

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 10**

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Trial Exhibit 12, 12/21/2012 email Lambros Pedafronimos L. Pedaf@gmail.com to Christos Livadas (WEISER000345)	1/31/2019	9	JA1718- JA1719
Trial Exhibit 13, 1/10/2013 Corporate Indemnity to Nevada Agency and Transfer Company to Reissuance of Lost Certificate (S000007)	1/28/2019	6	JA1160- JA1161

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Trial Exhibit 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
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Trial Exhibit 22, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000013)	1/28/2019	6	JA1173-JA1174
Trial Exhibit 23, 06/24/2013 Email Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000014)	1/28/2019	6	JA1175-JA1176
Trial Exhibit 24, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000015)	1/28/2019	6	JA1177-JA1178
Trial Exhibit 25, 06/24/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (WEISER000333-000337)	1/28/2019	6	JA1179-JA1184
Trial Exhibit 26, 06/25/2013 Email Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000016)	1/28/2019	6	JA1185-JA1186
Trial Exhibit 27, 07/02/2013 Lambros Pedafronimos L.Pedaf@gmail.com to Christos Livadas (S000017)	1/28/2019	6	JA1187-JA1188
Trial Exhibit 28, 07/02/2013 Christos Livadas Lambros to Pedafronimos L.Pedaf@gmail.com (S000018)	1/28/2019	6	JA1189-JA1190

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Trial Exhibit 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

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Trial Exhibit 35, 07/12/2013 Power of Attorney to Transfer Bonds or Shares (WEISER000368)	1/28/2019	6	JA1213-JA1214
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Trial Exhibit 40, 10/28/2013 Email Tom Skarpelos and Christos Livadas (WEISER000339)	1/28/2019	6	JA1217-JA1218
Trial Exhibit 43, 12/31/2013 Weiser Skarpelos Statement of Account for February 1, 2013 - December 31, 2013 (WEISER000378-WEISER000380)	1/28/2019	6	JA1219-JA1222
Trial Exhibit 44, Duplicate copy of 12/31/2013 Weiser Skarpelos Statement of Account for February 1, 2013 - December 31, 2013 (WEISER000378-WEISER000380)	1/28/2019	6	JA1223-JA1226
Trial Exhibit 46, 11/02/2015 Letter Ernest A. Alvarez to Nevada Agency and Transfer Company Weiser Asset Management Ltd. (WEISER000004)	1/28/2019	6	JA1227-JA1228
Trial Exhibit 47, 11/03/2015 Letter Alexander H. Walker III to Ernest A. Alvarez (WEISER000001)	1/28/2019	6	JA1229-JA1230

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Trial Exhibit 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

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Trial Exhibit 56, 11/17/2015 email Bill Simonitsch to Louis R. Montello cc Ernesto Alvarez (WEISER000238)	1/28/2019	6	JA1254- JA1255
Trial Exhibit 57, 11/18/2015 email Bill Simonitsch and Ernesto A. Alvarez (WEISER000216-WEISER000217)	1/28/2019	6	JA1256- JA1258
Trial Exhibit 58, 11/19/2015 Email bill Simonitsch and Ernesto A. Alvarez cc Louis Montello (WEISER000218-WEISER000219)	1/28/2019	7	JA1259- JA1261
Trial Exhibit 59, 11/19/2015 Email Christos Livadas re Tom Transfer request (WEISER000320-WEISER000322)	1/28/2019	7	JA1262- JA1265
Trial Exhibit 60, 11/19/2015 email Christos Livadas re Skarpelos Email flow 2011-2013 (WEISER000341-WEISER000343)	1/28/2019	7	JA1266- JA1269
Trial Exhibit 61, Bank documents (S000032-S000035)	1/30/2019	7	JA1560- JA1564
Trial Exhibit 7, 05/30/2011 Email between Athanasios Skarpelos and Howard Daniels re Courier Address for WAM, Ltd. (S000006)	1/28/2019	6	JA1151- JA1152

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6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8 HONORABLE ELLIOTT A. SATTler, DISTRICT JUDGE

9

10 NEVADA AGENCY & TRANSFER CO.,

11 Plaintiff,

Case No. CV15-02259

12 vs.

Dept. No. 10

13 WEISER ASSET, ET AL.,

14 Defendants.

15

16

17 TRANSCRIPT OF PROCEEDINGS

18 Wednesday, February 6, 2019

19 Reno, Nevada

20

21

22

23 Job No.: 526770

24 Reported by:

LORI URMSTON, CCR #51

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2 FOR WEISER ASSET MANAGEMENT AND WEISER BAHAMAS, LTD.:</p> <p>3 HOLLAND & HART</p> <p>4 By: JEREMY L. NORK, ESQ.</p> <p>5 5441 Kietzke Lane, Second Floor</p> <p>6 Reno, Nevada 89511</p> <p>7</p> <p>8 FOR ANTHANASIOS SKARPELOS:</p> <p>9 WOODBURN AND WEDGE</p> <p>10 By: DANE W. ANDERSON, ESQ.</p> <p>11 SETH J. ADAMS, ESQ.</p> <p>12 6100 Neil Road, Suite 500</p> <p>13 Reno, Nevada 89509</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 style="text-align: right;">Page 3</p> <p>1 RENO, NEVADA; WEDNESDAY, FEBRUARY 6, 2019; 3:04 P.M.</p> <p>2 --oOo--</p> <p>3 THE COURT: We will go back on the record in</p> <p>4 CV15-02259, Weiser entities versus Skarpelos. Mr. Nork</p> <p>5 is here on behalf of Weiser Asset Management, Ltd., and</p> <p>6 Weiser Bahamas, Ltd.</p> <p>7 Good afternoon, Mr. Nork.</p> <p>8 MR. NORK: Good afternoon, Your Honor.</p> <p>9 THE COURT: Mr. LaForge is not joining us today?</p> <p>10 MR. NORK: I've got him busy running around doing</p> <p>11 other things, Your Honor.</p> <p>12 THE COURT: Good for you. That's what associates</p> <p>13 are for.</p> <p>14 MR. NORK: That's right.</p> <p>15 THE COURT: So it's nice to see you again. The</p> <p>16 Court would note that Mr. Livadas is not present. I</p> <p>17 assume that Mr. Livadas is in warmer climates.</p> <p>18 MR. NORK: I would hope so, Your Honor, yes.</p> <p>19 THE COURT: Mr. Anderson and Mr. Adams are here as</p> <p>20 well as Mr. Murtha. Good afternoon to all of you</p> <p>21 gentlemen. They're here on behalf of Mr. Skarpelos.</p> <p>22 Mr. Skarpelos, I assume, is also in a warmer climate at</p> <p>23 this point.</p> <p>24 MR. ANDERSON: I certainly hope so, Your Honor.</p>
<p style="text-align: right;">Page 4</p> <p>1 And I tried to send Mr. Adams somewhere else, but he</p> <p>2 wanted to come anyway.</p> <p>3 THE COURT: Poor Mr. Adams, he couldn't even get</p> <p>4 shooed away.</p> <p>5 We are here, gentlemen, for the Court to put its</p> <p>6 findings of fact, conclusions of law and order on the</p> <p>7 record regarding the bench trial that took place last</p> <p>8 week. The Court heard arguments of counsel on Friday,</p> <p>9 and then the matter was submitted to the Court for</p> <p>10 consideration.</p> <p>11 It was my hope to be able to come back and put the</p> <p>12 findings of fact, conclusions of law and the order on</p> <p>13 the record Friday, but I thought it was more prudent to</p> <p>14 go back and review my notes again, review all of the</p> <p>15 other documents and exhibits that had been admitted in</p> <p>16 the case, look at some of the case law that was cited</p> <p>17 by the parties and refresh my mind with that again, and</p> <p>18 then come back and make an informed decision while the</p> <p>19 issues were still fresh in my mind, but at the same</p> <p>20 time after having given it appropriate consideration.</p> <p>21 Counsel, just so you both know how I -- or all of</p> <p>22 you three know how I approach bench trials, I really</p> <p>23 try and be mindful of the instructions that we give</p> <p>24 jurors in how to judge the credibility of witnesses,</p>	<p style="text-align: right;">Page 5</p> <p>1 the application of direct versus circumstantial</p> <p>2 evidence, and all the other things that we tell juries</p> <p>3 all the time. When I'm the finder of fact, I don't</p> <p>4 just sit here and think, "Well, this is what I think or</p> <p>5 this is what I would do." I really try and place</p> <p>6 myself into the position of what would the jury be</p> <p>7 instructed on any given issue.</p> <p>8 This case is particularly difficult because the</p> <p>9 credibility of the witnesses is so important. And</p> <p>10 before I put the findings of fact on the record, I want</p> <p>11 the parties to understand something about how I</p> <p>12 reviewed -- or how I viewed the credibility of all of</p> <p>13 the witnesses. And I don't say this in a dismissive</p> <p>14 way towards either Mr. Anderson or Mr. Nork, but in the</p> <p>15 closing arguments I certainly got the impression that</p> <p>16 both counsel were arguing in essence my client is free</p> <p>17 from all responsibility and blame, my client is clean,</p> <p>18 shall we say, or lily white, and this other guy is</p> <p>19 sullied.</p> <p>20 And, frankly, I found the testimony of all of the</p> <p>21 witnesses, Mr. Livadas, Mr. Skarpelos and</p> <p>22 Mr. Pedafronimos, to be troubling. And troubling only</p> <p>23 in the sense that there were some just large</p> <p>24 inconsistencies in what they said versus what they did</p>

