	pass 235:23 243:1	306:14
owning 48:16, 17	papers 74:12	participated 31:20,22	passed 314:1	payments 119:15 226:12 246:21
owns 95:6 121:24 183:15 216:24 243:9	paperwork 50:23 78:7 146:10	particular 77:6	passport 3:22 81:22 89:15,20 100:23 101:6 176:8 295:16, 19,23 296:4 297:9 298:23 299:1	pays 25:6
P	paragraph 186:19 187:22, 23 285:4 292:24 293:9	particularly 167:7	passports 26:16	Pedafronimos 3:22 4:6,7,8,10, 11,13,14,16,18, 19,22 5:1 14:8 15:22 96:15 107:5 108:8 110:1
p.m. 165:2 317:3	paragraphs 151:7	parties 11:3,24 13:5,6,8,10 16:9 104:6 123:17 126:20 141:9 207:18 219:4 243:20 245:1,15 248:11 292:9, 12	past 13:21 196:12	Pedafronimos's 110:19 120:8
package 100:13 134:9 177:8 298:1	parameters 84:1 87:1,5	partly 311:10	pasted 161:7	PEGGY 1:24
packet 186:7	Pardon 131:20 300:11	parts 28:15,16 235:15 274:3	paths 11:2	penalty 187:11
paid 141:4 234:24 238:12, 14 239:20 240:19,22 246:18 305:13, 22	parse 113:20 114:1 115:2,21	party 10:14 50:6 69:14 102:22, 24 107:6 180:16,17 233:23 239:8 254:13 263:22 271:21	pattern 61:2	pendency 11:7
paper 27:11	part 10:9 20:14 26:3 31:9,14 56:12 62:9 64:15 66:19 67:10 70:21 71:23 72:19 78:8 81:20 100:9 117:3	party's 242:2	pay 49:9 74:15 86:5 124:15 174:4,5,15	pending 198:20
			paying 21:13 246:17	people 46:18 103:13 108:2 166:9 169:15 189:10 196:19 202:12,13 228:22 236:21 243:14 244:20
			payment 85:14 222:5 223:6 225:20 226:2,9, 13,15 227:10 229:6,13,19,21, 22 230:6	per-share 124:18

percent 24:14 30:3 83:1,13 87:4 93:19,21, 22 94:11,12 124:24 314:10	265:8	98:24	planet 159:16 160:2	266:20 267:1 270:22,23 271:9 275:6 283:6 287:4 288:22 296:8 300:6 305:6 311:3,4,20 312:2 314:16
percentage 24:8	permissions 239:5	photocopy 10:10,12 299:15	play 53:15 66:19	
perfect 147:15	permitted 33:1, 8 188:12	physical 3:13 33:17 34:1,12 48:7 170:7 229:21 246:1	played 67:6	pointed 206:24
perfectly 308:23	person 69:7 96:14 98:10 103:8 159:8,17, 22 203:24 204:19 205:15, 17,19 206:1,13 207:1,3 233:13 239:7 241:6 260:4,6 315:24	physically 41:3 57:15 63:7 202:3	pleadings 12:21 16:19 278:19 279:11	points 274:22
performed 180:15		Pinsky 5:17	plummeting 95:14	policies 202:21 203:5,7
perhaps 14:9 15:22 183:24	person's 95:14	place 11:19 12:13 62:7 127:15 133:7, 10 138:24 146:16 163:20 168:4 173:18 180:13 233:6 234:21 235:9 236:20 240:6 285:10 288:18	plus 26:7 117:8 160:16,20	policy 195:10
period 30:8 52:8 55:4 56:10,12 130:13 140:3 148:22 149:20 157:7 159:11, 20 160:9,19 168:20 169:22 174:6 202:19 203:2 214:13, 15 250:22 252:3,5 308:13	personal 60:10 75:14,16		POA 177:23 308:24	portfolio 83:23 84:2,5
	personally 97:7		pocket 59:5	portion 86:7 114:6,19 115:5 116:24 118:17 169:24 227:4
	personnel 291:12	places 159:18, 19	point 11:11 12:10 16:14 46:14 51:2 56:1,14 65:14 69:17 70:3 76:14,24 84:23 85:1,3 91:7 92:4 95:23 114:20 123:24 164:18 174:4, 17,19 191:15, 22 192:1 217:22 220:8 221:24 225:3 235:9 243:18 259:13 260:9	position 13:7 48:4 49:16,24 92:21,22 93:4, 5,11 94:21 120:11 121:14 122:20 124:24 167:16,18 172:7 173:3 229:13 236:12 293:14,18 315:21
periods 163:4 298:1	perspective 275:11	plaintiff 1:11 8:18 13:9		positions 36:2
perjury 187:11	pertains 115:3	plaintiffs 13:7, 11		
permission 238:24 242:4	phasing 293:23	plan 15:21		
	phone 91:18			

146:11,12	219:7,12,17,21, 24 220:1,9,12, 16,23 221:5 295:15,23 296:3,11,13 299:11 300:6 302:15 303:4, 23,24 304:2,10, 17,18,19 305:6	69:12 133:20 206:5,6	81:2	172:6 174:11, 12 266:10 305:13,22
possession 11:6 64:11 68:3,19 198:1 299:12		prepared 68:12, 21 69:13 170:17 183:4 184:8 206:2 259:14	presume 95:5	prima 205:6
possible 92:15 113:8 119:14 215:17 255:20	powers 17:8 133:23 139:3	preparing 133:12 134:9 184:2 202:15, 21 203:4 224:8	presumes 10:1	primarily 99:20 196:10
possibly 152:11 163:15 291:23	practice 12:12	present 2:14 20:20 25:9 31:4 56:13 92:8 113:20 151:9 197:14 202:3 292:10	pretrial 8:11,21 9:7 12:19 16:1, 4	primary 17:8 29:9 153:14 271:6
post 33:19	preceding 181:23	presented 89:19 157:20 158:4,8	pretty 24:12 27:1 121:14 135:9 154:4 213:2 263:24 264:20 292:2	prime 33:10 35:2,11,12,13, 17,19,20,24 36:1,4,5,6,9,11, 15,19,20,23 37:3,10,14,15, 24 38:4,13,14 39:5,6,7,8,9,18, 24 40:1,3,7,13, 14,15,18 41:5, 17,18 43:14 94:15 145:12, 18,19 147:21 167:12 177:17 213:5 218:20 253:19,24 254:7 255:10 259:21 260:2 267:17,18,24 268:3,4 269:14, 17,19,20,21 270:6,8,9,10, 18,19,20 271:3, 15,19,20 272:1, 12,17,23 273:4, 8,16,17,22,23 274:3,5,14,16 275:19 276:3,6,
posted 256:4,6	predecessors 203:19	presently 34:21, 22	prevailing 10:14	
potential 66:17 132:13 134:13 174:22 227:5 228:20	predominantly 297:4	preserving 115:12	prevent 155:16	
potentially 48:18 215:21 228:21	prefaced 149:8	pressure 243:21	prevented 17:24	
power 5:4,5 52:20,21,22,23 53:3,11 133:24 134:1 135:6,8,9 138:20 139:6, 11,14,20 140:8 142:2,20,21,24 143:6,16,20 144:16 146:14, 24 147:11,18 148:13 149:3 176:7 218:23	prefer 46:18	pressured 243:18	previous 304:1	
	preference 10:19 13:13	presumably	previously 128:24 130:14 148:12 179:12 229:9 257:1 288:5	
	preferred 46:17		price 51:24 86:8 122:9,10 124:18 141:4	
	preparation 104:1 182:18			
	prepare 68:9			

9,10 277:1,21, 24 278:3,4 287:1	260:14	processed 43:21 311:6,7	pronunciation 96:18	90:4 112:21 305:5
Primoris 298:15	privately 17:6 130:17	processes 39:8 148:8 275:17	proof 90:6 305:12 306:13	PSA 145:6
principals 21:18,19	privilege 290:1	produce 60:7 192:3 200:11, 15,21 201:6 242:3,19,20,21 247:8 251:10 253:15 290:13	proper 62:20 117:2	public 20:5 37:16,19 44:11 55:1,2 85:2 97:24 130:17, 18 169:12 170:3 260:1
print 191:2 192:9	privileged 292:3,15	produced 62:6 180:17 192:4, 11 199:15,18 201:8 221:18 242:1,11,15 252:10	properly 157:20 309:3	publicly 17:6 44:22 50:20
printed 27:4 64:6 79:5 259:24	probably 97:2 266:18	production 201:15	proposition 69:22	publish 193:14
printout 260:16	problem 74:16 148:18 149:13 243:1 244:1,16	professional 238:7	protected 300:20	published 193:22
prints 27:3	procedures 32:2 182:19 201:12 202:22, 24 203:5,7	project 56:4	prove 162:5	pull 186:6
prior 25:14 27:14 28:4 59:19,22 60:3 116:12 152:17 154:3 155:4 186:2,4 187:16 188:18,20,23 189:2,13 201:16,24 250:3,19 286:21 287:13, 23 288:10 301:7	proceed 15:20	projects 56:3	provide 9:23 22:20 23:12,16 52:24 70:14 76:1 104:7 188:11 213:5 305:12,19,21	pulled 181:13 183:22 204:8
private 37:18, 21,23 38:2,3 45:8,10,14 47:24 49:5,19 50:19 51:16	proceedings 21:11 317:3	promise 196:23	provided 23:1 26:18 28:23 31:8,14 53:13 64:3,6,11 89:4 101:4,13 103:17 197:17 241:7 258:5	purchase 3:16 4:20,24 5:2 17:8 18:1 45:20 50:23 51:21 52:4 53:14 61:3 69:1,4 70:12 72:8,12,17 73:19 74:9 86:6,8 124:16, 22 125:3 133:16,19 134:11 135:4, 14 136:12,17 137:21 138:21
	process 34:10 39:6 42:4 51:9 101:17 109:14 125:12,13 149:8 170:11 188:7 189:17 200:4 202:8,10, 16 216:22 235:22 238:2,8 279:22 280:11, 12,14,15 309:1	prompted 118:22	provides 73:24	
		promptly 165:13	providing 82:1	

140:6,9,11,15 141:4,21 142:2, 6 145:5 166:19, 21 188:6 216:1, 4 218:1 219:7, 10 221:6 222:6 223:6,10 224:20 225:21 226:3,8,16 227:10 233:11 266:9,23 281:10 284:22 285:1 303:4,6, 9,14,20 305:7, 13,22	112:7 155:24 163:5 167:4 176:11,12 177:3,4 178:5 182:1 189:7 220:11,22 306:14	putting 17:14 84:21,23 133:7, 9 245:23	19,20 200:5,6, 7,12 204:2 205:19 207:9 222:24 223:3,5 225:13 228:15 230:7,12 232:18 235:16 237:13,22 247:22 248:3 256:1 274:18 277:10 279:14 290:6 291:6 293:17 310:23 311:4 315:19	quote 140:17,18
purchased 130:11 167:17 203:15,19 234:5,23 235:12 300:20	purposes 9:2 16:20 82:3 83:21 146:7 147:16 167:7,9, 10 218:18 227:5	Q		R
purchaser 52:8 58:1 69:8 236:23 300:20	pursuant 207:6 216:16 222:6 223:6 226:3 227:6,10,13 307:7 312:3 313:21	quadruple 111:7 112:20 113:3 119:3	questioning 103:5	Rainbow 112:24 114:11,22 115:7,22 116:6, 10 117:8,18,19 118:18,19 119:6,8 268:21, 23
purchasers 52:11 147:16	put 11:13 14:14 24:1 33:9 44:5 46:2,5 57:12 68:12 77:19 120:11 127:6 167:6,14 172:7, 24 173:16 176:12 177:6 191:8,15 213:4 230:22,23 233:17 238:16 239:1 253:24 284:5,6 309:6 311:11,14,18	qualified 204:19 205:17,19 206:13 207:3	questions 67:16 81:5 101:21 107:11,22 131:15,18,22 171:1 185:8 214:22 229:5 234:11,12,13 273:15 288:4 315:14	raise 17:13 20:11 22:24 55:19 56:5,19 57:12,14,17,19 62:10 70:2 75:1 121:4,13,16
purchasing 53:15		quality 207:12	quick 79:9 207:8	raised 71:2
purport 205:24		quarterly 25:4,5 191:18,21	quicker 98:19	raising 54:22 55:2,9 56:15 57:8 70:22,24 73:21 76:22 120:17,24 121:12 154:7
purports 231:5 240:13	putatively 118:5	question 8:15 18:5 29:15 30:9 37:22 52:15 58:13 60:21 62:22 68:6 70:1 79:9 81:15 86:19 90:16 94:7,22 97:13 102:4 108:20 116:13 135:24 136:1 152:7 160:17 161:16 163:15,17 166:2 169:2,18 190:15 192:20 193:9 194:5,8, 20,23 195:2,6, 9,14 196:15,21, 22,24 197:8,19 198:15,16,17,	quickly 255:17, 20 288:7	ran 121:17
purpose 8:20 17:20 82:1	puts 87:19		quite 14:13 94:4 164:10 234:15	range 174:5 179:4
			quizzical 290:24	rare 161:22
				rarely 93:12
				rather 46:19

ratio 96:9	realize 244:11	144:11 184:15 185:17 188:3 193:6,11 201:9 202:10 211:16 221:21 223:23 242:18 252:14 261:5 282:6 283:4,15 287:18 296:2 305:2 309:19, 21	289:18 290:8 297:18 298:19 304:5 305:6,13, 23	9:11 74:19 76:5 77:3 110:5,21 158:3 287:22
RDR 1:24	really 12:10 17:11 62:1 108:7 119:3,4 171:3 207:12 233:5 234:22 260:21 261:8 266:2 273:12		receives 38:23 39:13 270:5	reconvene 316:11
reach 153:12				
reached 122:11			receiving 66:10 107:23 108:16, 22,24 109:5 110:14,16 111:9,11 179:12 237:6 265:19 274:11	record 10:9 12:8 14:14 19:2 21:10 92:2,7 115:12 118:5 165:5 183:18 186:3,6 204:6, 8,11 205:12 206:11,23 207:6 218:18 240:3 241:22, 24 242:1,8,16 248:8 256:2,12 259:5,7,8,9,10, 11 260:1,11,20 261:7 266:14 267:4,5,8 274:3,4 276:6 277:18 278:11 292:8
reaching 302:9	reason 13:15 49:22 181:17 183:15 207:21 212:22 213:9 218:14 237:1 307:15	recalled 188:1		
read 15:9 85:22 86:3 90:19,22 112:17 118:6 209:5 225:8,11, 12 228:13 282:19 288:13 293:3,7,20 294:2 297:17 299:3,4	reasonable 10:6	receipt 148:5 176:10 296:15	recently 106:5	
read] 74:16	reasons 98:16 139:17 145:6	receive 24:18 27:2,9,14,21 28:1 39:12 65:2 80:11,13 108:7 179:7 237:7 245:14	recess 91:24 92:1 164:17,20, 21 247:14 248:5,7 291:22 292:6,7 317:2	
reading 158:21 207:19 222:13 304:15	reassign 309:5	received 11:21 12:14,17 26:3, 5,7,21 27:3,4, 23 66:9,12,14, 16 70:12 73:9, 10 107:18 109:17 117:17 118:1,4,24 135:8 167:23, 24 176:6 179:8, 22 181:8 195:5 204:9 211:3 213:13 230:9 237:5 239:17 241:7 255:21 263:19 271:18 281:23 284:13	recipient 269:18	recordkeeping 30:22 31:4,23 189:16
reads 292:24 293:9	recall 25:23 36:23 37:3 58:1,15,17 66:8,10,12,14 68:23 75:19 99:13 108:22 109:20,24 110:14 111:9 120:3 121:2,10 125:1 129:6 133:13,24 135:1 136:23 138:2 143:5		recipient's 270:14	
ready 49:6,20 134:12 233:16 292:6,14			recital 156:18	records 26:6, 21,22 27:2,3, 12,13,17,21 28:5,6,10,14 29:19 32:3,4,6 48:15,17 60:8, 11 100:18 125:19 128:22 181:3,12,13 183:1,12,23
real 95:1 96:4 276:17			recognize 65:22 67:12 79:7,9 89:10 135:2 281:18	
realities 115:10			recognizes 68:5	
			recollection	

189:13 190:6 191:1 192:2,3, 4,11 195:11 196:2,7 197:24 198:6 199:8,10, 12,15 200:11, 19,22 201:3,7 204:16,20,22, 23 205:7,21 207:2 212:22 213:6 219:16 246:21 249:2 252:6,8,15,22 253:15,16,18, 22,23 254:1,3, 7,9,14,17 255:10 256:23, 24 257:5,9 259:12,17,19, 20,24 260:14 261:2,6,9,11 265:17,18 267:19 271:14, 23 272:3,8,16 273:19 274:1 276:5,15 277:20,22 278:2,8 290:13, 15,24 redact 264:21, 23 redacted 175:23 reduced 17:10 reengaged 56:15 refer 13:17	59:12 96:17 132:11 152:19 303:16 304:11 reference 26:16 75:3 90:11 221:19 230:9 256:9 259:10 284:20 285:3,9 288:24 311:24 referenced 82:7 138:3 143:20 151:14 222:5 226:2,15 227:9 284:15 references 74:8 234:8 284:22 285:1,20,24 286:1 289:9 referencing 224:14 228:18 285:6 310:20 referral 23:13 referred 17:1 19:11 22:1 88:24 278:20 279:8 referring 132:12 186:19 198:11 222:11,19,21 223:1 287:17 301:9 313:7	reflect 264:2 reflects 246:11 reforwarding 117:1 refresh 74:19 110:5,21 regard 127:12 183:18 249:4 312:6 regarding 11:1 74:1,21 99:9 102:1,10,19,23 110:6 113:23 119:24 121:12 126:5 146:9 160:17 161:19 164:2 207:4 219:21 291:15 292:3,15 306:7 regardless 107:19 241:11 regards 138:17 157:23 register 143:14 286:13,24 287:9 300:22 registered 3:14 28:21 105:1 regular 150:7,8	153:4 191:17 regularly 205:15 206:3,5 regulations 87:3 191:5,12 regulator 257:9 260:18 regulators 27:13 256:24 257:4 260:16 regulatory 82:3 87:3 reinvest 71:6 reinvested 71:4 reissue 156:13 157:21 reissued 46:4 158:9,10,11,23 reissuing 158:14 reiterate 288:17 relate 213:21 226:19 250:24 259:20	related 1:17 97:12 132:17 170:17 216:3,4 221:23 224:20, 22 226:8 228:4 247:4 252:23 253:16 262:18 276:10 relates 255:1 relating 228:9 relationship 25:18 29:8 35:19 36:3 58:6 70:22 relationships 35:16 36:6,9, 11,20 relative 250:7, 10 release 38:15 265:9 released 38:18 relevance 58:3 60:17,22 61:6, 14 62:16 73:15, 17,19 74:2 107:10 112:8 relevancy 58:4 107:8
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

relevant 60:15 61:8,14,17,21 62:12,17,22,23 63:1 69:18 73:23 74:1 252:18	12	represent 134:12 310:21	111:16 120:4 155:19 271:24 275:7,20,23 306:13	Reserve 269:21 270:12,20,21, 24 271:3,4,6,9 273:17,18,24 277:2 278:7
reliability 207:4	remind 168:14	representative 249:21	requests 102:1, 5,6,9 155:15 167:23,24 168:1,4,10 172:12 191:8 208:15 213:4, 22 245:9 249:6 275:15 276:2 277:3	residency 26:17 90:7
relief 12:24 13:1,2 279:1 292:22	removed 177:2	represented 104:18,24 244:22		residential 26:17
rely 107:13 108:2 205:1,23	Reno 1:22 2:6, 11 7:2 165:2	representing 302:2		resolve 8:10
relying 40:18 293:22	rep 42:11	request 6:7 28:7,8 39:7,16 41:20 46:3 49:12 87:19 109:3 110:18 111:1,13 113:2 118:1 125:14 157:5 172:21 176:11,12 193:13 211:17 253:24 272:14, 15 274:13,20, 24 275:17,18 276:6,24 277:1, 2,13,16 287:13 294:24 298:5 303:3	require 102:23 169:19 257:4 260:17	resolved 9:9 10:15 157:19
remainder 250:23	repeatedly 228:13		required 43:16 51:20 52:9,19 82:3 90:6,12 91:15,17 115:12 129:18 130:13 133:14 146:20 166:22 256:23 257:8	respect 29:21 73:21 106:21 275:3 276:14
remained 141:23	rephrase 102:17 135:24 136:1 251:2 252:21 290:4,5			respective 316:13
remaining 212:18 309:8	replaced 289:5			respond 134:5 135:13 234:13
remedy 247:6	replacement 156:21 158:12 288:19 289:2		requirements 61:11 82:5 90:13 91:16	responding 305:4
remember 8:21 54:13 57:4,5 60:9 76:8 99:6, 15,16 108:17 111:23 122:7 124:19 128:23 144:11 178:10 218:15 314:11,	replacing 156:14	requested 75:8 155:14 156:19 197:16 249:9, 10 253:18 274:21 278:9 280:5 287:6 304:21	reread 225:7	responds 134:19
	report 205:12		research 56:22 76:17	response 61:13 102:13 107:12 108:3,24 109:5 110:16 111:11 133:3 178:8
	reported 1:24 189:19,22	requesting	resell 146:23	
	reporter 137:10 196:16			
	reporter's 21:11			

197:4 247:22 264:6 303:3	119:17 149:24 168:1 181:3 182:5 210:12 213:8 250:18	reviews 145:9 258:12	rules 45:12 82:4	314:1 316:1
responses 171:5	resulted 290:23	revolved 122:19	ruling 116:14	sale 4:20,23 5:2 17:9 20:15 25:3 45:20 47:24 48:13,14 49:5, 19 50:23 51:21 52:5 53:14 60:24 66:20 67:6,10 69:1,4 123:21 126:5 129:16 133:14, 16,19 134:11 135:3,14 136:12,18 137:21 138:21 140:6,8,11,15, 17 141:21 142:3,6 145:24 146:2,9,10,13, 16 147:5,8 156:7 166:19, 21,22 167:1 199:2 210:1,3 214:17 215:15, 17 216:2,4 218:1 219:10 221:6 222:6,19 223:7,10 224:20 225:4, 21 226:3,8,16 227:10 228:19, 20 231:2 233:5 234:9 245:9,23 246:22 259:6 260:5,14 261:13,18 263:3 265:17 266:6 281:10 284:22 285:1, 10 289:10 293:10 302:16
responsibilities 316:23	results 180:10, 16	right-hand 59:13 71:12 100:1 106:8 155:21	rush 171:7 221:2	
responsibility 33:11,20 35:20	Resumed 3:5 165:22 208:2	rights 35:14	S	
responsible 35:5 48:22,24 166:6 280:14	retain 10:3,4	risk 29:23 33:6, 9 48:19,22 50:6,12,16 84:1,6 93:13 94:18 173:4 307:16,17,19 308:17,18,19 315:15	S-I-M-O-N-I-T-C-H 301:15	
rest 74:12 274:6	retained 150:16, 17	risks 307:13 308:12 309:14	S-O-U-R-S-O-S 128:5	
restricted 104:22 105:3, 21 130:12 168:20	retention 195:10	Road 2:5	safekeeping 176:9	
restriction 44:23 45:3,22 46:1,5 49:20 140:2 148:22 169:22	revenue 24:14 25:5	role 67:6 234:18	safer 307:20	
restrictions 45:1,7	revenues 24:9	roughly 251:4	said 8:22 12:20 13:20 24:3 83:7 101:16 115:11, 13 163:11 165:10 171:17 180:21 183:21 186:5 196:12 200:10,15 201:20 206:4, 16,17 225:11 230:8 249:4 254:17 255:15 263:4 270:24 284:1 288:1,2 291:12 292:12 294:12 310:6, 12,13 311:20 313:19,24	
restrictive 177:2	reviewed 12:11, 12,15,18,20 31:12 125:18 206:21 283:4	rounded 251:15,16		
result 68:4 107:23 108:9, 16 118:1	reviewing 228:14 272:8	rule 45:12 68:7 69:22 161:14, 15,18 183:2 316:11,13,18, 23		

303:4,6,10,14, 20 312:6	28:7 33:4,13 34:4 39:14 42:15,20,24 44:1,2 46:11 49:6,20 50:8 54:23 72:19 91:4 96:4 97:21 98:1 103:9 108:17 115:19 118:20 119:5 131:2 133:6 135:9 141:9 152:13 159:14 162:22 167:20 172:18 173:11, 12 174:12 187:10 189:24 191:19 196:7, 17 205:22 225:23 244:5 245:5 251:1 252:16,20 257:12 258:17 259:9,18 273:3, 20 276:9 285:15,19,20 286:3,4,6,9 287:8,11 289:21 290:9 292:3 299:19 300:24 301:3,7 306:1 308:1 309:17 310:2 313:6,20 314:7, 10	24 234:4 237:11 244:19 256:12 262:6,9 268:18 276:1 279:5 285:22 296:10 312:12	Sciences 3:9 17:4 83:2 282:18 screenshot 161:3 screenshots 161:3,5 162:18 screw 50:8 search 63:22,24 182:9 searched 182:7 Searching 73:5 106:17 SEC 45:12 second 1:6 2:11 71:18 82:9 89:9 129:4 130:23 151:20 163:11 175:24 208:12 214:1,6 216:3,5 219:11,14 220:13 222:13 228:12,19 236:1 277:8 281:7,10,13 294:21 310:8 second-to-last 65:18 67:13 section 84:14	85:17 88:24 140:14,19 141:3,7,12,16 214:2 293:20 313:18 316:9 sections 313:20 secured 88:2 securities 32:14,15 45:2 63:12 85:22 86:6,8,24 93:13 94:13,14 191:5, 12 214:2,7,12, 18 265:4 security 44:11 85:2 87:2 94:3, 17 300:21 seeking 12:23 52:8,17 seems 250:9 seen 11:10 29:18 59:19,22 66:5 69:21 112:20 168:6 190:17 194:6, 21 213:21 219:23 221:18 264:3 278:19 281:3 sees 47:20
sales 51:16,17 243:19		says 45:14 48:23 59:14 72:7 74:11,14 75:12 79:1 84:14,17 86:5 104:24 132:6 134:19 137:3 138:16 140:21 141:4,7 151:4, 9,11 152:11 156:18 157:17 173:5 176:6 195:16 196:18 210:3 214:6 231:6,7 247:21 249:13,15 282:14,15 283:22 285:5, 12,22 288:2 295:14,19,21, 22 296:14 297:9,12 300:19 304:18		
same 11:2 17:17 30:24 37:5 44:17 50:12 62:12 96:9 101:9,10 102:11 133:19 141:1,4,13 143:1 156:2 157:7 159:20 160:9,17 163:23 177:7,8 178:19,22 196:8,20 197:2 203:13 207:14, 18,21 212:5,18 221:7 222:18 237:3 241:18 256:1 273:15 301:9		scenario 47:23 Schedule 67:3 school 19:15 Science 210:3 302:7		
satisfy 85:15				
SATTler 1:8				
savvy 98:19				
saw 60:2,5 165:11 188:4 219:17,21 277:23 278:6, 12 283:3	saying 61:9 65:12 68:2 91:5 134:5 135:12, 13 137:20 149:9 169:5 176:24 191:4,			
say 22:12 27:17				

selected 144:9	75:22 130:7	115:22 270:13 298:16	22:23 37:20 80:12	several 199:5
sell 17:18 18:2 24:22 34:3,6,17 37:17 41:15 42:15 43:6 44:2,21,24 45:4,15 46:13, 15,16 47:14,16 49:1,2,6,11,21 50:18,19 58:10 87:20 93:13 99:3 121:15,19, 23 122:8,9,12 125:14 130:10, 13,16,17,18,23 149:6 154:8 157:6 166:15 169:23 170:3 171:10,13,18 172:13,14,18, 19,23 173:1,5, 12,20,21,22,24 174:1,10,22 231:14,18 232:4 237:3 239:2 243:7 244:3 245:6,14, 19,20 280:12 293:12	sellers 135:3 selling 17:6,13 38:3 52:4 57:19,23 58:6 61:2 62:10 71:3 73:22 123:1,13, 18 164:9 172:4 176:16 sells 38:22 166:13 172:23 Semiannually 191:18 send 39:22 40:16 41:10 47:16,17,18 52:13 74:14 111:13 134:11 139:16,22 149:2 164:7,16 176:19 191:6,7, 13,14,16,20,24 269:12 282:5 302:14 sending 135:18 136:17 140:7 145:19 148:13 283:14 296:24 298:11 299:17 300:1 303:13, 19,24 304:16 sends 40:3	sense 25:2 27:6 92:6 258:1 sensitive 260:18 sent 64:17,19 65:1,2 67:9 68:12 74:11 75:9,10,14,17, 20 109:24 111:13 114:22 115:3 120:8 132:12 134:21 135:12 136:22 137:16 139:7,8 141:22 143:17 144:13 156:3 161:10 162:6,7 216:2 276:2 282:2 283:16 284:2 295:3 296:8 297:22, 24 298:3,6,18 299:15,24 300:2 302:4 303:2,7 304:4, 24 305:16 sentence 141:3, 7 187:23 282:13 288:16 296:14 separate 219:12 separately	September 65:4 72:8,15 212:15, 18 218:6 223:19,22 224:2,5 227:23 228:8 229:6,10 284:3 series 194:16 server 73:6 service 19:24 23:13 services 22:20 23:2,17,21,22 267:24 268:4 set 8:1 84:1 SETH 2:5 sets 85:6 205:11 settle 175:6 246:18 settles 42:21 127:9 seven 151:6 251:4	share 3:9 24:14 115:4 122:20 124:22 166:7 167:13 173:13 174:11 216:20 224:8 299:23 shareholder 83:1,13 113:7 119:6,10 137:7 shares 5:4,6 17:3 28:17 29:2 42:14,16,17 48:24 49:18,21, 22,24 50:19 51:2 68:24 69:8 70:14 71:3 75:2 84:21,23 85:1 93:8 95:6 104:18,24 105:15 121:16, 19,22,24 122:4, 6,14,21 123:1, 11 124:21 125:3,14 128:16,19 129:11 130:5,6, 24 143:14 145:16,19 147:22 148:10, 18 149:13 156:20 157:6 164:9 166:23 171:8 172:13, 22 173:10,12, 14,18 210:1 216:15,17 218:20 219:3,6
seller 38:17,19, 22 42:22 44:9 48:1 51:13,14, 24 123:22 127:10 130:2 141:5 169:1,6 282:16 307:22 308:3,5 312:21, 23				
seller's 71:9				

220:20 232:13, 22 233:8,11,15, 17 234:3,5,23 235:13,17 236:6,11,12,16, 17,22 237:2,4 239:2,4,6 240:24 241:7, 20 242:24 244:21,24 245:16,18,24 246:4,5,9,10,13 265:20 280:19, 20 282:17 286:24 289:11 300:22 302:6 306:14,17 309:16 315:8	13:23 shorted 175:16, 17 shorter 297:6 shorting 246:16 315:21 shortly 19:24 54:17 149:15 shorts 174:7 175:10 267:11 should 10:4 21:6 85:10 113:14 157:19 169:3 190:20, 24 193:1,3,5 195:11,13,23 196:2 197:24 199:22 200:22 205:1 225:12 252:8 253:23 254:3,14 255:6 256:2,5 308:5 shouldn't 117:3 190:22 show 14:21 17:16 112:10 117:24 134:6 145:21 158:19 161:23 185:23 198:8 199:11 208:22 214:11	240:13 247:3 250:20 269:3, 11 272:11 278:2,9 309:22 314:17 showed 172:4 showing 49:9 205:6 235:20 263:8 271:19 278:11 305:12 shown 205:16 241:18 shows 58:5 61:1,10 158:21 208:24 209:23 210:22 229:15 241:19,20 246:7,8 250:14 251:10 263:11, 22 266:5 shredded 46:24 sick 99:14,20 121:5 129:1 153:7 154:4 side 21:21 42:17,18,19,24 75:22,23,24 76:2 85:3 142:15 169:10 174:13 175:18 194:17 219:4 237:6,7 238:4	244:8 255:9 273:10 274:12 sides 10:11,12 232:10 sign 66:5 signature 61:23 65:8,19,22 66:1,4 67:12 68:5,10 79:7,9, 13,17 89:9,10 139:8 142:3 152:1 155:22 187:4,10 281:18 signed 4:24 61:22 64:18 68:13,22 89:22, 23 139:15 140:12 141:23 142:7 185:21 187:6 230:17 signing 187:16 signs 81:1,4 258:22 similar 60:24 101:3 263:13 similarly 212:10 Simonitsch 6:2, 3,5 301:14,21	302:1,13,22 303:7,13,19 304:8,17,20,24 305:4 306:12 Simonitsch's 303:3 simple 17:11 51:12 52:1 245:4 279:21 simply 9:22 61:6 146:6 161:23 163:2 183:3 193:9 235:11 simultaneous 44:15 since 30:12 31:19 50:13 153:1 175:13 213:18 305:9 sing 74:12,13 single 71:21,23 196:17 283:10 sir 8:8 22:6 42:10 55:6 60:4 70:20 71:15 72:14 79:3 82:17 83:24 91:6 98:15 140:20 159:13 196:10 213:12
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

214:21 317:1	55:8,16,19 56:7,15,18 57:8,22 58:10 61:2 62:8,10 65:13,20 67:9 68:5,9,20 70:22 72:22 74:20 76:5,21 77:1,4, 19 78:1,3,8 81:1 82:12,24 83:12,17 87:6 92:5 99:14 100:12 101:3 103:12 105:7, 24 106:4 107:5 120:17 121:23 151:4 154:14 155:20 159:8 161:24 163:4, 19 164:1,6,14 165:6 170:18 176:8 179:3,20 189:11 195:4 202:4,12 208:10 213:13 216:11,12,15 219:17,20 220:2,9 229:6, 19 231:3,11,14, 18 235:4 236:22 240:19 248:9 249:9 250:2 251:23 268:6 273:4,5, 13 275:3,7,14, 20 276:11 278:9 282:16 286:10 289:10 292:9 293:10, 11 302:17 313:2	12:16 Skarpelos's 17:18 18:1,6 54:2 65:24 66:3 79:5,21 84:9 100:10 101:14 102:1 103:10 110:23 186:24 190:4,16 192:22 195:10 197:13 198:7, 24 201:7 203:14 208:16 234:7 235:1 237:22 240:7, 14 249:23 250:16 252:23 264:11 267:15 297:9 298:23 skip 141:12 224:4 skipped 83:4 slight 290:23 slightly 213:13 slow 12:24 small 16:20 35:18 56:10 93:20 95:22 software 192:6 sold 20:10	37:14,16 45:14, 17 50:20 70:18 75:2 93:8 122:6 123:19 128:19 129:11 130:21 138:5 147:12 149:14 170:9 229:15 232:22 237:2,3 241:4 243:13 282:17 285:6 289:11 315:1 316:3 solid 95:5 somebody 7:13 10:11 43:6,20 64:19 136:10 165:9 184:7 205:1 238:9 239:3 244:3,5 somehow 47:5 245:11 302:2 someone 29:16 112:23 115:7, 23 118:2 135:13,18 183:21 206:9 269:10 someone's 95:21 someplace 163:20 something 8:12	13:20 29:14 46:23 47:6 48:11,12,24 56:11 68:11 72:1 95:11 98:21 114:9 115:23 117:9, 19 147:17 163:16 170:13 175:4 203:11 209:2 211:22 213:13 216:23 236:10 255:22 256:5 269:12 296:7 315:9 sometime 97:2 150:16 230:22 sometimes 12:24 19:11 21:9 35:21 53:7,10 167:15 218:19 232:7 252:20 270:2 307:18 somewhere 35:6 55:23 57:24 62:4 175:4 183:24 234:7 243:6 244:8 252:8 253:21 soon 113:8 119:13 sophisticated 254:8
sit 76:4 115:14 118:4 120:3 134:23 136:20 145:16 154:13 164:10 233:9 sits 35:4 sitting 18:4 164:5 165:8,15 233:14 309:17 situation 86:9 247:6 six 14:23 45:16, 21 46:10 49:5, 19 52:17 60:16 62:11 105:3 130:14,19 138:10 168:19 221:3 251:4 six-month 52:7 140:2 148:22 size 146:12 Skarpelos 1:14 2:3 3:14,17,18, 20 4:1,3 5:7,8 6:8 8:6,7,8 9:15,20 10:18 12:23 13:15,24 14:8 15:22 16:5 17:12,15,18 53:19 54:12,16	Skarpelos'			

sorry 31:1 52:14 71:22 75:23 117:1 151:18 169:2 172:10 187:8 194:11 195:18 200:1,3 214:10 217:14, 16 219:1,20 221:12 222:13, 16 225:11 240:16 253:16 273:20 275:11 279:7 281:10, 11 284:5,24 285:22 288:13 289:20 293:23 294:9,18 295:14 297:14 301:15 303:17 304:11,15 308:1 309:24 316:7 sort 155:3 230:5 244:21 256:12 315:22 sorted 27:18 sorts 273:15 sought 53:2 sound 280:9 sounds 221:10 284:18 source 29:9	50:21 sourcing 131:1, 2 Sourson 5:15 Soursos 127:23 128:4 speak 13:1 160:10,18 198:18 speaking 132:13 special 274:20 specific 22:11 63:1 86:24 120:6 144:7 146:13 177:12 251:5 273:3 274:15 specifically 18:2 31:16 121:10 127:8 133:18 144:11 178:10,11 189:15,24 231:21 273:5 specified 97:13 speculation 79:24 80:6	101:16 103:20 154:18 speculative 47:8 101:19 spell 19:1 286:5 spent 240:20 spoken 56:10 spring 159:21 160:13 springtime 99:15,18 squarely 183:1 stack 183:22 206:15 255:18 staff 126:21,23 127:1 181:13 183:22 248:13 stage 308:11 stamp 59:3,11, 13 71:12 72:2 99:24 100:3 101:7 114:7 139:9 151:21, 24 155:21,23 stamped 89:22	stamps 101:10 stand 26:9 92:9 standalone 114:24 standard 24:12, 14 135:9 139:12,16,22 start 37:20 115:20 120:21 121:20 165:13, 24 168:12 194:4,14 197:2 199:23 248:18 258:8,21,24 316:8,17 started 112:11 121:8 125:5 150:5 171:24 172:6,9 starters 50:5 57:16 starting 14:7 76:11,13 165:7 227:22 277:9 314:19 starts 172:11 194:17 258:9 288:16 302:21 state 1:6 19:1	115:10 119:13 141:16 177:16 185:14 187:12, 22 285:9 318:1 stated 118:11 179:4 188:13 311:10 statement 5:9 12:17,19 13:9, 13 14:11 15:6, 23 16:8,11,13, 15,18 28:1 69:14 90:8 91:14,18 108:7, 9,13 162:5 179:1,2,5,19 182:23 186:3,5 190:10,11 191:8,9,17,24 192:4,6,8,9,14, 15,16,17 194:5, 21 199:18,21, 22 200:22 201:2,9 203:20 206:24 208:9 209:14 213:10 222:5,11,20 225:20 226:2 227:9 229:14 236:5 240:16, 17 241:19 249:19 250:4,5, 22 251:10,20 259:12,15,16 261:3 263:15 264:10,17 294:14 305:24 306:2,3 statements
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

27:22,23,24 179:13,17 181:6 190:3,7, 8,10,12,16 191:2,6,7,13, 14,21 192:10, 22 193:3,5 195:4,23 196:3, 4,6,8 197:12, 15,16,20,23 199:20 200:10, 14 201:15,19, 21,22 206:5,6 234:16 236:4 242:4,22 249:4, 5 256:21 260:23 263:14, 19 264:1	109:18 127:12, 13 147:16 stickers 11:21 still 20:20 45:15 56:6 62:21 64:17 92:8 120:13 130:23 131:1 140:5 145:6 150:7 162:16 174:1 175:18 178:21 190:11 195:11 217:21 237:6, 16 243:8 245:5 300:7 314:22 315:6,8,19,24 316:2 stipulate 11:3 15:10 207:18 stipulated 14:13,22 15:5 stipulation 11:1 12:9 78:19 stock 3:15 4:1, 20,23 5:2 8:4,5, 15 10:13 11:4, 6,20 17:3,6,13, 15,18,19 18:1,3 24:22 33:14,16, 22 34:1,12,14 37:14,16,17 38:9,22 41:15, 22 44:2,8,16,20 45:6,18,21	46:11 47:14,20, 24 48:1,3,5,7, 11,12 49:4,7, 14,15,16 50:22 51:10 52:9,10, 18,19,20,22,23 53:3,11,16,23 54:21,24 57:18, 19,20,23 58:2, 6,11 60:24 61:2,3 62:10 66:18 70:9,12, 14,18 72:8,12, 17 73:19,22 74:8 84:20 85:15 87:3,7,20 93:2 95:4,5,6,8, 13,23 96:2 99:3 104:15,18,19, 21 105:2,6,7, 13,15,18,23 120:13 121:22 122:22 123:1, 13,14,18,19,21 124:1,7,15,21 126:5 129:17 130:10 131:5 133:23,24 135:3,9 139:20, 21 140:6,8,11, 15 142:6,20,21, 23 143:5,20 145:5,12,21 146:23 147:3, 12,17,18 148:10,14,19 149:3,4,14 151:2,14,15 152:4,22 153:18,23 154:6,8 155:17 156:20 157:6 158:4,9 159:6	164:3 166:13, 19,21,23 167:12 168:13 169:23 170:1,7, 13,21 171:12, 13,18 172:1,2, 5,16,17,18,19 174:2 175:10, 13,16 176:7,13, 17 177:1,14,22 178:5,12 199:2 210:3,12 215:15 216:24 217:2,5,7,9,11, 21 218:1,22,23 219:7,11,17,21, 24 220:1,9,11, 16,23 221:5,6 222:19 223:1 224:8,19 225:4 226:8,15 228:4 229:15 231:2, 15,18 232:4,12, 14 234:24 235:11 236:7 237:18,19,20, 22 238:12 239:2,20 240:20,22 241:2,3,4,5,8, 16,17,23 243:1, 6,9,10,11,12 245:12,16 246:13,14,17 259:5,17 260:13 261:12, 18 263:3 266:6 279:2,6,13,16 282:17,23 283:20 286:11, 14,22 287:5,6, 8,24 289:11 293:11,12	295:1,13,15,21, 22,23 296:3,6, 11,13 299:5,8 300:4,17 301:4 303:3,4,6,20, 23,24 304:2,10, 17,18,19 305:6, 7 307:9 309:21 310:24 312:6 313:22 314:15, 20,23 315:20, 24 stockbroker 44:1 Stockhouse 20:8,10,15 stocks 87:3,5, 14 95:15 stop 4:3 54:1 154:24 155:14, 19 156:3 164:3 210:7 280:2 288:18 289:2 290:19 297:5 storage 26:6 27:10,11 29:18 183:23 257:10, 11 stored 181:15 Street 177:16 strictly 274:17
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Strike 199:14 292:13	101:24 116:7,8 216:1	suggestion 77:14	102:12 103:22, 24 108:12,14 135:23 180:19	127:12,13 140:14 157:22 161:5 163:8,21 168:16 169:13 181:2 182:4 183:9 196:16, 19 215:2 245:20 247:14 264:24 269:8 288:13 291:22 305:5 307:19 308:18
structure 24:1, 13 30:19	subsidiary 25:22	suggests 299:16	sustained 106:22 115:18 154:19	
stuck 216:22 236:1 237:5 280:17 309:8	substantially 173:4	suing 234:2 235:10	SWIFT 274:20, 21,22,24 275:5	
stuff 74:15	substitute 244:21	Suite 2:5	sworn 18:18	takeaway 174:20
subject 58:7 113:2 132:5 140:21 162:21 294:24 302:6 316:6	subtract 244:13	summarizes 27:1	syllables 163:8	
	successful 55:18	summary 185:15 186:10, 24 259:12	system 27:5,8, 15 30:23 31:5, 23 32:7,8 34:8 96:3 190:14 192:16 201:23 202:1 256:20 257:1,3,17,20, 23,24 258:6,8, 9,12,18,19,20	taken 12:13 92:1 164:21 173:18 235:8 248:7 251:5 292:7 309:6
subjects 185:6	such 141:9 157:21,23	support 162:19 185:15 186:23 300:3		takes 33:10 233:6 243:5 252:13 267:1 269:24 270:2
Submission 294:24	sudden 95:12	Supporting 3:20	systems 254:8	taking 60:18 94:18 170:20 173:2 256:13
submit 79:1 91:20	sue 236:15	supports 69:22	tables 25:6	talented 196:18
submitted 9:12, 17 11:3 78:8 110:18 131:14 143:9,12 158:10 159:7 177:24 202:4	sufficient 62:1	supposed 9:24 190:6 236:18 238:1 292:3 315:5	take 8:11 21:10 33:8,20 35:19 37:20 38:12 52:1 78:3,13 84:6,7 91:17,23 92:20 109:17	talk 41:14 63:13 67:22 103:9,13 132:2 188:16 267:12,20 277:9
submitting 143:13 178:4 202:10	suggest 64:23 293:14	surgery 211:18	T	talked 46:7
subsequent	suggested 73:24 77:7 121:15	surprise 154:11		
	suggesting 43:5 62:19 115:15 121:23	sustain 101:20		

60:15 72:18 73:7 107:19 128:15 129:15 167:22 168:12 185:6 187:18 188:17 215:15 225:18 249:12 290:21 292:22 306:20	technically 48:14 113:19 158:11 237:2 311:13 312:13 telephone 98:8 telling 137:15 177:13 187:18 201:1 282:21 283:11 template 82:18 temporary 262:22,23 term 32:10 34:9 35:11 59:2,10 95:17 233:13 250:7 terms 5:11 17:7 128:15 140:21 141:20 257:16 287:2 terrible 90:9 terrorists 167:20 testified 18:19 25:11 58:9 62:9 69:6,12 103:20 120:16 125:20 128:24 130:14 139:11 148:12	162:7,11 166:21 167:1 170:12 179:12 180:12,14 182:16 183:7 184:18,19,22 185:1 193:6,11 199:19,21 201:18 204:13 205:4,5,24 206:16 208:14 215:9 217:19 218:13 232:21 233:10 237:21 238:10 249:1, 22 250:2 258:3 259:4 262:2 267:21 276:11 307:6 308:8 310:3 313:1 testify 64:17 104:2 113:16 182:15 184:1,5 185:5 190:23 193:4,9 198:5 204:20 269:1 testifying 67:19 207:1 221:21 279:15 testimony 17:22 64:14 100:17 107:20 122:24 146:5 180:16 191:11 196:1 200:13 203:12 205:5,16 206:18 215:24 216:6 217:3	218:10 220:17 222:10 224:19 225:8,18 227:1, 11 233:19 235:2 239:19 251:22 253:9 254:12,16 260:13 263:2 279:4 311:23 313:14 314:4,5 316:18 text 98:21 129:20 132:6, 12 texts 160:19 than 46:19 52:10,19 64:10 78:2 93:4 97:22 98:17,24 114:23 118:10 139:8 141:8 157:18 158:14 168:7 213:14 215:3 234:18 236:10 251:13 254:8 261:3 266:9 276:15, 21 310:17 313:14 314:5 their 13:19 26:16,17 27:5, 12 29:9,15 35:22 36:2 38:5 39:9 50:7,19 53:8 58:5 83:23 84:5 86:17 89:20 126:18	147:17 166:10 176:17 186:10 195:3 202:22, 24 203:5 219:5 233:8,15 235:13 236:16 237:5 238:17 239:3,11,13,14, 16,17 241:9,10, 15,18,23 242:9, 21,23 246:18 257:3,24 258:6, 11,12,18,19,20 260:23,24 264:18 265:9, 13 266:19 271:5,7,19 316:13,15,22 themselves 180:15 theoretically 10:7 theory 221:10 265:10 thereabouts 35:7 57:24 thereafter 18:2 therefore 288:17 thing 10:24 37:5 43:6 47:13 52:6 62:12 92:14
-------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

114:8 115:6 116:15 117:6 150:5 196:8,17 201:2,4,8 204:9 247:21 261:17 things 21:9 26:11 50:23 53:24 57:16 64:23 65:8 69:3 76:9,13,18 98:17 113:21, 24 114:2 121:21 133:23 145:22 148:8 167:15,21 188:17 196:11 256:9 thinking 247:17 third 50:6 82:15 89:14 102:22, 24 104:6 180:16,17 242:2 245:1,15 254:13 271:21 third-party 238:11 242:16 246:12 247:1 263:5,12 264:16 265:18 286:6,10,15 Thornton 206:10 thought 60:20 73:2 77:12	152:12 205:9 238:10 308:8 thousand 49:18,21,24 173:16 thousands 183:24 thread 72:19,20 112:11 116:8 117:4 135:11 threads 112:16 three 16:22 20:22 21:3 36:18 55:23 56:11 116:7 157:1 192:14 251:4 270:1 through 12:7,19 21:18 25:18 29:11,12 31:18 37:13 42:1 44:11,19 46:2 48:15 51:9 54:7 73:5 91:8 96:22 97:17 98:13 99:5,10,21 100:7 113:24 114:1 115:21 121:17 125:6,7 126:13,19,20 127:6 128:7 130:9 146:3 147:6,8 157:18 163:18,22	164:13,14 166:14,17 167:2 169:3 170:16 171:4 188:3,7 197:13, 22 205:5 206:7 208:21 213:4 214:15 219:16 220:5 225:15, 17 235:20,24 236:23 243:2 252:12,13,17, 22,24 254:6 256:16 261:9, 11 270:16 273:10 275:15 283:18 311:13 314:2 throughout 113:14 125:7 242:14 308:13 throw 163:12 tied 274:15 ties 109:2 tight 76:18 tightrope 292:1 time 8:1 11:2 16:24 17:17 25:3 29:11 30:8,12,17 31:3,19 32:1 36:8,16,23 37:2	42:2,4,6 44:17, 23 53:6,19 54:10,16 55:4, 15,24 56:9 57:6,18 60:5 69:17 74:21 76:9,12 77:11 78:12 86:6 91:22 95:1,23 96:2,4 97:19, 20,21,22 99:7, 8,13 100:18 103:2 115:19 117:8 121:3,5,6 122:5,11 124:2 125:1,23 129:1 130:13 133:20 149:2,20,23 150:16 156:2 157:7 162:1 163:4,23 165:11 166:13 171:3,7 172:19 174:5,6 176:15 179:10 182:19 185:4,9 188:1 191:17 196:20 197:2 203:2 205:14,23 213:5 215:2 220:8 232:16 236:11 237:3 242:18 243:17, 18 247:14,16 249:18 251:24 252:13 256:19 259:14 260:9 269:7 283:7 288:13,22 296:8 298:1 300:6 307:10 308:13 314:24 315:11 316:7,	24 time-sensitive 288:17,21,24 289:1 times 51:4 120:7 159:9,10, 14,24 160:15, 18 232:8 234:9 243:13 timing 157:4 title 29:21,23,24 51:3 titled 111:7 today 10:17 34:3 36:3 59:20,23 60:3 76:4 120:3 134:23 136:20 154:14 216:9 217:3 218:10 233:9 248:12 267:6 313:14 314:4 together 24:2 56:5 57:13 77:12 100:13 136:9 160:5 191:9 230:22, 23 told 16:9 57:11 68:24 69:3
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

149:21 150:13 165:13 216:20 242:19 287:22 292:13 309:20 310:15 312:5 313:5 315:11	20 111:17 119:24 120:5, 10 126:5 142:5 168:2,7 171:3 202:16 241:19 246:7 266:6 269:15,17	tough 76:13	260:21 266:15 279:23 308:9	6,10 218:11,17 219:9,11,14,15 220:5,13,17,24 221:15,23 223:1 224:7,12, 21,24 225:4 226:20,22,23 227:2,4 228:1, 4,10,19 230:19, 21,24 233:18 235:8,20 237:6, 7 238:4 239:13 241:1 244:8 245:19 249:2 250:15,24 252:6,8,9 253:2,16,18 254:3,19,23 255:1,2,3,4,10, 15,18 256:14, 17,22,23,24 257:4,9 261:3, 6,24 262:7,10, 19 265:11,16, 18 266:5,13 267:1,19 269:15 275:18 279:22 280:1,3, 6,7,13,15,16 283:21 284:21, 23 285:2 286:18 289:10, 16,22 291:13 293:15,21 294:4,8 301:7 302:16 307:6, 21 308:2,22,24 310:8,10,12 311:13,14,17 312:10,12,22 314:9,12 315:6
Tom 6:6 53:23 54:5,7,17 55:1 57:11,12,13,18 66:13,15 68:2 70:13 71:1,6 72:22 74:7 77:11 89:24 96:22 97:12,15, 17 98:4,13,17, 24 99:11,21 113:8 119:1,14 120:7,17,20,23 121:1,4,9,12, 15,17 123:12, 18,19 129:1 130:2 133:11 150:7,8 153:5, 6,10,12,14,22 154:2,3 155:20 160:1,11 161:4, 24 162:11 171:2 179:3 189:10 208:10 211:17 216:11, 12,15 229:6 230:8 261:23 262:4,6,9,13,18 263:3 268:9 311:14	tomorrow 248:18 316:11, 24	towards 316:23	trading 167:16 173:13 218:20	
Tom's 57:10 89:13,15 96:20 98:18 99:2,9 102:10,19 109:22 110:3,7,	tonight 132:19	trace 274:19,20, 21,23,24 275:5	trail 266:3	
	took 117:18 127:15 146:16 168:4 180:13 184:15 185:4 240:6 255:23 285:10 293:14, 18	track 200:19 256:21 274:14	transact 34:4 85:1 169:15 171:15	
	top 11:13 82:24 84:14 85:3 116:15,18 117:3 156:19 196:5 204:9	tracked 189:19, 21,22	transacted 34:3 128:20 138:7 147:22	
	topic 166:18 230:5	tracking 256:21 257:16	transaction 37:18,21,23 38:1,2,4,5,6 42:1,20 43:17 44:7 45:8 48:2, 5 50:19 51:5, 13,15 60:15,18, 21 63:11 69:5 123:21 125:19, 23 126:4,12,15 127:10,11 128:7 130:9 134:12 136:9 142:11 146:20 167:9 169:10, 19 173:22 190:6 191:1 192:11 199:12 200:11,18,22 201:6 206:18 210:12 212:3 213:16,17 214:14,19 215:14 216:3,5,	
	total 175:15	trade 29:14 32:16 42:21 43:21 44:4,5 50:8,10,11 127:6,11,15 146:20 167:16 169:12 173:18 239:1 246:18 259:24 266:16 309:6 311:13, 14,15		
	totally 165:8,14	tradeable 246:14		
	touch 56:6 77:20 292:15	traded 17:6 44:22 85:2 219:3		
	touched 41:12	trades 32:16 219:4 247:2,4 259:17,23		transactional

26:6,21 27:12, 17,18,20 28:10 252:15 transactions 41:14 45:10 50:2,3,16 52:7 53:5 66:7 97:23 110:7 125:10, 11 132:17 189:20,23 191:1 192:2,3, 5,7 198:1,6,23 199:5,9,10,16 201:3,5 205:22 213:1,3,4,6 214:12 215:11, 12 230:15 245:11,13 246:21,23,24 249:2,11,23 250:18 252:3,7, 23 253:1,19 254:2,11,13,20 257:16 260:17, 19 261:10 268:18 271:16, 18,24 274:2 276:2,15 277:17 278:12 279:24 306:4 310:4 313:9 transacts 277:17 transcript 310:1 transfer 1:10 4:3,4 5:4,6 6:7 7:6,15 8:3 34:7,	13 39:7 46:2,3, 11,22 47:3,4, 11,15,19 49:11 52:24 53:4,9,10 87:19 92:19 109:11,13,15, 18 110:18 112:21 113:2,7 114:15 118:22 119:6,9,11 143:12,13,14, 17 147:19,20 148:14 150:19 154:24 155:14, 15,19 156:3 157:20,21 158:5,8 163:20 164:2,3,7 166:5,11 177:5, 12 209:15 210:15 211:13 243:3 253:3,17 260:17 269:17 282:22 286:24 287:5 288:18 289:2 295:10 296:16 298:7 302:6 304:3 308:24 transferee 142:23 143:7 transferrable 246:14 transferred 51:3 109:21,22 110:19,22 111:16 117:15, 21 168:1	208:16 240:24 306:17 transferring 119:24 234:21 306:14 transfers 152:18 155:17 259:18 transition 190:13 263:20 transitioned 257:23 transmitted 205:14,24 treating 113:11 trial 1:19 8:2 10:5 12:6,16,18 13:8 16:13,21 58:22 115:11 182:23 206:24 216:10 236:4,5 310:21 311:24 trials 113:23 tried 213:1 313:18 true 17:23 107:22 180:18 183:5 187:13	trust 21:5,17 25:15,16,21 89:23 100:4 101:7,10 202:12 trustworthiness 206:12 truth 107:13 108:4 161:22 162:5,19,20,24 truthfully 185:8 try 81:5 93:12 113:15 157:6 181:22 213:5 254:9,13 291:5 308:15 315:15 trying 21:10 47:14 61:10 63:10 112:10 121:20 130:23 131:4 154:8 171:2 190:9 191:19,22 197:4,6 233:11 236:15 246:2 270:15 290:20 312:11 turn 9:24 29:16 58:23 71:10 78:11,16,23 88:13 99:23 101:2 104:12 105:10 106:6 110:9 111:3,19	131:6 133:1 134:3,14 138:8, 24 142:16,17 144:19 147:20 150:21 154:21 156:9 160:21 169:14 175:21 176:22 177:18 178:18 187:3 198:9 208:8 227:21 229:12 230:1 281:7 turning 65:18 81:19 217:19 turns 170:7 twelve 45:16 130:19 221:3 twice 160:1 two 34:23 42:16 44:8 47:24 56:11 116:7 139:4,17 172:11 196:19 215:10,12 220:21 235:15 251:4,12 278:12 279:24 286:17 307:14 308:15,16 309:14 two-page 71:11, 20 two-year
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

159:10,20 160:9,19 192:16	13 313:3 314:20 315:5, 10	86:19 91:6 96:10 98:12 103:4 115:10, 13 116:6 117:23 124:3 133:8 149:23 155:12 169:4 171:15 191:10 197:5 200:13 203:12 215:8, 23 220:22 223:24 229:13 230:7 233:19 234:15 235:2 237:10 239:12 254:16 255:13 256:10 262:2, 24 274:18 275:13 278:14, 19 279:14 293:24 300:1	undertook 125:13 Unfortunately 17:16 Uniform 157:23 unit 183:23 United 187:12 university 19:16,17,18 unknown 263:22 unless 13:20 48:3 85:24 101:19 102:16 107:1 180:19 197:15 237:7,8 238:2 265:8 unrelated 220:21 221:6 unsure 163:17 280:9 until 10:5 20:1, 20 44:4 45:22 125:21 130:13 142:14 148:16 156:7 164:17 170:22 189:20 238:3 248:4	270:11 284:10 297:4 updated 137:21 upper 104:23 urgent 74:15 urgently 76:5 119:4 USD 214:7 use 59:2,12 83:17 84:4 95:4 140:16 141:1 166:9 233:13 248:14 used 32:10 35:11 119:10 163:21 218:18 226:21 284:14 297:3 using 61:3 297:5 usually 45:16 48:2 90:7 123:23 130:14 171:4 256:4 utility 90:3,7,16, 23 91:1,18 utilizes 267:24
type 20:21 87:1 199:23 298:16 types 30:15 31:15 55:15 148:8 typical 24:12 52:3 123:21 298:13 typically 24:13 25:4 28:17 29:1 32:15 35:18 38:12 45:5 90:12 93:21 94:13 120:8 295:9 298:15 typing 165:9	ultimately 61:1 139:19 145:13 147:5 242:24 246:13 271:13 273:18 309:6 unable 18:2 unconsummate d 226:20 undecided 178:22 under 33:6 45:12 61:17 69:10,18 72:7 76:13 79:10 85:11,21 87:5 90:12 91:15 114:23 135:3 141:13 142:23 143:16 157:23 162:14 183:1, 11 187:11 188:13 191:4, 12 206:13,23 210:22 224:1 310:4 understand 31:13 41:21 44:7 56:21 57:1 60:6 61:14 62:24 63:13 64:13 65:14	understanding 15:19 88:7 96:1 101:12 119:17 133:9 158:3 172:3 208:15 240:8 296:5 297:22 understands 117:12 understood 118:8 196:13 197:3 223:1 227:8 253:9 263:2 279:4 undertake 170:11	undertook 125:13 Unfortunately 17:16 Uniform 157:23 unit 183:23 United 187:12 university 19:16,17,18 unknown 263:22 unless 13:20 48:3 85:24 101:19 102:16 107:1 180:19 197:15 237:7,8 238:2 265:8 unrelated 220:21 221:6 unsure 163:17 280:9 until 10:5 20:1, 20 44:4 45:22 125:21 130:13 142:14 148:16 156:7 164:17 170:22 189:20 238:3 248:4	270:11 284:10 297:4 updated 137:21 upper 104:23 urgent 74:15 urgently 76:5 119:4 USD 214:7 use 59:2,12 83:17 84:4 95:4 140:16 141:1 166:9 233:13 248:14 used 32:10 35:11 119:10 163:21 218:18 226:21 284:14 297:3 using 61:3 297:5 usually 45:16 48:2 90:7 123:23 130:14 171:4 256:4 utility 90:3,7,16, 23 91:1,18 utilizes 267:24
<hr/> U <hr/>				
U.S. 210:24 211:14 253:10 Uh-huh 138:13 239:21 ultimate 142:10 236:24 237:24 244:2,20 274:1 278:8 310:4,11,				

268:3	246:10	6	Walker's 11:2	125:9,12,14,18, 21,22 126:8,10, 11,14,22,24 127:1,14 129:13,17 130:1,2,21 139:18 144:3 146:16,18,22 147:8,12,16 149:5 152:24 153:1,15,18,19 159:5 164:9 168:2,7,24 169:6 172:11, 12 179:13,14, 23 180:1,4,6,7, 15 181:9,20 182:5,19 183:8 184:1,7 185:11, 16 187:23 188:18,23 189:2,8,11,13, 19 190:3 191:12 192:21 195:2,6 197:12, 19,24 198:6,24 199:8,10,16,19 200:10,15,19, 21 201:16,19, 23 202:4,12 203:15,19 204:16 205:19 206:6,14 215:21 217:20 232:22 234:23 235:24 237:17 238:16 239:13, 15,20 240:23 241:3 242:2,8, 16 243:4,18 244:2,19,24 245:15 249:1, 18,22 252:6,17
V	venture 20:11, 17,19	virtue 239:10	walking 292:1	
V-E-R-D-M-O-N-T 37:8	verbal 129:20 262:12,13	vis-a-vis 61:2	WAM 3:11 17:1 19:11 24:4,7 25:11,14,24 26:2,7,19 28:2, 4,13 29:6,10, 16,21 30:3,12, 16 31:3,9,19,20 32:1,19,21,23 33:13,14 34:17, 20,24 35:8,9 36:3,8,9,11,23 37:2,14,17 38:7,10,11 39:1,2,15,16 40:8,11,13 41:2,14,15,16, 23,24 42:8 43:11,22 44:8 47:13,20,24 48:7,16,17 50:2,3,12,18 51:5,11,13 52:1,2,7,17 53:4,5 77:1,5,8, 10,13,20 78:1, 4,6,9 82:13 84:19 87:13,20 92:16 93:1,18 97:5 100:17 102:22,23 103:18 104:7,8 105:8,24 106:3 109:9 110:3,7, 23 111:16,17 118:20,21 120:10,14 122:3 123:16, 17 124:13,15	
vague 30:7 42:2 103:2,5	Verdmont 36:16 37:7 40:7,8 41:7 109:10	voice 289:19,21		
valuable 236:10	verification 3:20 81:22 204:7 253:19	voir 3:5 184:4,9, 13 205:20		
value 85:9 87:1 93:16 94:2,3,4, 24 95:6,7,13, 14,21,23 96:7 122:13 124:17 172:17 203:18 210:11,13 236:6,10,11 250:10 253:13 266:16 270:1 300:21	verified 204:10	volatility 76:10		
values 94:22,23	verify 26:16 204:3 213:1	W		
variance 95:22	verifying 213:6	wait 45:5 49:5, 19 105:3 116:12 130:13 168:19 198:19 199:23 248:1,4 290:19		
various 19:23 26:23 66:7 98:20 168:2 184:18 239:5 296:22	version 33:24 136:21 137:23	waiting 113:9 119:14 165:12, 15 233:7,8,14		
vault 33:18 152:24 153:1 241:17,21	versus 34:1 93:22 207:20	Walk 37:13		
	via 66:8 98:6,8	Walker 2:15 5:14,20,22 6:1 7:10,11,12,14, 16,17 8:12,13 9:9,22 10:6,16 11:8,9,15,23 12:2,3 14:9 15:23		
	vice-versa 52:3			
	view 280:17 284:16			
	violating 265:4,			

253:15,22,23 254:3,14,17 255:9 256:13, 20 257:1,19 258:4 259:5 261:11 262:9, 14 263:4,8 267:1,12,21 268:14,17,23 269:5,8,10,11, 12,14,16,18 270:5,17 271:11,14,21, 23 272:2,5,12, 16,23 273:2,8, 13,19 274:1,14 275:8,14,17,23 276:2 277:14, 17,19 279:5,15, 18,19,23 280:8, 12,13,17,20 281:1 282:22 283:6,20 285:16 286:1,3, 9,13,21 287:4, 15,22,23 288:5 290:9 291:2,10, 11,18 297:2 300:17,19,22 301:8 306:21 307:6,11,21,22 308:2,3,6,9,12, 18,19,21 309:4, 8,18,21 312:21, 22,23 313:6,9, 12,17 314:10 WAM's 28:5,9 29:19 30:6,13, 22 31:4,22 32:2 34:14 40:14 83:20,21	125:19 148:7 189:16 199:15 201:2,11 202:7, 16,21 203:4 212:22 252:9, 22 255:11 261:2 262:22 269:16,19 270:6,9,17 271:15 272:1, 10,13,17,18 273:7,8 274:17 276:12 Wamo 296:22 297:6 want 9:11 16:13,14 21:12, 14 42:15 43:2 47:7 49:1 53:8 61:18 80:6 81:7,12 85:18 86:10 96:13 109:4 131:18, 22 135:17 152:13 164:10 167:16,17 171:10,17 175:24 177:13 191:10 194:14 205:22 206:10 215:8,22 220:22 225:7 227:7 230:8 236:16 262:2, 24 268:18 270:4,16 275:13 291:16 309:23 wanted 17:12	29:14 39:14 71:24 130:18 172:2 245:19, 20 258:1,21 wanting 174:10 wants 9:3 14:11 23:23 34:3 41:15 43:6 50:18 51:4 95:4 169:23 174:21 257:9 WASHOE 1:7 way 14:1 28:6 33:6 35:14 47:1 51:9 68:12 73:20 75:1 81:9,11 104:4 125:7 146:21 153:12 173:1, 23 175:17 201:14 215:13 224:22,24 240:24 241:18 245:10 255:20 273:12 274:13, 14 275:6 283:21 288:14 294:1 312:24 313:1 315:14 ways 42:16 WEDGE 2:4 weeks 149:17	WEEZ-ER 7:7 weight 69:16,17 Weiser 1:13 2:8 3:2 5:8,10,12, 16 7:9,19 8:6 9:16 10:20,22, 23 13:1,18 16:2,16,24 17:1,15 18:7 19:10 20:23,24 21:1,4,16 22:3, 7,10,18,19,20, 21,22,23 23:5, 6,9,10,12,13, 15,16 24:4,6,9, 17,18,21,23 25:20 29:24 30:2,3 41:20,21 42:11 44:9,10, 12,13,20,21 45:19,24 46:10 48:18 49:4,6,7, 12,19 50:9,10, 11,14,20 51:14 59:14,17 62:6 71:12 72:1 79:10,11,18 92:5 97:8 99:24 106:7 130:5 142:12 143:1,3, 6 145:24 165:6 172:8,10,13,18, 19,24 173:1,5,9 174:11,13 176:24 177:13, 23 184:19,22, 23 185:1 187:24 188:5 189:4,7,10 217:1,4,6,8,11	230:8 231:6,7, 11,18 232:4,6, 8,11 233:10 234:3,4 235:24 237:17,20,23 238:5,10 245:8, 11,12,20,22 246:20 247:3 248:9 262:18 269:2 278:14, 15,16,24 279:7, 9,18,20,23 280:24 281:20, 23,24 282:4,14, 15 285:17,21 287:19 289:11, 13 292:9 293:9, 12,14,22 294:7 296:7,21,22 297:1 301:1 302:17 306:21, 22,23,24 307:8, 12,15,18 308:9, 12,16,18 309:12,15,20 310:3,24 311:19 312:1,7, 18,20,21,23 313:3,4,5,8,16 314:5,12,21 315:9,15,20,23 316:3 Weiser's 12:18 33:19 130:6 172:20 186:23 232:14 243:24 247:2 300:4 weisercapital.bz 296:18
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

well-founded 64:23	14 39:12 71:8	will 8:23 10:12 11:18 14:9,10 15:12 17:5,7, 12,16,22 24:13 38:11,15,16 48:3 50:10,11, 21,24 51:5,13, 15 52:4 53:8 62:11 74:3 85:23 86:12 91:23 93:12,21 94:15 96:4 100:19 104:4 108:11,19 115:2,14 116:11 117:12 126:1 137:23 142:12 157:22 162:17 163:2,5 164:17,18 174:7 175:2,5 191:2 192:6 196:23 203:14 207:6,17,20 232:9 247:3 248:11 269:16 272:2,5,18 282:10 293:8 307:17 308:12 309:17 316:8, 10,24	wired 39:3	81:9,13,16 90:17,20 91:1 92:9 95:9,16, 19,24 96:3 102:7 103:11, 14 108:16 113:13,16 114:12,14,17 116:18,20,24 117:10,24 123:6,9 127:19 137:13 152:10 163:10 166:10 169:2,9 173:15, 19 174:9,16 175:1,17 182:15 186:15 191:20 192:1, 13 193:11,24 196:13 198:18 200:1,3 203:16, 21 204:1 209:6 210:20 215:4 228:21,23 232:6,23 233:2, 16,22 234:1,11 235:7,15 236:8, 24 241:9,12 250:10 269:24 290:3 306:3,6,8 316:17
went 20:10 55:23 83:4 88:10 89:24 98:13 99:4 123:14 125:6,7 126:12 128:7 141:20 147:6,8 149:2,9 160:3 170:16 171:6 177:8 216:19 219:16 220:5 235:1 237:22 244:2 245:2 253:24 263:3 267:15 278:9 283:3 294:1 305:9 313:2	whether 14:10 17:22 63:2 86:2 97:13 98:21 104:22 106:3 121:16 148:17 180:4 181:22 191:16 204:21 205:19,22 223:5 229:5 299:20 304:23 305:16 314:24		wish 147:22	
whatever 21:15 42:15 49:21 96:9 121:18 122:17 124:18 162:6 180:21 181:14 192:16 245:21 252:5	Whichever 175:18		wishes 50:19 170:3	
Wheaton 115:23	while 99:20 113:18 114:2 116:6 196:20 217:19 245:24 271:6		withdraw 86:17 87:15,18 92:20 198:14 221:12 268:6	
whenever 266:19	whoever 9:24 126:21 259:14 269:18 314:2		withdrawal 113:7 115:4 119:7 199:6 212:8 213:22 273:5	
whereas 33:7	whole 30:19 72:2 134:9 174:8 186:7 276:19,20 309:1	willing 124:15, 16,22	withdrawn 88:1, 10 110:3 213:19	
whereby 289:10	wholesale 204:24	wire 209:19 211:6,24 212:5, 10,17	within 38:6 43:11 100:17 149:16 204:21	
wherever 21:8,	whom 123:19 307:4	wire-out 256:2, 11	without 46:5 87:23 97:14 99:16 112:12 187:18 242:4 298:16	witnesses 3:2 14:5 15:21 16:21,22 18:14 316:14,20
			witness 18:12 21:16 22:13 42:8 43:4,8 46:22 47:2,10 65:6 67:21 68:14,23 69:9, 12 80:8,11	WIZE-ER 7:7,8
				wonder 58:23

WOODBURN 2:4	263:8,11 268:17 269:11 282:14 288:9 294:7 297:21	21,24 182:10 194:6,21 195:4 197:18 204:14 206:11,14 215:10 263:19 264:1 297:4 306:9	Z	
word 119:11 227:5	written 139:20 262:3,5,6,9,11, 14,16,17,20 265:16 267:8 272:12,14,15 273:19	year's 197:17	zero 14:23 45:9 176:3,4 294:17, 18	
work 19:22 20:17 24:7,11 25:1,2 85:18		Yearly 191:18		
worked 292:14 308:23 313:2	written-in 218:5	years 55:21,23 56:10,11 60:16 62:11 96:23 182:5 190:4 197:13,20 208:17 233:14 242:14 286:17 308:15,16		
working 56:4 57:11 136:9	wrong 48:11 50:16 284:15 289:23 291:13	years' 19:16		
works 137:6 315:14	wrote 113:22 114:10 116:5, 10 118:17 185:20 218:8 223:19,22 224:3,6 227:24 282:24 293:4 312:14	yesterday 188:4,5		
world 95:12 147:15 164:7 276:17		yet 9:9 111:15 148:17		
worth 49:10 96:5		younger 98:19		
wrap 248:17	X	yours 77:15,17 234:20		
wrapping 92:14	XYZ 29:2	yourself 161:5, 10 234:3 245:6 291:12		
write 114:10,16 224:5 227:23 228:8	Y			
writing 21:9 259:6 261:2,17 262:21,23	year 20:13 22:6, 19 56:23 99:16, 18 125:8 129:8 180:5 181:20,			

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

DATE, JUDGE
OFFICERS OF
COURT PRESENT

Pg. 1

APPEARANCES-HEARING

1/29/19
HONORABLE
ELLIOTT A.
SATTLER
DEPT. NO. 10
M. Merkouris
(Clerk)
P. Hoogs
(Reporter)

ONGOING BENCH TRIAL

8:32 a.m. – Court reconvened.