<p style="text-align: right;">Page 6</p> <p>1 and in some of the things that they testified to that 2 they wanted me to believe. Let's put it that way. It 3 was not exclusive to one side or the other. 4 I don't think I have an obligation to put on the 5 record every single inconsistency that I saw or every 6 single issue that I took note of, because I don't think 7 a jury has a responsibility to do that either. I'm 8 just going to tell you what my findings of fact are, 9 but it is informed by my review of all of the exhibits, 10 my judgment of the credibility of the witnesses as they 11 testified, frankly, the believableness or 12 unbelievableness of a number of things that all three 13 of them said. 14 As we also know, I heard from Mr. Walker. I'm not 15 trying to pump Mr. Walker up, but he was uninterested 16 in the process and frankly came across as the most 17 credible witness out of everybody. 18 You know, one of the glaring examples of difficulty 19 in credibility and believing some of the things that 20 people said were just, for example, Mr. Livadas 21 choosing to take the document that was admitted as 22 exhibit -- 23 I should have had this at my fingertips. I 24 apologize. I apologize, counsel, for having to leaf</p>	<p style="text-align: right;">Page 7</p> <p>1 through my exhibit binder again. I had all this in my 2 head. Oh, here it is. 3 It's Exhibit 30, the Stock Sale and Purchase 4 Agreement, which I found was submitted to him for one 5 reason, and then Mr. Livadas testified that he just 6 converted it to something that was entirely different. 7 He just changed the meaning of the entire document. 8 And then that document was used to establish legal 9 claims or at least to make representations to NATCO 10 about actions that were done on behalf of some entity. 11 I found that very troubling. 12 Regarding Mr. Skarpelos, the testimony that he's 13 never received any money whatsoever from any of these 14 transactions, frankly, based on the circumstantial 15 evidence in the case, I find that very difficult to 16 believe. 17 The testimony of Mr. Pedafronimos about the sheer 18 coincidence that all of the transactions that are 19 referenced in Exhibit No. 44 -- or strike that. I 20 think it's 40. There it is. No, it was 44. I had it 21 right. 22 In Exhibit 44, it was just a mere coincidence that 23 he was having interaction with Mr. Livadas, he was 24 getting exactly that amount of money at or near the</p>
<p style="text-align: right;">Page 8</p> <p>1 time that all of these transactions took place, and 2 Mr. Pedafronimos wants me to believe that that's all 3 because he was getting money from his Birnbaum account 4 that there's absolutely no evidence of. 5 I don't -- jurors are not supposed to judge the 6 credibility of witnesses nor to make any determination 7 in the case simply by counting the number of witnesses 8 on one side and the side with the more witnesses is the 9 prevailing party. And I certainly didn't do that. But 10 I just -- I found Mr. Pedafronimos's testimony 11 regarding specifically those financial transactions to 12 be unbelievable. It just -- there was no credibility 13 to that. 14 Maybe if there was just one -- I mean, if something 15 happens once, you look at it and go, okay, well, maybe 16 that's just a coincidence. But as I listened to his 17 testimony, I judged his credibility, I considered the 18 evidence that was offered, and certainly the 19 cross-examination of Mr. Nork of Mr. Pedafronimos on 20 those issues, I just found his testimony regarding the 21 financial issues to be unpersuasive I guess would be 22 the best way to put it. 23 So I consider all of those things. I think that 24 there are a number of issues in the case. And rather</p>	<p style="text-align: right;">Page 9</p> <p>1 than sit here and just talk about them in a general 2 sense, I'll make my determinations about the case. 3 The Court would note, as I stated a moment ago, 4 that I have reviewed all of the exhibits that have been 5 admitted. What I do during a bench trial is I have my 6 court clerk remove all of the unadmitted exhibits from 7 my binder so I only have the things that are admitted 8 during the course of the trial in the binder that I 9 eventually review. So I've reviewed all of the 10 admitted exhibits. 11 I have reviewed the relevant portions of the 12 transcripts from the depositions. I don't go back and 13 review the entire deposition, because that's not 14 relevant for my consideration. I only review those 15 portions that are used to either impeach or refresh the 16 witness's recollection. 17 So I've reviewed those exhibits as well, and I've 18 also considered the pleadings in the case. The 19 pleadings themselves that bring the matter to the 20 Court's attention are the Amended Complaint filed by 21 Nevada Agency & Transfer Company file stamped 22 April 29th of 2016, the Answer to the Amended Complaint 23 and the Crossclaim filed by Mr. Skarpelos on May 24 23rd of 2016, and the Answer and Crossclaim filed by</p>

<p style="text-align: right;">Page 10</p> <p>1 Weiser Asset Management, Ltd., and Weiser Bahamas, 2 Ltd., on May 24th of 2016.</p> <p>3 For ease of the parties, I will refer to Weiser 4 Asset Management, Ltd., from this point forward as WAM, 5 the acronym W-A-M. And I will refer to Weiser Bahamas, 6 Ltd., and Bahamas is parenthetical, as Weiser Capital 7 from this point forward, because that's how the parties 8 really identified them and spoke about them during the 9 course of the trial and I think that is much easier for 10 the parties to understand the Court's analysis.</p> <p>11 I also apologize. I think I'm coming down with a 12 little bit of a cold. So forgive me, gentlemen, if my 13 voice starts to go out.</p> <p>14 The Court makes the following findings of fact 15 regarding the evidence presented at the trial. And 16 just so you know, I am referring to some of the notes 17 that I've made regarding your trial statements and also 18 regarding the suggested findings of fact, conclusions 19 of law and order that the parties have submitted. I'm 20 not using either of your suggested findings of fact, 21 conclusions of law and order, but I've used them to 22 inform my analysis.</p> <p>23 One moment.</p> <p>24 Okay. The Court makes the following findings of</p>	<p style="text-align: right;">Page 11</p> <p>1 fact:</p> <p>2 The Court finds that WAM is a Class 1 broker-dealer 3 maintaining custody of client assets of over 4 \$250,000,000. Strike that. The Court does not make 5 the finding of fact regarding the amount of assets that 6 WAM has.</p> <p>7 The Court would note that WAM does have a 8 significant number of clients. I believe that 9 Mr. Livadas testified that after his purchase of WAM he 10 increased their client roster from approximately 100 11 customers to approximately 2,000 customers now. So the 12 Court would make that note.</p> <p>13 I should say before I go any further that the 14 findings of fact are all based on a preponderance of 15 the evidence. So the Court is making all of these 16 determinations based on a preponderance of the 17 evidence.</p> <p>18 So the Court does find that WAM is a Class 1 19 dealer-broker and that it does have customers of 20 approximately 2,000 customers currently. Additionally, 21 the Court does find based on the testimony that WAM is 22 a registered and regulated Class 1 broker by the 23 Financial Services Authority and Securities Commission 24 of the Bahamas and is a registered foreign</p>
<p style="text-align: right;">Page 12</p> <p>1 broker-dealer in Canada regulated by the Ontario 2 Securities Commission.</p> <p>3 The Court further finds that Weiser Capital is an 4 affiliate entity to WAM and provides investment banking 5 advisory services and deal arrangements as an investor 6 and principal on behalf of WAM and its clients.</p> <p>7 The Court does finds that Christos Livadas is the 8 owner and director of Weiser Holdings, Ltd. Weiser 9 Holdings, Ltd., now is the parent company of WAM. The 10 Court finds that WAM was acquired by Weiser Holdings, 11 Ltd. Additionally, the Court does find that 12 Mr. Livadas is the owner and director of Weiser 13 Capital.</p> <p>14 The Court finds that the prior owner of WAM was 15 Equity Trust Bahamas, Ltd. The Court also notes that 16 one of the principals of Equity Trust Bahamas, Ltd., 17 was Howard Daniels. The Court finds that there is 18 evidence by a preponderance of the evidence that 19 Mr. Daniels was one of the two contacts that 20 Mr. Skarpelos had at WAM and was Mr. Skarpelos's prior 21 previous -- was Mr. Skarpelos's previous contact at WAM 22 in 2011.</p> <p>23 The Court does also find that WAM and Weiser 24 Capital, prior to Mr. Livadas purchasing WAM and</p>	<p style="text-align: right;">Page 13</p> <p>1 creating Weiser Holdings, Ltd., were two separate 2 entities. Based on the testimony of Mr. Livadas, he 3 would direct clients to WAM. And so the name Weiser in 4 both probably assists in marketing. However, they were 5 two entirely separate entities at the relevant times 6 that the Court will discuss in these proceedings.</p> <p>7 Mr. Livadas was the owner and director of Weiser 8 Capital at the times discussed by the Court.</p> <p>9 The Court does find that Mr. Skarpelos did apply 10 for and did open an account with WAM in 2011. There 11 is -- there has been a significant amount of discussion 12 by the attorneys and a large amount of questioning both 13 of Mr. Livadas and Mr. Skarpelos and Mr. Pedafronimos 14 about whether or not an account was opened by 15 Mr. Skarpelos.</p> <p>16 The Court finds that by a preponderance of the 17 evidence there was an account opened. The Court finds 18 that Mr. Skarpelos funded that account with his Anavex 19 stock certificates, which are Exhibit No. 2, that 20 primarily being Exhibit -- excuse me -- the Stock 21 Certificate 753.</p> <p>22 Stock Certificate 753 is in the name of Athanasios 23 Skarpelos. It is for Anavex stock in the amount of 24 6,633,332 shares. Those shares were issued to</p>

<p style="text-align: right;">Page 14</p> <p>1 Mr. Skarpelos on October 29th of 2009.</p> <p>2 The Court finds that Mr. Skarpelos did open the</p> <p>3 account with WAM, not with Weiser Capital but with WAM,</p> <p>4 through the assistance of Mr. Daniels and</p> <p>5 Mr. Pedafronimos in May of 2011. There was some</p> <p>6 discussion about whether or not Mr. Skarpelos ever</p> <p>7 received a notification that his account was officially</p> <p>8 opened or whether he was receiving statements about his</p> <p>9 account.</p> <p>10 Mr. Skarpelos's testimony that he didn't think that</p> <p>11 he had an account with WAM simply was unpersuasive.</p> <p>12 The Court finds that the evidence does exist and does</p> <p>13 support the conclusion that there was an account.</p> <p>14 The Court would note that in Exhibit No. 2 there is</p> <p>15 an application in place that describes what</p> <p>16 Mr. Skarpelos's desires are for his WAM account. And</p> <p>17 certainly a number of things that were testified to</p> <p>18 during the course of the trial were inconsistent with</p> <p>19 Exhibit No. 2, but the Court also finds that it is</p> <p>20 reasonable to conclude based on the evidence that it</p> <p>21 heard that the parties were simply doing things outside</p> <p>22 of the application.</p> <p>23 So while the application itself exists, and the</p> <p>24 Court has no reason to believe that it does not, and</p>	<p style="text-align: right;">Page 15</p> <p>1 that, as it says in the report, Mr. Skarpelos wanted to</p> <p>2 run a cash only account, he didn't want to trade on the</p> <p>3 margins, he didn't want to let anybody else have access</p> <p>4 to his account or to make trades or access his money in</p> <p>5 the account, the Court finds that it is more likely</p> <p>6 than not by a preponderance of the evidence that</p> <p>7 Mr. Livadas, Mr. Skarpelos and Mr. Pedafronimos simply</p> <p>8 were doing things that weren't contemplated by the</p> <p>9 application. But that doesn't mean in my mind that</p> <p>10 there wasn't an account there.</p> <p>11 Mr. Skarpelos did deposit the disputed stock</p> <p>12 certificate, and the Court finds that Mr. Skarpelos did</p> <p>13 withdraw money or had people withdraw money on his</p> <p>14 behalf from the account. The Court finds that there's</p> <p>15 no reason to believe that the account didn't have a</p> <p>16 negative balance at the time of the April sale or at</p> <p>17 the time that Exhibit 44 is referencing about -- I want</p> <p>18 to say July, if I remember correctly. As of</p> <p>19 December 31st of 2013 it showed that there was a</p> <p>20 negative account balance on February 1st of 2013 of</p> <p>21 \$140,000, and then the transfers began to take place.</p> <p>22 The Court finds that it's reasonable -- it is a</p> <p>23 reasonable conclusion based on the preponderance of the</p> <p>24 evidence that the account existed, that the shares were</p>
<p style="text-align: right;">Page 16</p> <p>1 in place and that Mr. Skarpelos was withdrawing money</p> <p>2 against those shares. And the Court finds that the</p> <p>3 testimony of Mr. Livadas regarding allowing</p> <p>4 Mr. Skarpelos to get into that position was reasonable.</p> <p>5 The Court does note that Mr. Livadas testified that</p> <p>6 he really wasn't familiar with WAM's bookkeeping or</p> <p>7 records at the time he purchased WAM in 2013 or 2014.</p> <p>8 When did he purchase WAM, gentlemen? Help me with</p> <p>9 that.</p> <p>10 MR. ANDERSON: Your Honor, I believe his</p> <p>11 declaration testimony said December of 2014. And he</p> <p>12 gave perhaps slightly different testimony, but I think</p> <p>13 that's what his declaration says.</p> <p>14 MR. NORK: I think the year is correct, 2014.</p> <p>15 There was some dispute about which month.</p> <p>16 THE COURT: So the Court does -- I don't think the</p> <p>17 exact month is determinative of any of the issues that</p> <p>18 the Court is considering, but the Court does find that</p> <p>19 based on the circumstantial evidence that I heard that</p> <p>20 it's reasonable to conclude that Mr. Skarpelos did have</p> <p>21 a negative account balance when WAM was purchased by</p> <p>22 Mr. Livadas, and so the Court believes that that</p> <p>23 account existed in the state that it was.</p> <p>24 The Court also finds that Mr. Skarpelos did contact</p>	<p style="text-align: right;">Page 17</p> <p>1 Nevada Agency & Transfer Company, NATCO, and indicated</p> <p>2 that his Stock Certificates No. 660 and 753 were lost.</p> <p>3 The Court finds that Mr. Skarpelos's explanation for</p> <p>4 why he stated that those documents -- or those stock</p> <p>5 certificates were lost was unpersuasive.</p> <p>6 It is clear in the exhibits, which are 13, 14 and</p> <p>7 15, specifically with Exhibit No. 14, that being lost</p> <p>8 is one of the possible explanations for filing an</p> <p>9 Affidavit of Lost Stock Certificate. It indicates in</p> <p>10 Exhibit No. 14, quote, "That the present status of the</p> <p>11 certificate is as follows," parenthetically, "please</p> <p>12 describe, i.e., lost, misplaced or stolen." So lost,</p> <p>13 misplaced or stolen are mere suggestions of why</p> <p>14 something is lost or it's not available.</p> <p>15 Mr. Skarpelos testified that he knew exactly where</p> <p>16 the stock certificate was. There was never a question</p> <p>17 about the stock certificate itself or its location,</p> <p>18 because Mr. Skarpelos knew that he had deposited it</p> <p>19 with WAM to open his account.</p> <p>20 So the statement to NATCO that the stock</p> <p>21 certificate was lost is simply not true. The Court</p> <p>22 would also note that that was signed under a notary</p> <p>23 from Greece. So he's swearing to the authenticity of</p> <p>24 that allegation. And he testified that he knew it just</p>