Jeremy Nork, Esq., was present on behalf of Cross-Claimants Weiser (Bahamas) Ltd., and Weiser Asset Management, Ltd. Mr. Christos Livadas was present with counsel Nork.

Cross-Claimant Anthanasios Skarpelos was present with counsel Dane Anderson, Esq., and Seth Adams, Esq.

Counsel Anderson placed an objection on the record; counsel Nork responded.

Christos Livadas was reminded by the Court that he remains under oath; further cross examined by counsel Anderson.

10:18 a.m. – Court stood in recess.

10:37 a.m. – Court reconvened

Witness further cross examined; re-direct examined; re-cross examined.

12:05 p.m. – Court stood in recess for lunch.

1:23 p.m. – Court reconvened.

Witness further re-cross examined; and excused.

Counsel Nork advised the Court that he is not resting his case, however counsel Anderson is now going to call a witness out of order.

Counsel Anderson called **Anthanasios Skarpelos** who was sworn and direct examined.

3:00 p.m. – Court stood in recess.

3:17 p.m. – Court reconvened.

Witness further direct examined.

Upon questioning by the Court, counsel Anderson indicated that he will waive his opening statement, however he does intend to make a Rule 50b motion, which he cannot do until counsel Nork rests.

Discussion ensued between the Court and respective counsel regarding the order for the remaining witnesses.

Counsel Nork indicated that he would prefer not to break up his cross examination of Mr. Skarpelos, so it would be his request that the Court take the evening recess now, and then they can call Mr. Walker first thing in the morning (as Mr. Walker has travel plans later in the day); at the conclusion of Mr. Walker's testimony, counsel Nork will then conduct cross examination of Mr. Skarpelos.

Counsel Anderson had no objection.

3:49 p.m. – Court stood in recess for the evening, to reconvene tomorrow, January 30, 2019, at 8:30 a.m.

1 CODE: 4185
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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
Company, a Nevada corporation,

11

Plaintiff,

12

Case No. CV15-02259

vs.

13

Dept. No. 10

14 WEISER ASSET MANAGEMENT, LTD.,
a Bahamas company; ATHANASIOS
SKARPELOS, an individua; and
15 Does 1-10,

16

Defendants.

17

18

TRANSCRIPT OF PROCEEDINGS

19

TRIAL - DAY 2

20

Tuesday, January 29, 2019

21

Reno, Nevada

22

23 Job No.: 524001

24

Reported by:

LORI URMSTON, CCR #51

Page 2	Page 3
<p>1 APPEARANCES:</p> <p>2 FOR DEFENDANTS WEISER ASSET MANAGEMENT AND WEISER</p> <p>3 BAHAMAS, LTD.:</p> <p>4 HOLLAND & HART</p> <p>5 By: JEREMY L. NORK, ESQ.</p> <p>6 FRANK Z. LaFORGE, ESQ.</p> <p>7 5441 Kietzke Lane, Second Floor</p> <p>8 Reno, Nevada 89511</p> <p>9 FOR CROSS-CLAIMANT ATHANASIOS SKARPELOS:</p> <p>10 WOODBURN AND WEDGE</p> <p>11 By: DANE W. ANDERSON, ESQ.</p> <p>12 SETH J. ADAMS, ESQ.</p> <p>13 6100 Neil Road, Suite 500</p> <p>14 Reno, Nevada 89509</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 I N D E X</p> <p>2</p> <p>3 WITNESSES PAGE</p> <p>4 CHRISTOS LIVADAS</p> <p>5 Cross-Examination (Resumed) by Mr. Anderson 9</p> <p>6 Examination by the Court 18</p> <p>7 Cross-Examination (Resumed) by Mr. Anderson 24</p> <p>8 Examination by the Court 108</p> <p>9 Cross-Examination (Resumed) by Mr. Anderson 110</p> <p>10 Redirect Examination by Mr. Nork 112</p> <p>11 Examination by the Court 120</p> <p>12 Redirect Examination (Resumed) by Mr. Nork 124</p> <p>13 Recross Examination by Mr. Anderson 152</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
Page 4	Page 5
<p>1 RENO, NEVADA; TUESDAY, JANUARY 29, 2019; 8:33 A.M.</p> <p>2 --oOo--</p> <p>3 THE COURT: This is CV15-02259, Skarpelos versus</p> <p>4 the Weiser entities. Mr. LaForge and Mr. Nork are here</p> <p>5 on behalf of Weisers' interests, Weisers plural.</p> <p>6 Good morning, gentlemen.</p> <p>7 MR. NORK: Good morning, Your Honor.</p> <p>8 THE COURT: Mr. Livadas, you're still on the stand</p> <p>9 and you're under oath. Do you understand that, sir?</p> <p>10 THE WITNESS: Yes.</p> <p>11 THE COURT: Good morning to you as well.</p> <p>12 Mr. Skarpelos, good morning to you, sir.</p> <p>13 MR. SKARPELOS: Good morning.</p> <p>14 THE COURT: And good morning to you as well,</p> <p>15 Mr. Anderson and Mr. Adams.</p> <p>16 Mr. Adams, I'm not trying to be disrespectful.</p> <p>17 You're just kind of stuck behind my computer screen, so</p> <p>18 every time I have to see you I look all the way over</p> <p>19 there to peek at you. But good morning as well. I</p> <p>20 have not forgotten your presence.</p> <p>21 MR. ADAMS: Thank you.</p> <p>22 THE COURT: When we broke last night Mr. Anderson</p> <p>23 was in cross-examination of Mr. Livadas. As I said,</p> <p>24 Mr. Livadas is still under oath.</p>	<p>1 Mr. Anderson, if you would like to continue your</p> <p>2 cross-examination.</p> <p>3 MR. ANDERSON: Thank you. Good morning.</p> <p>4 Your Honor, before I resume my questioning I would</p> <p>5 like to place an objection on the record.</p> <p>6 Mr. Skarpelos would object to Weiser presenting any</p> <p>7 further evidence or argument that the July 2013</p> <p>8 agreement is not the basis of their claims in this</p> <p>9 case. All the pleadings and documents up to this date</p> <p>10 have alleged that Mr. Skarpelos breached a July 2013</p> <p>11 agreement, and those pleadings were never amended to</p> <p>12 allege that he breached an April sale.</p> <p>13 If you look at their trial statement filed just</p> <p>14 shortly before trial, they identified four critical</p> <p>15 documents, one of which on page 2 is identified as the</p> <p>16 Stock Sale and Purchase Agreement that is at issue in</p> <p>17 this case, Exhibit 30. And they indicate in the trial</p> <p>18 statement that Mr. Skarpelos agreed to sell the shares</p> <p>19 to Weiser Capital for \$250,000 and that the transaction</p> <p>20 occurred on April 2nd, 2013.</p> <p>21 They then go on to cite on page 5 that the</p> <p>22 agreement provides the certain terms set forth and that</p> <p>23 the closing date would be such other date as the</p> <p>24 parties may hereto agree. And then the next paragraph</p>

<p style="text-align: right;">Page 6</p> <p>1 starting at line 12 states with respect to the \$250,000</p> <p>2 purchase price Weiser attributed \$249,580 to</p> <p>3 Skarpelos's account balance in April of 2013 when the</p> <p>4 actual exchange took place.</p> <p>5 For the first time yesterday I heard what I thought</p> <p>6 was a new theory being advanced which was that there</p> <p>7 was the April 2nd transaction and that the</p> <p>8 documentation that was transacted or exchanged in July,</p> <p>9 including the purchase and sale agreement, was a deal</p> <p>10 that was never consummated. That's completely at odds</p> <p>11 with their pleadings, Your Honor. And I just wanted to</p> <p>12 put on the record in the event that they plan to do a</p> <p>13 Rule 15(b) motion to conform the pleadings to the</p> <p>14 evidence that we're not expressly or impliedly</p> <p>15 consenting to that issue being tried.</p> <p>16 THE COURT: Mr. Nork or Mr. LaForge.</p> <p>17 MR. NORK: Thank you, Your Honor.</p> <p>18 I appreciate counsel's objection. However, it</p> <p>19 doesn't reflect reality. In fact, almost a year ago in</p> <p>20 our opposition to the motion for summary judgment filed</p> <p>21 by Mr. Skarpelos, Mr. Livadas in his declaration stated</p> <p>22 at paragraph 13, quote, "In April 2013 Skarpelos sold</p> <p>23 3,316,666 shares of the Anavex shares he had deposited</p> <p>24 with WAM in 2011 to Weiser Capital in exchange for</p>	<p style="text-align: right;">Page 7</p> <p>1 \$250,000 minus a \$420 processing fee which I helped</p> <p>2 arrange." That was in April of 2018 in our opposition</p> <p>3 to the motion for summary judgment which was under</p> <p>4 oath.</p> <p>5 THE COURT: I don't think that Mr. Anderson is</p> <p>6 contesting that.</p> <p>7 MR. ANDERSON: I'm not contesting what's in his</p> <p>8 declaration. I'm saying what's in their pleadings and</p> <p>9 what has been the evidence at issue -- Your Honor, I</p> <p>10 know there's going to be a dispute. And I understand</p> <p>11 what Mr. Nork's objections are, but the fact is the</p> <p>12 pleadings that they filed are the controlling documents</p> <p>13 in this case. And if you look at their operative</p> <p>14 pleading, which is Weiser's answer and crossclaim,</p> <p>15 filed on May 24th, 2016 --</p> <p>16 THE COURT: I think -- is the argument that you're</p> <p>17 making, Mr. Anderson, just so I understand it</p> <p>18 correctly, that the operative documents are the</p> <p>19 crossclaim, it's not any response in a motion for</p> <p>20 summary judgment, that's not what forms the basis of</p> <p>21 the defendant's -- or excuse me -- of the Weiser</p> <p>22 entities' complaint, it's the answer and the</p> <p>23 counterclaim?</p> <p>24 MR. ANDERSON: That's correct, Your Honor. The</p>
<p style="text-align: right;">Page 8</p> <p>1 document, the crossclaim that was filed on May 24th,</p> <p>2 2016, nearly three years ago, alleges in paragraph 3 of</p> <p>3 the crossclaim, "In July 2013 Weiser and Skarpelos</p> <p>4 entered into a contract for the sale of a certain</p> <p>5 amount of stock. Skarpelos, the former owner of the</p> <p>6 stock, agreed to sell it to Weiser."</p> <p>7 That's the allegation and that's what the evidence</p> <p>8 shows that his lawyers were claiming back in 2015 and</p> <p>9 they've never filed an amended pleading alleging that</p> <p>10 there was an April 2nd agreement and then a later July</p> <p>11 contemplated agreement that didn't take place.</p> <p>12 Everything in this case, all the discovery, has been</p> <p>13 based on the July '13 agreement that they allege was</p> <p>14 breached by Mr. Skarpelos.</p> <p>15 THE COURT: So noted. It might be -- it might be</p> <p>16 an issue that is raised at the conclusion of the</p> <p>17 case-in-chief for the Weiser entities, but I appreciate</p> <p>18 the fact you're raising the issue now, Mr. Anderson.</p> <p>19 And I would also note that by conducting your</p> <p>20 cross-examination and continuing to participate in</p> <p>21 cross-examining other witnesses that Mr. LaForge and</p> <p>22 Mr. Nork may call, you're not waiving the objection or</p> <p>23 consenting to the amendment of the answer and</p> <p>24 counterclaim.</p>	<p style="text-align: right;">Page 9</p> <p>1 MR. ANDERSON: Thank you, Your Honor. I just</p> <p>2 wanted to preserve that for the record.</p> <p>3 THE COURT: Thank you. I think that's the purpose</p> <p>4 of the objection. Correct?</p> <p>5 MR. ANDERSON: Yes, Your Honor.</p> <p>6 THE COURT: I think I'm with you. Go ahead.</p> <p>7 CROSS-EXAMINATION (Resumed)</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q Good morning, Mr. Livadas.</p> <p>10 A Good morning.</p> <p>11 Q Would you turn to Exhibit 30, please.</p> <p>12 We talked a little bit about this document</p> <p>13 yesterday; correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. And this is the Stock Sale and Purchase</p> <p>16 Agreement that was entered into between Weiser Capital</p> <p>17 or Weiser Bahamas and Mr. Skarpelos; correct?</p> <p>18 A Correct.</p> <p>19 Q And the date up top is July 5th, 2013, but you</p> <p>20 said you don't know exactly why you put that date in</p> <p>21 there?</p> <p>22 A Correct.</p> <p>23 Q Now, this document was a document that we also</p> <p>24 talked about at your deposition; correct?</p>

<p style="text-align: right;">Page 10</p> <p>1 A Correct.</p> <p>2 Q And I'll represent to you, and I have copies if</p> <p>3 you need to see it, that the deposition number for this</p> <p>4 document was Exhibit 25. Would you like to see a copy?</p> <p>5 A Of 25? It's the same as this; right?</p> <p>6 Q Exhibit 25 is the same as Exhibit 30.</p> <p>7 A I remember that.</p> <p>8 MR. ANDERSON: I've got a copy if the Court would</p> <p>9 prefer I mark it, but --</p> <p>10 THE COURT: No, that's not necessary.</p> <p>11 You understand that during the deposition it's</p> <p>12 being referred to as Exhibit 25, here it's been marked</p> <p>13 as Exhibit 30, but it's the same document; correct?</p> <p>14 THE WITNESS: Correct.</p> <p>15 THE COURT: All right. So he understands that,</p> <p>16 Mr. Anderson. Go ahead.</p> <p>17 MR. ANDERSON: Thank you, Your Honor.</p> <p>18 BY MR. ANDERSON:</p> <p>19 Q And at your deposition on page 228 -- and I'll</p> <p>20 let you turn to that page. I was struggling to find</p> <p>21 this yesterday, but I knew we had this conversation.</p> <p>22 Are you at page 228?</p> <p>23 A Yes.</p> <p>24 Q Starting at line 6 I asked you the question,</p>	<p style="text-align: right;">Page 11</p> <p>1 "I'll just ask you this question. Exhibit 25, the</p> <p>2 purchase and sale agreement that we looked at earlier,</p> <p>3 that document was intended to, I guess, document the</p> <p>4 arrangement that you had with Mr. Skarpelos that</p> <p>5 resulted in the April 2nd transaction?"</p> <p>6 And your answer was "Yes, correct."</p> <p>7 Right?</p> <p>8 A Correct, yes.</p> <p>9 Q Okay. So in October of 2018 you agreed with me</p> <p>10 that Exhibit 30, trial Exhibit 30, was intended to</p> <p>11 document the April 2nd transaction that is on Exhibit</p> <p>12 44, the account statement; correct?</p> <p>13 A Sir, that was in here or are you asking me the</p> <p>14 question?</p> <p>15 Q I'm asking you the question.</p> <p>16 A Oh, sorry. Ask me the question again.</p> <p>17 Q Sure. So you agreed with me in October of 2018</p> <p>18 that the purpose of trial Exhibit 30, which was</p> <p>19 deposition Exhibit 25, trial Exhibit 30, the purpose of</p> <p>20 that was to document the April 2nd transaction that you</p> <p>21 said took place April 2nd of 2013; correct?</p> <p>22 A Correct.</p> <p>23 Q Okay. And let's look at some of the terms of</p> <p>24 Exhibit 30. After the date that you wrote in there, it</p>
<p style="text-align: right;">Page 12</p> <p>1 indicates that this agreement is made and entered into</p> <p>2 by and among Weiser, Ltd., which you intended to be</p> <p>3 Weiser Capital -- correct?</p> <p>4 A Correct.</p> <p>5 Q -- and Athanasios Skarpelos with respect to the</p> <p>6 following facts. That's what it says; correct?</p> <p>7 A Yes.</p> <p>8 Q So the agreement is based on the terms and</p> <p>9 conditions set forth in this agreement; correct?</p> <p>10 A Say that again. The agreement is based on the</p> <p>11 conditions, yes.</p> <p>12 Q Yes. Your understanding of Mr. Skarpelos was</p> <p>13 based on this document?</p> <p>14 A Correct.</p> <p>15 Q Okay. And this document provides that the</p> <p>16 agreement doesn't go into effect until the closing date</p> <p>17 set forth in the agreement; correct?</p> <p>18 A Say that again. This document doesn't go into</p> <p>19 effect until the closing date?</p> <p>20 Q Correct. That's what the agreement provides is</p> <p>21 that it doesn't go into effect until the closing date;</p> <p>22 correct?</p> <p>23 A Correct.</p> <p>24 Q It says effective as of closing date.</p>	<p style="text-align: right;">Page 13</p> <p>1 A Sure.</p> <p>2 Q Okay. And you wrote September 30th as the</p> <p>3 closing date. We talked about that yesterday; correct?</p> <p>4 A Correct.</p> <p>5 Q And the agreement calls for a \$250,000 cash</p> <p>6 payment to be made at closing; correct?</p> <p>7 A Correct.</p> <p>8 Q Which is September 30th; correct?</p> <p>9 A Correct.</p> <p>10 Q Okay. Now, you agreed with me at your</p> <p>11 deposition that Weiser Capital as the party on this</p> <p>12 contract could have included a reference to the</p> <p>13 April 2nd payment that you say occurred, they could</p> <p>14 have set forth that term in this contract, but they did</p> <p>15 not; correct?</p> <p>16 A I could have included, yes.</p> <p>17 Q Okay. But you didn't?</p> <p>18 A Correct.</p> <p>19 Q And if you look at section 3.2 on the second</p> <p>20 page --</p> <p>21 A Yes.</p> <p>22 Q -- that indicates that you as the buyer have</p> <p>23 reviewed all the SEC reports involving Anavex stock;</p> <p>24 correct?</p>

<p style="text-align: right;">Page 14</p> <p>1 A Correct.</p> <p>2 Q And Mr. Skarpelos's ownership of Anavex stock?</p> <p>3 A Correct.</p> <p>4 Q Okay. And let's turn to the last page. And</p> <p>5 I'm going to read to you paragraph 4.1 which is</p> <p>6 entitled Entire Agreement. "This agreement constitutes</p> <p>7 the entire understanding and agreement of the parties</p> <p>8 relating to the subject matter hereof and supersedes</p> <p>9 any and all prior understandings, agreements,</p> <p>10 negotiations and discussions, both written and/oral,</p> <p>11 between the parties hereto with respect to the subject</p> <p>12 matter hereof"; correct?</p> <p>13 A That is what it says, correct.</p> <p>14 Q And the "subject matter hereof" is the disputed</p> <p>15 stock at issue in this case; correct?</p> <p>16 Let me rephrase that. The "subject matter hereof"</p> <p>17 is referred to on the first page of the agreement which</p> <p>18 says the 3,316,666 shares of Anavex stock that</p> <p>19 Mr. Skarpelos owned?</p> <p>20 A Correct.</p> <p>21 Q Okay. And there's also in section 4.2 a</p> <p>22 Governing Law provision. Do you see that?</p> <p>23 A Yes.</p> <p>24 Q Okay. Did you have a specific discussion with</p>	<p style="text-align: right;">Page 15</p> <p>1 Mr. Skarpelos or Lambros about having California law</p> <p>2 apply?</p> <p>3 A No.</p> <p>4 Q That California law provision was just in an</p> <p>5 internet form that Lambros found somewhere on the</p> <p>6 internet?</p> <p>7 A Yes.</p> <p>8 Q So it wasn't really the intent of the parties</p> <p>9 that California law apply to this transaction?</p> <p>10 A Right.</p> <p>11 Q And if you look at section 4.4, that's entitled</p> <p>12 Further Assurances. And I'll paraphrase what I think</p> <p>13 it means and I'll ask you a question. But as I read</p> <p>14 this provision, it's basically saying if any further</p> <p>15 documentation needs to be executed or completed to</p> <p>16 fulfill this agreement that Mr. Skarpelos or you as the</p> <p>17 other party agree to provide that; correct?</p> <p>18 A Correct.</p> <p>19 Q Okay. Basically if we need to execute this</p> <p>20 form to complete this deal, that's what this provision</p> <p>21 contemplates?</p> <p>22 A Correct.</p> <p>23 Q Okay. Did you ever send anything in writing to</p> <p>24 Mr. Skarpelos or Lambros saying that further</p>
<p style="text-align: right;">Page 16</p> <p>1 documentation needed to be completed to finish this</p> <p>2 contract?</p> <p>3 A Not that I recall for this contract.</p> <p>4 Q And that's your signature on the left-hand side</p> <p>5 at the bottom?</p> <p>6 A Yes.</p> <p>7 Q Okay. And you wrote in Weiser Bahamas, Ltd.?</p> <p>8 A Correct.</p> <p>9 Q In any of the email discussions or prior</p> <p>10 correspondence did you indicate to Lambros or to Tom</p> <p>11 Skarpelos that Weiser Capital would be the buyer of the</p> <p>12 stock in this agreement?</p> <p>13 A That Weiser Capital would be the buyer. Not</p> <p>14 that I can recall.</p> <p>15 Q Okay. Let's look at Exhibit 8, please. And</p> <p>16 before you turn there, actually what -- you said</p> <p>17 yesterday that you completed Exhibit 30 at a much later</p> <p>18 date than July 2013; correct?</p> <p>19 A Correct, because this agreement -- we were</p> <p>20 doing this agreement for the contemplated sale that</p> <p>21 would happen later in the year. So this agreement was</p> <p>22 for -- when this was being drafted, it was for a sale</p> <p>23 of stock of 3.3 million which Tom still owns, because</p> <p>24 this was the balance of his position, for a transaction</p>	<p style="text-align: right;">Page 17</p> <p>1 that was going to take place later in the year.</p> <p>2 So when that transaction didn't take place, when we</p> <p>3 didn't complete the sale of all of his stock, then I</p> <p>4 used this -- then I executed the agreement much later</p> <p>5 just to finish the file on what we had begun earlier in</p> <p>6 the year.</p> <p>7 Q You just testified earlier that this document,</p> <p>8 Exhibit 30, was related to the first April 2nd</p> <p>9 transaction.</p> <p>10 A It started for the purpose of finding buyers</p> <p>11 outside of WAM's clients. That's how this started.</p> <p>12 Q Okay. So this was -- now your testimony is</p> <p>13 that Exhibit 30 was started for the purpose of a second</p> <p>14 transaction --</p> <p>15 A Correct.</p> <p>16 Q -- that never happened, so you used it for the</p> <p>17 first transaction?</p> <p>18 A I used it to close our file, because it was</p> <p>19 supposed to be -- transactions happen in multiple</p> <p>20 transactions. The order was to sell the stock. We</p> <p>21 started this document to deal with outside non-WAM</p> <p>22 clients. And, yes, after we concluded with what the</p> <p>23 total final transaction was, which was only the first</p> <p>24 3.3 million, then I executed this to have in our file</p>

<p style="text-align: right;">Page 18</p> <p>1 for our AML purposes.</p> <p>2 THE COURT: I apologize for interrupting your</p> <p>3 cross-examination, Mr. Anderson.</p> <p>4 EXAMINATION</p> <p>5 BY THE COURT:</p> <p>6 Q Can you clarify something for me?</p> <p>7 A Yes, sir.</p> <p>8 Q Look at Exhibit No. 30. You've got your finger</p> <p>9 on Exhibit 30?</p> <p>10 A Yes.</p> <p>11 Q Now go to Exhibit No. 33. So you've got both</p> <p>12 of them simultaneously.</p> <p>13 A Correct.</p> <p>14 Q Did you just -- now, in Exhibit 33 there are</p> <p>15 one, two -- on the third page we've got that stock</p> <p>16 agreement. Do you see that?</p> <p>17 A Yes, sir.</p> <p>18 Q Stock Sale and Purchase Agreement.</p> <p>19 A Correct.</p> <p>20 Q And this is the document that Lambros emailed</p> <p>21 to you as a completed document?</p> <p>22 A Correct.</p> <p>23 Q Okay. So you received this presumably on</p> <p>24 July 9th of 2013. That's when the email is sent on the</p>	<p style="text-align: right;">Page 19</p> <p>1 first page from Lambros. And he sends you both the</p> <p>2 notarized power of attorney and transfer of bonds of</p> <p>3 shares -- or shares, I should say, notarized in blank.</p> <p>4 A Correct.</p> <p>5 Q And then the next document is the Stock Sale</p> <p>6 and Purchase Agreement notarized in blank.</p> <p>7 A Correct.</p> <p>8 Q Okay. So we're on the same page.</p> <p>9 A Yes, sir.</p> <p>10 Q Did you just fill out this document, the</p> <p>11 notarized document, that you received? And by "fill</p> <p>12 out" I mean did you just insert in the document that</p> <p>13 Lambros sent to you the information that then is on</p> <p>14 page -- or excuse me -- is on Exhibit 30? Because as</p> <p>15 I'm looking at them -- and as the finder fact what I'm</p> <p>16 doing is I'm just comparing them.</p> <p>17 A Yes, sir.</p> <p>18 Q So it looks like the notary is the same. I</p> <p>19 would note that Exhibit 30 is in black and white and</p> <p>20 that Exhibit 33 is in color. But it appears just as</p> <p>21 I'm going back and forth and comparing them, flipping</p> <p>22 back and forth between the two, it looks like you just</p> <p>23 took Exhibit 33, filled it out, signed it yourself and</p> <p>24 then, as I understand your testimony, you just put it</p>
<p style="text-align: right;">Page 20</p> <p>1 in the file to complete the file as you keep saying.</p> <p>2 Is that accurate or inaccurate?</p> <p>3 A That is correct. I can elaborate a little bit</p> <p>4 further.</p> <p>5 Q No, I'll allow Mr. Anderson and Mr. Nork to</p> <p>6 clarify those issues. But you basically just took what</p> <p>7 Lambros emailed you in -- I apologize. I just forgot</p> <p>8 when it was.</p> <p>9 MR. ANDERSON: 33, Your Honor.</p> <p>10 THE COURT: Thank you.</p> <p>11 BY THE COURT:</p> <p>12 Q So you just took what Lambros emails you in</p> <p>13 July of 2013, fill it out yourself, date it -- or</p> <p>14 excuse me -- you don't date it, you just sign it</p> <p>15 yourself and you just inserted those numbers?</p> <p>16 A Yes.</p> <p>17 Q And as I understand your testimony so far today</p> <p>18 and yesterday, it's not to memorialize a sale from</p> <p>19 Mr. Skarpelos to Weiser of the second half of the</p> <p>20 shares that he still has represented on Certificate</p> <p>21 753, it's just to kind of close the whole thing out.</p> <p>22 He's already sold the first half of the shares in</p> <p>23 April. This has nothing to do with that. That's your</p> <p>24 testimony so far, isn't it?</p>	<p style="text-align: right;">Page 21</p> <p>1 A This is not to memorialize -- I didn't complete</p> <p>2 it to memorialize the second sale.</p> <p>3 Q Because there was no second sale.</p> <p>4 A Correct.</p> <p>5 Q And you didn't do it to memorialize the April</p> <p>6 sale because that's over with. And I'm not telling you</p> <p>7 what to say. I'm asking you if that's a correct</p> <p>8 statement.</p> <p>9 A I understand. And I don't know what</p> <p>10 memorialize means exactly, but in my words, yes, I</p> <p>11 completed it much later so that the file was complete</p> <p>12 for AML purposes to explain to our compliance if they</p> <p>13 wished to submit it to anybody.</p> <p>14 Q But, again, just for clarification purposes,</p> <p>15 this document, the sale agreement that is Exhibit 33,</p> <p>16 was originally sent to you by Lambros in order to be</p> <p>17 able to put into effect the potential sale to the</p> <p>18 outside buyers, not the April sale, but the second sale</p> <p>19 of the second half of the shares?</p> <p>20 A Correct.</p> <p>21 Q So that's why Lambros sends it to you.</p> <p>22 A There's two parts on this. The discussion of</p> <p>23 the stock power -- dealing with the stock power is a</p> <p>24 separate discussion than the purchase and sale</p>

<p style="text-align: right;">Page 22</p> <p>1 agreement so that we're clear on that.</p> <p>2 Q Okay. I appreciate that.</p> <p>3 A I needed the stock power to finish</p> <p>4 dematerializing the whole position in general. So the</p> <p>5 stock power and the purchase and sale are unrelated</p> <p>6 events in a way.</p> <p>7 Q I understand. But NATCO couldn't dematerialize</p> <p>8 Certificate 753 without that stock power signed and</p> <p>9 notarized?</p> <p>10 A Correct.</p> <p>11 Q At all?</p> <p>12 A Correct.</p> <p>13 Q I understand that. I'm just more focused on</p> <p>14 what Mr. Anderson is talking to you about with the</p> <p>15 Stock Sale and Purchase Agreement itself. Tell me if</p> <p>16 I'm wrong in my analysis of what you've said so far.</p> <p>17 You asked Lambros to give you this notarized agreement</p> <p>18 so you could sell the second half --</p> <p>19 A Correct.</p> <p>20 Q -- of 753?</p> <p>21 A Yes.</p> <p>22 Q That's correct?</p> <p>23 A Correct.</p> <p>24 Q All right. Then the second half sale doesn't</p>	<p style="text-align: right;">Page 23</p> <p>1 transpire, it doesn't happen?</p> <p>2 A No.</p> <p>3 Q Never?</p> <p>4 A No.</p> <p>5 Q So then you just fill it out for a different</p> <p>6 purpose?</p> <p>7 A Correct. Correct.</p> <p>8 Q Not because there's a sale to Weiser. You're</p> <p>9 just filling it out just to kind of close it out. So</p> <p>10 you're using it for something other than it was sent to</p> <p>11 you?</p> <p>12 A Correct.</p> <p>13 THE COURT: Go ahead, Mr. Anderson.</p> <p>14 MR. ANDERSON: Thank you, Your Honor.</p> <p>15 THE COURT: And, again, I apologize to both you and</p> <p>16 to Mr. Nork, because I've done it with both of you that</p> <p>17 I just ask questions, I think, because I just need to</p> <p>18 understand in my mind what the testimony is. And</p> <p>19 sometimes, like with this, I'm looking at it going, I</p> <p>20 need to know if this is the same thing or a</p> <p>21 different -- an entirely different document. And</p> <p>22 that's why I wanted the clarification from Mr. Livadas</p> <p>23 that it's actually the same document that Lambros sent</p> <p>24 to him in July. It had nothing initially to do with</p>
<p style="text-align: right;">Page 24</p> <p>1 the April sale.</p> <p>2 MR. ANDERSON: Yes, Your Honor.</p> <p>3 THE COURT: So that's why I asked the question. Go</p> <p>4 ahead.</p> <p>5 MR. ANDERSON: Thank you.</p> <p>6 CROSS-EXAMINATION (Resumed)</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q And you said you did Exhibit 30 for anti-money</p> <p>9 laundering purposes?</p> <p>10 A That's generally what we -- so frequently when</p> <p>11 we get --</p> <p>12 Q I'm just asking you that's what you said;</p> <p>13 correct?</p> <p>14 A Yeah, yeah.</p> <p>15 Q And so you used the document for a purpose</p> <p>16 other than the purpose it was sent to you, as the judge</p> <p>17 just asked, and that was for anti-money laundering</p> <p>18 purposes?</p> <p>19 A Correct.</p> <p>20 Q And just to kind of close the loop on the</p> <p>21 judge's questions, when the second sale that you allege</p> <p>22 was being contemplated by all these emails and this</p> <p>23 document didn't happen, you used Exhibit 30 to document</p> <p>24 the April 2nd transaction that you say did happen?</p>	<p style="text-align: right;">Page 25</p> <p>1 A In my interpretation of the word "document," I</p> <p>2 didn't use it to document that transaction. I used it,</p> <p>3 if it would be needed, for AML purposes.</p> <p>4 Q Let's look back at page 228 of your deposition,</p> <p>5 because I think you agreed with me earlier that trial</p> <p>6 Exhibit 30 was intended to document the April 2nd</p> <p>7 transaction.</p> <p>8 I asked you starting at line 6, "Is Exhibit 25,</p> <p>9 depo Exhibit 25, intended to document the April 2nd</p> <p>10 arrangement with Mr. Skarpelos?"</p> <p>11 And you said, "Yes, correct."</p> <p>12 A Correct, that's what I said.</p> <p>13 Q Okay. Thank you.</p> <p>14 And you also just told the judge that the purchase</p> <p>15 and sale agreement that Lambros sent to you had a</p> <p>16 separate purpose than the power of attorney that was</p> <p>17 sent to you; correct?</p> <p>18 A Correct.</p> <p>19 Q Would you look at Exhibit 25. I'm sorry. 24,</p> <p>20 please. Now, this is an email exchange between you and</p> <p>21 Lambros that addresses the blank forms that the judge</p> <p>22 was looking at on Exhibit 33. And the attachments to</p> <p>23 this email are actually different. These are the</p> <p>24 internet forms as they existed; correct?</p>

<p style="text-align: right;">Page 26</p> <p>1 A I assume so.</p> <p>2 Q Okay. And in this email you asked Lambros,</p> <p>3 "Email me blank ones now so I can show them what</p> <p>4 they'll be looking like," et cetera. And it looks like</p> <p>5 down below Lambros sent you a power of attorney and a</p> <p>6 Stock Sale and Purchase Agreement; correct?</p> <p>7 A Correct.</p> <p>8 Q Nothing in this email indicates that you were</p> <p>9 asking for the power of attorney for any separate</p> <p>10 purpose other than showing the Kinezi folks what a</p> <p>11 sample purchase and sale agreement and power of</p> <p>12 attorney might look like; correct?</p> <p>13 A When I was saying I want to show them what</p> <p>14 they'll be looking like, the reference to that is I</p> <p>15 want to show them what the deal is going to be looking</p> <p>16 like. We didn't typically show draft templates of</p> <p>17 purchase and sale agreements to buyers. And we had had</p> <p>18 discussions about the POAs separately. The discussion</p> <p>19 was coming together there to finish dealing with all</p> <p>20 these documents at once.</p> <p>21 Q Okay. But there are no emails that talk about</p> <p>22 the power of attorney being separate from the purchase</p> <p>23 and sale agreement; correct?</p> <p>24 A Not in here.</p>	<p style="text-align: right;">Page 27</p> <p>1 Q And you never did show any potential Kinezi</p> <p>2 buyers the purchase and sale agreement that Lambros</p> <p>3 sent you, did you?</p> <p>4 A I represented the terms of the purchase and</p> <p>5 sale agreement.</p> <p>6 Q Okay. You didn't actually show them the</p> <p>7 documents that Lambros sent you?</p> <p>8 A Correct. No.</p> <p>9 MR. ANDERSON: I apologize, Your Honor. I'm going</p> <p>10 to try to get back on track here.</p> <p>11 THE COURT: Okay.</p> <p>12 BY MR. ANDERSON:</p> <p>13 Q Let's look back at Exhibit 30 real quick. And</p> <p>14 focusing on sections 1.2 and 1.3, neither you nor WAM</p> <p>15 nor Weiser Capital delivered \$250,000 in cash to Tom</p> <p>16 Skarpelos on September 30th of 2013; correct?</p> <p>17 A On September 30th, no.</p> <p>18 Q Okay. And neither you nor WAM nor Weiser</p> <p>19 Capital nor anyone else delivered \$250,000 in cash to</p> <p>20 Mr. Skarpelos after September 30th, 2013; correct?</p> <p>21 A No.</p> <p>22 Q You're saying that the payment that's</p> <p>23 contemplated by the agreement, this July 2013</p> <p>24 agreement, was the April 2nd credit to Tom's account</p>
<p style="text-align: right;">Page 28</p> <p>1 statement at WAM; correct?</p> <p>2 A Ask that again, please.</p> <p>3 Q Yes. Your testimony is that the payment that</p> <p>4 was made to Tom Skarpelos for the stock at issue in</p> <p>5 this case was the April 2nd, 2013, credit to his</p> <p>6 account --</p> <p>7 A Correct.</p> <p>8 Q -- that is not mentioned in any way in this</p> <p>9 agreement?</p> <p>10 A No.</p> <p>11 Q Okay. I'm correct, it's not in there?</p> <p>12 A Correct, it's not in there.</p> <p>13 Q Let's look at -- well, actually one more</p> <p>14 question on Exhibit 30. There's a provision in here</p> <p>15 that states that the closing date is September 30th or</p> <p>16 such other date as the parties hereto may agree to the</p> <p>17 closing date. Is it your testimony that you and</p> <p>18 Mr. Skarpelos agreed to a different date than</p> <p>19 September 30th, 2013?</p> <p>20 A We were having ongoing discussions past</p> <p>21 September 30th which this was still blank at the time.</p> <p>22 We were still having ongoing discussions past</p> <p>23 September 30th because we were still working with the</p> <p>24 purchasers, the potential purchasers, to close on this.</p>	<p style="text-align: right;">Page 29</p> <p>1 I believe that went to October or November of 2013.</p> <p>2 And then at that time the transaction was set to close,</p> <p>3 but then Tom and I never came to an agreement to close</p> <p>4 that transaction.</p> <p>5 Q You testified that you filled this document out</p> <p>6 much later.</p> <p>7 A Correct.</p> <p>8 Q And I would like you to look at Exhibit 54,</p> <p>9 please. Now I would like you to look at 54 first and</p> <p>10 then we're going to look at 35, so if you can put your</p> <p>11 thumb into that one as well.</p> <p>12 Now, Exhibit 54, if you look -- this is the email</p> <p>13 we talked about yesterday or the letter we talked about</p> <p>14 yesterday where Mr. Boutsalis on November 13th of 2015</p> <p>15 is sending documentation regarding Weiser's ownership</p> <p>16 of the stock to NATCO; correct?</p> <p>17 A Correct.</p> <p>18 Q And we looked at the third page yesterday of</p> <p>19 Exhibit 54 which is the stock power filled out by</p> <p>20 Mr. Skarpelos that the judge was looking at in Exhibit</p> <p>21 33.</p> <p>22 A Correct.</p> <p>23 Q And it's still blank; correct?</p> <p>24 A Correct.</p>

<p style="text-align: right;">Page 30</p> <p>1 Q Okay. And this is -- this is almost two 2 years -- more than two years after the transaction. 3 And then we also looked at Exhibit 57, I believe. 56. 4 So Exhibit 56 we looked at. That was Mr. Simonitsch 5 from Anavex asking your attorney to send him a complete 6 copy of the executed power of attorney and fully 7 executed July 12th, 2013, sales transaction; correct? 8 A Correct. 9 Q And then we also looked at Exhibit 57 which was 10 the day after Exhibit 56. In that document it appears 11 your attorney was sending him a stock power, Stock Sale 12 and Purchase Agreement; correct? 13 A Correct. 14 Q So if we turn -- we looked at the Boutsalis 15 letter, Exhibit 54, to NATCO. It had a blank power of 16 attorney as of November of 2015; correct? 17 A Correct. 18 Q Okay. Isn't it correct that you filled these 19 documents out sometime in November of 2015? 20 A The purchase and sale agreement, I can't 21 remember exactly when I filled that one out. 22 Q But certainly the stock power? 23 A The stock power would have been completed -- 24 Q I'll direct you to Exhibit 54. The third page</p>	<p style="text-align: right;">Page 31</p> <p>1 may help you, because on November 13th of 2015 it's 2 still incomplete; correct? 3 A My recollection was that it was completed, so I 4 would be surprised that the issuer would send a blank 5 stock power to the transfer agent. So I'm trying to 6 think or trying to confirm to myself that they sent a 7 blank stock power, because it would be rather -- how do 8 I say? It's not normal course of business to send 9 blank stock powers to transfer agents. 10 Q Right. The transfer agent wants to see a 11 complete stock power, otherwise they can't do anything? 12 A Yeah. 13 Q But if you look at Exhibit 50, and in 14 particular the second page, on November 12th of 2015 15 you're confirming with Mr. Boutsalis that he received 16 the original stock certificate and stock power. So if 17 he had it on November 12th, and on November 13th he's 18 writing a letter to NATCO, why is he sending a blank 19 one? 20 A That's -- yeah, that's what I don't understand, 21 because I'm pretty sure it would have been a completed 22 one that would have gone through the process. 23 Q Okay. The bottom line is you don't know when 24 you filled out either the stock power or the purchase</p>
<p style="text-align: right;">Page 32</p> <p>1 and sale agreement; correct? 2 A Exactly when, no. 3 Q Okay. And let's look at Exhibit 35 real quick. 4 This is the stock power that you filled out at some 5 point; correct? 6 A Correct. 7 Q And when the judge was looking at Exhibit 33, 8 which is what Lambros sent you, it only had the 9 signature of the transferor and the notary stamp; 10 correct? 11 A Correct. 12 Q You wrote in everything else or typed in or 13 caused someone to type this information in; correct? 14 A Correct. 15 Q So at some point in time, much later than the 16 date of Exhibit 30, the purchase and sale agreement, 17 you typed in name of transferee, Weiser Bahamas, Ltd.; 18 correct? 19 A Correct. 20 Q In other words, you're saying transfer the 21 shares to Weiser Capital? 22 A Correct. 23 Q Okay. And in the box in the middle of the 24 page --</p>	<p style="text-align: right;">Page 33</p> <p>1 A To be clear, not to transfer them to Weiser 2 Capital but to effect the dematerialization of them, 3 because transfer is an important term when we talk 4 about transfer. 5 Q Well, they say "name of transferee" which is -- 6 A I know that's what it says there, but when it's 7 a broker-dealer for a financial institution, transferee 8 has a different meaning. 9 Q Well, then shouldn't broker-dealers use a 10 special power of attorney rather than an internet form 11 to make clear exactly to their clients what's 12 happening? 13 A These are standard -- stock powers are quite 14 standard. I wouldn't call it an internet form. This 15 is a very standard form that transfer agents use. 16 Q But you just said there's a very important 17 difference between transferee in the normal world and 18 in the broker-dealer world; correct? 19 A Correct. 20 Q So as the owner of WAM, which is a Class 1 21 broker-dealer, shouldn't they be using special forms to 22 let their client know it's not our intent to be the 23 owner, it's somebody else? 24 A No.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q You don't think it's important?</p> <p>2 A No. This is the standard process.</p> <p>3 Q Okay. I just want to make sure I'm clear. So</p> <p>4 you're the owner of WAM. This is a WAM agent, Weiser</p> <p>5 Capital, acquiring ownership of WAM's client's shares,</p> <p>6 and you're saying that there's nothing outside of an</p> <p>7 ordinary internet form found by a guy who is not a</p> <p>8 lawyer that is needed to effect a transfer like that?</p> <p>9 A Again, I wouldn't call this a transfer of</p> <p>10 ownership. That's an important difference, because</p> <p>11 Weiser was not going to take ownership of 6.6 million</p> <p>12 shares.</p> <p>13 Q Okay. Thank you for clarifying that. But</p> <p>14 according to Exhibit 30 Weiser Capital was going to</p> <p>15 take ownership of half of those shares?</p> <p>16 A Correct.</p> <p>17 Q And still you're using a stock power that was</p> <p>18 sent to you by Lambros?</p> <p>19 A Correct.</p> <p>20 Q Okay. Nothing provided to you by WAM or Weiser</p> <p>21 Capital?</p> <p>22 A No.</p> <p>23 Q Okay. Now, you typed in all 6,633,000 shares</p> <p>24 into this power; right?</p>	<p style="text-align: right;">Page 35</p> <p>1 A Correct.</p> <p>2 Q And that was the entire position that</p> <p>3 Mr. Skarpelos had in Certificate 753?</p> <p>4 A Correct.</p> <p>5 Q The Exhibit 30 that we looked at says that</p> <p>6 Weiser Capital is only acquiring half of those shares.</p> <p>7 A Correct.</p> <p>8 Q Okay. But you wrote in all six million shares</p> <p>9 here.</p> <p>10 A Correct.</p> <p>11 Q Sometime much later than the transactions that</p> <p>12 you allege happened?</p> <p>13 A Correct.</p> <p>14 Q Okay. And you're the one that typed in</p> <p>15 Certificate 753; correct?</p> <p>16 A Myself or somebody at the firm.</p> <p>17 Q Okay. Now, you knew in October of 2013 that --</p> <p>18 I think you said there was a hold on Certificate 753;</p> <p>19 correct?</p> <p>20 A I think towards the end of 2013, early 2014.</p> <p>21 Q Okay. So when you filled out this power of --</p> <p>22 stock power, which is Exhibit 35, you knew that there</p> <p>23 might be a problem with Certificate 753; correct?</p> <p>24 A When this was initially completed, I don't</p>
<p style="text-align: right;">Page 36</p> <p>1 believe so, because if we were putting the request to</p> <p>2 the transfer agent we would have sent a completed stock</p> <p>3 power. So I don't know how Primoris sent a blank stock</p> <p>4 power, because we never send blank stock powers.</p> <p>5 Q Well, you just said you don't know when you</p> <p>6 executed this -- or filled in this document.</p> <p>7 A Not exactly what date, but when we were -- but</p> <p>8 when we begin initiating to clear a certificate, we</p> <p>9 don't send blank stock powers to transfer agents. So</p> <p>10 normally we complete the stock power, send it to the</p> <p>11 transfer agent with the stock certificate and then they</p> <p>12 would come back and say there's an issue. It's not the</p> <p>13 ordinary course of business to send blank stock powers.</p> <p>14 Q I thought you said that NATCO or somebody told</p> <p>15 you that there was an issue with the stock in October</p> <p>16 of 2013.</p> <p>17 A After we submitted the request to clear, to</p> <p>18 dematerialize the certificate.</p> <p>19 Q So you sent to NATCO the documents that are</p> <p>20 necessary to dematerialize the certificate in October</p> <p>21 of 2013?</p> <p>22 A We would have sent them in late 2013, because</p> <p>23 that's how we would have received back the message that</p> <p>24 there's a hold.</p>	<p style="text-align: right;">Page 37</p> <p>1 Q Okay. So if you sent to NATCO in October of</p> <p>2 2013 the original stock certificate and the executed</p> <p>3 power of attorney notifying them that they're to</p> <p>4 transfer ownership, they would have completed copies of</p> <p>5 those documents in their files?</p> <p>6 A I would assume so.</p> <p>7 Q Not blank powers of attorney, not a blank</p> <p>8 purchase and sale agreement, not anything else that's</p> <p>9 uncertain, they would have the documents that you</p> <p>10 deemed necessary to transfer ownership?</p> <p>11 A I would expect, yes, completed documents.</p> <p>12 Q Okay. And those documents show that Weiser</p> <p>13 Capital is entitled to 6.6 million shares, Tom's entire</p> <p>14 stock?</p> <p>15 A Again, it's entitled, no, because the</p> <p>16 broker-dealer is just trying to dematerialize the</p> <p>17 certificate. It doesn't mean that the institution is</p> <p>18 entitled to the stock, because that stock becomes</p> <p>19 entitled -- it's holding it in custody and it's</p> <p>20 entitled to clients.</p> <p>21 Q Well, in any event, you're telling NATCO and</p> <p>22 basically the world here -- or you're asking NATCO to</p> <p>23 dematerialize his entire certificate?</p> <p>24 A Correct.</p>

<p style="text-align: right;">Page 38</p> <p>1 Q With no documentation that you're allowed to do 2 that? 3 A No documentation to be allowed to do that? 4 Q Where did Mr. Skarpelos authorize you to 5 dematerialize all 6.6 million shares? 6 A When a client provides us a stock certificate 7 and a stock power, that is to dematerialize the 8 certificate into electronic form. 9 Q Okay. But you can't just go do it without 10 something happening that allows you to do it. 11 A Well, that is the stock power and the client 12 having deposited the position to Weiser. 13 Q So you're saying that the stock power that 14 Mr. Skarpelos caused to be sent to you while discussing 15 a possible transaction with Kinezi that didn't happen 16 allows you to dematerialize his entire position? 17 A Yes. When a client deposits shares at the 18 firm, and then also with it a stock power, that is the 19 request, that is the authorization, that is the right 20 of the firm to allow it to turn a physical asset into 21 an electronic asset. 22 Q Okay. So the firm has the right to basically 23 do whatever it wants with those certificates. In this 24 case we've looked at --</p>	<p style="text-align: right;">Page 39</p> <p>1 A No, that's not -- 2 Q Let me just finish my question. Your counsel 3 can follow up with you. 4 Exhibit 30 contemplates a sale of 3.1 million 5 shares; correct? 6 A 3.1 or 3.3. 7 Q And there was only one -- yeah, 3.3, one-half 8 of the number that's in Exhibit 35. 9 A Correct. 10 Q No other transaction happened according to you 11 other than the April 2nd transaction; correct? 12 A Correct. 13 Q And that was only 3.3 million shares? 14 A Correct. 15 Q Okay. But at sometime later Weiser Asset -- 16 I'm sorry -- Weiser Capital or yourself took it upon 17 yourself to say that the entire 6.6 million should be 18 dematerialized? 19 A We didn't take it just upon ourselves out of 20 the blue. That's the job of -- that's what the 21 broker-dealer does. That's the business; that's the 22 function. 23 THE COURT: Mr. Livadas, in order to effectuate the 24 transfer of the April sale, so the transfer of half of</p>
<p style="text-align: right;">Page 40</p> <p>1 Stock Certificate 753, would you have to dematerialize 2 the entire stock certificate? 3 THE WITNESS: Yes. 4 THE COURT: Next question. 5 BY MR. ANDERSON: 6 Q Okay. So -- 7 THE COURT: Excuse me. Let me ask a follow-up. 8 But that doesn't mean -- so let's say that that 9 happens. You have to dematerialize the whole thing in 10 order to give the April sale shares, half of those 11 shares, to whoever purchased them; correct? 12 THE WITNESS: Correct. 13 THE COURT: And then once that happens who owns the 14 remaining shares at that moment? 15 THE WITNESS: In this case it would be 16 Mr. Skarpelos. 17 THE COURT: Next question. 18 BY MR. ANDERSON: 19 Q Where does Mr. Skarpelos's name appear on this 20 document other than authorizing the 6.6 million shares 21 to Weiser Capital? 22 A It is in the -- the name appears under the 23 undersigned on the books of Athanasios Skarpelos. 24 Q It doesn't say anything that Weiser Capital is</p>	<p style="text-align: right;">Page 41</p> <p>1 in any way obligated to transfer the other half that 2 wasn't sold back to Mr. Skarpelos? 3 A It does not say that, no. 4 Q Okay. There's nothing in writing from WAM 5 directing Weiser Capital to do this; correct? 6 A Directing Weiser. No. No. 7 Q Okay. And there's nothing from Mr. Skarpelos 8 in writing directing WAM to direct Weiser Capital to do 9 this; correct? 10 A The stock power is the direction to do it. 11 Q So you're telling me that WAM can just assign 12 the ability to take its blank stock power -- it's 13 client's blank stock powers to the transfer agent and 14 do anything with them? 15 A Not to do anything with them, to dematerialize 16 so they can put the electronic asset in custody. 17 Q But I haven't seen anything in writing 18 indicating that Weiser Capital had that sort of 19 relationship with WAM. 20 A Sorry. I didn't understand the question. 21 Q I'm wondering what writing lets people like 22 Mr. Skarpelos know that WAM will assign the stock power 23 of the client's stock to any third party to have it 24 dematerialized.</p>

<p style="text-align: right;">Page 42</p> <p>1 A WAM can do whatever it likes in that regard as</p> <p>2 long as the client is credited the asset. In the end</p> <p>3 it has to give the asset to the client.</p> <p>4 Q Okay. So you're basically saying that WAM</p> <p>5 doesn't have to get anything in writing from the client</p> <p>6 authorizing the shares to be dematerialized, just a</p> <p>7 blank stock power signed at some point in time and</p> <p>8 given to someone who is not employed by WAM is enough?</p> <p>9 A Correct, as long as WAM ends up with the stock</p> <p>10 power. It's very, very common for the firm to end up</p> <p>11 with the stock certificate and the stock power so it</p> <p>12 can convert it from physical to electronic.</p> <p>13 Q Okay. I didn't see that Mr. Skarpelos ever</p> <p>14 sent the stock power to WAM.</p> <p>15 A That he sent directly, no.</p> <p>16 Q He sent it to you, Weiser Capital, or you</p> <p>17 individually?</p> <p>18 A It was sent to me, and me is either Weiser</p> <p>19 Capital and also dealing with WAM.</p> <p>20 Q Okay. But you weren't employed by WAM at that</p> <p>21 time?</p> <p>22 A I was their agent, so I was -- employed as an</p> <p>23 employee, no, not as an employee.</p> <p>24 Q You weren't on their payroll?</p>	<p style="text-align: right;">Page 43</p> <p>1 A I was receiving monetary compensation from WAM.</p> <p>2 Q Okay. But that was a -- that was commissions</p> <p>3 basically?</p> <p>4 A Correct.</p> <p>5 Q Let's look at Exhibit 8, please.</p> <p>6 THE COURT: 8?</p> <p>7 MR. ANDERSON: Yes.</p> <p>8 BY MR. ANDERSON:</p> <p>9 Q You discussed this form with Mr. Nork</p> <p>10 yesterday; correct?</p> <p>11 A Yes, correct.</p> <p>12 Q And I think you may have called it a Know Your</p> <p>13 Customer form?</p> <p>14 A Yes.</p> <p>15 Q The formal title in WAM's records is Identity</p> <p>16 Verification Form; correct?</p> <p>17 A Correct.</p> <p>18 Q Form IVF?</p> <p>19 A Correct.</p> <p>20 Q And I'm going to read the first paragraph to</p> <p>21 you. "This form must be completed for each beneficial</p> <p>22 owner and signatory of a Weiser Asset Management, Ltd.,</p> <p>23 account, including individuals named on powers of</p> <p>24 attorney and trading authorizations."</p>
<p style="text-align: right;">Page 44</p> <p>1 A I'm sorry. Are you on No. 8?</p> <p>2 Q Exhibit 8, first page.</p> <p>3 A On the bottom is it page 362?</p> <p>4 Q Yes, sir.</p> <p>5 A Okay. I see it now.</p> <p>6 Q So I'm going to start over. I apologize to the</p> <p>7 court reporter.</p> <p>8 The first paragraph reads, "This form must be</p> <p>9 completed for each beneficial owner and signatory of a</p> <p>10 Weiser Asset Management, Ltd., account, including</p> <p>11 individuals named on powers of attorney and trading</p> <p>12 authorizations."</p> <p>13 A Correct.</p> <p>14 Q "The information requested is required under</p> <p>15 anti-money laundering regulations of the Bahamas."</p> <p>16 A Correct.</p> <p>17 Q "Please copy this form as necessary to complete</p> <p>18 for each relevant individual."</p> <p>19 Did I read that correctly?</p> <p>20 A Yes.</p> <p>21 Q Okay. Now, that form which Weiser had</p> <p>22 Mr. Skarpelos fill out in May of 2011 indicates that</p> <p>23 the information in this document that's asked about the</p> <p>24 customer is required by Bahamian law; correct?</p>	<p style="text-align: right;">Page 45</p> <p>1 A Correct.</p> <p>2 Q And for purposes of anti-money laundering;</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q Okay. And as I read this paragraph, basically</p> <p>6 WAM as a registered Class 1 broker-dealer is letting a</p> <p>7 client know that if anyone is going to be a signatory</p> <p>8 on your account, if anyone is going to be able to act</p> <p>9 on your account, we need to know who they are and they</p> <p>10 need to fill out this information; correct?</p> <p>11 A Correct.</p> <p>12 Q So that WAM has some kind of record of knowing</p> <p>13 who is authorized to transact on the account; correct?</p> <p>14 A Correct.</p> <p>15 Q Okay. And it mentions the form itself, powers</p> <p>16 of attorney and trading authorizations. And I</p> <p>17 interpret trading authorizations as meaning this person</p> <p>18 is authorized to conduct trades.</p> <p>19 A Correct.</p> <p>20 Q And powers of attorney we looked at earlier.</p> <p>21 That's basically a document that lets the recipient</p> <p>22 know that the person who is being -- is directing</p> <p>23 transactions is authorized by the client; correct?</p> <p>24 A Correct.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q Now, Mr. Skarpelos filled this out and on the 2 second page signed and dated it; correct? 3 A Correct. 4 Q And you weren't physically present when that 5 happened? 6 A Correct. 7 Q And when you acquired ownership of WAM -- 8 strike that. You weren't present when it happened and 9 you also weren't involved in WAM's internal procedures 10 or anything at that time? 11 A Not in a detailed level. 12 Q In terms of clients filling out paperwork and 13 the process of getting them as clients, that wasn't 14 your deal? 15 A Correct. 16 Q But you acquired ownership of WAM in December 17 of 2014 and received -- is it a storage unit full of 18 documents? 19 A Correct. 20 Q Okay. In boxes? In stacks? How is it -- 21 A Well, there's two parts. One is a storage 22 facility. Separate is filing cabinets which come with 23 the office. So there's some files in the office and 24 then a lot of transactional records are in a storage</p>	<p style="text-align: right;">Page 47</p> <p>1 facility. 2 Q Okay. And in the process of preparing this 3 case you located this document Exhibit 8; correct? 4 A Correct. 5 Q Okay. And was it part of a Skarpelos file? 6 Because I understood you yesterday to say there 7 weren't -- they weren't organized by client. 8 A Transactions are not organized by client, but 9 client QIC is organized by client file. 10 Q Okay. So your testimony is that you found 11 Exhibit 8 in Mr. Skarpelos's client file? 12 A Correct. 13 Q Okay. And Exhibit 9 was admitted yesterday as 14 well. Your testimony is you found that in 15 Mr. Skarpelos's client file? 16 A Correct. 17 Q What else was in Mr. Skarpelos's client file? 18 A I can't recall exactly what else would have 19 been in there. 20 Q Okay. Would it be fair to say that these two 21 documents are what you remember finding? 22 A Yeah, and some of these other -- there was -- 23 what's in here is what I recall pulling out of the file 24 specifically.</p>
<p style="text-align: right;">Page 48</p> <p>1 Q And I'll have you glance at Exhibit 2 real 2 quick. We'll get to it in more detail later. Was that 3 in Mr. Skarpelos's client file? 4 A Yes. 5 Q Okay. All right. Let's look back at Exhibit 6 8. 7 A 8? 8 Q Yes. I'm sorry. I don't mean to be flipping 9 back and forth. I just want to confirm what you found 10 in Mr. Skarpelos's client file. 11 Now, in Mr. Skarpelos's client file there's no IVF 12 form, Exhibit 8, that's completed by anyone other than 13 Mr. Skarpelos; correct? 14 A Correct. 15 Q You did not complete a form to be an authorized 16 signatory on Mr. Skarpelos's account; correct? 17 A I don't fill out IVF forms in client level 18 files because I'm an agent, representative agent, of 19 the firm. So the firm already has my information since 20 I'm an agent working with the firm. 21 Q Okay. My question was you did not complete 22 this form for Mr. Skarpelos? 23 A No. 24 Q And your testimony is that Weiser Capital as</p>	<p style="text-align: right;">Page 49</p> <p>1 the agent doesn't have to complete Know Your Customer 2 forms to Mr. Skarpelos? 3 A To Mr. -- 4 Q That was a bad question. I'm sorry. 5 Your testimony is that as WAM's agent Weiser 6 Capital is not required to fill out an IVF form for a 7 customer such as Mr. Skarpelos? 8 A For Weiser Capital to fill it out? 9 Q You or Weiser Capital. You said you were the 10 agent. 11 A We might help in filling it out. In this case 12 we didn't. I didn't in this case. Many times we'll 13 help clients fill it out, but in this case I didn't. 14 Q Okay. And my question is neither Weiser 15 Capital nor you individually filled out an IVF form for 16 Mr. Skarpelos's account? 17 A For Mr. Skarpelos, no. 18 Q For his account. 19 A We didn't fill it out. 20 Q Okay. "We" being you and Weiser Capital? I 21 want to be really clear on that. 22 A Yes. 23 Q And you also didn't find in Mr. Skarpelos's 24 account file any powers of attorney; correct?</p>

<p style="text-align: right;">Page 50</p> <p>1 A Correct.</p> <p>2 Q I mean Mr. Skarpelos never listed you</p> <p>3 specifically, either you or Weiser Capital, as an</p> <p>4 authorized signatory on his account; correct?</p> <p>5 A He did not list me, because I don't need to be</p> <p>6 listed.</p> <p>7 Q Okay. You've got to listen really carefully to</p> <p>8 my question. I'm only asking you if Mr. Skarpelos put</p> <p>9 anything in writing in the WAM client file that said</p> <p>10 Christos Livadas is authorized to transact on my</p> <p>11 account.</p> <p>12 A Correct, he did not.</p> <p>13 Q And are you aware of any WAM documents that</p> <p>14 were provided to Mr. Skarpelos that says our agents</p> <p>15 don't have to sign anything to transact on your</p> <p>16 account?</p> <p>17 A Let me take a look.</p> <p>18 Q Well, we can get to the exhibits. I'm just</p> <p>19 asking you off the top of your head.</p> <p>20 A Off the top of my head?</p> <p>21 Q Yeah.</p> <p>22 A I can't answer off the top of my head. I'm not</p> <p>23 sure.</p> <p>24 Q There's nothing -- a better question is there's</p>	<p style="text-align: right;">Page 51</p> <p>1 nothing specifically in writing that WAM sent</p> <p>2 Mr. Skarpelos that says we understand that you want</p> <p>3 Christos Livadas and Weiser Capital to transact on your</p> <p>4 account or we're confirming this; correct?</p> <p>5 A Not that I recall.</p> <p>6 Q Okay. And I think I asked you, there's no</p> <p>7 evidence of any power of attorney where Tom empowered</p> <p>8 you or anyone else to act on his behalf regarding WAM</p> <p>9 transactions?</p> <p>10 A Correct.</p> <p>11 Q And Tom didn't complete a trading authorization</p> <p>12 form authorizing you or Weiser Capital or anyone else</p> <p>13 to transact on his account; correct?</p> <p>14 A "Anyone else" is very broad. Ask the question</p> <p>15 again.</p> <p>16 Q Sure. Did you find a trading authorization</p> <p>17 form in Tom Skarpelos's file?</p> <p>18 A Trading authorization, no.</p> <p>19 Q Okay. Did you find any other document in the</p> <p>20 nature of a trading authorization stating specifically</p> <p>21 that Tom Skarpelos was authorizing you, Weiser Capital</p> <p>22 or anyone else to execute transactions on his account?</p> <p>23 A I can't answer towards anyone else, because</p> <p>24 anyone else refers again to the representatives, the</p>
<p style="text-align: right;">Page 52</p> <p>1 agents, brokers, et cetera, of the firm.</p> <p>2 Q Okay. Did you find any kind of that document</p> <p>3 in his file? I'm not talking about general documents</p> <p>4 that WAM says we can do this or we can do that. I'm</p> <p>5 talking about anything specific that Mr. Skarpelos said</p> <p>6 this person can or this person can transact on my</p> <p>7 account.</p> <p>8 A For a specific person, I don't recall seeing</p> <p>9 anything for a specific person.</p> <p>10 Q Okay. I mean, basically you didn't find</p> <p>11 anything in the WAM file that specifically said Tom is</p> <p>12 authorizing Christos Livadas or Weiser Capital --</p> <p>13 A Specifically, no.</p> <p>14 Q And let me finish my question so it's clear.</p> <p>15 You didn't find anything that specifically Tom</p> <p>16 authorized you or Weiser Capital to transact on his</p> <p>17 account?</p> <p>18 A Not specifically.</p> <p>19 Q And Lambros did not complete a form IVF for</p> <p>20 Weiser Asset Management either, did he?</p> <p>21 A Not that I've seen.</p> <p>22 Q The only thing Weiser Asset Management has is a</p> <p>23 copy of his passport?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 53</p> <p>1 Q He didn't fill out any of the information</p> <p>2 called for in Exhibit 8?</p> <p>3 A Not that I'm aware of.</p> <p>4 Q And neither did Nikolaos; correct?</p> <p>5 A No.</p> <p>6 Q Nikolaos Pedafronimos.</p> <p>7 A No, I don't remember anything from Nikolaos.</p> <p>8 Q And you would agree with me that if a client</p> <p>9 was going to direct that money from his account be sent</p> <p>10 to someone other than himself, WAM would require that</p> <p>11 that request be in writing; correct?</p> <p>12 A No, sometimes they do the calls verbally,</p> <p>13 sometimes they do it through what we call secure</p> <p>14 message which is like writing, yes. So sometimes the</p> <p>15 requests are verbal to send funds, and especially if</p> <p>16 it's already been to an account which is known to the</p> <p>17 firm which has had previous transfers to it.</p> <p>18 Q Would you look at page 99, please, of your</p> <p>19 deposition.</p> <p>20 MR. NORK: 99, counsel?</p> <p>21 MR. ANDERSON: 99.</p> <p>22 THE WITNESS: Of the deposition?</p> <p>23 BY MR. ANDERSON:</p> <p>24 Q Yes. Sorry.</p>

<p style="text-align: right;">Page 54</p> <p>1 I direct your attention to line 8. And I asked you</p> <p>2 the question: "Okay. And, for instance, if a client</p> <p>3 was going to direct that any -- that money can be</p> <p>4 distributed from his or her account to someone other</p> <p>5 than the client, you would want that request in</p> <p>6 writing; correct?"</p> <p>7 "ANSWER: Correct."</p> <p>8 A Correct.</p> <p>9 Q Let's -- well, staying on Exhibit 8, there's</p> <p>10 nothing in WAM's records that Tom authorized WAM to</p> <p>11 distribute money to anyone but Mr. Skarpelos; correct?</p> <p>12 A Say that again.</p> <p>13 Q There's nothing in WAM's records showing that</p> <p>14 Mr. Skarpelos authorized WAM to distribute money to</p> <p>15 anyone but him; correct?</p> <p>16 A Correct.</p> <p>17 Q Okay. And that includes Lambros and Nikolaos;</p> <p>18 correct?</p> <p>19 A That is correct.</p> <p>20 Q And there's nothing in WAM's records in writing</p> <p>21 authorizing Lambros to request withdrawals or debits</p> <p>22 from Tom's account; correct?</p> <p>23 A That is correct.</p> <p>24 Q So as I read Exhibit 8, if WAM is doing these</p>	<p style="text-align: right;">Page 55</p> <p>1 transactions, accepting instructions from third parties</p> <p>2 that haven't completed this form and haven't completed</p> <p>3 powers of attorney and trading authorizations, would it</p> <p>4 be violating the anti-money laundering laws?</p> <p>5 A As far as the anti-money laundering laws --</p> <p>6 please ask the question again.</p> <p>7 Q Sure. So if WAM is allowing unauthorized</p> <p>8 persons to transact on Mr. Skarpelos's account without</p> <p>9 having been deemed a valid signatory, completed powers</p> <p>10 of attorney and trading authorizations, would it be</p> <p>11 violating anti-money laundering laws?</p> <p>12 A I can't say if it would violate the anti -- I</p> <p>13 can't say if it would violate the anti-money laundering</p> <p>14 laws. I'm not sure.</p> <p>15 Q But they would be violating their own policy;</p> <p>16 correct?</p> <p>17 A If they didn't have an authorization it would.</p> <p>18 Q Look at Exhibit 2, please.</p> <p>19 Now, you talked a little bit yesterday with</p> <p>20 Mr. Nork about introducing Tom to Weiser Asset</p> <p>21 Management; correct?</p> <p>22 A Yes.</p> <p>23 Q And you were doing that as Weiser Capital, as</p> <p>24 an agent of WAM; right?</p>
<p style="text-align: right;">Page 56</p> <p>1 A Correct.</p> <p>2 Q I think we talked about it a little bit in your</p> <p>3 deposition. You were trying to establish a</p> <p>4 relationship with the Equity Trust/Weiser Asset</p> <p>5 Management people?</p> <p>6 A Correct.</p> <p>7 Q Okay. And you talked a little bit about your</p> <p>8 refer agreement and the commissions that you get for</p> <p>9 that. I think you said yesterday it was a 20 percent</p> <p>10 commission?</p> <p>11 A I can't remember what mine were exactly, but</p> <p>12 that's about industry standard.</p> <p>13 Q I recall in your deposition that you said</p> <p>14 50 percent.</p> <p>15 A It can go up to 50, yes.</p> <p>16 THE COURT: What exhibit are you on, Mr. Anderson?</p> <p>17 MR. ANDERSON: I'm sorry, Your Honor. 2.</p> <p>18 THE COURT: Thank you. I was writing something</p> <p>19 down and I didn't flip over.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q Now, we talked about how you weren't physically</p> <p>22 present when Mr. Skarpelos completed this. You didn't</p> <p>23 have any involvement in the process of Tom or WAM</p> <p>24 completing this form other than introducing Tom to WAM?</p>	<p style="text-align: right;">Page 57</p> <p>1 A Correct. Yeah, in the filling out of the form,</p> <p>2 no, I wasn't involved.</p> <p>3 Q You just introduced Tom to WAM and they took it</p> <p>4 from there?</p> <p>5 A For filling out this form, yes.</p> <p>6 Q Okay. And if you look at the first paragraph,</p> <p>7 it says -- on page 1 it talks about "this application."</p> <p>8 Do you see that?</p> <p>9 A Yeah.</p> <p>10 Q Okay. And there's a sentence -- the second</p> <p>11 sentence of that paragraph reads, "When we accept it,</p> <p>12 this application and all accompanying or supplemental</p> <p>13 documents form the entire agreement between us for this</p> <p>14 account." Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Okay. And you don't know whether WAM gave Tom</p> <p>17 any accompanying or supplemental documents at this</p> <p>18 time; correct?</p> <p>19 A From what I know from looking at the client</p> <p>20 file when I pulled it, it had the terms and conditions</p> <p>21 that go with the account application.</p> <p>22 Q Okay. So you're saying the terms and</p> <p>23 conditions -- some document called terms and conditions</p> <p>24 was in there?</p>

<p style="text-align: right;">Page 58</p> <p>1 A Correct. Yeah, terms and -- I don't know if</p> <p>2 it's called exactly that, but terms and conditions.</p> <p>3 Q Okay. But you don't know if WAM actually sent</p> <p>4 that to Mr. Skarpelos?</p> <p>5 A Did it send it to him.</p> <p>6 Q I'll withdraw that question and ask you</p> <p>7 another. The only thing you know is that you found</p> <p>8 that document in the file of Mr. Skarpelos when you</p> <p>9 acquired ownership?</p> <p>10 A Correct.</p> <p>11 Q You weren't present at the account application</p> <p>12 meeting and so you don't know whether they handed him</p> <p>13 anything?</p> <p>14 A No, I don't know, no.</p> <p>15 Q And you don't know whether they mailed him</p> <p>16 anything?</p> <p>17 A I don't know.</p> <p>18 Q And you don't know if they in fact ever</p> <p>19 provided him the account terms and conditions?</p> <p>20 A Right.</p> <p>21 Q And other than the account terms and</p> <p>22 conditions, you don't know if any other documents were</p> <p>23 sent to Mr. Skarpelos?</p> <p>24 A I wouldn't know, no.</p>	<p style="text-align: right;">Page 59</p> <p>1 Q Okay. And there certainly are no documents</p> <p>2 showing that anything was delivered to him, there's no</p> <p>3 letter saying here are the supplemental documents to</p> <p>4 your account, read them carefully; correct?</p> <p>5 A I thought I recall an email. I'm not sure if</p> <p>6 the email is in here in the exhibits or not, but I</p> <p>7 thought it was emailed to him.</p> <p>8 Q And if you saw that, you would have provided it</p> <p>9 to your counsel; correct?</p> <p>10 A Correct.</p> <p>11 Q Okay. All you know is you didn't send him any</p> <p>12 supplemental documents?</p> <p>13 A Not myself directly, no.</p> <p>14 Q Now let's look at page 9 of 10. And as you're</p> <p>15 flipping through that, let me ask you this. There's</p> <p>16 nothing in this document that indicates that Tom is</p> <p>17 going to share the account with anybody or authorize</p> <p>18 anybody to transact on it?</p> <p>19 A I'm sorry. Page 9 of 10?</p> <p>20 Q Yes. I'm sorry. Yeah, page 9 of 10, you can</p> <p>21 go ahead and turn there, but before I ask --</p> <p>22 A Exhibit 9?</p> <p>23 Q Of Exhibit 2. I apologize.</p> <p>24 A Page 9 of 10, yes.</p>
<p style="text-align: right;">Page 60</p> <p>1 Q Okay. Before I ask you any specific questions</p> <p>2 about that page, are you aware of anything in this</p> <p>3 document, Exhibit 2, that shows that Tom intended to</p> <p>4 share the account with anybody or authorize anybody but</p> <p>5 him to use it?</p> <p>6 A In this document, no.</p> <p>7 Q Okay. And -- I apologize. I want you to look</p> <p>8 at 8 of 10.</p> <p>9 Now, on page 8 of 10 Mr. Skarpelos or WAM, someone,</p> <p>10 checked the box "No, I do not want the ability to</p> <p>11 borrow funds in my account which means I will have a</p> <p>12 cash account"; correct?</p> <p>13 A Correct.</p> <p>14 Q And you testified yesterday to your</p> <p>15 understanding what a cash account is; correct?</p> <p>16 A I don't believe I testified what a cash account</p> <p>17 is. I don't recall testifying what a cash account is.</p> <p>18 Q Do you recall your testimony with Mr. Nork</p> <p>19 where he was discussing margins versus cash accounts?</p> <p>20 And I think you testified that in a cash account, even</p> <p>21 if there's no cash in there, you can still debit the</p> <p>22 account.</p> <p>23 A Correct.</p> <p>24 Q That was your testimony yesterday?</p>	<p style="text-align: right;">Page 61</p> <p>1 A Yes.</p> <p>2 Q And I think you indicated that a customer can</p> <p>3 transact on deposited shares, even if there's no cash</p> <p>4 in the account they can transact on deposited shares if</p> <p>5 they are free trading; correct?</p> <p>6 A They can transact, yes, if they're electronic</p> <p>7 form free trading. It depends where they're going to</p> <p>8 transact them to, but yes. To be clear, people can</p> <p>9 transact also on restricted shares, but they can't</p> <p>10 transact to the public markets with them. So they can</p> <p>11 still transact but not to the public stock exchange.</p> <p>12 Q Okay. And that's your understanding of what a</p> <p>13 cash account -- a customer can do on a cash account</p> <p>14 with securities deposited?</p> <p>15 A With any account, a cash or a margin account,</p> <p>16 they can transact.</p> <p>17 Q Okay. And, again, that's your understanding;</p> <p>18 correct?</p> <p>19 A Yeah.</p> <p>20 Q Okay. But you weren't present, so you don't</p> <p>21 know if anyone at WAM discussed the details of a WAM</p> <p>22 cash account with Tom, do you?</p> <p>23 A No, I don't know.</p> <p>24 Q And this provision says, "I do not want the</p>