<p style="text-align: right;">Page 18</p> <p>1 wasn't true.</p> <p>2 Additionally, Mr. Skarpelos testified that the</p> <p>3 reason he identified "lost" was because it was one of</p> <p>4 the three things that he saw there and his attorney</p> <p>5 told him to do it or words to that effect. And the</p> <p>6 Court just doesn't find that to be persuasive at all.</p> <p>7 I have no idea why Mr. Skarpelos took the actions that</p> <p>8 he did with NATCO, but he took them. So now we've got</p> <p>9 the lost stock certificate.</p> <p>10 The Court also finds that there was a sale of</p> <p>11 3,316,666 shares of Anavex stock in April of 2013,</p> <p>12 specifically on April 2nd of 2013. The Court finds</p> <p>13 that by a preponderance of the evidence that sale took</p> <p>14 place. Additionally, the Court finds that the</p> <p>15 documents that I referenced earlier --</p> <p>16 I keep doing this. I keep getting lost in my</p> <p>17 exhibit binder. The actual sale document was what,</p> <p>18 counsel?</p> <p>19 MR. ANDERSON: Your Honor, I believe Exhibit 30 was</p> <p>20 the Purchase and Sale Agreement.</p> <p>21 THE COURT: There it is.</p> <p>22 The Court finds that Exhibit 30, which purports to</p> <p>23 be a July 5th, 2013, sale of the stock to Weiser</p> <p>24 Capital, is simply not what it purports to be. The</p>	<p style="text-align: right;">Page 19</p> <p>1 Court finds that that document has little to no meaning</p> <p>2 whatsoever in the case other than evidencing that</p> <p>3 Mr. Livadas is willing to just change a document from</p> <p>4 one thing to something else. So the Court doesn't put</p> <p>5 any significant weight in Exhibit 30 beyond what I'll</p> <p>6 comment on in a minute, but the Court would note that</p> <p>7 Exhibit 30 does not demonstrate a sale of any type to</p> <p>8 anyone in this case.</p> <p>9 Further, the Court does find that the money was</p> <p>10 provided to Mr. Pedafronimos as identified in the</p> <p>11 trial, that he withdrew the money in May, July, August</p> <p>12 and September in the amounts stated as well as the</p> <p>13 \$20,000 in medical expenses as were identified in</p> <p>14 Exhibit No. 44. The Court does find that that actually</p> <p>15 took place and that that money was provided to</p> <p>16 Mr. Pedafronimos presumptively to be given to</p> <p>17 Mr. Skarpelos.</p> <p>18 The Court finds that Mr. Skarpelos based on the</p> <p>19 evidence that I have before me has really no bank</p> <p>20 accounts of any type, and so I find that</p> <p>21 circumstantially it's reasonable to conclude that</p> <p>22 Mr. Pedafronimos was contacting Mr. Livadas and asking</p> <p>23 Mr. Livadas to forward money to Mr. Pedafronimos. And</p> <p>24 that money would then logically be given to</p>
<p style="text-align: right;">Page 20</p> <p>1 Mr. Skarpelos for some reason. Again, it's based on</p> <p>2 circumstantial evidence, but circumstantial evidence is</p> <p>3 just as compelling as direct evidence. And based on</p> <p>4 what was demonstrated during the course of the trial</p> <p>5 through all of the exhibits and the cross-examination</p> <p>6 of Mr. Nork, the Court simply finds that it's</p> <p>7 reasonable to conclude that that money was being sent</p> <p>8 from WAM to Mr. Pedafronimos for Mr. Skarpelos's</p> <p>9 benefit.</p> <p>10 Now, with that in mind, the Court has to turn to</p> <p>11 the allegations in the competing crossclaims. And the</p> <p>12 Court first turns to the crossclaim for the Weiser</p> <p>13 entities, both WAM and Weiser Capital.</p> <p>14 As we know, WAM and Weiser Capital are asserting</p> <p>15 both a request for equitable relief and a request for a</p> <p>16 breach of contract and a breach of the implied covenant</p> <p>17 of good faith and fair dealing.</p> <p>18 The Court must determine whether or not there was</p> <p>19 in fact a contract. Mr. Nork on behalf of the Weiser</p> <p>20 entities has to demonstrate to the Court that a</p> <p>21 contract existed between Weiser Capital or Weiser Asset</p> <p>22 Management and Mr. Skarpelos.</p> <p>23 The Court finds that there is no evidence that I</p> <p>24 can use to conclude that there was in fact a contract</p>	<p style="text-align: right;">Page 21</p> <p>1 for the sale of the shares of stock to either Weiser</p> <p>2 Asset Management or to Weiser Capital. It's just</p> <p>3 unclear based on the testimony that that agreement</p> <p>4 between either one of those entities and Mr. Skarpelos</p> <p>5 ever took place.</p> <p>6 With all respect to Mr. Nork, the testimony at the</p> <p>7 trial was inconsistent with the testimony identified --</p> <p>8 or, excuse me -- the anticipated testimony identified</p> <p>9 in the trial statement, it was different than the</p> <p>10 testimony that was demonstrated in relevant parts from</p> <p>11 Mr. Livadas's depositions and, telling, it was</p> <p>12 different than the anticipated evidence that would be</p> <p>13 offered as purported -- or as propounded in the two</p> <p>14 causes of action in the crossclaim.</p> <p>15 It was identified all along that somehow this</p> <p>16 contract, the Stock Sale and Purchase Agreement that is</p> <p>17 Exhibit No. 30, was an agreement between someone,</p> <p>18 either Weiser Capital or WAM, and Mr. Skarpelos. But</p> <p>19 the Court finds that it has not been demonstrated that</p> <p>20 the parties had a contract at all based on what I see.</p> <p>21 The Court finds that Mr. Livadas has testified that</p> <p>22 WAM wasn't even the owner of the stock. I was going</p> <p>23 through my notes, and during Mr. Livadas's testimony I</p> <p>24 actually made a note that Mr. Livadas testified that</p>

<p style="text-align: right;">Page 22</p> <p>1 Weiser Capital and WAM don't own the stock, because the</p> <p>2 stock really was just to be transferred through them.</p> <p>3 And so the Court finds that there was no contract</p> <p>4 between either Weiser Asset Management or Weiser</p> <p>5 Capital and Mr. Skarpelos to do anything.</p> <p>6 The Court notes that Mr. Livadas testified that</p> <p>7 there was a large amount of documentary evidence that</p> <p>8 may exist and may be in either Weiser Asset Management</p> <p>9 or Weiser Holdings' possession at this point, but the</p> <p>10 Court can't base its determination on any of those</p> <p>11 things. I can only base my decision on what I see here</p> <p>12 in court. And what I see in court shows me that there</p> <p>13 was no contract specifically for the sale.</p> <p>14 I want to make an important distinction. I'm not</p> <p>15 saying that there wasn't an account that Mr. Skarpelos</p> <p>16 had. I've already made that finding. I think he did</p> <p>17 have an account.</p> <p>18 The Court is called upon to decide whether or not</p> <p>19 there was a contract to sell 3,336,000 shares to</p> <p>20 anyone, either -- well, not anyone -- to either Weiser</p> <p>21 Capital or Weiser Asset Management. The Court finds</p> <p>22 that it simply has not been demonstrated to the Court</p> <p>23 that those -- or that that agreement was reached by the</p> <p>24 parties.</p>	<p style="text-align: right;">Page 23</p> <p>1 Therefore, as we've previously discussed, if the</p> <p>2 Court finds that there is no contract between either</p> <p>3 Weiser Asset Management -- or WAM, I should say, and</p> <p>4 Weiser Capital, there's no contract. There can also be</p> <p>5 no breach of the implied covenant of good faith and</p> <p>6 fair dealing. And, additionally, if there is no</p> <p>7 contract, there can be no request for declaratory</p> <p>8 relief.</p> <p>9 The Weiser entities are not entitled to declaratory</p> <p>10 relief, because they have no interest in the shares of</p> <p>11 stock themselves. At best what happened in this case</p> <p>12 was that arguably Weiser Asset Management, WAM, was</p> <p>13 just transferring the stock to somebody else. They</p> <p>14 were never purchasing the stock. That was never the</p> <p>15 agreement between Mr. Skarpelos and WAM.</p> <p>16 The Court also finds that Weiser Capital had</p> <p>17 absolutely nothing to do with the sale. At best the</p> <p>18 argument -- or what the Court would look at it is</p> <p>19 whether or not there was an agreement between WAM and</p> <p>20 Mr. Skarpelos. And based on the confusion in the</p> <p>21 bookkeeping, the questionable way that the case has</p> <p>22 been demonstrated to the Court and the testimony of</p> <p>23 Mr. Livadas, I just can't come to the conclusion that</p> <p>24 there was a contract between either Weiser Capital or</p>
<p style="text-align: right;">Page 24</p> <p>1 WAM and Mr. Skarpelos. Therefore, the Court rules</p> <p>2 against those entities in their claims for</p> <p>3 compensatory -- or, excuse me -- declaratory relief,</p> <p>4 their contract claim and their claim for the implied</p> <p>5 covenant of good faith and fair dealing.</p> <p>6 The Court will make the following conclusions of</p> <p>7 law that inform my decision. And these deal with both</p> <p>8 contract issues and equity issues.</p> <p>9 Counsel, I apologize if I kind of mangle them all</p> <p>10 up, but I trust, Mr. Anderson, you'll be able to</p> <p>11 clarify them and make them in a cogent order when you</p> <p>12 prepare the Court's final order.</p> <p>13 Okay. The Court finds that Certified Fire</p> <p>14 Protection, Incorporated, versus Precision</p> <p>15 Construction, Incorporated, 128 Nevada 371, 283 P.3d</p> <p>16 250, a 2012 case, is particularly instructive in</p> <p>17 determining what a contract is in the state of Nevada</p> <p>18 and the terms that that contract must contain.</p> <p>19 Both parties cite to Certified Fire Protection,</p> <p>20 Incorporated, in their pleading. At page 378 of the</p> <p>21 Nevada Reporter and page 255 of the Pacific Third</p> <p>22 Reporter, the Nevada Supreme Court says the following</p> <p>23 regarding an express contract: Quote, "Basic contract</p> <p>24 principles require, for an enforceable contract, an</p>	<p style="text-align: right;">Page 25</p> <p>1 offer and an acceptance, a meeting of the minds, and</p> <p>2 consideration," close quote, citing May versus</p> <p>3 Anderson, 121 Nevada 688, at page 672, 119 P.3d 1254,</p> <p>4 at page 1257, a 2005 case.</p> <p>5 The Certified Fire Protection court goes on to say,</p> <p>6 "A meeting of the minds exists when the parties have</p> <p>7 agreed upon the contract's essential terms," citing</p> <p>8 Roth versus Scott, 112 Nevada 1078, at page 1083, 921</p> <p>9 P.2d 1262, at page 1265, a 1996 case.</p> <p>10 The Certified Fire Protection court goes on to</p> <p>11 state, "Which terms are essential," quote, "depends on</p> <p>12 the agreement and its context and also on the</p> <p>13 subsequent conduct of the parties, including the</p> <p>14 dispute which arises and the remedies sought," close</p> <p>15 quote, citing the Restatement (Second) of Contracts at</p> <p>16 Section 131 from 1981.</p> <p>17 Quote, "Whether a contract exists is a question of</p> <p>18 fact requiring this court," that being the supreme</p> <p>19 court, "to defer to the district court's findings</p> <p>20 unless they are clearly erroneous or not based on</p> <p>21 substantial evidence," close quote, citing back to May</p> <p>22 versus Anderson at page 672 to 673 of the Nevada</p> <p>23 Reporter and at page 1257 of the Pacific Third</p> <p>24 Reporter.</p>