<p style="text-align: right;">Page 62</p> <p>1 ability to borrow funds in my account"; correct?</p> <p>2 A That is correct.</p> <p>3 Q Let's look at -- well, in this case the only</p> <p>4 funds in Tom's account were the stock certificates;</p> <p>5 correct?</p> <p>6 A Correct.</p> <p>7 Q Okay. And you're saying that he did borrow</p> <p>8 from his account; correct?</p> <p>9 A He withdrew cash which put it in a debit</p> <p>10 position which is like borrowing, yes.</p> <p>11 Q So basically he did borrow money from his</p> <p>12 account?</p> <p>13 A Correct.</p> <p>14 Q According to you?</p> <p>15 A Yes.</p> <p>16 Q Let's look at page 10 of 10. I apologize,</p> <p>17 Mr. Livadas. I wrote the numbers down wrong on my</p> <p>18 outline.</p> <p>19 MR. ANDERSON: I apologize, Your Honor.</p> <p>20 THE COURT: It's okay.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q Let's look at page 9 of 10.</p> <p>23 Now, this section 5 is entitled "Tell us how you</p> <p>24 want to work with us."</p>	<p style="text-align: right;">Page 63</p> <p>1 A We're on number --</p> <p>2 Q I'm sorry. Page 9 of 10.</p> <p>3 A Oh, back on Exhibit 2?</p> <p>4 Q Yes, we're still on Exhibit 2.</p> <p>5 A 9 of 10, yes.</p> <p>6 Q Now, section 5 at the top says, "Please supply</p> <p>7 a user name and password for on-line access." Do you</p> <p>8 see that?</p> <p>9 A Yes.</p> <p>10 Q And there's no information provided there;</p> <p>11 correct?</p> <p>12 A Correct.</p> <p>13 Q And the application also doesn't have any</p> <p>14 information on how the client is supposed to log on;</p> <p>15 correct?</p> <p>16 A No, I don't think so.</p> <p>17 Q I mean, I think it just generally references</p> <p>18 the internet or on line, but it doesn't have any</p> <p>19 specific location or instructions; correct?</p> <p>20 A Right.</p> <p>21 Q And you don't have any evidence that</p> <p>22 Mr. Skarpelos was ever provided a user name and</p> <p>23 password for WAM; correct?</p> <p>24 A No evidence, no.</p>
<p style="text-align: right;">Page 64</p> <p>1 Q Okay. And in fact you don't even know if WAM</p> <p>2 had an on-line platform back when Mr. Skarpelos</p> <p>3 completed this account application?</p> <p>4 A 2011, I can't recall. I can't recall.</p> <p>5 Q Now, Mr. Skarpelos only had one account with</p> <p>6 Weiser Asset Management; correct?</p> <p>7 A Correct.</p> <p>8 Q And if you look on the next page of Exhibit 2,</p> <p>9 page 10 of 10, it looks like Mr. Skarpelos signed it on</p> <p>10 May 31st, 2011.</p> <p>11 A Correct.</p> <p>12 Q And he was in the Bahamas at Equity Trust's</p> <p>13 offices; correct?</p> <p>14 A I would assume it would be in person, so I'm</p> <p>15 assuming he was there in person.</p> <p>16 Q Okay. And down below -- well, let me ask you</p> <p>17 this. Do you know back in 2011 how WAM notified its</p> <p>18 clients that the application had been accepted?</p> <p>19 A How? I only have assumptions. I don't know</p> <p>20 how. I have assumptions.</p> <p>21 Q So prior to your ownership you don't know how</p> <p>22 WAM would notify clients that their application had</p> <p>23 been accepted; correct?</p> <p>24 A I know that they would do it by email</p>	<p style="text-align: right;">Page 65</p> <p>1 typically, but I can't say how they did it here.</p> <p>2 Typically by email.</p> <p>3 Q Okay. Typically by email. Now, you testified</p> <p>4 yesterday that that's Charles Oddie's signature down at</p> <p>5 the bottom page?</p> <p>6 A Yes, correct.</p> <p>7 Q Okay. And, again, who is Mr. Oddie?</p> <p>8 A He was the compliance officer.</p> <p>9 Q Okay. And do you know if Mr. Skarpelos ever</p> <p>10 met Mr. Oddie?</p> <p>11 A I think so.</p> <p>12 Q Okay. Mr. Skarpelos was primarily dealing with</p> <p>13 Howard Daniels in this process; correct?</p> <p>14 A As far as I recall.</p> <p>15 Q And I think you testified at your deposition</p> <p>16 that you don't know why there was such a delay between</p> <p>17 Mr. Skarpelos submitting this account application and</p> <p>18 the approval date that's indicated.</p> <p>19 A Not specifically, no.</p> <p>20 Q And you didn't discuss the status of approval</p> <p>21 with Mr. Skarpelos during that time, did you?</p> <p>22 A I don't recall.</p> <p>23 Q Okay. And you don't know -- there's nothing in</p> <p>24 WAM's files that demonstrates that Mr. Skarpelos was</p>

<p style="text-align: right;">Page 66</p> <p>1 ever notified that this account was opened; correct?</p> <p>2 A Not that I know of. Not that I've seen.</p> <p>3 Q Okay. And you yourself weren't involved in the</p> <p>4 process of approving Mr. Skarpelos's account; correct?</p> <p>5 A The approval, no.</p> <p>6 Q And it looks to me down below that WAM wrote in</p> <p>7 the account number as 11120001; correct?</p> <p>8 A Correct.</p> <p>9 Q That's what they wrote there. Now, the account</p> <p>10 number that's listed there is not the account number</p> <p>11 that's on Exhibit 44, the account statement; correct?</p> <p>12 A Correct.</p> <p>13 Q Okay. And you were not involved in this</p> <p>14 process, so you don't know one way or the other whether</p> <p>15 this was an account number on Exhibit 2 that was</p> <p>16 assigned to Mr. Skarpelos's account?</p> <p>17 A Well, my experience of having the accounts</p> <p>18 opened and dealing with the firm, they typically</p> <p>19 assigned a client -- what I refer to as a client</p> <p>20 number. So a client is referred to as an account and</p> <p>21 then the client has its own accounts which have account</p> <p>22 numbers.</p> <p>23 Q So that's based on your experience, but you</p> <p>24 don't know if that's what WAM did or not, do you?</p>	<p style="text-align: right;">Page 67</p> <p>1 A Yes, that is what WAM did. It assigns client</p> <p>2 numbers.</p> <p>3 Q I thought you said you weren't involved back</p> <p>4 then.</p> <p>5 A I was involved. You're asking me a different</p> <p>6 level of detail.</p> <p>7 Q Okay. Didn't you testify in your deposition</p> <p>8 that that number looks like an internal reference</p> <p>9 number or could be a reference number?</p> <p>10 A Correct, that's what it looks like to me.</p> <p>11 Q Okay. And you don't know whether WAM actually</p> <p>12 sent Tom, Mr. Skarpelos, a copy with the acceptance</p> <p>13 form completed; correct?</p> <p>14 A I don't know.</p> <p>15 Q I think you testified at your deposition that</p> <p>16 you were told that the account had been opened by</p> <p>17 Lambros.</p> <p>18 A This account was opened by Lambros?</p> <p>19 Q Yes.</p> <p>20 A I'm sorry. Can you show me that?</p> <p>21 Q Yes. Can you turn to page 86.</p> <p>22 So on page 86, line 5, I asked you, "Okay. Did</p> <p>23 you, I guess, a representative of Mr. Skarpelos, were</p> <p>24 you aware of whether this account was approved or not?"</p>
<p style="text-align: right;">Page 68</p> <p>1 And after some objections you said, "I was told the</p> <p>2 account was opened."</p> <p>3 And below I asked you, "Okay. Who told you that?"</p> <p>4 You said, "I believe it was Lambros who told me."</p> <p>5 A Yes, this is Lambros, but he wasn't the only</p> <p>6 party who told me.</p> <p>7 Q That was your answer in October of 2018;</p> <p>8 correct?</p> <p>9 A Yeah, Lambros told me initially.</p> <p>10 Q But there's nothing in WAM's records</p> <p>11 demonstrating that WAM notified Tom that his account</p> <p>12 had been opened?</p> <p>13 A Not that I've seen.</p> <p>14 Q And there's nothing in WAM's records notifying</p> <p>15 Mr. Skarpelos what his account number is; correct?</p> <p>16 A Are you asking me if I've looked and seen in</p> <p>17 the records or did they have something in the records?</p> <p>18 Q I'm asking you if you've seen anything in Tom's</p> <p>19 client file where you found this document.</p> <p>20 A I have not seen.</p> <p>21 Q And you don't know whether WAM has any</p> <p>22 documents showing that Mr. Skarpelos was notified of an</p> <p>23 account number that he has?</p> <p>24 A I have not seen it.</p>	<p style="text-align: right;">Page 69</p> <p>1 Q Now, WAM is a Class 1 broker-dealer registered</p> <p>2 and regulated by the Bahamas Securities Commission;</p> <p>3 correct?</p> <p>4 A Correct.</p> <p>5 Q Was WAM a licensed broker-dealer in 2011 when</p> <p>6 Mr. Skarpelos submitted his account application?</p> <p>7 A Yes.</p> <p>8 Q Okay. Did you ever produce documentation in</p> <p>9 this case that WAM was actually licensed?</p> <p>10 A Yes.</p> <p>11 Q Okay. You provided to your counsel documents</p> <p>12 that WAM was licensed?</p> <p>13 A Yes.</p> <p>14 Q Did you provide a copy of the license?</p> <p>15 A Yes.</p> <p>16 Q Now, WAM is also a registered foreign</p> <p>17 broker-dealer in Canada; correct?</p> <p>18 A Correct.</p> <p>19 Q Regulated by the Ontario Securities Commission?</p> <p>20 A Correct.</p> <p>21 Q Now, the Ontario Securities Commission, when I</p> <p>22 took your deposition they had an investigation going of</p> <p>23 a gentleman named David Sidders; correct?</p> <p>24 A Correct.</p>

<p style="text-align: right;">Page 70</p> <p>1 Q And Mr. Sidders was employed by WAM in the 2 timeframe of 2011 to 2014? 3 A No, he was employed from 2000 -- not earlier 4 than 2013. I think 2014, somewhere in there. 5 Q 2013, 2014. Okay. 6 And I think you told me at your deposition when I 7 asked you whether that involved any of his activities 8 at WAM, you said it wasn't clear yet; correct? 9 A Sorry. When the -- 10 Q I think I asked you at your deposition if you 11 knew whether that activity that was the subject of the 12 investigation involved WAM. 13 A Oh, of Mr. Sidders? 14 Q Yes. 15 A Correct. 16 Q In October you didn't know yet? 17 A Correct. 18 Q Do you know whether that -- 19 A As far as we know, the activities that the 20 Ontario Securities Commission is investigating him for 21 was not his activities at WAM. It was prior to his 22 time at WAM. 23 Q Now, WAM is a Class 1 broker-dealer who acts in 24 a fiduciary capacity to its clients; correct?</p>	<p style="text-align: right;">Page 71</p> <p>1 A Correct. 2 Q And you talked about there's different classes 3 of broker-dealers, but WAM is sort of at that highest 4 level; correct? 5 A Correct. 6 Q And because of that, it has a greater duty of 7 responsibility to its clients than maybe some of the 8 lesser classes? 9 A Yes. 10 Q And Bahamian securities law requires that WAM's 11 broker-dealer license be held or in the name of some 12 qualified person; correct? 13 A Ask the question again, please. 14 Q Yeah, it was a bad question. Bahamian 15 securities law requires that there be a qualified 16 person at a broker-dealer; correct? 17 A Correct. 18 Q And what does that person do to become 19 qualified? 20 A Well, principally it's the chief operating -- 21 sorry -- the chief compliance officer who is the first 22 required qualified person or principal at the firm. 23 Compliance officers go through various training to get 24 their certifications to be compliance officers.</p>
<p style="text-align: right;">Page 72</p> <p>1 Q Okay. And there's been four to five different 2 qualified persons for WAM since 2011; correct? 3 A Correct. 4 Q But you've never been a qualified person for 5 WAM? 6 A Correct. 7 Q You don't have any licenses or professional 8 certifications in the securities area; correct? 9 A Correct. 10 Q And you've never been the compliance officer? 11 A No. 12 Q But you're aware generally that Bahamian 13 securities laws impose certain duties and restrictions 14 on WAM as a registered broker-dealer? 15 A Yes. 16 Q I think you said you're the risk advisor for 17 the firm. 18 A Correct. 19 MR. ANDERSON: The Court's indulgence one moment. 20 THE COURT: Okay. 21 BY MR. ANDERSON: 22 Q Now, you're aware that Bahamian securities 23 regulations require that firms keep books and records 24 for a certain period of time; correct?</p>	<p style="text-align: right;">Page 73</p> <p>1 A Correct. 2 Q And one of the purposes of those regulations is 3 to demonstrate compliance with internal control 4 procedures? 5 A Correct. 6 Q And one of those purposes is to demonstrate 7 compliance with the firm's policies and procedures; 8 correct? 9 A Correct. 10 Q And it's also to -- there's a regulation that 11 governs the identification and segregation of client 12 cash and securities? 13 A Correct. 14 Q And you're aware that WAM is required to 15 provide -- keep documents to provide an audit trail for 16 client instructions and orders; correct? 17 A Correct. 18 Q And you're aware that WAM is required to keep 19 records to demonstrate an audit trail for each trade 20 transmitted or executed for the account of the client 21 in the name of WAM? 22 A Correct. 23 Q Okay. And WAM is also required to keep books 24 and records to document correspondence of clients?</p>

<p style="text-align: right;">Page 74</p> <p>1 A Correct.</p> <p>2 Q Okay. WAM is also required to report to</p> <p>3 clients on contract notes; correct?</p> <p>4 A Contract notes. I'm not sure what's meant by</p> <p>5 that.</p> <p>6 Q Let me read you this and see if you agree.</p> <p>7 "Any registered firm that carries out any sale or</p> <p>8 purchase of securities on behalf of a client shall</p> <p>9 within one business day after the sale or purchase was</p> <p>10 executed make a contract note of the transaction."</p> <p>11 Would you agree that that's what Bahamian law provides?</p> <p>12 A Yes.</p> <p>13 Q And then the next section says, "Unless</p> <p>14 otherwise expressly directed by the client in writing,</p> <p>15 any registered firm that carries out any sale or</p> <p>16 purchase of securities on behalf of a client shall</p> <p>17 immediately after the sale or purchase was executed</p> <p>18 transmit a contract note of the transaction to its</p> <p>19 client." You're aware of that provision?</p> <p>20 A Let me see what you're looking at.</p> <p>21 Q I don't have a copy. I'm not going to make</p> <p>22 this an exhibit.</p> <p>23 Are you aware that Bahamian law requires that the</p> <p>24 registered broker-dealer transact information on</p>	<p style="text-align: right;">Page 75</p> <p>1 transactions to the client?</p> <p>2 A Sorry. To transact or transmit?</p> <p>3 Q Transmit.</p> <p>4 A To transmit. Those become available to the</p> <p>5 clients on their account when they want to pull that</p> <p>6 information. They never -- as far as I know, they're</p> <p>7 not required to email or mail the transaction to the</p> <p>8 client, but they're supposed to have that transaction</p> <p>9 note available, yes, to the client when the client</p> <p>10 requests it or when they pull it up on their account or</p> <p>11 when they generate their statements.</p> <p>12 Q Okay. And a contract note would require the</p> <p>13 quantity and description of the security, the price at</p> <p>14 which the transaction was effected, the commission, any</p> <p>15 other fees charged, the settlement date, the name of</p> <p>16 the registered firm involved, whether the registered</p> <p>17 firm was acting as principal or agent and the</p> <p>18 marketplace, if any, on which the transaction took</p> <p>19 place; correct?</p> <p>20 A Correct.</p> <p>21 Q So your testimony is that WAM wasn't required</p> <p>22 to transmit that to Mr. Skarpelos regarding the</p> <p>23 April 2nd transaction, but there was a contract note</p> <p>24 that should have been in his file?</p>
<p style="text-align: right;">Page 76</p> <p>1 A Yes. Not in the file. There will be a</p> <p>2 contract note, because that's what I refer to as the</p> <p>3 transaction records that are kept. So there would be a</p> <p>4 contract note in the transaction file.</p> <p>5 Q Wouldn't that be important to establish the</p> <p>6 legitimacy of that April 2nd transaction?</p> <p>7 A To establish the legitimacy. Wouldn't it be</p> <p>8 important. If it was -- if it was challenged early</p> <p>9 on -- that's not the way we use them. If a client</p> <p>10 requests a trade and a trade is done, the client</p> <p>11 typically has up to three days maximum to challenge the</p> <p>12 trades.</p> <p>13 Q Assuming they're notified.</p> <p>14 A Yes, if they're notified. And they are</p> <p>15 notified. Typically we call -- clients call us to put</p> <p>16 orders in. The trades are done. We call the client</p> <p>17 back, tell them your order is done. And they have</p> <p>18 three days, sort of an industry standard, three days to</p> <p>19 challenge that trade. And if they challenge that</p> <p>20 trade, then it goes to the contract notes and the</p> <p>21 transaction records and so on and so forth. So there</p> <p>22 is -- so I believe there is contract notes --</p> <p>23 Q But you've not seen it?</p> <p>24 A -- in the records.</p>	<p style="text-align: right;">Page 77</p> <p>1 Q But you haven't seen it?</p> <p>2 A Correct, no, I have not.</p> <p>3 Q Are you aware that Bahamian regulations impose</p> <p>4 duties on a registered broker-dealer to send their</p> <p>5 client statements?</p> <p>6 A No, I'm not.</p> <p>7 Q Okay. Are you aware there's a regulation that</p> <p>8 says, "Unless otherwise expressly directed by the</p> <p>9 client in writing, a registered firm must send or</p> <p>10 deliver a statement of account to each client not less</p> <p>11 than once every three months showing any debit or</p> <p>12 credit balance and the details of securities held or</p> <p>13 owned by the client"?</p> <p>14 A I'm not aware of this.</p> <p>15 Q Are you aware that Bahamian regulations provide</p> <p>16 that when a registered firm purchases securities as a</p> <p>17 principal it shall record such securities in the book</p> <p>18 of accounts separate from the book of accounts relating</p> <p>19 to securities held as an agent?</p> <p>20 A Correct.</p> <p>21 THE COURT: By "correct" you mean you are aware of</p> <p>22 that regulation?</p> <p>23 THE WITNESS: Yes, I am aware.</p> <p>24 /////</p>

<p style="text-align: right;">Page 78</p> <p>1 BY MR. ANDERSON:</p> <p>2 Q And you're aware that Bahamian regulations</p> <p>3 govern certain conflicts of interest related to client</p> <p>4 accounts; correct?</p> <p>5 A I know that they -- yes, they keep assets</p> <p>6 separate. My knowledge of that is yes. If there's --</p> <p>7 you cannot conflict and overlap assets between the firm</p> <p>8 and the clients.</p> <p>9 Q Would you look at Exhibit 7, please. I'm not</p> <p>10 sure if you and I looked at this together yesterday,</p> <p>11 but this is an email exchange between Tom and</p> <p>12 Mr. Daniels, Howard Daniels.</p> <p>13 A Correct.</p> <p>14 Q And I think we talked about it, but I just want</p> <p>15 to be clear. There's no other emails from WAM to</p> <p>16 Mr. Skarpelos or from Mr. Skarpelos to WAM following</p> <p>17 the date of this email; correct?</p> <p>18 A Not in the file here, no.</p> <p>19 Q Okay. And you didn't see any -- I mean, there</p> <p>20 were none forwarded to you; correct?</p> <p>21 A Emails in general between Howard and Tom?</p> <p>22 Q Emails from anyone at Weiser Asset</p> <p>23 Management -- you see he's got a Weiserm.com domain?</p> <p>24 A Yeah.</p>	<p style="text-align: right;">Page 79</p> <p>1 Q Did you receive any forwarded emails from</p> <p>2 anybody with a Weiserm.com domain that reflected</p> <p>3 discussions with Tom about anything?</p> <p>4 A Yes, throughout the history of the relationship</p> <p>5 there were -- there were emails from WAM staff, myself,</p> <p>6 Tom. There were emails throughout the history.</p> <p>7 Q You actually saw those?</p> <p>8 A Yeah. I was copied on some of them, yes.</p> <p>9 Q Okay. And if they were relevant to the issues</p> <p>10 in terms of a stock sale or transactions or anything</p> <p>11 like that, you would have produced them; correct?</p> <p>12 A If I had seen them, yes.</p> <p>13 Q And you didn't find in WAM's records any notes</p> <p>14 of any phone calls with Mr. Skarpelos; correct?</p> <p>15 A Phone calls with Mr. Skarpelos. No, I did not</p> <p>16 look up phone call records.</p> <p>17 Q And you didn't find anything in the WAM files</p> <p>18 directly from Mr. Skarpelos to WAM requesting any</p> <p>19 transactions; correct?</p> <p>20 A In the file, no.</p> <p>21 Q Well, anywhere. Have you ever seen anything in</p> <p>22 writing from Mr. Skarpelos to WAM saying, "I want you</p> <p>23 to do this"?</p> <p>24 A Yes, I have, because he has sent me requests</p>
<p style="text-align: right;">Page 80</p> <p>1 which I wasn't able to reproduce.</p> <p>2 Q Okay. So your testimony is that Mr. Skarpelos</p> <p>3 sent requests to you that you weren't able to</p> <p>4 reproduce?</p> <p>5 A I have seen those requests. I have received</p> <p>6 those requests. I don't have the records. I don't</p> <p>7 have the text messages, et cetera.</p> <p>8 Q So you don't have anything from Mr. Skarpelos</p> <p>9 to you and you also don't have anything from you to WAM</p> <p>10 other than that email you talked about with Rainbow</p> <p>11 requesting any transactions; correct?</p> <p>12 A To me, to WAM, I would have. I never -- I have</p> <p>13 seen them when I was -- when information was requested</p> <p>14 of me regarding some of these things, I was looking for</p> <p>15 the correspondence between myself and Tom. I didn't</p> <p>16 look for the correspondence or pull the correspondence</p> <p>17 from me to WAM.</p> <p>18 Q Well, WAM is the party; right?</p> <p>19 A Yeah, yeah.</p> <p>20 Q Okay. And you never sent Tom anything in</p> <p>21 writing that confirmed, "Hey, I know you are asking me</p> <p>22 to do this. I just want to put something in writing</p> <p>23 that says Christos Livadas is authorized to conduct</p> <p>24 transactions"?</p>	<p style="text-align: right;">Page 81</p> <p>1 A As far as authorizations, me putting in writing</p> <p>2 to Tom regarding authorizations?</p> <p>3 Q Yes.</p> <p>4 A Sorry. Ask the question again.</p> <p>5 Q You didn't put anything in writing to Tom</p> <p>6 saying, "I want to confirm that when I go to ask WAM to</p> <p>7 do this you're authorizing me to do this"?</p> <p>8 A In writing to Tom, no.</p> <p>9 Q In fact, there's nothing in writing at all</p> <p>10 between WAM and Tom to confirm any of the transactions</p> <p>11 that are listed on Exhibit 44; correct?</p> <p>12 A In here, no.</p> <p>13 Q Let's talk a little bit about the canceled</p> <p>14 stock certificate. And Mr. Nork showed you some</p> <p>15 exhibits yesterday that Mr. Skarpelos filled out. And</p> <p>16 this was -- I guess this thing happened, the canceled</p> <p>17 stock, in January of 2013.</p> <p>18 A If you can refer me to --</p> <p>19 Q Yes. I'm sorry. 13, I guess. Actually 14 is</p> <p>20 the Affidavit for Lost Stock Certificate.</p> <p>21 A Correct.</p> <p>22 Q And that's dated March of 2013?</p> <p>23 A I'm on Exhibit 14; correct?</p> <p>24 Q Yes, Exhibit 14. If you would look at the</p>

<p style="text-align: right;">Page 82</p> <p>1 second page.</p> <p>2 A I think we concluded it was March 29th.</p> <p>3 Q Okay. Now, we've looked at a bunch of emails</p> <p>4 going back and forth between you and Lambros discussing</p> <p>5 the July transaction; correct?</p> <p>6 A Correct.</p> <p>7 Q And nowhere in any of those emails or anywhere</p> <p>8 else did Lambros or Mr. Skarpelos indicate that what</p> <p>9 they were selling was specifically Certificate 753?</p> <p>10 A In the emails that it was specific to the</p> <p>11 certificate, no.</p> <p>12 Q Okay. And you would agree with me that even</p> <p>13 though Certificate 753 was canceled by Mr. Skarpelos</p> <p>14 and new Certificate 975 was issued by NATCO, they're</p> <p>15 the same shares; correct?</p> <p>16 A Are they the same shares.</p> <p>17 Q They're the same 6,600,000 and odd shares that</p> <p>18 were represented by 753; correct?</p> <p>19 A To me they're different, because the context of</p> <p>20 our discussions was always the discussions of the</p> <p>21 shares that were on deposit at Weiser.</p> <p>22 Q Is that what those emails say? Do the emails</p> <p>23 discuss Weiser in any way?</p> <p>24 A No.</p>	<p style="text-align: right;">Page 83</p> <p>1 Q They don't discuss Weiser, they don't discuss</p> <p>2 Weiser Capital and they don't discuss 753?</p> <p>3 A Correct.</p> <p>4 Q And nothing in Exhibit 30 discusses 753?</p> <p>5 A Correct.</p> <p>6 Q So in theory they are the same shares, they're</p> <p>7 just represented by a different number?</p> <p>8 A Yes.</p> <p>9 Q Okay. And when Tom filled out the blank power</p> <p>10 of attorney, which is Exhibit 36, he didn't write in</p> <p>11 any specific certificate number, did he?</p> <p>12 A As far as I recall -- this would be the blank</p> <p>13 one. No, no specific certificate number.</p> <p>14 Q Okay. And so let's assume that the transaction</p> <p>15 that's happening in July or the discussions that are</p> <p>16 happening in July, those goes on and eventually you</p> <p>17 find a buyer for the stock and everything happens well.</p> <p>18 Tom could have written in Certificate 975 and he would</p> <p>19 be selling the same shares that were being talked about</p> <p>20 in those emails; correct?</p> <p>21 A In my view incorrect, because there was already</p> <p>22 a transaction. So there was already a transaction and</p> <p>23 the power of attorney was in relationship to the</p> <p>24 certificate that Weiser had on deposit.</p>
<p style="text-align: right;">Page 84</p> <p>1 Q Okay. And the transaction that you're saying</p> <p>2 happened on April 2nd was just after these certificates</p> <p>3 were canceled; correct?</p> <p>4 A I don't see what date these certificates were</p> <p>5 canceled.</p> <p>6 Q Well, the stock transfer order -- the stock</p> <p>7 transfer order was submitted by Mr. Skarpelos in March</p> <p>8 of 2013 -- correct? -- March 29? If you look at</p> <p>9 Exhibit 15.</p> <p>10 A So that's the -- the affidavit is in March,</p> <p>11 yes, 2013.</p> <p>12 Q And if you look at Exhibit 15, the stock</p> <p>13 transfer order that you submitted to NATCO was dated</p> <p>14 March 29, 2013, at the top?</p> <p>15 A Yes.</p> <p>16 Q Okay. And it looks like if you look at Exhibit</p> <p>17 16 that NATCO canceled those certificates on April 4th</p> <p>18 of 2013. The date is in the upper left-hand corner.</p> <p>19 A Yes.</p> <p>20 Q Okay. So the transaction that you're saying</p> <p>21 happened was on April 2nd, 2013; correct?</p> <p>22 A Correct.</p> <p>23 Q Okay. But the emails that lead up to the July</p> <p>24 transaction -- I'm sorry -- the July 30th agreement --</p>	<p style="text-align: right;">Page 85</p> <p>1 strike that.</p> <p>2 The emails leading up to Exhibit 30, which is the</p> <p>3 purchase and sale agreement, don't say anything about</p> <p>4 Certificate 753 in it, do they?</p> <p>5 A Correct, no.</p> <p>6 Q And that document that we discussed earlier</p> <p>7 that you completed and filled out was to document the</p> <p>8 April 2nd transaction; correct?</p> <p>9 A Sorry. Are you talking about the stock power</p> <p>10 or the PSA, the purchase and sale agreement?</p> <p>11 Q The purchase and sale agreement.</p> <p>12 A Correct, yes.</p> <p>13 MR. ANDERSON: The Court's indulgence for one</p> <p>14 moment.</p> <p>15 THE COURT: Sure. You have about ten minutes</p> <p>16 before we take our recess.</p> <p>17 BY MR. ANDERSON:</p> <p>18 Q Would you look at Exhibit 35, please.</p> <p>19 Now, this stock certificate power -- or stock power</p> <p>20 that you filled out is dated July 12th, 2013; correct?</p> <p>21 A Correct.</p> <p>22 Q And it's dated at Athens. Were you in Athens</p> <p>23 when you filled that out?</p> <p>24 A No. Whether it was myself or the staff, it</p>

<p style="text-align: right;">Page 86</p> <p>1 wouldn't have been in Athens.</p> <p>2 Q You weren't in Athens?</p> <p>3 A No.</p> <p>4 Q And you wrote July 12th, 2013; correct?</p> <p>5 A Yes.</p> <p>6 Q Okay. And that's the same date that appears in</p> <p>7 Mr. Montello's letters or Mr. Alvarez's letters to</p> <p>8 NATCO; correct?</p> <p>9 A That is correct.</p> <p>10 Q When you learned of the hold on the stock in</p> <p>11 2013 did you notify Mr. Skarpelos in writing at all</p> <p>12 that you heard there was a problem with the</p> <p>13 certificate?</p> <p>14 A I couldn't get ahold of Skarpelos, so I</p> <p>15 notified -- I first contacted Lambros.</p> <p>16 Q Is there anything in writing from you to</p> <p>17 Lambros or to Tom Skarpelos saying, "I've been told</p> <p>18 there's a problem with the stock certificate"?</p> <p>19 A In writing here, no.</p> <p>20 Q In fact, the only evidence of a written</p> <p>21 communication between you and Mr. Skarpelos after</p> <p>22 July 2013 is Exhibit 40; correct?</p> <p>23 A Correct.</p> <p>24 Q And in Exhibit 40 at the bottom Mr. Skarpelos</p>	<p style="text-align: right;">Page 87</p> <p>1 tells you, "I'm around if you want to talk"; correct?</p> <p>2 A Correct.</p> <p>3 Q Okay. Now, this email in here doesn't say</p> <p>4 anything about Weiser Asset Management, Weiser Capital</p> <p>5 or the sale of stock; correct?</p> <p>6 A As far as the sale of stock, only that the</p> <p>7 funds were ready for the second -- this is the</p> <p>8 reference for the funds for the second transaction.</p> <p>9 Q Okay. So your testimony is that this is the</p> <p>10 funds for the Chinese investor transaction that you say</p> <p>11 never happened?</p> <p>12 A Yes.</p> <p>13 THE COURT: Why does it say Lou Lou in the subject</p> <p>14 line?</p> <p>15 THE WITNESS: Lou Lou is Lambros's other name,</p> <p>16 nickname.</p> <p>17 THE COURT: Gotcha. Okay. And that's L-o-u L-o-u.</p> <p>18 Go ahead.</p> <p>19 BY MR. ANDERSON:</p> <p>20 Q But it doesn't mention anything about Kinezi or</p> <p>21 Weiser Asset Management or Weiser Capital?</p> <p>22 A In this email, no.</p> <p>23 Q And there's no other written communications</p> <p>24 from you to Tom after this email; correct?</p>
<p style="text-align: right;">Page 88</p> <p>1 A Not that I'm aware of.</p> <p>2 Q And there's also nothing in writing from WAM to</p> <p>3 Tom after this date on any subject, including the stock</p> <p>4 sale?</p> <p>5 A I don't know.</p> <p>6 Q You haven't seen it?</p> <p>7 A Not that I recall, no.</p> <p>8 Q You haven't seen any documents?</p> <p>9 A I may have seen them, but I don't recall.</p> <p>10 Q So as far as you know they don't exist?</p> <p>11 Prior to --</p> <p>12 THE COURT: Hold on a second. You didn't answer</p> <p>13 that question.</p> <p>14 THE WITNESS: I did not catch if it was a question</p> <p>15 or a statement.</p> <p>16 THE COURT: I wasn't quite sure either. You just</p> <p>17 said as far as --</p> <p>18 MR. ANDERSON: I thought it was a question. Your</p> <p>19 Honor, I apologize. I thought I heard him answer, but</p> <p>20 it wouldn't be the first time I was mistaken.</p> <p>21 THE COURT: That's okay. We're all imperfect.</p> <p>22 So the question -- and it was a question. The</p> <p>23 question was as far as you know they don't exist. That</p> <p>24 was your question -- correct? -- Mr. Anderson?</p>	<p style="text-align: right;">Page 89</p> <p>1 Do you have a response to that?</p> <p>2 THE WITNESS: Sorry. As far as I know which don't</p> <p>3 exist?</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q Any writings from WAM to Tom at any point in</p> <p>6 time discussing the stock sale.</p> <p>7 A I believe that there is -- that they do exist.</p> <p>8 Q But you haven't produced them?</p> <p>9 A No, no.</p> <p>10 Q We talked a little bit earlier about what a</p> <p>11 conflict of interest might be. Do you recall that?</p> <p>12 A Earlier today?</p> <p>13 Q At your deposition.</p> <p>14 A I remember a little bit, yes.</p> <p>15 Q Now, as the owner of WAM you don't know whether</p> <p>16 WAM has any policies or procedures addressing conflicts</p> <p>17 of interest; correct?</p> <p>18 A I know that operating policies and procedures</p> <p>19 about conflict of interest exist. I don't have those</p> <p>20 with me to recall them in detail.</p> <p>21 Q Do you recall at your deposition testifying</p> <p>22 that you don't know whether WAM has any policies or</p> <p>23 procedures addressing conflicts of interest?</p> <p>24 A If you could reference me to it.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q Yes. Look at page 57, please. And in 2 particular I would refer you to page 57, line 12. And 3 I asked you, "Okay. Do you have an understanding of 4 what a conflict of interest is?" 5 "ANSWER: Yes." 6 "QUESTION: Okay. Can you tell me what that is?" 7 "ANSWER: That's when you may have -- do it by 8 example, I suppose -- is when you're in a deal and may 9 have benefit from both sides, both parties on both 10 sides of the deal." 11 Do you recall saying that? 12 A Yeah. 13 Q And my question was "Does Weiser Asset 14 Management have any policies or procedures that address 15 conflicts of interest?" 16 "ANSWER: I would have to refer to their compliance 17 manual to see." 18 "QUESTION: Okay. Off the top of your head then 19 you don't know whether there are any policies or 20 procedures addressing conflicts of interest?" 21 "ANSWER: No." 22 That was your testimony in October? 23 A Correct. 24 Q Okay. And you don't know whether WAM does</p>	<p style="text-align: right;">Page 91</p> <p>1 anything to educate its employees or agents about a 2 conflict of interest? 3 A It does. 4 Q How about Weiser Capital? 5 A Does Weiser Capital educate its -- 6 Q Does Weiser Capital have any policies or 7 procedures on conflicts of interest? 8 A No. 9 THE COURT: You are Weiser Capital; correct? 10 THE WITNESS: Correct. 11 THE COURT: So there's no one other than you that 12 is an employee of Weiser Capital? Just so I'm clear. 13 THE WITNESS: Correct. 14 THE COURT: All right. Go ahead. 15 BY MR. ANDERSON: 16 Q And that's always been the case; correct? 17 Since 2011 you are Weiser Capital? 18 A Yes. 19 Q So it doesn't have any policies or procedures. 20 Do you have take any classes or anything like that to 21 educate yourself on how to avoid conflicts of interest? 22 A I do studies on it. I don't take classes, but 23 I do studies and read our compliance manuals, yes. 24 Q So Weiser Capital has compliance manuals?</p>
<p style="text-align: right;">Page 92</p> <p>1 A No. I read WAM's compliance manuals. 2 Q Okay. Is WAM's compliance manual different 3 than the terms and conditions that we talked about 4 earlier? 5 A It would be. The compliance manual is a very 6 large document, so it's different in the terms. 7 Q Do you know if that's ever been produced in 8 this case? 9 A The compliance manual? 10 Q Yes. 11 A Not that I'm aware of. 12 Q Have any documents been produced that talk 13 about WAM's internal policies and procedures other than 14 the terms and conditions that you -- 15 A Here, no. 16 Q Okay. Now, let's assume for a second that the 17 April 2nd, 2013, transaction actually happened and that 18 Mr. Skarpelos's account was credited with \$250,000. 19 According to that statement there was a positive 20 roughly \$100,000 balance in the account at that point; 21 correct? 22 A Yes, if you say so. 23 Q Where is that cash? 24 A Where is that cash. Please define the</p>	<p style="text-align: right;">Page 93</p> <p>1 question. 2 Q Okay. Your testimony and the Exhibit 44 3 account statement that you've offered purports to 4 demonstrate that Mr. Skarpelos had a negative balance 5 of almost \$150,000 in March of 2013; correct? 6 THE COURT: You're looking at 44? 7 MR. ANDERSON: 44, sir. 8 THE WITNESS: Yes. Sorry. Say again. 9 BY MR. ANDERSON: 10 Q You've testified that this account statement 11 reflects the books and records of WAM. I know we had a 12 dispute over that, but this document is admitted. 13 You're saying that that was the status of Tom's 14 account? 15 A Correct. 16 Q And in early 2013, if you look at the March 17 entry, there's a negative 153,804.54; correct? 18 A Correct. 19 Q We talked yesterday about how WAM doesn't have 20 any records prior to this year, so we don't have any 21 WAM evidence of the transactions that occurred to make 22 it \$140,000 negative; correct? 23 A Not in this file, no. 24 Q They're not available in the court; correct?</p>