<p style="text-align: right;">Page 26</p> <p>1 The Certified Fire Protection court goes on to</p> <p>2 state at page 379 of the Nevada Reporter and at page</p> <p>3 255 of the Pacific Third Reporter, quote, "When</p> <p>4 essential terms such as these have yet to be agreed</p> <p>5 upon by the parties, a contract cannot be formed,"</p> <p>6 close quote, citing to Nevada Power Company versus</p> <p>7 Public Utility Commission, 122 Nevada 821, at 839 to</p> <p>8 840, 138 P.3d 46, at page 498 to 499, a 2006 case.</p> <p>9 So in order to have a contract, you need to have</p> <p>10 those basic principles. You need to have offer and</p> <p>11 acceptance, a meeting of the minds and consideration.</p> <p>12 The Court finds that in this case it simply has not</p> <p>13 been demonstrated that there actually was an offer and</p> <p>14 an acceptance between Mr. Skarpelos and WAM. It simply</p> <p>15 is not there. Further, the Court finds that there is</p> <p>16 no meeting of the minds as to the relevant terms or</p> <p>17 essential terms of the contract.</p> <p>18 The testimony of the parties was certainly</p> <p>19 inconsistent, but the Court finds that the Weiser</p> <p>20 entities and WAM specifically have failed to prove by a</p> <p>21 preponderance of the evidence that there was in fact a</p> <p>22 contract that existed between them and Mr. Skarpelos.</p> <p>23 I'll state again, it may be that there is some</p> <p>24 record out there in all of the records, the boxes and</p>	<p style="text-align: right;">Page 27</p> <p>1 boxes that are contained somewhere in the Bahamas that</p> <p>2 Mr. Livadas testified to that may demonstrate what the</p> <p>3 contract was or what the terms were, that there was an</p> <p>4 agreement. There may be some digital record, an email</p> <p>5 or a cell phone conversation or a text that exists.</p> <p>6 Mr. Livadas testified that he had repeated contact</p> <p>7 with Mr. Skarpelos. There is an exhibit with multiple</p> <p>8 screen shots of interaction between Mr. Skarpelos and</p> <p>9 Mr. Livadas. I have no idea what the contents of those</p> <p>10 are. The screen shot itself wasn't offered to support</p> <p>11 the truth of the matter asserted, that is, that there</p> <p>12 are conversations, it's just this is what he says the</p> <p>13 screen shot looked like. So I just don't know. It</p> <p>14 just hasn't been demonstrated.</p> <p>15 Regarding Mr. Livadas's testimony that there was</p> <p>16 evidence there, it just couldn't be admitted for</p> <p>17 privacy or for privilege reasons, the Court would say</p> <p>18 that that is not necessarily accurate. As we discussed</p> <p>19 earlier, there are ways that you can redact or edit or</p> <p>20 seal information.</p> <p>21 So the fact that Mr. Livadas simply chose not to</p> <p>22 provide documents that he says he has because it's</p> <p>23 privileged information frankly is not persuasive.</p> <p>24 Either the discovery commissioner or I could have</p>
<p style="text-align: right;">Page 28</p> <p>1 worked with the parties if in fact that became an</p> <p>2 issue. But as I sit here right now, the Court finds</p> <p>3 simply that those basic contract principles as</p> <p>4 identified in the Certified Fire Protection case are</p> <p>5 not present.</p> <p>6 In order to establish a breach of contract cause of</p> <p>7 action the parties need to demonstrate the following:</p> <p>8 Number one, that there is the existence of a valid</p> <p>9 contract. Number two, that that contract had been</p> <p>10 breached by the defendant in this case, Mr. Skarpelos.</p> <p>11 And, number 3, that damage resulted as -- there were</p> <p>12 damages as a result of the breach.</p> <p>13 Mr. Nork cites Saini versus International Game</p> <p>14 Technology, 434 F.Supp.2d 913, at page 919 to 920, a</p> <p>15 2006 case, from the Federal District of Nevada. I</p> <p>16 think that is an accurate statement of the law and the</p> <p>17 Court does adopt it. However, there is no breach of</p> <p>18 contract in this case because the Court finds there is</p> <p>19 not -- it has not been demonstrated that there is a</p> <p>20 valid contract between the parties. Therefore, the</p> <p>21 Court finds that the breach of contract cause of action</p> <p>22 fails.</p> <p>23 In order to succeed on a breach of the implied</p> <p>24 covenant of good faith and fair dealing, Mr. Nork</p>	<p style="text-align: right;">Page 29</p> <p>1 accurately cites to the following elements for that</p> <p>2 cause of action: Number one, that the plaintiff and</p> <p>3 the defendant were parties to an agreement. Number</p> <p>4 two, the defendant owed a duty of good faith to the</p> <p>5 plaintiff. Number three, the defendant breached that</p> <p>6 duty by performing in a manner that was unfaithful to</p> <p>7 the purpose of the contract. And, number four, that</p> <p>8 the plaintiffs' justified expectations were denied.</p> <p>9 That is a citation basically back to Hilton Hotels</p> <p>10 versus Butch Lewis Productions, Incorporated, which is</p> <p>11 808 P.2d 919, at page 923.</p> <p>12 One moment.</p> <p>13 The Nevada citation for the Butch Lewis case is 107</p> <p>14 Nevada 226. So when you prepare your findings of fact</p> <p>15 you can have both, you can include the Nevada citation,</p> <p>16 but I was reading from his pleadings.</p> <p>17 Additionally, the Court notes that in the Certified</p> <p>18 Fire Protection case it can be argued that there was a</p> <p>19 contract based upon -- or a contract implied-in-fact.</p> <p>20 Beginning at page 379 of the Nevada Reporter and page</p> <p>21 256 of the Pacific Third Reporter, the Nevada Supreme</p> <p>22 Court says the following: Quote, "Thus, quantum</p> <p>23 meruit's first application is in actions based upon</p> <p>24 contracts implied-in-fact. A contract implied-in-fact</p>

<p style="text-align: right;">Page 30</p> <p>1 must be," quote, "manifested by conduct," close quote, 2 citing to Smith versus Recrion, R-e-c-r-i-o-n, 3 Corporation, 91 Nevada 666, at page 668, 541 P.2d 663, 4 at page 664, a 1975 case, and Hay versus Hay, 100 5 Nevada 196, at page 198, 678 P.2d 672, at page 674, a 6 1984 case.</p> <p>7 Then the Nevada Supreme Court goes on to state, 8 quote, "It is a true contract that arises from the 9 tacit agreement of the parties. To find a contract 10 implied-in-fact, the fact-finder must conclude that the 11 parties intended to contract and promises were 12 exchanged, the general obligations for which must be 13 sufficiently clear. It is at that point that a party 14 may invoke quantum meruit as a gap-filler to supply the 15 absent term," citing a number of cases in other 16 treatises.</p> <p>17 The Court goes on to say, "Where such a contract 18 exists, then, quantum meruit ensures that the laborer 19 receives the reasonable value, usually the market 20 price, for his services," citing to Restatement (Third) 21 of Restitution and Unjust Enrichment.</p> <p>22 However, the Court in this case, I'm saying I, 23 cannot find that there is a contract implied-in-fact, 24 because I cannot conclude that the parties intended to</p>	<p style="text-align: right;">Page 31</p> <p>1 contract with each other and that promises were 2 exchanged based on the evidence that has been presented 3 in this case.</p> <p>4 We already know based on the testimony it's not 5 exactly clear who allegedly even purchased the stock. 6 Was it WAM or was it Weiser Capital? I appreciate the 7 argument Mr. Nork makes that it really doesn't matter 8 which one. I'm just paraphrasing there. But I think 9 it does matter. I think that the parties have to be 10 identified. It has to be at least clear in the Court's 11 mind who it is that Mr. Skarpelos allegedly was 12 contracting with.</p> <p>13 If we can't even establish that basic premise, then 14 the Court doesn't find that you can get to an oral 15 contract, a contract implied-in-fact or an actual 16 contract. And certainly the parties can't -- if we 17 can't get to that point, we can't get over that hurdle 18 and we can't even address whether or not there was a 19 meeting of the minds or what the terms were. But as I 20 stated earlier, I can't even conclude that there was a 21 meeting of the minds in the first place.</p> <p>22 Additionally, regarding declaratory relief -- 23 Hold on.</p> <p>24 The Court will cite the parties to a number of</p>
<p style="text-align: right;">Page 32</p> <p>1 Nevada cases --</p> <p>2 One moment. I had it right here.</p> <p>3 -- regarding equity and what courts should look at 4 when sitting in courts of equity. In Shadow Wood 5 Homeowners Association versus New York Community 6 BanCorp, which is 132 Nevada Advance Opinion 5, 366 7 P.3d 1105, at page 1114, a 2016 case, the Nevada 8 Supreme Court states, quote, "When sitting in equity, 9 however, courts must consider the entirety of the 10 circumstances that bear upon the equities." And I'll 11 omit the citations there.</p> <p>12 The Court goes on to state, "This includes 13 considering the status of action of all parties 14 involved, including whether an innocent party may be 15 harmed by granting the desired relief," citing Smith 16 versus United States, 373 F.2d 419, at page 424, a 17 Fourth Circuit case from 1966, wherein the Fourth 18 Circuit concluded, quote, "Equitable relief will not be 19 granted to the possible detriment of an innocent third 20 party."</p> <p>21 Additionally, the Court notes when it sits in 22 equity, according to a case by the name of MacDonald 23 versus Krause, K-r-a-u-s-e, 77 Nevada 312, at page 318, 24 362 P.2d 724, at page 727, a 1961 case, the Nevada</p>	<p style="text-align: right;">Page 33</p> <p>1 Supreme Court stated that "It is a recognized province 2 of the courts of equity to do complete justice between 3 the parties."</p> <p>4 In Landex, L-a-n-d-e-x, versus the State, 94 Nevada 5 469, at page 477, 582 P.2d 786, at page 791, a 1978 6 case, the Nevada Supreme Court acknowledged, quote, "A 7 court has the inherent power ancillary to its general 8 equity jurisdiction to order restitution in an 9 appropriate case."</p> <p>10 Additionally, the parties acknowledged in their 11 trial statements accurately that simply because the 12 Court denies equitable relief for one party doesn't 13 mean that the other party, in this case Mr. Skarpelos, 14 ipso facto wins or prevails totally. Each party with 15 their declaratory relief has an obligation to 16 demonstrate to the Court it is entitled to relief.</p> <p>17 Mr. Nork accurately cites to Balish, B-a-l-i-s-h, 18 versus Farnham, F-a-r-n-h-a-m, 92 Nevada 133, at page 19 137, 546 P.2d 1297, at page 1299, a 1976 case, for the 20 proposition, quote, "Interpleader is an equitable 21 proceeding to determine the rights of rival claimants 22 to property held by a third person having no interest 23 therein."</p> <p>24 Then he goes on to state, and the Court agrees, "In</p>