<p style="text-align: right;">Page 94</p> <p>1 A Correct.</p> <p>2 Q Okay. So you're saying on April 2nd, 2013, a</p> <p>3 transaction happened where Tom was credited almost</p> <p>4 \$250,000?</p> <p>5 A Correct.</p> <p>6 Q And if you look to the right it shows a</p> <p>7 positive balance of almost \$95,000; correct?</p> <p>8 A Correct.</p> <p>9 Q Where is that money?</p> <p>10 A Where is it. I'm sorry. I can't --</p> <p>11 Q On April 2nd, 2013, where is the actual cash?</p> <p>12 Because you testified yesterday that WAM doesn't hold</p> <p>13 cash.</p> <p>14 A Yeah, the actual cash would be at the Federal</p> <p>15 Reserve.</p> <p>16 Q Okay. So let me make sure I understand this.</p> <p>17 WAM credits his account. The buyer supposedly has paid</p> <p>18 \$250,000 somewhere. We don't have any evidence of</p> <p>19 that; correct?</p> <p>20 A Correct.</p> <p>21 Q Now, WAM then takes that cash and apparently</p> <p>22 applies 150,000 roughly to Mr. Skarpelos's supposed</p> <p>23 debit and there's \$100,000 surplus on April 2nd, 2013;</p> <p>24 right?</p>	<p style="text-align: right;">Page 95</p> <p>1 A Yeah.</p> <p>2 Q Okay. Where is the money on April 2nd, 2013?</p> <p>3 A Well, the money -- the transactions are always</p> <p>4 kept as an electronic ledger, so that's -- the credits</p> <p>5 and liabilities of clients are kept on a ledger. Where</p> <p>6 the actual cash is, the cash ends up usually at the</p> <p>7 prime bank or the Federal Reserve. I'm sorry. I don't</p> <p>8 understand your question.</p> <p>9 Q You testified yesterday that the cash, the</p> <p>10 \$250,000 that the buyer paid, was in an account under</p> <p>11 the buyer's name held in WAM's name; correct?</p> <p>12 A You say that the cash -- I'm sorry. When you</p> <p>13 say "the cash," to me that refers to a physical thing.</p> <p>14 Q The electronic money that the buyer -- reflects</p> <p>15 that the buyer --</p> <p>16 A The credit balance, yes.</p> <p>17 Q Okay. It exists on WAM's books, but I'm</p> <p>18 assuming WAM doesn't do that unless it has proof that</p> <p>19 the buyer has actually paid something that justifies</p> <p>20 that credit.</p> <p>21 A Sorry. Ask the question again, please.</p> <p>22 Q How did you confirm that Tom Skarpelos should</p> <p>23 be paid \$250,000 or have \$250,000 credited to his</p> <p>24 account?</p>
<p style="text-align: right;">Page 96</p> <p>1 A How did I confirm that it should be?</p> <p>2 Q Mr. Livadas, did the buyer, ultimate buyer, pay</p> <p>3 \$250,000 --</p> <p>4 A Yes.</p> <p>5 Q -- that caused WAM to credit this account?</p> <p>6 A Correct, the buyer's account was debited</p> <p>7 \$250,000.</p> <p>8 Q Okay. So WAM doesn't debit their account and</p> <p>9 credit Mr. Skarpelos's account without seeing some sort</p> <p>10 of proof that the buyer has submitted money somewhere</p> <p>11 to justify this transaction.</p> <p>12 A Well, the buyer would have a credit on their</p> <p>13 account already, a credit balance, whatever that cash</p> <p>14 amount might be.</p> <p>15 Q And you don't credit their account balance</p> <p>16 unless they put money somewhere that says we should now</p> <p>17 credit their account balance?</p> <p>18 A Put money somewhere.</p> <p>19 THE COURT: Are you asking him how the account is</p> <p>20 initiated? I'm just trying -- we're going to take a</p> <p>21 recess and then you can clarify this when we come back,</p> <p>22 because it's now 10:16. But in essence, as I</p> <p>23 understand what Mr. Livadas's testimony is, there</p> <p>24 are these -- there is this other person who purchased</p>	<p style="text-align: right;">Page 97</p> <p>1 the first half of Certificate 753, the three plus</p> <p>2 million shares. That person had a positive account</p> <p>3 with WAM in excess of \$250,000.</p> <p>4 And then Mr. Skarpelos, according to the testimony</p> <p>5 at this point, had a negative balance of \$153,804.54.</p> <p>6 The sale takes place between those two entities, and so</p> <p>7 the purchaser's account is debited \$250,000. WAM takes</p> <p>8 their \$420, \$420 fee, and then credits Mr. Skarpelos's</p> <p>9 account in the amount of \$249,580, giving him a</p> <p>10 positive balance now of \$95,775.46. Is that correct?</p> <p>11 THE WITNESS: Correct.</p> <p>12 THE COURT: So it's just an internal -- because</p> <p>13 it's two WAM clients, it's just internal movement in</p> <p>14 the ledgers of the WAM accounts. Is that your</p> <p>15 testimony?</p> <p>16 THE WITNESS: Correct.</p> <p>17 THE COURT: We'll be in recess. You're free to</p> <p>18 pick that up again right from that spot, Mr. Anderson.</p> <p>19 And if I have misstated something or if I'm not</p> <p>20 understanding it correctly, please feel free to</p> <p>21 continue in your line of inquiry. That's just how I</p> <p>22 understood the testimony. So court will be in recess</p> <p>23 for approximately 15 minutes.</p> <p>24 (A recess was taken.)</p>

<p style="text-align: right;">Page 98</p> <p>1 THE COURT: We'll go back on the record in 2 CV15-02259, Weiser entities versus Skarpelos. 3 Mr. Anderson, you may continue your 4 cross-examination of Mr. Livadas. 5 MR. ANDERSON: Thank you, Your Honor. 6 BY MR. ANDERSON: 7 Q Mr. Livadas, would you turn to Exhibit 12, 8 please. I apologize, Mr. Livadas. Let's look at 9 Exhibit 59. 10 Now, Exhibit 59 was admitted in part yesterday, I 11 think for the purpose of establishing that Lambros sent 12 you an email and that you then requested that Rainbow 13 perform some sort of transaction; correct? 14 A Correct. 15 THE COURT: Hold on a second. That's not correct. 16 It wasn't admitted in part. It was admitted over 17 objection with an explanation on how I would consider 18 certain aspects of it, but the exhibit itself has been 19 admitted. 20 MR. ANDERSON: Okay. 21 THE COURT: Just so we're clear. 22 MR. ANDERSON: Thank you, Your Honor. 23 THE COURT: That's a legal technicality. 24 MR. ANDERSON: Just to clarify, the entire exhibit</p>	<p style="text-align: right;">Page 99</p> <p>1 has been admitted by the Court? 2 THE COURT: Yes. 3 MR. ANDERSON: Thank you. 4 BY MR. ANDERSON: 5 Q Now, the initial email on this document from 6 Lambros to you, the subject is "Quadruple bypass"; 7 correct? 8 A Correct. 9 Q And then all the body of the text is some kind 10 of bank information; correct? 11 A Correct. 12 Q And there's nothing in the body of the email 13 that mentions Tom's name; correct? 14 A Correct. 15 Q Or that there's a transfer request happening; 16 correct? 17 A He's not stating it as such in the email. 18 Q Okay. Now, if you look above that line that's 19 there, there's an email from you to Rainbow who I think 20 you say is WAM's controller? 21 A Correct. 22 Q And the subject is "Transfer request, forward 23 quadruple bypass." So you added the "transfer request" 24 portion when you forwarded it; correct?</p>
<p style="text-align: right;">Page 100</p> <p>1 A Correct. 2 Q Even though it doesn't say that in the email? 3 A I added that in the subject line. 4 Q Even though that wasn't in Lambros's email? 5 A Correct. 6 Q Now, who is Alana Wheaton? 7 A Alana is one of my assistants. 8 Q Okay. And you testified at your deposition 9 that she's an employee of Weiser Capital; correct? 10 A She's been an employee of WAM and Weiser 11 Capital on and off. 12 Q Would you turn to page 218 of your deposition, 13 please. And at page 218, line 6, I asked you, "Who is 14 Alana Wheaton?" 15 "ANSWER: Alana is my assistant." 16 "QUESTION: Is she a current employee of Weiser 17 Capital?" 18 "ANSWER: Of Weiser Capital, yes." 19 "QUESTION: Okay. Does she work for Weiser Asset 20 Management at all?" 21 "ANSWER: No." 22 A At present, no. 23 Q Did I read that correctly? Okay. So your 24 testimony is that in 2013 she was employed at Weiser</p>	<p style="text-align: right;">Page 101</p> <p>1 Capital and Weiser Management? 2 A She was involved with both in that time. Now 3 she's not. 4 Q Okay. Now, let's look at Exhibit 60. 5 A 60? 6 Q 60, please. And we discussed this exhibit at 7 your deposition as well; correct? 8 A I don't recall, but I'm sure it's in there. 9 Q You produced this document in response to a 10 request from your lawyers for communications between 11 Tom and somebody who represented Weiser; correct? And 12 if you need to refer to your deposition, you could look 13 at page 219. If you look at lines 17 to 23 and just 14 read those to yourself really quick. 15 A Which lines? 16 Q Lines 17 to 23. 17 A 17. Okay. "Why did you send this screen 18 shot" -- 19 THE COURT: Don't read it out loud. Just read it 20 to yourself. 21 THE WITNESS: Oh, sorry. 22 Yes. 23 BY MR. ANDERSON: 24 Q Okay. And so they were asking for</p>

<p style="text-align: right;">Page 102</p> <p>1 correspondence involving you and Weiser; correct?</p> <p>2 A Correct. Me and Weiser or Tom and I?</p> <p>3 Q Well, you testified they were asking for</p> <p>4 correspondence with Tom and that he had contact with</p> <p>5 somebody who represented Weiser.</p> <p>6 A Correct.</p> <p>7 Q And this is what you provided them; correct?</p> <p>8 A Correct.</p> <p>9 Q But this was your personal email account;</p> <p>10 correct?</p> <p>11 A This was my Weiser Capital corporate account.</p> <p>12 Q Okay. Do you recall testifying at deposition</p> <p>13 that it was your personal email? I'll have you look at</p> <p>14 page 221, line 8.</p> <p>15 A Sure. I'm sorry. I was looking at the top.</p> <p>16 Yes, this would have been my -- it's more personal,</p> <p>17 yeah.</p> <p>18 Q And when you took this screen shot you</p> <p>19 basically pulled up the emails on your screen and</p> <p>20 printed the screen shot and this is what came out?</p> <p>21 A Correct.</p> <p>22 Q Okay. At that time you had the ability to</p> <p>23 click on any of these emails, open them up and print</p> <p>24 those out; correct?</p>	<p style="text-align: right;">Page 103</p> <p>1 A Correct.</p> <p>2 Q But you didn't do that?</p> <p>3 A No.</p> <p>4 Q Are you aware that my office requested all</p> <p>5 emails between you and Tom?</p> <p>6 A My understanding was all emails relevant to the</p> <p>7 transaction, not all emails.</p> <p>8 Q So you provided all the emails relevant to the</p> <p>9 transaction?</p> <p>10 A That I could find that I thought were relevant</p> <p>11 to the transaction.</p> <p>12 Q I think you testified yesterday about the</p> <p>13 negative balance that Mr. Skarpelos had on his account</p> <p>14 a little bit. And as I understand it, WAM didn't do</p> <p>15 anything to notify Mr. Skarpelos that his account had</p> <p>16 gone negative in any way?</p> <p>17 A Well, I had told Mr. Skarpelos. He was aware</p> <p>18 that he was in negative liquidity.</p> <p>19 Q But there's nothing in writing from Weiser</p> <p>20 Asset Management advising Mr. Skarpelos that his</p> <p>21 account was in negative liquidity?</p> <p>22 A Not that I'm aware of.</p> <p>23 Q Okay. I think we talked about this at your</p> <p>24 deposition, and luckily this hasn't happened to me</p>
<p style="text-align: right;">Page 104</p> <p>1 since college, but when I would go overdraft in my bank</p> <p>2 account they would immediately send me a notice saying</p> <p>3 you're in overdraft. Are you telling me WAM doesn't do</p> <p>4 anything like that?</p> <p>5 A It expects its rep to communicate with the</p> <p>6 clients on the status of their accounts.</p> <p>7 Q Okay. And you were that rep is your testimony?</p> <p>8 A Yes.</p> <p>9 Q Even though there's nothing in writing to</p> <p>10 indicate that?</p> <p>11 A Correct.</p> <p>12 Q Now, before we broke we were talking a little</p> <p>13 bit about the April 2nd transaction you say happened</p> <p>14 and how the dynamics of that worked. I understood</p> <p>15 based on the judge's question that WAM only has ledgers</p> <p>16 for client accounts and that you credited</p> <p>17 Mr. Skarpelos's account and you debited the buyer's</p> <p>18 account; correct?</p> <p>19 A Correct.</p> <p>20 Q Where did the buyer's money go?</p> <p>21 A The buyer's money.</p> <p>22 Q The money that they paid for the stock.</p> <p>23 A It was credited to Tom's account.</p> <p>24 Q Right. But there wasn't cash delivered to WAM</p>	<p style="text-align: right;">Page 105</p> <p>1 in order to credit Tom's account. The buyer had to</p> <p>2 have deposited the money somewhere to then cause WAM to</p> <p>3 do the ledger transaction.</p> <p>4 A At some point through the buyer's history of</p> <p>5 his account he would have either deposited securities</p> <p>6 or would have -- or sent an electronic funds transfer,</p> <p>7 not cash, but an electronic funds transfer to our prime</p> <p>8 bank or prime broker to then create the credit in his</p> <p>9 account.</p> <p>10 Q Okay. And that's what I was getting at. I was</p> <p>11 not trying to be confusing. But there was evidence of</p> <p>12 some kind of payment by the buyer, whether it was a</p> <p>13 deposit of certificates or an electronic funds</p> <p>14 transfer, to somewhere that caused WAM to look at that</p> <p>15 and say, "Okay. We're good now. Let's credit</p> <p>16 Mr. Skarpelos's account"?</p> <p>17 A Well, we would have -- yes, a credit balance so</p> <p>18 there's enough cash to do the transaction.</p> <p>19 Q And was that balance at the prime bank?</p> <p>20 A The specific client's credit balance, that</p> <p>21 ledger would be at WAM. The total -- the total credit</p> <p>22 balances of all clients would be at the prime broker.</p> <p>23 Q Okay. So do you know whether the buyer --</p> <p>24 allegedly under the April 2nd transaction whether that</p>

<p style="text-align: right;">Page 106</p> <p>1 buyer paid with stock, did they pay with electronic</p> <p>2 buyer transfers, did they pay with cash?</p> <p>3 A On April 2nd they would have paid by having</p> <p>4 their account debited that amount of funds.</p> <p>5 Q Okay. Do you know when they deposited the</p> <p>6 securities or the cash in order to cause that debit to</p> <p>7 happen?</p> <p>8 A Well, I imagine it was -- it would have been</p> <p>9 much prior to that. The buyer wasn't a client who</p> <p>10 walked in that day to do the transaction. It was an</p> <p>11 existing client.</p> <p>12 Q And at some point WAM credits Mr. Skarpelos's</p> <p>13 account because the buyer's funds or stock or whatever</p> <p>14 has paid for the stock that was supposed to be</p> <p>15 transferred?</p> <p>16 A Correct.</p> <p>17 Q Okay. And you're saying that WAM received</p> <p>18 money in order to credit Mr. Skarpelos's account</p> <p>19 \$100,000?</p> <p>20 A It would have had to have that balance on</p> <p>21 accounts.</p> <p>22 Q Okay. My point is all these transactions that</p> <p>23 took place happen outside of WAM; correct? The only</p> <p>24 thing that happened inside WAM was ledger transactions?</p>	<p style="text-align: right;">Page 107</p> <p>1 A Correct. Correct.</p> <p>2 Q And we don't have any documentation of what</p> <p>3 happened outside of WAM that led WAM to do these ledger</p> <p>4 transactions; correct?</p> <p>5 A Are you talking specifically for the trade or</p> <p>6 for the funds transfers?</p> <p>7 Q I'm talking about everything that happened that</p> <p>8 is supposed to have happened on April 2nd.</p> <p>9 A Well, we do have a little bit of information on</p> <p>10 the funds transfers, what was happening at the prime</p> <p>11 broker level.</p> <p>12 Q You provided funds that happened at the prime</p> <p>13 broker -- documents showing what happened at the prime</p> <p>14 broker level regarding the April 2nd transaction?</p> <p>15 A April 2nd, no, because that was the trade.</p> <p>16 Q That's the document I'm talking about. That's</p> <p>17 the date I'm talking about. You're saying on April</p> <p>18 2nd something happened that caused WAM to credit</p> <p>19 Mr. Skarpelos's ledger and simultaneously debit the</p> <p>20 ledger for the buyer.</p> <p>21 A Correct.</p> <p>22 Q So my point is that all WAM has are ledgers and</p> <p>23 the activity that took place that caused WAM to adjust</p> <p>24 these ledgers happened somewhere else; correct?</p>
<p style="text-align: right;">Page 108</p> <p>1 A At WAM.</p> <p>2 Q So WAM does have records?</p> <p>3 A Of course it has records.</p> <p>4 Q I'm confused, Mr. Livadas. The only thing I've</p> <p>5 ever seen regarding this April 2nd transaction and a</p> <p>6 transfer of funds or a credit of funds is Exhibit 44.</p> <p>7 A Which is the accounts payable.</p> <p>8 Q Accounts payable.</p> <p>9 A Correct. So account statements are compiled,</p> <p>10 produced based on transaction records.</p> <p>11 Q Okay. And you haven't produced any of those</p> <p>12 transaction records that led to the statement; correct?</p> <p>13 A Correct.</p> <p>14 MR. ANDERSON: The Court's indulgence for a moment.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. ANDERSON: No further questions at this time,</p> <p>17 Your Honor.</p> <p>18 EXAMINATION</p> <p>19 BY THE COURT:</p> <p>20 Q Mr. Livadas, just so I understand your</p> <p>21 testimony regarding the transactions themselves, your</p> <p>22 prime bank has WAM's account; correct?</p> <p>23 A Correct, it has all of the clients.</p> <p>24 Q All of the clients. So WAM tells the prime</p>	<p style="text-align: right;">Page 109</p> <p>1 bank -- well, let me start again. The prime bank</p> <p>2 thinks that WAM has \$1 million in client accounts.</p> <p>3 Let's just use a small number, \$1 million. Then</p> <p>4 internally WAM breaks that \$1 million down into \$50,000</p> <p>5 for client A and 450,000 for client B and 200,000 for</p> <p>6 client C. So you've got it internally broken down.</p> <p>7 A Correct.</p> <p>8 Q So is it your testimony that there really is no</p> <p>9 interaction with the prime bank regarding this \$250,000</p> <p>10 transfer?</p> <p>11 A Correct.</p> <p>12 Q Because no money is being exchanged from some</p> <p>13 outside source that affects WAM's internal ledgers?</p> <p>14 A Correct.</p> <p>15 Q The prime bank doesn't think -- I don't want to</p> <p>16 say they don't think anything has happened, but they're</p> <p>17 not notified that anything has happened --</p> <p>18 A No.</p> <p>19 Q -- because their WAM account is exactly the</p> <p>20 same value.</p> <p>21 A Correct.</p> <p>22 Q You're just allocating it differently</p> <p>23 internally. You're moving it from one client to the</p> <p>24 other because you're representing that one client has</p>

<p style="text-align: right;">Page 110</p> <p>1 purchased stock for \$250,000 and one client has sold</p> <p>2 stock for \$250,000.</p> <p>3 A Correct.</p> <p>4 Q But the net effect in WAM's books is zero. I</p> <p>5 can't say it's zero, because there's the \$420 servicing</p> <p>6 fee. But the net effect is zero at the prime bank; is</p> <p>7 that correct?</p> <p>8 A Correct.</p> <p>9 THE COURT: All right. Mr. Anderson, do you have</p> <p>10 any questions about that? I just wanted to clarify</p> <p>11 that.</p> <p>12 MR. ANDERSON: Very briefly, Your Honor.</p> <p>13 THE COURT: Okay. Go ahead.</p> <p>14 CROSS-EXAMINATION (Resumed)</p> <p>15 BY MR. ANDERSON:</p> <p>16 Q What was the prime bank that would have been</p> <p>17 involved in this April 2nd transaction?</p> <p>18 A It wouldn't have been involved.</p> <p>19 Q Where was WAM's prime bank account at that</p> <p>20 time?</p> <p>21 A With a prime broker. Well, it had multiple</p> <p>22 prime brokers.</p> <p>23 Q Who was the prime broker at that time?</p> <p>24 A There was three that I recall. I named some of</p>	<p style="text-align: right;">Page 111</p> <p>1 them previously yesterday.</p> <p>2 Q Which one held the account that would have</p> <p>3 dealt with this transaction?</p> <p>4 A They wouldn't have dealt with this transaction,</p> <p>5 because this transaction was a buyer and a seller at</p> <p>6 WAM.</p> <p>7 Q Okay. Where was WAM's bank account that as the</p> <p>8 Court pointed out would have had no change in balance</p> <p>9 because of the net zero?</p> <p>10 A That would have been CIBC or HSBC or its prime</p> <p>11 brokers which were Vermont, Interactive Brokers and a</p> <p>12 couple others that I don't recall.</p> <p>13 Q Okay. So for WAM at this time it was, as I</p> <p>14 understand the order, client and then WAM and then</p> <p>15 prime broker and then prime bank?</p> <p>16 A Correct.</p> <p>17 Q Okay. And so you don't know if WAM's account,</p> <p>18 the actual bank account at the time, was at the prime</p> <p>19 broker or the prime bank?</p> <p>20 A Well, it has -- at that time it was at the</p> <p>21 prime broker, because it didn't have a strong prime</p> <p>22 banking relationship.</p> <p>23 Q So was the prime broker a bank?</p> <p>24 A No, it's a prime broker.</p>
<p style="text-align: right;">Page 112</p> <p>1 Q Okay. But there is an account somewhere that</p> <p>2 has WAM's general account?</p> <p>3 A Multiple banks would have -- because we have</p> <p>4 multiple prime brokers, so there's multiple prime banks</p> <p>5 that hold the assets ultimately.</p> <p>6 Q Okay. So in 2011 there was a WAM account that</p> <p>7 had money in it?</p> <p>8 A Correct.</p> <p>9 Q In 2011 to 2013 which banks had WAM's money at</p> <p>10 that time?</p> <p>11 A It would have been mostly between HSBC and</p> <p>12 CIBC.</p> <p>13 MR. ANDERSON: No further questions, Your Honor.</p> <p>14 THE COURT: Redirect examination based on the</p> <p>15 cross-examination, Mr. Nork.</p> <p>16 MR. NORK: Thank you, Your Honor.</p> <p>17 REDIRECT EXAMINATION</p> <p>18 BY MR. NORK:</p> <p>19 Q I will start right where we left off. I think</p> <p>20 better with pictures, so, Mr. Livadas, if you would</p> <p>21 indulge me just to talk about the banking relationship.</p> <p>22 THE COURT: I wouldn't rely on those little</p> <p>23 stickers holding that sheet of paper up. I would go</p> <p>24 with the clips, Mr. Nork.</p>	<p style="text-align: right;">Page 113</p> <p>1 MR. NORK: Thank you, Your Honor.</p> <p>2 THE WITNESS: Maybe the marker.</p> <p>3 THE COURT: Well, no, I don't like using a marker</p> <p>4 on a whiteboard, Mr. Livadas, because if we create an</p> <p>5 exhibit, that is, if it's something that you identify</p> <p>6 and then becomes marked and admitted, there's no way to</p> <p>7 mark and admit the whiteboard.</p> <p>8 BY MR. NORK:</p> <p>9 Q Okay. So you just testified that WAM had its</p> <p>10 accounts that had ledger entries for all of its</p> <p>11 customers; correct?</p> <p>12 A Correct.</p> <p>13 Q All right. So I'll start with WAM. And that's</p> <p>14 customer accounts?</p> <p>15 A Correct.</p> <p>16 Q Then in 2011 because its banking -- it wasn't</p> <p>17 strong enough to have a prime banking relationship, WAM</p> <p>18 then had an account with a prime broker; correct?</p> <p>19 A Prime brokers, yeah.</p> <p>20 Q And you named two; right? What were those two?</p> <p>21 A Vermont and Interactive Brokers were the ones</p> <p>22 we used the most.</p> <p>23 Q And you also mentioned CIBC?</p> <p>24 A Those firms -- so our prime brokers had --</p>

<p style="text-align: right;">Page 114</p> <p>1 their prime banks were typically HSBC and CIBC.</p> <p>2 Q So Vermont and Interactive, they are prime</p> <p>3 brokers?</p> <p>4 A Yeah.</p> <p>5 Q And the name of the account holder for those</p> <p>6 two is who?</p> <p>7 A WAM.</p> <p>8 Q Then these are prime broker-dealers; correct?</p> <p>9 A Correct.</p> <p>10 Q So they have relationships with what?</p> <p>11 A Prime banks.</p> <p>12 Q Prime banks. And who was Vermont's prime bank</p> <p>13 relationship with?</p> <p>14 A HSBC.</p> <p>15 Q And who was Interactive's with?</p> <p>16 A I believe it was CIBC.</p> <p>17 Q And who was the account holder at HSBC?</p> <p>18 A The prime broker.</p> <p>19 Q So that would be Vermont?</p> <p>20 A Correct.</p> <p>21 Q And who was the account holder at CIBC?</p> <p>22 A Interactive Brokers.</p> <p>23 MR. ANDERSON: Your Honor, may I step over here so</p> <p>24 I can see?</p>	<p style="text-align: right;">Page 115</p> <p>1 THE COURT: Sure.</p> <p>2 MR. NORK: I'll get out of the way too, Dane.</p> <p>3 BY MR. NORK:</p> <p>4 Q For the transaction that took place in April of</p> <p>5 2013, the money moving around all took place at what</p> <p>6 level?</p> <p>7 A At WAM.</p> <p>8 Q At the WAM level?</p> <p>9 A Correct.</p> <p>10 Q So as far as Vermont -- as far as the WAM</p> <p>11 account at Vermont and the WAM account at Interactive,</p> <p>12 would it reflect anything?</p> <p>13 A No.</p> <p>14 Q And for the Vermont account at HSBC and the</p> <p>15 Interactive account at CIBC, would it reflect anything?</p> <p>16 A No.</p> <p>17 Q Now, let me ask you another question. If a</p> <p>18 customer of WAM wanted to wire funds out of his WAM</p> <p>19 account, what would the order be for those funds to</p> <p>20 work its way finally to whatever bank is designated by</p> <p>21 the WAM customer?</p> <p>22 A So we would give the order to the prime broker.</p> <p>23 Q So WAM would give the order to, say, Vermont?</p> <p>24 A Correct. They would give the order to credit</p>
<p style="text-align: right;">Page 116</p> <p>1 the account that's on the receiving instruction, so</p> <p>2 whoever the receiving person is.</p> <p>3 THE COURT: Let's just say it's a Wells Fargo</p> <p>4 account.</p> <p>5 THE WITNESS: Correct. So we would tell Vermont</p> <p>6 to credit Wells Fargo's account. So then Vermont</p> <p>7 would then give that instruction to HSBC to credit the</p> <p>8 Wells Fargo account.</p> <p>9 BY MR. NORK:</p> <p>10 Q Okay. So it would go through here. But if you</p> <p>11 were to look at a transaction, for example, between</p> <p>12 Vermont and HSBC, would it reflect the WAM customer's</p> <p>13 name?</p> <p>14 A No.</p> <p>15 Q Well, who would be the customer here?</p> <p>16 A Just Vermont.</p> <p>17 Q It would be Vermont, because Vermont is</p> <p>18 asking HSBC to send the money; correct?</p> <p>19 A Correct.</p> <p>20 Q Now, another issue that keeps coming up is --</p> <p>21 that came up during cross-examination has to do with</p> <p>22 structuring stock sales among WAM customers. Do you</p> <p>23 remember that line of questioning both this morning and</p> <p>24 yesterday?</p>	<p style="text-align: right;">Page 117</p> <p>1 A Yes.</p> <p>2 Q Again, I think better in pictures, so you've</p> <p>3 got a WAM seller and he has stock; correct?</p> <p>4 A Right.</p> <p>5 Q And then you've got a WAM buyer; correct?</p> <p>6 A Correct.</p> <p>7 Q And the buyer has money?</p> <p>8 A Correct.</p> <p>9 Q And as you testified today, by saying the WAM</p> <p>10 buyer has money, that means his account shows what?</p> <p>11 A That it has a credit balance.</p> <p>12 Q Okay. And that is at the WAM level that we</p> <p>13 just talked about?</p> <p>14 A Correct.</p> <p>15 Q Now, if a WAM buyer wants to buy stock from a</p> <p>16 WAM seller, what is the first step of the transaction?</p> <p>17 A The first step is that each of them give the</p> <p>18 order to WAM.</p> <p>19 Q Okay. WAM buyer gives an order, WAM seller</p> <p>20 gives an order; correct?</p> <p>21 A Correct.</p> <p>22 Q And then what happens?</p> <p>23 A So then WAM debits the account of the buyer.</p> <p>24 That actually happens at the WAM ledger level, because</p>

<p style="text-align: right;">Page 118</p> <p>1 transactions never happen across clients. So it has to</p> <p>2 debit WAM's ledger. So the WAM buyer's account is</p> <p>3 debited, WAM's account is credited, and then WAM then</p> <p>4 credits that over to the WAM seller.</p> <p>5 Q Okay. So just continuing through, the money</p> <p>6 comes from the buyer to WAM and then gets credited to</p> <p>7 the seller?</p> <p>8 A Correct.</p> <p>9 Q The WAM's seller's account is credited with</p> <p>10 money; correct?</p> <p>11 A Correct.</p> <p>12 Q And what is the WAM buyer's account credited</p> <p>13 with?</p> <p>14 A The shares.</p> <p>15 Q Okay. And you have testified both on</p> <p>16 cross-examination and direct that for an infinitesimal</p> <p>17 moment WAM owns the stock?</p> <p>18 A Correct.</p> <p>19 Q Because it goes through WAM?</p> <p>20 A Correct.</p> <p>21 Q When this transaction takes place how soon</p> <p>22 afterwards can the seller use the money to which his</p> <p>23 account was credited?</p> <p>24 A Immediately.</p>	<p style="text-align: right;">Page 119</p> <p>1 Q For the buyer -- assuming it's restricted</p> <p>2 stock, when can the buyer sell the stock that his</p> <p>3 account is credited with?</p> <p>4 A If he's selling it to the public, it would be</p> <p>5 after the restriction lifts which is six to twelve</p> <p>6 months later.</p> <p>7 Q Okay. The buyer must wait six plus months.</p> <p>8 Okay. During that waiting period typically what does</p> <p>9 WAM do to facilitate any future use of that stock</p> <p>10 assuming that the sale was of a stock certificate?</p> <p>11 A Well, we collect the POA, we get the POA, which</p> <p>12 then we wait until the restriction lifts to then submit</p> <p>13 the POA to the transfer agent.</p> <p>14 Q For the purpose of doing what?</p> <p>15 A To make it electronic, into an electronic form</p> <p>16 so it can come up on the electronic ledger of WAM.</p> <p>17 Q Okay. And that's the dematerialization term?</p> <p>18 A Correct.</p> <p>19 Q And you testified WAM dematerializes it by</p> <p>20 taking the stock certificate with the POA and sending</p> <p>21 it to the transfer agent. Now, there was some</p> <p>22 discussion this morning about -- let's assume there's</p> <p>23 no transaction, we've just got a WAM seller who owns</p> <p>24 stock and the stock -- and WAM dematerializes it. What</p>
<p style="text-align: right;">Page 120</p> <p>1 would happen to the account of the WAM seller's stock</p> <p>2 after dematerialization?</p> <p>3 A Nothing.</p> <p>4 Q It would still show as stock?</p> <p>5 A Correct, yeah, if it's a paper certificate.</p> <p>6 Let's say you have a million shares, but it's a</p> <p>7 certificate, it shows a million shares in the account.</p> <p>8 Q So before and after dematerialization his</p> <p>9 account would still reflect a million shares?</p> <p>10 A Correct.</p> <p>11 Q All it is is it puts it in a form that can be</p> <p>12 more easily transferred if someone should so desire?</p> <p>13 A Correct.</p> <p>14 Q And then -- so we've got the waiting for six</p> <p>15 months, the dematerialization of the stock. And then</p> <p>16 afterwards can the buyer sell the stock?</p> <p>17 A I'm sorry. What was the question?</p> <p>18 Q Afterwards can the WAM buyer then sell the</p> <p>19 stock?</p> <p>20 A After it's dematerialized, yes.</p> <p>21 EXAMINATION</p> <p>22 BY THE COURT:</p> <p>23 Q While you're writing that down, Mr. Livadas,</p> <p>24 would you have to dematerialize the stock certificate</p>	<p style="text-align: right;">Page 121</p> <p>1 if the seller in Mr. Nork's example sold the entirety</p> <p>2 of the stock certificate? So in our specific example</p> <p>3 here, let's say that instead of selling \$250,000 worth</p> <p>4 or half of the shares in April Mr. Skarpelos allegedly</p> <p>5 sold the whole thing, the entirety of the certificate.</p> <p>6 A Right.</p> <p>7 Q Would you still need to dematerialize it and</p> <p>8 make it a digital record or would you be able to simply</p> <p>9 transfer it physically, now the certificate goes from</p> <p>10 WAM's seller to WAM buyer's file or account or</p> <p>11 something like that? Put another way, do you have to</p> <p>12 dematerialize it if you're selling the entirety of what</p> <p>13 is represented in the physical certificate?</p> <p>14 A You have to dematerialize if you're going to be</p> <p>15 selling to the public market, because you can't</p> <p>16 transact with the public market. I think it's next to</p> <p>17 impossible to transact with the public market if it's</p> <p>18 not in electronic form.</p> <p>19 Q But I'm saying in the example that we've got</p> <p>20 going right here, let's assume instead of selling half</p> <p>21 of the stock certificate internally in April you sold</p> <p>22 the whole thing.</p> <p>23 A Okay.</p> <p>24 Q And I guess I'm assuming also you're selling it</p>