<p style="text-align: right;">Page 34</p> <p>1 an interpleader action," quote, "each claimant is 2 treated as a plaintiff and must recover on the strength 3 of his own right to title and not upon the weakness of 4 his adversaries." That is citing back to page -- the 5 same page of the Balish case. 6 "Further, each claimant must succeed in 7 establishing his right to the property by a 8 preponderance of the evidence." That is citing to 9 Midland Insurance Company versus Friedgood, 10 F-r-i-e-d-g-o-o-d, 577 F.Supp.1047 -- strike that -- 11 1407 at 1411, a 1984 case, from the Southern District 12 of New York. 13 In looking at Mr. Anderson's pleadings and also his 14 trial statement, he basically offers the same analysis 15 regarding the interpleader action and, that is, that 16 each side really must establish its right or interest 17 in the property. 18 The Court would also note that the parties have 19 agreed and both acknowledge that the Court is able to 20 fashion a remedy that isn't solely Mr. Skarpelos having 21 the stock back and WAM or Mr. Livadas or Weiser Capital 22 receiving nothing. I don't just simply put the parties 23 back in the position that they were which was what 24 Mr. Anderson's suggestion was in his trial statement</p>	<p style="text-align: right;">Page 35</p> <p>1 and in his argument. 2 The Court does acknowledge that because there is no 3 contract of sale between WAM and Mr. Skarpelos, the 4 shares themselves when they were sold and, therefore, 5 Mr. Skarpelos's interest in Stock Certificate 753 has 6 not changed based on the Court's determination that no 7 contract existed. However, the Court has also noted 8 that it does believe that Mr. Skarpelos had an account 9 with Weiser Asset Management or WAM, that he was in a 10 negative balance position, that something occurred and 11 that he was credited \$249,480. 12 Therefore, it is the order of the Court as follows: 13 That Weiser Asset Management or WAM and Weiser Capital, 14 their claims for contract, for declaratory relief and 15 for the implied covenant of good faith and fair dealing 16 are dismissed as having not been proven by a 17 preponderance of the evidence. 18 It is an additional order of the Court that 19 Mr. Skarpelos's single cause of action for declaratory 20 relief is granted. The Court finds that Mr. Skarpelos 21 is the owner of the disputed shares of stock that have 22 been interpled by NATCO in this proceeding. 23 The Court also pursuant to its equitable 24 jurisdiction resolves the issue between the parties as</p>
<p style="text-align: right;">Page 36</p> <p>1 follows: The Court finds that as an additional 2 determination, sitting as a court of equity, that 3 Mr. Skarpelos does in fact owe Weiser Asset Management 4 \$250,000 -- I shouldn't say 250 -- I should say 5 \$249,580, because the Court does conclude based on the 6 testimony that even though there wasn't a contract 7 between WAM and Mr. Skarpelos, WAM did give that money 8 to Mr. Skarpelos, either directly, as demonstrated by 9 Exhibit No. 44, or through the findings that the Court 10 has made that the money was going to Mr. Pedafonimos 11 and then presumably Mr. Pedafonimos is giving it 12 somehow to Mr. Skarpelos. 13 So the Court fashions a remedy that I believe is 14 appropriate under the circumstances and, that is, that 15 Mr. Skarpelos should be disgorged of those funds that 16 were given to him from his account. 17 The Court notes that the initial portion of the 18 funds were a liquidation of his negative balance with 19 Weiser Asset Management in the amount of \$153,679.54. 20 Correct that, because there was a wire transfer fee as 21 well. So the actual negative balance as of March 25th 22 of 2013 was \$153,804.54. Then when there is the credit 23 of \$249,580, that brings him to a positive account 24 balance of \$95,775.46.</p>	<p style="text-align: right;">Page 37</p> <p>1 There was no testimony at the trial that disputed 2 that at the end of the last withdrawal, which was the 3 \$7,500 Euro withdrawal and a \$125 transaction fee on 4 September 18th of 2013, Mr. Skarpelos wound up having a 5 cash positive balance of \$4,115.36. 6 So one moment. Let me do some quick math here on 7 the bench. 8 I hadn't taken that cash balance into consideration 9 at the time that I had made my conclusion regarding the 10 actual amount of restitution or disgorgement, I should 11 say, that Mr. Skarpelos must pay. So when I subtract 12 the balance of \$4,115.36, because I heard no testimony 13 to the contrary and I assume that balance still exists, 14 I come up with \$245,464.64. That's the 249,580 less 15 \$4,115.36. 16 If I did the math incorrectly, I apologize, 17 gentlemen, but it's my intention that he, 18 Mr. Skarpelos, return to Weiser Asset Management those 19 funds, because the Court finds that it has at least 20 been demonstrated to me that although there was no 21 contract in place, he certainly was advanced those 22 sums. 23 Additionally, the Court finds that allowing 24 Mr. Skarpelos to both retain the stock and to have no</p>

<p style="text-align: right;">Page 38</p> <p>1 responsibility regarding the monies that were forwarded 2 to him is an unreasonable windfall to Mr. Skarpelos. 3 As I said, I just simply did not find his statements to 4 be credible that throughout all of these transactions 5 with Mr. Livadas he never received a dime, no money 6 ever came to him, that he has no idea why these debits 7 were being placed on his account, that he never raised 8 any of these issues with Mr. Livadas. I just found it 9 to be frankly unconvincing.</p> <p>10 And so he shouldn't be entitled to both the 11 windfall of keeping the stock, because the Court finds 12 that there was no contract whatsoever, and the 13 associated benefit of simply saying, "Oh, and, by the 14 way, I get to keep the \$250,000 that you forwarded to 15 me on my account." And, therefore, the Court finds 16 that it is the equitable thing to do under the 17 circumstances to force Mr. Skarpelos to disgorge those 18 funds.</p> <p>19 Additionally, the Court orders that Mr. Skarpelos 20 shall not transfer, sell, gift, bequest, or in any 21 other way dispose of or liquidate any of his Anavex 22 stock until he has paid WAM the money back. And that 23 is the only portion of the Court's judgment that, 24 counsel, I would allow you to give me some additional</p>	<p style="text-align: right;">Page 39</p> <p>1 research on, because what I don't want to do is create 2 an issue in the case that causes needless difficulty, 3 but I also don't want Mr. Skarpelos to be able to just 4 now continue to liquidate all of his stock and not take 5 care of his responsibility as the Court has determined.</p> <p>6 I just want him to get WAM paid back the money I 7 think that they are owed. That's why I'm placing the 8 limitation on his ability to dispose of any of that 9 remaining stock that he identifies he still has. I 10 know he's given away a million and a half or two 11 million shares or something like that. He's given away 12 a good chunk of it was his testimony subsequent to the 13 failed or non-consummated sale to the mysterious 14 Chinese investors, but he still has a significant 15 amount of stock.</p> <p>16 And what I will do for the first time today 17 is look. I'm just curious. I remember the parties had 18 indicated that Anavex stock was trading at a much 19 higher rate than it had in the past. So let's see what 20 Anavex is trading at today.</p> <p>21 Anavex Life Science Corporation closed today at 22 \$2.08 a share. So parenthetically -- and it has no 23 impact on the Court's outcome, because I found that 24 there was no contract at all. I also don't think it</p>
<p style="text-align: right;">Page 40</p> <p>1 would be fair for WAM or Mr. Livadas or Weiser Capital 2 to have the unintended benefit of getting stock that's 3 trading at or near \$2 a share when the sale back in 4 2013 was -- as we discussed, it was like 8 cents a 5 share is what the parties came to. That wasn't the 6 intention of the parties at all.</p> <p>7 So that is the Court's finding. The Court finds in 8 favor of Mr. Skarpelos. The Court finds that 9 Mr. Skarpelos owes Mr. Livadas a little under \$250,000. 10 And the Court concludes that Mr. Skarpelos cannot 11 transfer any of his assets in Anavex until he pays 12 Mr. Livadas the money that is due and owing.</p> <p>13 Do you believe that you would like to brief that 14 final issue, Mr. Anderson?</p> <p>15 MR. ANDERSON: Yes, Your Honor. I guess I would 16 like to just think about it a little bit. It seems 17 almost like sort of a stay pending appeal. And I 18 haven't had a chance to really consider what the bond 19 implications may be. Normally Mr. Livadas would be 20 required to post some sort of a bond or to receive a 21 stay that Skarpelos not do anything with the stock.</p> <p>22 In this case at three million shares at \$2 a share 23 we're talking about \$6 million, well in excess of the 24 \$250,000 the Court has ordered. So I don't want to</p>	<p style="text-align: right;">Page 41</p> <p>1 extend this longer than necessary, but I do want to 2 have a chance to think about it and discuss with my 3 client and my colleagues and see if that's something 4 that needs to be briefed. I'm happy to do it on an 5 expedited basis so we can have finality to this, but I 6 would like an opportunity to consider it.</p> <p>7 THE COURT: I guess if it's selling at \$2 and 8 change a share, just go sell 100,000 or 125,000 shares 9 and it's all over with.</p> <p>10 Mr. Nork, what are your thoughts?</p> <p>11 MR. NORK: That's fine. I would like to look into 12 that as well. The only thing I would point out is 13 there was that four-to-one stock consolidation.</p> <p>14 THE COURT: That's right. So now there's only like 15 800,000 shares.</p> <p>16 MR. ANDERSON: And I had forgotten about that. 17 Mr. Nork is correct.</p> <p>18 THE COURT: That is correct, Mr. Nork. I had 19 completely forgotten about that. The Court would note 20 that the parties stated in their trial statements that 21 there was -- what? -- a four-to-one stock 22 consolidation.</p> <p>23 MR. NORK: Yes, Your Honor.</p> <p>24 THE COURT: So there are not as many shares out</p>

<p style="text-align: right;">Page 42</p> <p>1 there, but still, even assuming that he has -- by "he"</p> <p>2 I mean Mr. Skarpelos -- has give or take 800,000 shares</p> <p>3 or 500,000 shares, he can certainly make this good.</p> <p>4 You know, and it's funny when you raised that</p> <p>5 issue, Mr. Anderson, I hadn't really thought too much</p> <p>6 about an appeal. You're right, there's an appeal bond.</p> <p>7 I don't know if either party wishes to appeal the</p> <p>8 Court's decision. And I always tell people this: I am</p> <p>9 never offended if somebody appeals something that I do,</p> <p>10 because, I mean, that's your job. So if you want to</p> <p>11 appeal, go ahead and appeal. I'm just concerned that</p> <p>12 Mr. Skarpelos would liquidate his assets unnecessarily</p> <p>13 or make it more difficult to reimburse WAM for the</p> <p>14 money that was forwarded to him on his account.</p> <p>15 MR. NORK: Your Honor, the other thing that occurs</p> <p>16 to me is I have a vague recollection that the order</p> <p>17 dismissing NATCO provides that they are not going to do</p> <p>18 anything until all appeals have run. So if NATCO -- I</p> <p>19 mean, they deposited the stock certificate with Your</p> <p>20 Honor, but it seems to me to have been contemplated by</p> <p>21 the parties that nothing was going to happen with the</p> <p>22 stock until all appeals had run anyway.</p> <p>23 THE COURT: Well, then maybe I'll just withdraw the</p> <p>24 caveat that Mr. Skarpelos not dispose of any of his</p>	<p style="text-align: right;">Page 43</p> <p>1 shares if that's the case, Mr. Nork.</p> <p>2 MR. NORK: You know, I would like to take a closer</p> <p>3 look at that stip, if you don't mind, before that.</p> <p>4 THE COURT: Okay. I'll let the parties brief that.</p> <p>5 If that is the stipulation that's in place, then the</p> <p>6 Court's order regarding the disposition of</p> <p>7 Mr. Skarpelos's interest in Anavex would be moot</p> <p>8 anyway, so it would just be creating an issue that I</p> <p>9 don't want to do. I like solving problems, not</p> <p>10 creating them.</p> <p>11 So if that is the case, gentlemen, if NATCO -- if</p> <p>12 NATCO is not going to do anything regarding the stock</p> <p>13 at all with Anavex until all of this is resolved</p> <p>14 through appeal, then it's probably moot, I think,</p> <p>15 Mr. Nork, but I'll give you the opportunity to give</p> <p>16 that a look.</p> <p>17 MR. NORK: Thank you, Your Honor.</p> <p>18 THE COURT: So if you could just contact</p> <p>19 Ms. Mansfield after you look at that and let me know.</p> <p>20 I'll leave that open.</p> <p>21 Mr. Anderson, I'll direct you to prepare the</p> <p>22 findings of fact and conclusions of law and the order</p> <p>23 for the Court's signature. And if you could wait to do</p> <p>24 the final draft until Mr. Nork looks at that. So,</p>
<p style="text-align: right;">Page 44</p> <p>1 counsel, if you could just confer with each other.</p> <p>2 Mr. Nork, if you think it's moot or would just</p> <p>3 create a bigger issue than is necessary, then just let</p> <p>4 Mr. Anderson know that and he can eliminate that</p> <p>5 portion of the Court's decision. If, however, you want</p> <p>6 to leave it in, Mr. Nork, and, Mr. Anderson, you don't</p> <p>7 want it in there and you guys want to fight about it,</p> <p>8 contact me and let me know.</p> <p>9 I say "fight" in the most civil and professional</p> <p>10 way as you guys have been throughout these proceedings.</p> <p>11 If you want to discuss it with me, we can set a brief</p> <p>12 hearing and resolve it that way.</p> <p>13 Mr. Anderson, do you need any additional</p> <p>14 information from the Court to prepare the findings of</p> <p>15 fact and conclusions of law and the order?</p> <p>16 MR. ANDERSON: I don't believe so, Your Honor.</p> <p>17 I'll request a copy of the transcript from the court</p> <p>18 reporter and get to work.</p> <p>19 THE COURT: And I would also note that if there are</p> <p>20 additional legal principles that you have cited in your</p> <p>21 brief regarding any of the legal issues that I have</p> <p>22 addressed, you can certainly include those in the</p> <p>23 findings of fact, because I always review them. You</p> <p>24 know, I don't just sign what you guys give me. I</p>	<p style="text-align: right;">Page 45</p> <p>1 actually go back and look at it myself.</p> <p>2 And so if I think that there's something in there</p> <p>3 that is an inaccurate statement of the law or that</p> <p>4 doesn't apply under the circumstances, I will direct</p> <p>5 that it be removed, but I think I've covered all of the</p> <p>6 basic legal principles regarding both the contract</p> <p>7 issues, the implied contract that Mr. Nork raised, oral</p> <p>8 contract -- there was no oral contract that the Court</p> <p>9 found -- and additionally the equitable principles that</p> <p>10 we've talked about. So I think I hit on all the main</p> <p>11 principles, legal principles, and I've also given you</p> <p>12 the findings regarding the facts in the case.</p> <p>13 Do you need anything else regarding the facts?</p> <p>14 MR. ANDERSON: I don't believe so. I think the</p> <p>15 Court made sufficient facts to support the findings of</p> <p>16 fact to support the judgment it reached with respect to</p> <p>17 the claims by Weiser. I think I'm prepared to make the</p> <p>18 draft according to the Court's finding.</p> <p>19 THE COURT: Mr. Nork, anything that you would like</p> <p>20 me to clarify? I know -- it's funny. I don't expect</p> <p>21 you to agree with the decision. But regarding the</p> <p>22 Court's conclusion and the analysis that the Court went</p> <p>23 through, is there anything that I can clarify for you</p> <p>24 in order to make Mr. Anderson's job easier? I would</p>