<p style="text-align: right;">Page 122</p> <p>1 to one person, you're not breaking it up to different</p> <p>2 or multiple clients.</p> <p>3 A Actually many times it is multiple clients.</p> <p>4 Q So you might have to -- even under those</p> <p>5 circumstances, Mr. Livadas, you would have to</p> <p>6 dematerialize it, because even if Mr. Skarpelos has</p> <p>7 divested himself in the entirety of the shares, they</p> <p>8 need to be sprinkled about to the people who have</p> <p>9 purchased them, so you still would have to</p> <p>10 dematerialize them?</p> <p>11 A Correct.</p> <p>12 Q With my analysis, if you sold it to one person,</p> <p>13 if Mr. Skarpelos sold all of his shares to Mr. Nork,</p> <p>14 then theoretically you wouldn't need to dematerialize</p> <p>15 it because Mr. Nork then would just be in possession of</p> <p>16 the certificate?</p> <p>17 A No, because he's not in possession of the</p> <p>18 certificate.</p> <p>19 Q Gotcha. Okay.</p> <p>20 A It's in the vault of the bank let's call it.</p> <p>21 So the bank still has to turn it into electronic form.</p> <p>22 Q Even under that circumstance you couldn't just</p> <p>23 give it to Mr. Nork?</p> <p>24 A No, no.</p>	<p style="text-align: right;">Page 123</p> <p>1 Q Okay.</p> <p>2 MR. NORK: Well, my name wouldn't be on that stock</p> <p>3 certificate; correct?</p> <p>4 THE WITNESS: Correct.</p> <p>5 MR. NORK: It would be Tom's name?</p> <p>6 THE WITNESS: Correct.</p> <p>7 BY THE COURT:</p> <p>8 Q And you can't endorse it. This just</p> <p>9 demonstrates that I'm not heavily invested in the stock</p> <p>10 market. But you can't just endorse the back of it, you</p> <p>11 know, Mr. Skarpelos couldn't just endorse it to</p> <p>12 Mr. Nork and now it's Mr. Nork's?</p> <p>13 A That is the POA. So we could put a new</p> <p>14 certificate in Mr. Nork's name. I don't know why we</p> <p>15 would do that, but we could put a new certificate --</p> <p>16 Q Theoretically.</p> <p>17 A -- in Mr. Nork's name, yes.</p> <p>18 Q But, regardless, the dematerialization process</p> <p>19 is almost always, if not always, necessary even with</p> <p>20 the internal WAM transaction; is that a fair statement?</p> <p>21 A Correct, if they ever want to do anything with</p> <p>22 it.</p> <p>23 MR. NORK: Thank you, Your Honor.</p> <p>24 /////</p>
<p style="text-align: right;">Page 124</p> <p>1 THE COURT: And I apologize, Mr. Nork, again for</p> <p>2 jumping in on you.</p> <p>3 MR. NORK: No, I think that was very helpful.</p> <p>4 REDIRECT EXAMINATION (Resumed)</p> <p>5 BY MR. NORK:</p> <p>6 Q Now, the WAM buyer, he plays no role in</p> <p>7 dematerializing the stock?</p> <p>8 A No.</p> <p>9 Q He doesn't know; he doesn't care?</p> <p>10 A No.</p> <p>11 Q Because instantaneously his account was</p> <p>12 credited with the stock; correct?</p> <p>13 A Correct.</p> <p>14 Q And so after waiting six months can the</p> <p>15 buyer -- the buyer can sell the stock?</p> <p>16 A Right.</p> <p>17 Q Now, let's say you can't dematerialize, that</p> <p>18 doesn't -- that can't happen for some reason or</p> <p>19 another. The buyer can still sell the stock; correct?</p> <p>20 A The firm has to make sure he can still sell the</p> <p>21 stock.</p> <p>22 Q Okay. So what does the firm have to do to make</p> <p>23 sure that the buyer can still sell the stock?</p> <p>24 A So the firm has to find other stock to fulfill</p>	<p style="text-align: right;">Page 125</p> <p>1 his orders or it has to go short in the marketplace.</p> <p>2 Q I just wrote down WAM find other stock, but</p> <p>3 that can be in the form of either acquiring other stock</p> <p>4 in the public market or, as you said, taking short</p> <p>5 positions; correct?</p> <p>6 A Correct.</p> <p>7 Q And so that then happens instead of</p> <p>8 dematerializing; correct?</p> <p>9 A Correct.</p> <p>10 Q And as a result can the buyer still sell the</p> <p>11 stock?</p> <p>12 A Yes.</p> <p>13 Q Now, if that happens is the stock -- the buyer</p> <p>14 is selling in the case here, is that stock from</p> <p>15 Certificate 753?</p> <p>16 A Sorry. Say that again.</p> <p>17 Q So the subject matter of this lawsuit is the</p> <p>18 shares of stock represented in Certificate 753. In the</p> <p>19 case where WAM has to find other stock because it can't</p> <p>20 dematerialize, and the buyer sells the stock, is the</p> <p>21 stock that buyer is selling the stock from Certificate</p> <p>22 753?</p> <p>23 A No.</p> <p>24 Q Okay. It's replacement stock that WAM had to</p>

<p style="text-align: right;">Page 126</p> <p>1 go out and get?</p> <p>2 A Correct.</p> <p>3 Q Because, again, as soon as the transaction took</p> <p>4 place as far as the WAM buyer was concerned, his</p> <p>5 account was credited with other stock?</p> <p>6 A Correct.</p> <p>7 Q All right. Final step of the process. Let's</p> <p>8 say WAM at the conclusion of this matter obtains the</p> <p>9 3.3 million shares as contained in Certificate 753.</p> <p>10 What would WAM do with that stock?</p> <p>11 A Then it would deposit it -- it would settle</p> <p>12 it -- we call settle it to its prime broker accounts.</p> <p>13 Q With either Vermont or Interactive?</p> <p>14 A They've changed now, but it would settle it</p> <p>15 there to get its accounts in balance.</p> <p>16 Q Used to settle its account.</p> <p>17 A Correct. We call it settling to the account</p> <p>18 which means it gets credited to its account at the</p> <p>19 prime broker.</p> <p>20 Q WAM's account?</p> <p>21 A Yes.</p> <p>22 Q Okay. Up to the point of at least here on the</p> <p>23 board, this is what has happened; correct? WAM has</p> <p>24 found other stock for those buyers who wanted to sell</p>	<p style="text-align: right;">Page 127</p> <p>1 so that it's -- WAM honored the account statements that</p> <p>2 reflected them having a stock balance?</p> <p>3 A Correct.</p> <p>4 Q But right now WAM's account with its prime</p> <p>5 broker is a little imbalanced because it had to find</p> <p>6 other stock?</p> <p>7 A Correct. Yeah, it's short somewhere in that</p> <p>8 chain.</p> <p>9 Q Okay. And if WAM is awarded the 3. million</p> <p>10 shares, it would deposit it with its prime broker to</p> <p>11 settle up WAM's account?</p> <p>12 A Correct.</p> <p>13 Q Okay. I'm going to start with some of the</p> <p>14 questions you were asked this morning and then I'll</p> <p>15 focus a little bit on the ones you were asked</p> <p>16 yesterday. To begin, do you have your deposition</p> <p>17 transcript?</p> <p>18 A Yes.</p> <p>19 Q Turn, please, to page 228.</p> <p>20 Now, a couple times you were read a portion, but</p> <p>21 only a portion, of your testimony on page 228. And</p> <p>22 that portion is the part that starts on line 6 that</p> <p>23 says, "I'll just ask you this question. Exhibit 25,</p> <p>24 the purchase and sale agreement that we looked at</p>
<p style="text-align: right;">Page 128</p> <p>1 earlier, that document was intended to, I guess,</p> <p>2 document the arrangement that you had with</p> <p>3 Mr. Skarpelos that resulted in the April 2nd</p> <p>4 transaction?"</p> <p>5 "ANSWER: Yes, correct."</p> <p>6 And you remember being read that section earlier</p> <p>7 today?</p> <p>8 A Yes.</p> <p>9 Q But you continued to testify in your deposition</p> <p>10 on that same page; correct?</p> <p>11 A Yes.</p> <p>12 Q And, in fact, you were asked the question at</p> <p>13 line 16: "Okay. Was there an agreement other than</p> <p>14 that agreement with Mr. Skarpelos of a verbal nature</p> <p>15 relating to that specific stock?"</p> <p>16 "ANSWER: We had the order to sell the stock. So</p> <p>17 the order to sell the stock, we don't consider that an</p> <p>18 agreement. It's an order."</p> <p>19 "QUESTION: Okay. Basically, and then you executed</p> <p>20 that order on April 2nd?</p> <p>21 "ANSWER: Correct."</p> <p>22 Now, is that consistent with how you understand --</p> <p>23 understood the sale of the 3. million shares took</p> <p>24 place?</p>	<p style="text-align: right;">Page 129</p> <p>1 A Yes, correct.</p> <p>2 Q Mr. Skarpelos asked you to sell, you found</p> <p>3 buyers, on April 2nd, 2013, the transaction took place;</p> <p>4 correct?</p> <p>5 A Correct.</p> <p>6 Q And under inquiry from the Court actually, it</p> <p>7 was pointed out -- well, let me ask you this. Did you</p> <p>8 need the purchase and sale agreement to accomplish that</p> <p>9 sale in April of 2013?</p> <p>10 A No.</p> <p>11 Q But you had that document once the Chinese sale</p> <p>12 fell through; correct?</p> <p>13 A Correct.</p> <p>14 Q And what did you use that document for once the</p> <p>15 Chinese sale fell through?</p> <p>16 A Used it to just fill in our file for ALM</p> <p>17 reasons.</p> <p>18 Q Okay. So if we look at Exhibit 30, which is</p> <p>19 the purchase and sale agreement, is this a document you</p> <p>20 needed to do the April 2013 stock sale?</p> <p>21 A No.</p> <p>22 Q You just had it -- you had it available once</p> <p>23 the Chinese sale fell through; correct?</p> <p>24 A Correct.</p>

<p style="text-align: right;">Page 130</p> <p>1 Q And as you testified both yesterday, this</p> <p>2 morning and in your deposition, your purpose of</p> <p>3 completing and throwing it in your file was for ALM</p> <p>4 purposes; correct?</p> <p>5 A Correct.</p> <p>6 Q In fact -- and you have historically taken that</p> <p>7 position; correct?</p> <p>8 A Yes.</p> <p>9 Q Would you turn, please, to your deposition at</p> <p>10 page 165.</p> <p>11 Do you have it?</p> <p>12 A Yes.</p> <p>13 Q At line 13 you testify: "The stock power needs</p> <p>14 to be notarized. The purchase and sale agreement is</p> <p>15 not overly relative, but it's part of general AML</p> <p>16 process to have on record, but the stock power has to</p> <p>17 be notarized." Correct?</p> <p>18 A Correct.</p> <p>19 THE COURT: Mr. Nork, if I can ask you a question.</p> <p>20 Maybe you can clarify this.</p> <p>21 MR. NORK: Yes, Your Honor.</p> <p>22 THE COURT: What is the value of a document for AML</p> <p>23 purposes that completely misrepresents what it is?</p> <p>24 That's what -- again, as the finder of fact I'm sitting</p>	<p style="text-align: right;">Page 131</p> <p>1 here thinking, well, he is -- "he," Mr. Livadas, is</p> <p>2 saying that I put this in the file to memorialize</p> <p>3 something that it wasn't Mr. Skarpelos's intention to</p> <p>4 memorialize. I don't know why you would take a</p> <p>5 document that's notarized for one reason and put it in</p> <p>6 a different file for another reason, for AML purposes</p> <p>7 or for any other purposes.</p> <p>8 It's like this isn't what this contract means. I</p> <p>9 just signed it anyway and threw it in a different file.</p> <p>10 It's not a -- I'm not making a finding of fact. It's</p> <p>11 not a contract at all.</p> <p>12 MR. NORK: It's not anything, Your Honor.</p> <p>13 THE COURT: It's just a thing that I signed. I</p> <p>14 mean, it could say -- you know, he could put Ronald</p> <p>15 Reagan's name on it.</p> <p>16 MR. NORK: That's right.</p> <p>17 THE COURT: It doesn't mean anything.</p> <p>18 MR. NORK: It doesn't mean anything, Your Honor.</p> <p>19 And that's the whole point, that Mr. Livadas has</p> <p>20 testified that he believes it helped cover his files</p> <p>21 for AML purposes, but the point of Mr. Livadas's</p> <p>22 testimony is that it had nothing to do with that April</p> <p>23 sale.</p> <p>24 THE WITNESS: I can add to this if you're</p>
<p style="text-align: right;">Page 132</p> <p>1 interested in AML situations.</p> <p>2 MR. NORK: Sure.</p> <p>3 THE WITNESS: So when it comes time to turn to the</p> <p>4 public market, let's say we give the order and let's</p> <p>5 say these are our prime brokers, let's say Interactive,</p> <p>6 Interactive will say, "You didn't buy these shares</p> <p>7 through the public market. Where did they come from?"</p> <p>8 They kind of want to know where they came from and why</p> <p>9 they came from.</p> <p>10 So if we have any documentation that explains how</p> <p>11 the certificate was created, why it was dematerialized</p> <p>12 and anything else, even though it's not totally</p> <p>13 relevant, but it gives some context to what had</p> <p>14 happened in the past, their compliance is happy because</p> <p>15 they see something that can give context to who the</p> <p>16 previous owners were, who the current owners might be,</p> <p>17 which we don't usually give them that, just to</p> <p>18 generally verify that it didn't come from Russia or</p> <p>19 Iran or anybody that they don't -- aren't happy with.</p> <p>20 So we'll generally throw anything into a file that</p> <p>21 might relate to the original stock and the original</p> <p>22 owners and how it was created, because it makes the</p> <p>23 compliance people happy to have some context to it.</p> <p>24 THE COURT: But then I still don't quite even</p>	<p style="text-align: right;">Page 133</p> <p>1 understand how it would give them that degree of</p> <p>2 comfort, Mr. Livadas, because it's a false sense of</p> <p>3 comfort because it's not what it purports to be. You</p> <p>4 even would have to note you postdated it. You didn't</p> <p>5 receive the notarized document based on Exhibit 33</p> <p>6 until July 9th of 2013. And for some reason you went</p> <p>7 back and dated it July 5th of 2013.</p> <p>8 THE WITNESS: Correct. I don't even know. I don't</p> <p>9 know why I put --</p> <p>10 THE COURT: You just picked some random day prior</p> <p>11 to the day that you received it. So I guess -- I'm not</p> <p>12 trying to be argumentative, Mr. Nork. I just don't</p> <p>13 understand at all the purpose of what this even means.</p> <p>14 And you're telling me now and Mr. Livadas is confirming</p> <p>15 it really doesn't mean anything. It certainly doesn't</p> <p>16 mean what it purports to mean.</p> <p>17 Any person who has not been privy to this trial</p> <p>18 would look at this and think it means something</p> <p>19 entirely different than what it means. And as</p> <p>20 Mr. Anderson points out, though it's not dispositive of</p> <p>21 the issues of the case, one of the issues on the motion</p> <p>22 for summary judgment was an allegation that this</p> <p>23 document meant something entirely different than it</p> <p>24 meant. Than it was initially drafted and provided for,</p>

<p style="text-align: right;">Page 134</p> <p>1 I guess that's -- that's what I'm saying.</p> <p>2 Mr. Anderson, you stood to object or --</p> <p>3 MR. ANDERSON: I just wanted to, I guess, reiterate</p> <p>4 my objection this morning. The Court said it was</p> <p>5 preserved, but since we're going into this line of</p> <p>6 questioning I just want to note it again.</p> <p>7 THE COURT: Thank you.</p> <p>8 Go ahead, Mr. Nork. I'll let you continue.</p> <p>9 MR. NORK: Thank you.</p> <p>10 BY MR. NORK:</p> <p>11 Q Well, Exhibit 30, Mr. Livadas, it reflects a</p> <p>12 sale of 3.3 million shares; correct?</p> <p>13 A Correct.</p> <p>14 Q For \$250,000; correct?</p> <p>15 A Correct.</p> <p>16 Q Sold by Mr. Skarpelos; correct?</p> <p>17 A Correct.</p> <p>18 Q And all of those three things happened in April</p> <p>19 2013?</p> <p>20 A Correct.</p> <p>21 Q Now, you were asked some questions about why</p> <p>22 were you dematerializing 6.6 million shares versus</p> <p>23 3.3 million shares. Can you please explain the answer</p> <p>24 to that?</p>	<p style="text-align: right;">Page 135</p> <p>1 A We dematerialize all 6.6 million so it can all</p> <p>2 be electronically credited to WAM's account at the</p> <p>3 prime broker.</p> <p>4 Q Can you only dematerialize part of Certificate</p> <p>5 753?</p> <p>6 A It is possible to do parts, yeah. We don't</p> <p>7 normally do it, but it is possible to do parts.</p> <p>8 Generally everybody likes to have everything</p> <p>9 electronic. It makes operations all easier.</p> <p>10 Q Okay. And in the process of dematerializing</p> <p>11 the 6.6, again, in light of the April sale of 3.3,</p> <p>12 where would the remaining 3.3 million shares go?</p> <p>13 A Well, Skarpelos's account is already credited</p> <p>14 that 3.3, so they don't go anywhere. It just</p> <p>15 changes -- it just changes the ledger balance in our</p> <p>16 physical vaults to our ledger balance -- our</p> <p>17 electronic.</p> <p>18 Q That wasn't a very good question by me. Prior</p> <p>19 to April 2013 Mr. Skarpelos's accounts reflect a</p> <p>20 balance of 6.6 million shares?</p> <p>21 A Correct.</p> <p>22 Q It's dematerialized and 3.3 million shares go</p> <p>23 to the new buyer. What does Mr. Skarpelos's account</p> <p>24 reflect afterwards regarding what's left?</p>
<p style="text-align: right;">Page 136</p> <p>1 A What's left, the 3.3.</p> <p>2 THE COURT: And now they would be electronic;</p> <p>3 correct?</p> <p>4 THE WITNESS: Correct.</p> <p>5 THE COURT: Because it under Mr. Nork's analysis</p> <p>6 would have been dematerialized even though in this case</p> <p>7 it has not been dematerialized?</p> <p>8 THE WITNESS: Correct. But they still show in the</p> <p>9 accounts.</p> <p>10 THE COURT: Gotcha.</p> <p>11 BY MR. NORK:</p> <p>12 Q And in fact if we look at the account</p> <p>13 statement, Exhibit 44, what does it show as balance of</p> <p>14 Mr. Skarpelos's stock on the first -- bottom of the</p> <p>15 first page?</p> <p>16 A It shows two balances. One is the 3.3 million</p> <p>17 which is the balance of the 6.6. And there was another</p> <p>18 certificate as well which was 92,000.</p> <p>19 Q 92,000 is the Certificate 660. This shows that</p> <p>20 Mr. Skarpelos still has a balance of 3.3 million</p> <p>21 shares -- correct? -- after the other 3.3 went out?</p> <p>22 A Correct.</p> <p>23 Q All right. You were asked some questions about</p> <p>24 why you aren't listed as an authorized person under</p>	<p style="text-align: right;">Page 137</p> <p>1 Tom's WAM account. Do you recall that questioning?</p> <p>2 A Yes.</p> <p>3 Q Why are you not listed?</p> <p>4 A Because I'm a representative of the firm.</p> <p>5 Q Of what firm?</p> <p>6 A Of WAM.</p> <p>7 Q Okay. And did you need a separate</p> <p>8 authorization?</p> <p>9 A No, no.</p> <p>10 Q And then with respect to the authorization to</p> <p>11 withdraw money out, you were again read a portion of</p> <p>12 your deposition at page 99. Please turn to that.</p> <p>13 Do you have it?</p> <p>14 A Yes.</p> <p>15 Q Okay. And the portion you were read started at</p> <p>16 line 8 which said, "QUESTION: Okay. And, for</p> <p>17 instance, if a client was going to direct that money --</p> <p>18 that money can be distributed from his or her account</p> <p>19 to someone other than the client, you would want that</p> <p>20 request in writing; correct?"</p> <p>21 "ANSWER: Correct."</p> <p>22 But then later on that same page the question is</p> <p>23 this on line 20: "QUESTION: Okay. Is there a letter</p> <p>24 or anything in writing by Tom which indicates that WAM</p>

<p style="text-align: right;">Page 138</p> <p>1 is authorized to make distributions to Lambros or 2 Nikolaos?"</p> <p>3 "ANSWER: Tom would typically call me verbally to 4 tell me that he wants money sent, needs money, needs 5 money."</p> <p>6 The next page. "And the account template provided 7 in many cases was his uncle's. So if he provided me a 8 verbal -- and there's two parts. If a client provided 9 an account direction, it would be with a template onto 10 the account so the accounts have a template tied to 11 them."</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q What do you mean by a template?</p> <p>15 A So if a transfer -- if there's a transfer 16 request and the client says send money to my sister's 17 Wells Fargo account, in the future they will just call 18 and say send money to my sister's Wells Fargo account 19 without sending the instructions because it's already 20 in the template. That account is already on file, so 21 we won't ask for those account details every time.</p> <p>22 Q Okay. Turn, please, to Exhibit 59, bottom of 23 the last page.</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 139</p> <p>1 Q Is that an example of a template?</p> <p>2 A This is an example of an instruction from the 3 request, but this becomes a template after in the 4 system. So if they call and request a second time in 5 the future, they can just call and say, you know, 6 please send money to Nikolaos. So on a call, the 7 receiver, typically the person in the office, will see 8 we have a template for Nikolaos, we've sent money here 9 before, and we'll direct it.</p> <p>10 Q So the first time the information that needs to 11 be provided are things like the bank name, the account, 12 the beneficiary, the IBAN number?</p> <p>13 A Correct.</p> <p>14 Q What's an IBAN number?</p> <p>15 A It's a European SWIFT or a European ACA number.</p> <p>16 Q Is that for purposes of wire transfers?</p> <p>17 A Correct. It's the receiving bank's information 18 with the account at that bank.</p> <p>19 Q And then the BIC/SWIFT number at the bottom, 20 what's that for?</p> <p>21 A That's the bank's account number which is 22 typically the bank's account number at the central 23 bank.</p> <p>24 Q Okay. So that kind of information is provided</p>
<p style="text-align: right;">Page 140</p> <p>1 then to WAM at least at the outset so that then later 2 on a shorthand request can be made saying please send 3 in this example to Nikolaos Pedafronimos. And then, 4 for example, HSEC could then wire directly to the Alpha 5 Bank the instructions that were provided?</p> <p>6 A Correct.</p> <p>7 Q And so it's your testimony that once the 8 template is made future requests can just be made 9 verbally and in shorthand?</p> <p>10 A Correct.</p> <p>11 Q Turn, please, to Exhibit 2. And the page 12 designation is 359. Lower right-hand corner, please. 13 And this is where you were asked questions about cash 14 versus margin account; correct?</p> <p>15 A Correct.</p> <p>16 Q And again you were asked about a portion of 17 this page, not the entire page. The portion you were 18 asked about is the box that is checked that says, "No, 19 I do not want the ability to borrow funds in my account 20 which means I will have a cash account." Do you see 21 that?</p> <p>22 A Yes.</p> <p>23 Q Now, up above there's an explanation of the 24 distinction; correct?</p>	<p style="text-align: right;">Page 141</p> <p>1 A Yes.</p> <p>2 Q So a couple lines above on that same page it 3 says, "In a cash account you pay for your securities in 4 full at the time of purchase."</p> <p>5 A Correct.</p> <p>6 Q "In a margin loan account we may lend you a 7 portion of the purchase price. This is called buying 8 securities on margin." Correct?</p> <p>9 A Correct.</p> <p>10 Q So the statement in the box that says, "I do 11 not want the ability to borrow funds in my account," 12 under this distinction between a cash account and a 13 margin account, what are the funds being borrowed for?</p> <p>14 MR. ANDERSON: Your Honor, I'm going to object to 15 him interpreting this particular document because he 16 wasn't involved in its preparation as he testified to.</p> <p>17 MR. NORK: I was just asking his general 18 understanding of the difference between a cash account 19 and a margin account.</p> <p>20 THE COURT: I'll allow him to answer the question 21 in a general sense but not the specific intent of the 22 parties in drafting or executing Exhibit No. 2.</p> <p>23 THE WITNESS: I'll describe it in general by 24 example. It would be like having a checking account at</p>

<p style="text-align: right;">Page 142</p> <p>1 the bank and having a line of credit at the bank. A</p> <p>2 checking account is a cash account. A line of credit</p> <p>3 is a margin account essentially.</p> <p>4 So on a checking account, your cash has to be there</p> <p>5 to do things in theory, but on a checking account there</p> <p>6 is cases and many times the bank or we allow clients to</p> <p>7 overwrite checks, to write too many checks, let's say,</p> <p>8 taking the account below zero. So we refer to that</p> <p>9 more as an overdraft, not really a lend. We refer to</p> <p>10 it more as an overdraft.</p> <p>11 BY MR. NORK:</p> <p>12 Q I understand that. But in a margin account</p> <p>13 what does the customer borrow funds to buy?</p> <p>14 A Shares. They borrow funds to buy shares.</p> <p>15 Q And that's where the term margin comes from --</p> <p>16 right? -- because they're buying it on margin?</p> <p>17 A Right.</p> <p>18 Q Okay. To your knowledge did Tom Skarpelos ever</p> <p>19 buy stock on margin in his account at WAM?</p> <p>20 A No.</p> <p>21 Q To your knowledge he just had funds wired out</p> <p>22 of that account which put it in a debit position;</p> <p>23 correct?</p> <p>24 A Correct.</p>	<p style="text-align: right;">Page 143</p> <p>1 Q So the difference between a cash account and a</p> <p>2 margin account has to do with how that customer is</p> <p>3 acquiring stock?</p> <p>4 A Correct.</p> <p>5 Q Either paying in full under the cash example or</p> <p>6 buying it on margin?</p> <p>7 A Correct. We do allow clients as well to buy</p> <p>8 and go into debt on cash accounts, but it creates more</p> <p>9 of a liability for the firm than on a margin account.</p> <p>10 Q Okay. In any event, that didn't happen in this</p> <p>11 case?</p> <p>12 A No.</p> <p>13 Q You were asked a lot of questions about</p> <p>14 Bahamian law. Do you remember those questions?</p> <p>15 A Um-hum.</p> <p>16 Q To your knowledge has WAM ever been held in</p> <p>17 violation of any Bahamian securities laws?</p> <p>18 A None whatsoever.</p> <p>19 Q Then you were asked questions about the stock</p> <p>20 transfer order that Mr. Skarpelos signed. Do you</p> <p>21 remember that?</p> <p>22 A Yes.</p> <p>23 Q Okay. And the questions concerned -- well,</p> <p>24 whether the stock was -- actually turn, please, if you</p>
<p style="text-align: right;">Page 144</p> <p>1 could, to Exhibit 16.</p> <p>2 A Yes.</p> <p>3 Q First of all, this document indicates that</p> <p>4 Stock Certificate 660 and the one at issue here, 753,</p> <p>5 were canceled?</p> <p>6 A Correct.</p> <p>7 Q And a new one was issued, 975?</p> <p>8 A Correct.</p> <p>9 Q Notably the date of this order or the date of</p> <p>10 this document is two days after the sale of the stock</p> <p>11 that was held by WAM that Mr. Skarpelos deposited with</p> <p>12 WAM; correct?</p> <p>13 A Correct.</p> <p>14 Q But be that as it may, the questions were what</p> <p>15 difference does it make if Lambros and Mr. Skarpelos</p> <p>16 were asking you to sell the stock from 753 or 975. Do</p> <p>17 you remember those questions?</p> <p>18 A Yes.</p> <p>19 Q Well, did WAM have the ability to sell the</p> <p>20 stock represented by Certificate 975?</p> <p>21 A Did we have the ability to sell the stock. No,</p> <p>22 no.</p> <p>23 Q Did you have in possession, on deposit in your</p> <p>24 vault stock 975?</p>	<p style="text-align: right;">Page 145</p> <p>1 A No.</p> <p>2 Q Did you even know stock 975 existed?</p> <p>3 A No.</p> <p>4 Q So you couldn't have just sold the stock</p> <p>5 represented by 975 without some additional steps being</p> <p>6 taken; correct?</p> <p>7 A Correct.</p> <p>8 Q And what were those additional steps?</p> <p>9 A They would have to deposit 975 at the firm.</p> <p>10 Q And until it was deposited, no matter what the</p> <p>11 power of attorney said, you couldn't sell stock 975;</p> <p>12 correct?</p> <p>13 A Correct.</p> <p>14 Q And, again, you never -- were never even</p> <p>15 advised that 975 existed, let alone was it sent to you</p> <p>16 for deposit?</p> <p>17 A No. Correct. I didn't see this until -- I</p> <p>18 haven't seen this until just last year.</p> <p>19 Q Okay. I know we touched on it a little bit,</p> <p>20 but let's go back to Exhibit 59.</p> <p>21 A Exhibit 59?</p> <p>22 Q 59, yes. Back to the template on the bottom of</p> <p>23 the last page.</p> <p>24 MR. ANDERSON: I'll object, Your Honor. I don't</p>

<p style="text-align: right;">Page 146</p> <p>1 think he called it a template.</p> <p>2 MR. NORK: I'm sorry. You're right. I stand</p> <p>3 corrected.</p> <p>4 THE COURT: The pink area.</p> <p>5 MR. NORK: Okay.</p> <p>6 THE WITNESS: The very bottom of the email where it</p> <p>7 says the account information for Alpha Bank?</p> <p>8 BY MR. NORK:</p> <p>9 Q Yes, sir.</p> <p>10 Do you know who Nikolaos Pedafronimos is?</p> <p>11 A Yes. That's Tom's uncle.</p> <p>12 Q And when you instructed Rainbow to do a</p> <p>13 transfer, you included this bank information in your</p> <p>14 email; correct?</p> <p>15 A Correct.</p> <p>16 Q And as far as you know, the money, the \$20,000</p> <p>17 deposited into -- or was the instruction given to send</p> <p>18 the \$20,000 to Nikolaos Pedafronimos's account?</p> <p>19 A That was my instruction.</p> <p>20 Q Okay. You were asked a series of questions</p> <p>21 yesterday about the accuracy of the figures in Exhibit</p> <p>22 44. Now, you also indicated you were aware that an</p> <p>23 audit had taken place regarding WAM's accounts in 2013;</p> <p>24 correct?</p>	<p style="text-align: right;">Page 147</p> <p>1 A Correct.</p> <p>2 Q And are you aware of any discrepancies</p> <p>3 discovered as a result of that audit?</p> <p>4 A No.</p> <p>5 MR. ANDERSON: Objection to the extent it calls for</p> <p>6 hearsay.</p> <p>7 MR. NORK: That's a fair -- I can ask him if he's</p> <p>8 aware of any discrepancies.</p> <p>9 THE COURT: I'll overrule the objection.</p> <p>10 BY MR. NORK:</p> <p>11 Q Go ahead.</p> <p>12 A I've read the auditor's reports and those</p> <p>13 reports --</p> <p>14 THE COURT: Don't tell me what the reports say.</p> <p>15 The question is are you aware of any issues.</p> <p>16 THE WITNESS: No, I'm not aware of any issues.</p> <p>17 THE COURT: Next question.</p> <p>18 BY MR. NORK:</p> <p>19 Q Okay. And to you what does that mean regarding</p> <p>20 the accuracy of Exhibit 44?</p> <p>21 A It means that all accounts throughout the whole</p> <p>22 chain of the firm are in balance.</p> <p>23 Q Okay. And then you also testified about trying</p> <p>24 to independently verify some of the wire transfers that</p>
<p style="text-align: right;">Page 148</p> <p>1 are listed on the second page of Exhibit 44; correct?</p> <p>2 A Correct.</p> <p>3 Q And these were transactions between what two</p> <p>4 entities?</p> <p>5 A That would have been from our prime broker to</p> <p>6 the prime bank.</p> <p>7 Q And so it would be between Vermont and HSBC?</p> <p>8 A Correct.</p> <p>9 Q And as a result of your investigation were you</p> <p>10 able to confirm that at least some of the wires</p> <p>11 identified in Exhibit 44 matched up with transfers</p> <p>12 between Vermont and HSBC?</p> <p>13 THE COURT: Don't answer that question.</p> <p>14 MR. ANDERSON: I'm going to object to the extent it</p> <p>15 calls for hearsay.</p> <p>16 THE COURT: Mr. Nork.</p> <p>17 MR. NORK: I carefully worded the question is he</p> <p>18 aware -- as a result of the investigation is he aware</p> <p>19 that they matched up.</p> <p>20 THE COURT: I'll sustain the objection. I think</p> <p>21 that would call for a hearsay answer. He would be</p> <p>22 testifying to basically a comparison of the documents</p> <p>23 themselves, that they match up, so that would be</p> <p>24 hearsay. The documents are the out-of-court statements</p>	<p style="text-align: right;">Page 149</p> <p>1 being offered in support of the truth of the matter</p> <p>2 asserted.</p> <p>3 MR. NORK: All right. Well, let me ask it a</p> <p>4 different way then.</p> <p>5 BY MR. NORK:</p> <p>6 Q As a result of your investigation do you have</p> <p>7 any reason to question the accuracy of Exhibit 44?</p> <p>8 A No.</p> <p>9 Q And then still on Exhibit 44, you were asked</p> <p>10 about the difference between statements and</p> <p>11 transactions as far as records that are held by WAM.</p> <p>12 Do you remember those questions?</p> <p>13 A Yes.</p> <p>14 Q And what is your testimony regarding what</p> <p>15 records are maintained by WAM?</p> <p>16 A What records --</p> <p>17 Q Yeah, customer statements versus transaction</p> <p>18 records.</p> <p>19 A So transaction records are maintained by WAM</p> <p>20 and statements are produced from transaction records.</p> <p>21 Q Okay. And that was your deposition testimony</p> <p>22 back in October; correct?</p> <p>23 A I would assume so, yes.</p> <p>24 Q Well, if you would confirm. Turn, please, to</p>

<p style="text-align: right;">Page 150</p> <p>1 page 107 of your deposition.</p> <p>2 THE COURT: Page what?</p> <p>3 MR. NORK: One zero seven.</p> <p>4 THE COURT: Thank you.</p> <p>5 BY MR. NORK:</p> <p>6 Q Do you have it?</p> <p>7 A Yes.</p> <p>8 Q Line 22. "QUESTION: Okay. And I probably</p> <p>9 asked that poorly. I was just focusing on</p> <p>10 Mr. Skarpelos's account."</p> <p>11 "ANSWER: Okay."</p> <p>12 "QUESTION: And whether WAM has records, I guess,</p> <p>13 dating seven years back for all of its account</p> <p>14 statements."</p> <p>15 "ANSWER: They don't keep account statements. They</p> <p>16 don't make monthly statements to keep statements of.</p> <p>17 The firm generally keeps records of transactions, so</p> <p>18 transactions being fund transfers. And, of course, if</p> <p>19 there was any trading activity, public markets, they</p> <p>20 will then keep some record of the trading ticket. They</p> <p>21 don't keep a statement, because they keep transactional</p> <p>22 records."</p> <p>23 Is that consistent with your testimony today?</p> <p>24 A Yes.</p>	<p style="text-align: right;">Page 151</p> <p>1 Q Now, you testified the only reason you have the</p> <p>2 account statement that is Exhibit 44 is because you</p> <p>3 received one of these for every customer of WAM;</p> <p>4 correct?</p> <p>5 A Correct.</p> <p>6 Q And when did you receive this statement of</p> <p>7 account for every customer of WAM?</p> <p>8 A These would have started to be delivered over</p> <p>9 towards the end of 2013, 2014.</p> <p>10 Q And was this part of your acquisition of WAM?</p> <p>11 A Correct, yeah, the one-year transition period,</p> <p>12 so I might have not been exact, but it was somewhere</p> <p>13 between the beginning of 2014 and end of 2014.</p> <p>14 Q And what did this account statement, Exhibit</p> <p>15 44, and all the other ones for all the other customers</p> <p>16 at WAM allow you as the new owner to do?</p> <p>17 A It allows us to take the balances of the</p> <p>18 accounts, basically the first paper which has the cash</p> <p>19 and securities balances, so this could all be put into</p> <p>20 the new computer database which we start fresh because</p> <p>21 we have a new computer system. We don't use the</p> <p>22 previous bank's system.</p> <p>23 So this goes into the computerized database so that</p> <p>24 the computer -- so the system has day zero on it, or</p>
<p style="text-align: right;">Page 152</p> <p>1 day zero, day one, so then they can begin to process</p> <p>2 the future transactions and keep future transactions,</p> <p>3 records in the electronic database and do its job.</p> <p>4 Q Thank you, sir. I have no further questions.</p> <p>5 THE COURT: Recross based on the redirect,</p> <p>6 Mr. Anderson.</p> <p>7 MR. ANDERSON: Yes, Your Honor. Thank you.</p> <p>8 RECCROSS EXAMINATION</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q Mr. Livadas, you were asked about some</p> <p>11 testimony that you gave at page 107 of your deposition.</p> <p>12 A 107, yes.</p> <p>13 Q And I think what your testimony was, not on</p> <p>14 that particular page but just a few minutes ago, is</p> <p>15 that WAM doesn't generate account statements, it has</p> <p>16 transaction records, and if an account statement is</p> <p>17 needed the statement can be generated from those</p> <p>18 transaction records; correct?</p> <p>19 A Correct.</p> <p>20 Q Okay. And at page 107 of your deposition we</p> <p>21 were talking about whether WAM maintains all of its</p> <p>22 records for seven years at line 9. Do you see that?</p> <p>23 A Yes.</p> <p>24 Q Okay. And that's because WAM had a policy that</p>	<p style="text-align: right;">Page 153</p> <p>1 it would maintain its records for seven years; correct?</p> <p>2 A The question is all of its records. There are</p> <p>3 many records that are not required to be kept.</p> <p>4 Q Okay. In general WAM had a policy of keeping</p> <p>5 its records for seven years?</p> <p>6 A Yes, fund transfer and trade records, yes.</p> <p>7 Q And I asked you at line 12: "Did WAM maintain</p> <p>8 records for all account transactions for</p> <p>9 Mr. Skarpelos's account for seven years?"</p> <p>10 And the answer you gave was "I can't answer that</p> <p>11 either."</p> <p>12 A Correct, I cannot say that for a fact.</p> <p>13 Q Okay. And Exhibit 44 is the only record that</p> <p>14 you found that references any transactions on</p> <p>15 Mr. Skarpelos's account; correct?</p> <p>16 A Correct.</p> <p>17 Q Okay. So Exhibit 44 must have been generated</p> <p>18 at some point in time by somebody; correct?</p> <p>19 A Yes.</p> <p>20 Q It wasn't you?</p> <p>21 A Correct. This would have been generated by the</p> <p>22 bank that owned the firm at that time.</p> <p>23 Q Okay. And does it say which bank on it?</p> <p>24 A No.</p>

<p style="text-align: right;">Page 154</p> <p>1 Q Okay. By the way, on Exhibit 44 I notice that</p> <p>2 the logo on there is different for Weiser than on</p> <p>3 Exhibit 2.</p> <p>4 A Yeah.</p> <p>5 Q Okay. Do you know when that changed?</p> <p>6 A Exactly, no.</p> <p>7 Q Okay. You were asked by Mr. Nork -- you were</p> <p>8 asked questions about whether you did anything in</p> <p>9 response to an audit. I think he asked you a question</p> <p>10 about whether WAM was audited with respect to the</p> <p>11 account statements and whether you did anything in</p> <p>12 response to that.</p> <p>13 A I don't remember a question like that.</p> <p>14 Q He was asking you about Exhibit 44. And then</p> <p>15 do you recall his questions a few minutes ago about</p> <p>16 whether an audit was performed by Grant Thornton of the</p> <p>17 firm's accounts?</p> <p>18 A Yes.</p> <p>19 Q Okay. And I'm not talking about you being</p> <p>20 audited individually. There was an audit performed by</p> <p>21 somebody?</p> <p>22 A Yes.</p> <p>23 Q And I think you answered the question that WAM</p> <p>24 didn't have any concerns after the audit was performed</p>	<p style="text-align: right;">Page 155</p> <p>1 effectively; right?</p> <p>2 A Correct, there was no --</p> <p>3 Q That audit really only involved looking at</p> <p>4 client holdings -- correct? -- and seeing if they</p> <p>5 matched the account?</p> <p>6 A Correct, they look at holdings, yeah.</p> <p>7 Q They didn't get into the nitty-gritty of each</p> <p>8 transaction; correct?</p> <p>9 A An audit of each transaction, no.</p> <p>10 Q Okay. You were asked about Exhibit 16 as well.</p> <p>11 That was the NATCO document referencing the canceled</p> <p>12 certificates. And Mr. Nork asked you that -- or</p> <p>13 pointed out that this was just a couple of days after</p> <p>14 the alleged April 2nd transaction; right?</p> <p>15 A Right.</p> <p>16 Q Okay. But your testimony is that you didn't do</p> <p>17 anything about the stock issue or the stock hold until</p> <p>18 2015; right?</p> <p>19 A I began to try to investigate it and to</p> <p>20 understand what was happening on the issue in early</p> <p>21 2014. That's when the process began.</p> <p>22 Q But there was no immediate consequence of the</p> <p>23 cancellation of the stock certificate in terms of the</p> <p>24 April 2nd transaction?</p>
<p style="text-align: right;">Page 156</p> <p>1 A Sorry. Say the question again. What do you</p> <p>2 mean by "immediate consequence?"</p> <p>3 Q So the April 2nd transaction occurred and then</p> <p>4 two days later NATCO issued the canceled stock</p> <p>5 certificate document; right?</p> <p>6 A Yeah.</p> <p>7 Q There was no immediate consequence to WAM or</p> <p>8 its buyers or Weiser Capital and its buyers, whoever it</p> <p>9 might be, as a result of the canceled stock certificate</p> <p>10 at that time?</p> <p>11 A At that time, not yet, no.</p> <p>12 Q Okay. If there had been you would have been</p> <p>13 aware of it and done something about it immediately;</p> <p>14 right?</p> <p>15 A Yeah, there would have been more aggressive</p> <p>16 action taken.</p> <p>17 Q And you were asked by Mr. Nork whether Bahamian</p> <p>18 securities regulators -- if you've ever had any issues</p> <p>19 with them, and the answer was no?</p> <p>20 A Correct.</p> <p>21 Q Have you notified Bahamian securities</p> <p>22 regulators that WAM is in a dispute with a client over</p> <p>23 who owns the stock or that Weiser Capital is in a</p> <p>24 dispute?</p>	<p style="text-align: right;">Page 157</p> <p>1 A I haven't. I don't know if the firm itself</p> <p>2 has.</p> <p>3 Q You were asked about the cash account on</p> <p>4 Mr. Skarpelos's account application. And you gave an</p> <p>5 example to describe what you understand a cash account</p> <p>6 to be as kind of a line of credit and a checking</p> <p>7 account; right? Do you remember that?</p> <p>8 A Correct.</p> <p>9 Q Okay. Now, a line of credit is something that</p> <p>10 a homeowner or a bank customer would fill out an</p> <p>11 application expressly asking to borrow the funds;</p> <p>12 correct?</p> <p>13 A Correct.</p> <p>14 Q Now, a checking account, banks don't generally</p> <p>15 let you run up large negative balances without, you</p> <p>16 know, making the account current; correct?</p> <p>17 A Banks generally don't.</p> <p>18 Q WAM had a policy, did it not, of requiring fund</p> <p>19 transfers to be only done if there's an authorized --</p> <p>20 by an authorized signatory?</p> <p>21 A Yes, correct.</p> <p>22 Q Now, you were asked some questions about the</p> <p>23 templates. Do you recall that testimony?</p> <p>24 A Yes.</p>

<p style="text-align: right;">Page 158</p> <p>1 Q And I think you were directed to page 99 and</p> <p>2 100 of your deposition.</p> <p>3 A 99.</p> <p>4 Q And the discussion that Mr. Nork pointed out I</p> <p>5 think begins at the bottom of the page. And at line 24</p> <p>6 you indicate that "Tom would typically call me verbally</p> <p>7 to tell me that he wants money and needs money."</p> <p>8 And on the second line of page 100 you describe the</p> <p>9 account template that you were talking about; right?</p> <p>10 A Correct.</p> <p>11 Q Okay. If you look further down on page 100 at</p> <p>12 line 13, I asked you the question: "My question to you</p> <p>13 is do you know whether in WAM's records, which you have</p> <p>14 access to, there's anything in writing from Tom</p> <p>15 Skarpelos to WAM authorizing WAM to distribute money to</p> <p>16 Lambros or Nikolaos?"</p> <p>17 "ANSWER: I don't know."</p> <p>18 A Correct.</p> <p>19 Q And when I asked you if you looked for them,</p> <p>20 you indicated that you haven't seen any?</p> <p>21 A Correct.</p> <p>22 Q So you don't know in this case whether a</p> <p>23 template even existed for the instruction letter that</p> <p>24 you were talking about?</p>	<p style="text-align: right;">Page 159</p> <p>1 A Well, templates exist, but it's just a template</p> <p>2 of past transfers. That's all it is.</p> <p>3 Q They exist in a computer?</p> <p>4 A Yes.</p> <p>5 Q And I think you testified yesterday that you</p> <p>6 don't even know if WAM had a computer system at that</p> <p>7 time.</p> <p>8 A I didn't say that. I said I didn't know much</p> <p>9 about their computer system, but they had a computer</p> <p>10 system.</p> <p>11 Q And you don't know if they had an account</p> <p>12 template for Lambros or Nikolaos or for Mr. Skarpelos</p> <p>13 at all, do you?</p> <p>14 A I know that they kept account templates. It's</p> <p>15 a standard process to keep a template.</p> <p>16 Q But you weren't involved with WAM at that time?</p> <p>17 A I wasn't involved with WAM.</p> <p>18 Q And you don't know whether they had an account</p> <p>19 template for Mr. Skarpelos that directed him -- that he</p> <p>20 directed to send money to Lambros or Nikolaos?</p> <p>21 A I cannot say for a fact, but it was standard</p> <p>22 operating procedure.</p> <p>23 Q And no template or printout of a template has</p> <p>24 been produced in this case; correct?</p>
<p style="text-align: right;">Page 160</p> <p>1 A No.</p> <p>2 Q You testified in regards to the template that</p> <p>3 if a customer calls and asks to execute a trade that</p> <p>4 the receiver will look at the template?</p> <p>5 A Not a trade but a cash transfer.</p> <p>6 Q Okay. I'm sorry. They'll look at the template</p> <p>7 and decide whether they can do the cash transfer?</p> <p>8 A Correct.</p> <p>9 Q Do they make any sort of internal notes that</p> <p>10 describe what's happening?</p> <p>11 A Internal notes. I can only describe how we do</p> <p>12 it now. I don't know exactly what it was back then.</p> <p>13 Q So you don't know if Mr. Skarpelos or Lambros</p> <p>14 had called a receiver -- and I guess who are the</p> <p>15 receivers?</p> <p>16 A That would be myself as a representative or if</p> <p>17 they called somebody else at the firm.</p> <p>18 Q And you testified earlier that you don't have</p> <p>19 any written records that evidence any of these</p> <p>20 transactions?</p> <p>21 A Correct.</p> <p>22 Q Now, the judge asked you some questions on</p> <p>23 Mr. Nork's redirect about Exhibit 30. And one of the</p> <p>24 Court's comments was this document doesn't mean</p>	<p style="text-align: right;">Page 161</p> <p>1 anything. And I think you agreed with him on that;</p> <p>2 right?</p> <p>3 A I don't -- means not anything --</p> <p>4 Q Are you aware that your attorney filed a trial</p> <p>5 statement about ten days ago where he referred to</p> <p>6 Exhibit 30 as a critical document?</p> <p>7 A Am I aware. When I read most of those things I</p> <p>8 don't understand them in detail, so --</p> <p>9 Q If your attorney described the Stock Sale and</p> <p>10 Purchase Agreement as a critical document in this case,</p> <p>11 would you disagree with him?</p> <p>12 A As a critical document?</p> <p>13 THE COURT: What page of the trial statement are</p> <p>14 you looking at?</p> <p>15 MR. ANDERSON: Your Honor, the first page indicates</p> <p>16 there are four critical documents in this case. I'm</p> <p>17 looking at subparagraph 3 on page 2 which identifies</p> <p>18 the Stock Sale and Purchase Agreement or stock and</p> <p>19 purchase agreement.</p> <p>20 THE WITNESS: It's an important document in the</p> <p>21 case I believe is what my lawyer was making a point of,</p> <p>22 which I mostly agree, but it's not a critical document</p> <p>23 to one of the transactions that we're discussing.</p> <p>24 ////</p>

<p style="text-align: right;">Page 162</p> <p>1 BY MR. ANDERSON:</p> <p>2 Q And that was the second transaction that never</p> <p>3 happened?</p> <p>4 A It's not an important document to the first</p> <p>5 transaction.</p> <p>6 Q Well, the first question I asked you out of the</p> <p>7 gate this morning was whether that Exhibit 30 related</p> <p>8 to the first transaction and you said that was a</p> <p>9 document intended to document the first transaction.</p> <p>10 A Yes.</p> <p>11 Q Look at page 228.</p> <p>12 A Pardon?</p> <p>13 Q Please look at page 228 of your deposition.</p> <p>14 A Yes, I don't disagree that I said that in the</p> <p>15 deposition.</p> <p>16 Q Okay. And what you said is that purchase and</p> <p>17 sale agreement was intended to document the April 2nd</p> <p>18 deal.</p> <p>19 A Yes, that's what I had said.</p> <p>20 Q And you also indicated that Exhibit 30, you did</p> <p>21 document it -- I'm sorry. You did sign or fill in</p> <p>22 Exhibit 30 to document the April 2nd transaction;</p> <p>23 right?</p> <p>24 A Yeah.</p>	<p style="text-align: right;">Page 163</p> <p>1 Q But you didn't -- you testified that you didn't</p> <p>2 have to; correct?</p> <p>3 A Correct.</p> <p>4 Q But you chose to do it?</p> <p>5 A Correct.</p> <p>6 Q Now, you mentioned that if Weiser prevails in</p> <p>7 this lawsuit it would settle to its account with the</p> <p>8 prime bank those shares; correct?</p> <p>9 A Correct.</p> <p>10 Q And that's Weiser Asset Management?</p> <p>11 A Correct.</p> <p>12 Q Okay. We talked a little bit yesterday about</p> <p>13 your testimony during your deposition where you said</p> <p>14 that Weiser Capital was actually the owner for a brief</p> <p>15 second and then ownership passed on to the buyers;</p> <p>16 correct?</p> <p>17 A Take me back to that, please, if you could.</p> <p>18 Q I was afraid you'd ask me that.</p> <p>19 A Sorry.</p> <p>20 Q So if you look at page 200, starting at line 6</p> <p>21 I asked you: "So based on Exhibit 25," which was depo</p> <p>22 Exhibit 25 and is now trial Exhibit 30, "Weiser Capital</p> <p>23 is the owner of the stock at issue; correct?"</p> <p>24 "ANSWER: It was the intermediary, so at a point it</p>
<p style="text-align: right;">Page 164</p> <p>1 was the owner."</p> <p>2 A Correct, that's what I said.</p> <p>3 Q "QUESTION: Okay. At what point was it no</p> <p>4 longer the owner?"</p> <p>5 "ANSWER: Since this was processed in or dated</p> <p>6 inaccurately" -- and I think you're referring there to</p> <p>7 this July 5th date -- "it was -- or it was no longer</p> <p>8 the owner in April."</p> <p>9 A Correct. And I believe I was mixing up Weiser</p> <p>10 Capital and WAM.</p> <p>11 Q Well, let's look at your declaration then.</p> <p>12 MR. ANDERSON: May I approach the clerk, Your</p> <p>13 Honor?</p> <p>14 THE COURT: Yes.</p> <p>15 MR. ANDERSON: And may I approach the witness?</p> <p>16 THE COURT: You certainly may.</p> <p>17 BY MR. ANDERSON:</p> <p>18 Q So the testimony you just gave was that on</p> <p>19 October 23rd, 2018, you had confused Weiser Capital for</p> <p>20 Weiser Asset Management; right?</p> <p>21 A Most likely.</p> <p>22 Q Okay. Well, that was your testimony just a few</p> <p>23 minutes ago; right?</p> <p>24 A Yeah, correct.</p>	<p style="text-align: right;">Page 165</p> <p>1 Q Now, if you look at your declaration on page 3,</p> <p>2 paragraph 13, you state in April 2013 Skarpelos sold</p> <p>3 3,316,666 shares of --</p> <p>4 A Sorry. One second, sir. Paragraph 13?</p> <p>5 Q I'm sorry. Not line 13, paragraph 13.</p> <p>6 You state, "In April 2013 Skarpelos sold 3,316,666</p> <p>7 shares of Anavex stock shares he had deposited with WAM</p> <p>8 in 2011 to Weiser Capital in exchange for \$250,000</p> <p>9 minus a \$420 processing fee which I helped arrange."</p> <p>10 Did I read that correctly?</p> <p>11 A Correct.</p> <p>12 Q And that was your sworn testimony that you gave</p> <p>13 to the court in April of 2018?</p> <p>14 A Yes.</p> <p>15 THE COURT: What page is that on again?</p> <p>16 MR. ANDERSON: I'm sorry, Your Honor. Page 3,</p> <p>17 paragraph 13.</p> <p>18 THE COURT: That's my fault. I looked at line 13.</p> <p>19 I apologize. Go ahead.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q And then in paragraph 17 you state that "In</p> <p>22 late 2013 when Weiser Capital attempted to resell the</p> <p>23 Anavex stock it believed it had acquired from</p> <p>24 Skarpelos, it discovered for the first time that</p>

<p style="text-align: right;">Page 166</p> <p>1 Skarpelos had Certificates No. 660 and 753 deemed 2 lost"; correct?</p> <p>3 A Yes.</p> <p>4 Q Okay. So, again, in paragraph 17 your sworn 5 testimony is it's Weiser Capital that got the stock and 6 they're attempting to resell it?</p> <p>7 A I don't think it's referring -- when I read 8 this I don't think it's referring -- I think it's 9 referring to the resell for the second transaction.</p> <p>10 Q How could there be a resell of the second 11 transaction if it never happened?</p> <p>12 A Well, we were selling -- we were working on a 13 second transaction to sell.</p> <p>14 Q Well, your declaration that we just looked at, 15 page 2, paragraph -- I'm sorry -- page 3, paragraph 13, 16 says that Weiser Capital acquired ownership of shares.</p> <p>17 A That was in paragraph 13 we referred to?</p> <p>18 Q Yes.</p> <p>19 A Okay. Yes.</p> <p>20 Q Okay. And then in paragraph 17 you said that 21 Weiser Capital, not Weiser Asset Management or anyone 22 else, attempted to resell those certificates. I'm 23 sorry. Those shares.</p> <p>24 A Yes, yes.</p>	<p style="text-align: right;">Page 167</p> <p>1 Q Okay. And then in paragraph 18 you state that 2 Weiser Capital through WAM attributed \$249,580 to his 3 account balance referring to Skarpelos; correct?</p> <p>4 A Correct.</p> <p>5 Q So in this document you were claiming Weiser 6 Capital was the owner and during this trial you're 7 claiming WAM is the owner; correct?</p> <p>8 A If I could explain something.</p> <p>9 Q I'm just -- is that correct?</p> <p>10 A Sorry. Ask the question again.</p> <p>11 Q In this declaration you're claiming Weiser 12 Capital is the owner; correct?</p> <p>13 A Correct.</p> <p>14 Q And in your deposition on October 23rd, 2018, 15 which was six months after your declaration, you were 16 also claiming that Weiser Capital was the owner; 17 correct?</p> <p>18 A Correct.</p> <p>19 Q Okay. And here at trial you're claiming WAM is 20 the owner; is that correct?</p> <p>21 A I'm claiming that WAM needs to end up with the 22 position to settle its accounts. And my understanding 23 is that it needs to become ultimately the owner of it.</p> <p>24 Q Because Weiser Capital bought it and didn't get</p>
<p style="text-align: right;">Page 168</p> <p>1 it or WAM?</p> <p>2 A Because ultimately WAM hasn't received it.</p> <p>3 Q Really what you're claiming is that WAM has 4 been damaged by Mr. Skarpelos's nonperformance; 5 correct?</p> <p>6 A Correct.</p> <p>7 Q Okay. So you're claiming damages, not 8 ownership?</p> <p>9 MR. NORK: Objection. Calls for a legal 10 conclusion.</p> <p>11 THE WITNESS: Yeah, I don't know how to answer 12 that.</p> <p>13 THE COURT: Sustained.</p> <p>14 At this point, Mr. Anderson, I'm not cutting off 15 your recross examination, I'm saying we're going to 16 take our lunch recess.</p> <p>17 MR. ANDERSON: Thank you, Your Honor.</p> <p>18 THE COURT: Because I let it go -- it looked 19 like -- based on your pause and as you glanced down at 20 your notes, it looked like you were about to move on.</p> <p>21 MR. ANDERSON: I think I'm very close.</p> <p>22 THE COURT: That's okay. I'm still going to take 23 the lunch recess. So we will be in recess until 24 approximately 1:20 in the afternoon at which point we</p>	<p style="text-align: right;">Page 169</p> <p>1 will continue with the recross examination. 2 Court is in recess. 3 (The lunch recess was taken at 12:05 p.m.) 4 --o0o-- 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

<p style="text-align: right;">Page 170</p> <p>1 RENO, NEVADA; TUESDAY, JANUARY 29, 2019; 1:24 P.M.</p> <p>2 --o0o--</p> <p>3 THE COURT: We'll go back on the record in</p> <p>4 CV15-02259, Skarpelos versus Weiser. Let's see. We're</p> <p>5 missing one person.</p> <p>6 MR. NORK: Mr. LaForge is absent, Your Honor.</p> <p>7 THE COURT: Mr. LaForge is not here. Are you ready</p> <p>8 to go without him, Mr. Nork?</p> <p>9 MR. NORK: Yes, Your Honor.</p> <p>10 THE COURT: All right. So Mr. Nork is here on</p> <p>11 behalf of the Weiser entities. Mr. Livadas is still on</p> <p>12 the stand.</p> <p>13 You're still under oath, sir. Do you understand</p> <p>14 that?</p> <p>15 THE WITNESS: Yes, Your Honor.</p> <p>16 THE COURT: Mr. Anderson, Mr. Skarpelos and</p> <p>17 Mr. Adams are all here on behalf of Skarpelos. So when</p> <p>18 we broke at lunch you were doing your recross</p> <p>19 examination, Mr. Anderson. You may continue.</p> <p>20 MR. ANDERSON: Thank you, Your Honor.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q Mr. Livadas, on redirect examination from</p> <p>23 Mr. Nork you talked a little bit again about the</p> <p>24 relationships between the various entities or parties</p>	<p style="text-align: right;">Page 171</p> <p>1 that are involved in transactions that involve WAM and</p> <p>2 its clients; correct?</p> <p>3 I'm sorry, I didn't hear you.</p> <p>4 A Yes, that's correct.</p> <p>5 Q And I understand you to say that WAM has an</p> <p>6 account at the prime bank; is that correct?</p> <p>7 A At the prime broker.</p> <p>8 Q At the prime broker. Okay. And in this case I</p> <p>9 think you said something to the effect of money -- if</p> <p>10 money is moving around, that took place at the WAM</p> <p>11 level?</p> <p>12 A If it was -- if the transactions involved</p> <p>13 clients that were within WAM, between clients that are</p> <p>14 at WAM.</p> <p>15 Q Okay. And when you say money moving around,</p> <p>16 are you referring to actual money in accounts at the</p> <p>17 WAM level or just ledger transactions?</p> <p>18 A To answer the question correctly, at all</p> <p>19 financial institutions it's ledger transactions.</p> <p>20 Q Okay. I can't walk into WAM with a bag of cash</p> <p>21 and deposit it with WAM?</p> <p>22 A No.</p> <p>23 Q Let's say I wanted to deposit a box of cash,</p> <p>24 let's say \$100,000, and open a WAM account. How would</p>
<p style="text-align: right;">Page 172</p> <p>1 I do that?</p> <p>2 A You can't come in with cash, physical cash.</p> <p>3 Q So I would have to go to -- would I have to go</p> <p>4 to a bank?</p> <p>5 A Yes, only commercial banks can take the cash.</p> <p>6 Q Now, WAM's relationship you said -- WAM had a</p> <p>7 relationship with Vermont Capital?</p> <p>8 A That's correct.</p> <p>9 Q And when did that relationship become</p> <p>10 established?</p> <p>11 A I don't know exactly.</p> <p>12 Q Okay. If I said to you that public records</p> <p>13 establish that it was -- that the relationship began in</p> <p>14 2014, would you disagree?</p> <p>15 A I think so.</p> <p>16 Q Okay. But you don't know for sure?</p> <p>17 A No, no.</p> <p>18 Q Okay. And Vermont Capital was under</p> <p>19 investigation by the SEC; correct?</p> <p>20 A Correct.</p> <p>21 Q And they filed for bankruptcy in 2016; correct?</p> <p>22 A Correct.</p> <p>23 Q And you indicated that Vermont was a customer</p> <p>24 of HSBC?</p>	<p style="text-align: right;">Page 173</p> <p>1 A Correct.</p> <p>2 Q And when you were describing the transactions</p> <p>3 going back and forth, as I understood it, you said in a</p> <p>4 transaction like you were talking about the example,</p> <p>5 you would debit the buyer account?</p> <p>6 A Debit the buyer, yes.</p> <p>7 Q Okay. And then you would debit the WAM</p> <p>8 account?</p> <p>9 A If you're debiting the buyer account, you</p> <p>10 credit the WAM account and then you debit the WAM</p> <p>11 account and credit the seller's account.</p> <p>12 Q Okay. And that all happens internally?</p> <p>13 A Correct.</p> <p>14 MR. ANDERSON: Your Honor, I have no further</p> <p>15 questions.</p> <p>16 THE COURT: Okay. Mr. Livadas, you may step down.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 THE COURT: Mr. Nork, you can call your next</p> <p>19 witness.</p> <p>20 THE WITNESS: Do I take these?</p> <p>21 THE COURT: Just leave those there. Mr. Nork will</p> <p>22 collect those and give them to the clerk.</p> <p>23 MR. NORK: I think the order of witnesses that we</p> <p>24 agreed upon was that Mr. Anderson was then going to</p>

<p style="text-align: right;">Page 174</p> <p>1 call the next witness.</p> <p>2 THE COURT: So you have no additional witnesses to</p> <p>3 call?</p> <p>4 MR. NORK: No, I fully intend --</p> <p>5 THE COURT: You're not resting I guess is what I'm</p> <p>6 saying.</p> <p>7 MR. NORK: I am not resting.</p> <p>8 THE COURT: Okay. Then, Mr. Anderson, I guess</p> <p>9 we're going to do it out of order. Then you would like</p> <p>10 to call a witness; is that correct?</p> <p>11 MR. ANDERSON: That's correct, Your Honor. We will</p> <p>12 call Mr. Skarpelos.</p> <p>13 THE COURT: Okay. Mr. Skarpelos, if you could</p> <p>14 please step forward and be sworn as a witness in these</p> <p>15 proceedings.</p> <p>16 THE BAILIFF: Come stand over here, please. Face</p> <p>17 the court clerk and raise your right hand.</p> <p>18 (The oath was administered.)</p> <p>19 THE WITNESS: I do.</p> <p>20 THE COURT: Deputy, if you would collect the</p> <p>21 transcript and the exhibit binder. Or should we leave</p> <p>22 the exhibit binder with him, Mr. Anderson?</p> <p>23 MR. ANDERSON: If you would leave the exhibit</p> <p>24 binder, Your Honor, that would be great.</p>	<p style="text-align: right;">Page 175</p> <p>1 THE COURT: Okay. We'll just take the deposition</p> <p>2 then.</p> <p>3 ATHANASIOS SKARPELOS,</p> <p>4 having been first duly sworn, was</p> <p>5 examined and testified as follows:</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MR. ANDERSON:</p> <p>8 Q Good afternoon, Mr. Skarpelos.</p> <p>9 A Good afternoon, sir.</p> <p>10 Q Would you please state and spell your full</p> <p>11 name.</p> <p>12 A Athanasios Tom Skarpelos, A-t-h-a-n-a-s-i-o-s,</p> <p>13 Tom, T-o-m, Skarpelos, S-k-a-r-p-e-l-o-s.</p> <p>14 Q And is Tom a part of your legal name or is that</p> <p>15 a nickname?</p> <p>16 A They use it in North America.</p> <p>17 Q So you've heard lots of testimony today</p> <p>18 referring to Tom. That is you?</p> <p>19 A Yes.</p> <p>20 Q Okay. And where do you reside?</p> <p>21 A I live in Greece right now in Astros, Arcadia.</p> <p>22 It's about a couple hours north of Athens.</p> <p>23 Q How big is that town?</p> <p>24 A It's a small town.</p> <p>Q And English is not your first language;</p>
<p style="text-align: right;">Page 176</p> <p>1 correct?</p> <p>2 A No.</p> <p>3 Q Okay. Do you understand English well?</p> <p>4 A Very much, yes.</p> <p>5 Q Okay. Do you speak English as well as you</p> <p>6 understand it?</p> <p>7 A Yes. I guess 80 percent.</p> <p>8 Q Okay. We'll go slow.</p> <p>9 A Yes.</p> <p>10 Q And the court reporter may appreciate you going</p> <p>11 slow. So if you don't understand something, let me</p> <p>12 know, but --</p> <p>13 A Okay.</p> <p>14 Q -- myself and counsel and the judge is going to</p> <p>15 assume that if you're asked a question and you give an</p> <p>16 answer that you understood it. Okay?</p> <p>17 A Okay.</p> <p>18 Q Were you born in Greece?</p> <p>19 A Yes.</p> <p>20 Q Okay. And did you live there your whole life?</p> <p>21 A No, I live there all the way to 1988 and then I</p> <p>22 move to Canada.</p> <p>23 Q Okay. And where did you move in Canada?</p> <p>24 A I move to Alberta in western Canada, Calgary.</p>	<p style="text-align: right;">Page 177</p> <p>1 Q Can you tell us about your education</p> <p>2 background?</p> <p>3 A I finished high school in Greece.</p> <p>4 Q Okay. When did you graduate from high school?</p> <p>5 A In 1983, I believe.</p> <p>6 Q And did you serve in the military at some</p> <p>7 point?</p> <p>8 A Yes.</p> <p>9 Q Okay. Tell us a little about that.</p> <p>10 A As a Greek citizen I have to serve in the</p> <p>11 military for three years.</p> <p>12 Q Do you have any formal business training?</p> <p>13 A No.</p> <p>14 Q After you got out of the military what did you</p> <p>15 do for work?</p> <p>16 A I work in the family's business. It's an olive</p> <p>17 oil business. We produce olive oil and table olives.</p> <p>18 THE COURT: What was -- oh, table oils did you say?</p> <p>19 THE WITNESS: Yes.</p> <p>20 THE COURT: Thank you.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q And after you moved to Canada you obviously</p> <p>23 weren't working at the olive oil farm anymore.</p> <p>24 A No.</p>

<p style="text-align: right;">Page 178</p> <p>1 Q What did you do in Canada?</p> <p>2 A In Canada I move and I work for my uncle. He's</p> <p>3 operating a hotel in Alberta outside of Calgary. And</p> <p>4 then I move to British Columbia and I operate a lounge</p> <p>5 there, a bar.</p> <p>6 Q Okay. What kind of work were you doing for the</p> <p>7 hotel and bar?</p> <p>8 A I help my uncle with everything.</p> <p>9 Q At some point in time did you become involved</p> <p>10 in the stock market?</p> <p>11 A Yes. That was around 1994.</p> <p>12 Q Okay. And tell us a little bit about your</p> <p>13 investing experience.</p> <p>14 A I have no experience up to that point. I</p> <p>15 become a small player like a stock -- I play the</p> <p>16 stocks, small investor. I play the penny stocks, the</p> <p>17 Canadian mining stocks.</p> <p>18 Q And you just mentioned that at some point in</p> <p>19 time you invested in a diamond mining business?</p> <p>20 A Yes. Happenstance I met a Canadian geologist</p> <p>21 which was working here in Nevada actually for gold</p> <p>22 exploration and in Northwest Territories in Canada. He</p> <p>23 was exploring for diamonds. And that led to a diamond</p> <p>24 discovery in 1995.</p>	<p style="text-align: right;">Page 179</p> <p>1 MR. ANDERSON: If I can just pause. I want to make</p> <p>2 sure the court reporter is able to understand.</p> <p>3 THE COURT: Mr. Skarpelos, I want you to know we're</p> <p>4 not being disrespectful. I've understood everything I</p> <p>5 think that you've said so far, but if there is some</p> <p>6 issue, we're going to let you know that maybe we're not</p> <p>7 understanding completely what you say.</p> <p>8 What I would request is that you speak just a</p> <p>9 little bit slower when you're using names, because</p> <p>10 oftentimes it's the names of things or the names of</p> <p>11 places that we tend to say very fast. But, again, I'm</p> <p>12 not -- hopefully you're not offended by that.</p> <p>13 THE WITNESS: No, no, no.</p> <p>14 THE COURT: I have a pretty good ear for languages,</p> <p>15 and so I've understood you completely, but we just want</p> <p>16 to make sure we get exactly what you say down. The</p> <p>17 court reporter's job is to take down every single word</p> <p>18 that you say accurately.</p> <p>19 So go ahead, Mr. Anderson. Thank you.</p> <p>20 BY MR. ANDERSON:</p> <p>21 Q And tell us a little bit more about that mining</p> <p>22 business you invested in.</p> <p>23 A It was a small company at first looking for</p> <p>24 diamonds across Canada all the way to Northwest</p>
<p style="text-align: right;">Page 180</p> <p>1 Territories in Canada. And that led to a big discovery</p> <p>2 in 1995. So the company stock jumped from pennies to</p> <p>3 \$67.</p> <p>4 Q Did you make some money off that?</p> <p>5 A Yes.</p> <p>6 Q Now, at some point in time did you move back to</p> <p>7 Greece?</p> <p>8 A Yes. I stayed in Canada until 1999 and around</p> <p>9 the summer of 1999 I move back to Greece.</p> <p>10 Q And did you do anything for work when you moved</p> <p>11 back to Greece?</p> <p>12 A No.</p> <p>13 Q When you moved back to Greece where did you</p> <p>14 move?</p> <p>15 A I moved back to my home town in Astros.</p> <p>16 Q At some point did you move from Astros to</p> <p>17 another place?</p> <p>18 A Yes. I stayed in Astros for three years with</p> <p>19 my family, my wife, my daughter. And I hang around in</p> <p>20 the family's business in the farms there and then I</p> <p>21 decide to go to Athens.</p> <p>22 Q Okay. And you mentioned your family. You're</p> <p>23 married?</p> <p>24 A Yes, I'm married and I have a daughter, she's</p>	<p style="text-align: right;">Page 181</p> <p>1 21 years old, and a boy, he's 14 years old.</p> <p>2 Q And so you and your family moved to Athens?</p> <p>3 A Yes.</p> <p>4 Q And when was that?</p> <p>5 A That was in 2003.</p> <p>6 Q And is your wife Greek as well?</p> <p>7 A She's Canadian, Greek Canadian, from Calgary,</p> <p>8 Alberta.</p> <p>9 Q She was born and raised in Canada?</p> <p>10 A Yes.</p> <p>11 Q When you moved to Athens in 2005 what did you</p> <p>12 do?</p> <p>13 A 2003.</p> <p>14 Q I'm sorry.</p> <p>15 A Yes. I felt I have to get back to business,</p> <p>16 but in Greece we don't have mining sector. There are</p> <p>17 no mines there. So I apply my knowledge, what I learn</p> <p>18 with exploring for metals in North America, to the</p> <p>19 biotech sector for discovering new pharmaceuticals.</p> <p>20 Q Was there anything in particular about the</p> <p>21 biotech sector that attracted you?</p> <p>22 A Yes, yes, a research project for Alzheimer's</p> <p>23 disease.</p> <p>24 Q And how did you get involved in that research</p>