<p style="text-align: right;">Page 46</p> <p>1 rather just solve the issue now as we're talking about</p> <p>2 it rather than Mr. Anderson going to draft it, then</p> <p>3 there's a dispute, then you've got to call me. I mean,</p> <p>4 as you sit here is there anything I've identified that</p> <p>5 you would like me to clarify?</p> <p>6 MR. NORK: Nothing leaps to mind, Your Honor. I</p> <p>7 too would like a copy of the transcript, though, so I</p> <p>8 can view it along with the proposed findings.</p> <p>9 THE COURT: Okay, gentlemen. Regarding the Stock</p> <p>10 Certificate 753, we have the original. The Court has</p> <p>11 the original. However, the Court would also note that</p> <p>12 actually that doesn't represent the current shares of</p> <p>13 stock in Anavex. I think the current shares of stock</p> <p>14 in Anavex are now 975.</p> <p>15 MR. NORK: That's true, Your Honor.</p> <p>16 THE COURT: But I'm not just going to get rid of</p> <p>17 that, just so you know.</p> <p>18 And, ma'am, I apologize. I know you've been here</p> <p>19 for the whole proceedings. You're here on behalf of</p> <p>20 NATCO; correct?</p> <p>21 MS. CARDINALLI: Yes. I'm Amanda Cardinalli. I'm</p> <p>22 the president of NATCO.</p> <p>23 THE COURT: And you're Mr. Walker's sister?</p> <p>24 MS. CARDINALLI: I am.</p>	<p style="text-align: right;">Page 47</p> <p>1 THE COURT: Excellent. Thank you for being here,</p> <p>2 Ms. Cardinalli.</p> <p>3 I don't want to do anything with the stock</p> <p>4 certificate at this moment. At the conclusion of the</p> <p>5 proceedings, which means all the way through the</p> <p>6 appeals process or until the parties direct me</p> <p>7 otherwise, Exhibit 753 will remain in the possession of</p> <p>8 the court. But as we already know, NATCO issued Stock</p> <p>9 Certificate 975. So now this additional certificate is</p> <p>10 out there. It's a problem.</p> <p>11 Ms. Cardinalli, what would you like to say?</p> <p>12 MS. CARDINALLI: I would like to say it's in</p> <p>13 electronic format. It is not in a physical</p> <p>14 certificate.</p> <p>15 THE COURT: 975?</p> <p>16 MS. CARDINALLI: Yes, the replacement shares.</p> <p>17 THE COURT: Okay.</p> <p>18 MR. NORK: Your Honor, it adds an additional layer</p> <p>19 of complication and one that I will have to keep in</p> <p>20 mind when I review the stipulation signed by NATCO and</p> <p>21 the other parties to see how that interplays at all.</p> <p>22 And I will be in touch with Mr. Anderson and with Your</p> <p>23 Honor about whatever I find.</p> <p>24 THE COURT: What are your thoughts on that,</p>
<p style="text-align: right;">Page 48</p> <p>1 Mr. Anderson?</p> <p>2 MR. ANDERSON: I think it's proper to be, I guess,</p> <p>3 pragmatic about how we approach this. I don't disagree</p> <p>4 with Mr. Nork that I need to revisit the stipulation on</p> <p>5 how we are going to dispose of the issue of the stock</p> <p>6 vis-a-vis NATCO. So we have time while we're reviewing</p> <p>7 the transcript to discuss the issue and figure out how</p> <p>8 to best approach it from our standpoint and also</p> <p>9 addressing it with NATCO. So I think we'll just take</p> <p>10 the time to hash that issue out while we put together</p> <p>11 the proposed findings of fact for the Court's</p> <p>12 consideration.</p> <p>13 THE COURT: Thank you, Mr. Anderson.</p> <p>14 The Court will retain possession of the interpled</p> <p>15 stock certificate until the Court decides what to do</p> <p>16 with it once the parties have reached an agreement or</p> <p>17 until I make a final determination.</p> <p>18 Ms. Cardinalli, regarding the certificate itself --</p> <p>19 this is just out of curiosity now based on your</p> <p>20 experience at NATCO. In the end, let's just assume</p> <p>21 that the Court's determination is that Mr. Skarpelos is</p> <p>22 entitled to that stock -- or to those stocks in</p> <p>23 question and the stock certificate is given back to</p> <p>24 him. Would he just destroy the stock certificate? I</p>	<p style="text-align: right;">Page 49</p> <p>1 guess what I'm saying in another way is does that</p> <p>2 certificate, that piece of paper, have any value?</p> <p>3 MS. CARDINALLI: It would. He could take it -- not</p> <p>4 that he would do this.</p> <p>5 THE COURT: Theoretically.</p> <p>6 MS. CARDINALLI: Theoretically he could take it and</p> <p>7 sell it again. And if that broker didn't contact my</p> <p>8 office and confirm that it was a valid certificate, it</p> <p>9 could be sold in the market and a third party, a bona</p> <p>10 fide purchaser, could be hurt.</p> <p>11 So I would like at the conclusion of this -- let's</p> <p>12 say Mr. Skarpelos does -- is entitled to the</p> <p>13 certificate. I would ask Mr. Skarpelos to return it to</p> <p>14 me to mark it canceled on the books, which it is marked</p> <p>15 canceled on the books, but the physical certificate</p> <p>16 would come back and be kept in the records so a third</p> <p>17 party could not be hurt.</p> <p>18 THE COURT: Right. That was my concern in a</p> <p>19 general sense is that it could be negotiated somehow to</p> <p>20 someone who doesn't know that it has been</p> <p>21 dematerialized and now it's in the digital form as 975.</p> <p>22 And then 975 may have been sold in parts over time or,</p> <p>23 as Mr. Skarpelos testified in this case, I think he's</p> <p>24 gifted some of it, sold some of it, has some of it. So</p>

<p style="text-align: right;">Page 50</p> <p>1 exactly who owns all the shares is in question.</p> <p>2 So it might be in the end that the Court will not</p> <p>3 return the stock certificate to Mr. Skarpelos. It</p> <p>4 might be that the Court returns it to Mr. Anderson</p> <p>5 theoretically to return to NATCO to have NATCO take any</p> <p>6 action in accordance with the Exhibits 13, 14, 15 and I</p> <p>7 think 16 which demonstrate the dematerialization -- the</p> <p>8 reissuance of Stock Certificates No. 660 and No. 753</p> <p>9 and then the issuance of Stock Certificate 975 in the</p> <p>10 total of amount of 6,725,832 shares of which Mr. Nork</p> <p>11 has already identified we've had a consolidation, so</p> <p>12 there are not even that many shares left. It's clear</p> <p>13 as mud as they say.</p> <p>14 Okay, gentlemen. I would again like to emphasize</p> <p>15 to the three of you certainly how impressed I have been</p> <p>16 with the presentation of this case, with your</p> <p>17 professionalism towards each other and with your</p> <p>18 collegiality with the Court. I really do truly</p> <p>19 appreciate that.</p> <p>20 The three of you have demonstrated to me that you</p> <p>21 can disagree without being disagreeable, you can be</p> <p>22 advocates and strongly advocate on behalf of your</p> <p>23 clients and it doesn't mean that you have to be</p> <p>24 unprofessional. So I think that all of you have</p>	<p style="text-align: right;">Page 51</p> <p>1 handled yourselves in a commendable way in this case</p> <p>2 and made a complex case both interesting and, dare I</p> <p>3 say, enjoyable for the Court to listen to. I actually</p> <p>4 really did enjoy it.</p> <p>5 That probably is even stranger than Mr. LaForge's</p> <p>6 comment that he wants to come to talk to me about the</p> <p>7 hearsay rule. I don't know if Mr. LaForge wants to</p> <p>8 inform me about the hearsay rule or just to chat. But</p> <p>9 either way, now that it's over with, Mr. Nork, if you</p> <p>10 want to tell Mr. LaForge to come on over and we'll talk</p> <p>11 about hearsay.</p> <p>12 MR. NORK: I will let him know, Your Honor.</p> <p>13 THE COURT: I love hearsay. We'll go from there.</p> <p>14 Counsel, court is in recess. Thank you very much.</p> <p>15 (The proceedings were concluded at 4:17 p.m.)</p> <p>16 --oOo--</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 style="text-align: right;">Page 52</p> <p>1 STATE OF NEVADA)</p> <p>2) ss.</p> <p>3 COUNTY OF WASHOE)</p> <p>4</p> <p>5 I, LORI URMSTON, Certified Court Reporter, in and</p> <p>6 for the State of Nevada, do hereby certify:</p> <p>7 That the foregoing proceedings were taken by me</p> <p>8 at the time and place therein set forth; that the</p> <p>9 proceedings were recorded stenographically by me and</p> <p>10 thereafter transcribed via computer under my</p> <p>11 supervision; that the foregoing is a full, true and</p> <p>12 correct transcription of the proceedings to the best</p> <p>13 of my knowledge, skill and ability.</p> <p>14 I further certify that I am not a relative nor an</p> <p>15 employee of any attorney or any of the parties, nor am</p> <p>16 I financially or otherwise interested in this action.</p> <p>17 I declare under penalty of perjury under the laws</p> <p>18 of the State of Nevada that the foregoing statements</p> <p>19 are true and correct.</p> <p>20 DATED: At Reno, Nevada, this 8th day of</p> <p>21 February, 2019.</p> <p>22</p> <p>23 LORI URMSTON, CCR #51</p> <p>24</p> <p>25 LORI URMSTON, CCR #51</p>	<p style="text-align: right;">Page 53</p> <p>1 HEALTH INFORMATION PRIVACY & SECURITY: CAUTIONARY NOTICE</p> <p>2 Litigation Services is committed to compliance with applicable federal</p> <p>3 and state laws and regulations ("Privacy Laws") governing the</p> <p>4 protection and security of patient health information. Notice is</p> <p>5 hereby given to all parties that transcripts of depositions and legal</p> <p>6 proceedings, and transcript exhibits, may contain patient health</p> <p>7 information that is protected from unauthorized access, use and</p> <p>8 disclosure by Privacy Laws. Litigation Services requires that access,</p> <p>9 maintenance, use, and disclosure (including but not limited to</p> <p>10 electronic database maintenance and access, storage, distribution/</p> <p>11 dissemination and communication) of transcripts/exhibits containing</p> <p>12 patient information be performed in compliance with Privacy Laws.</p> <p>13 No transcript or exhibit containing protected patient health</p> <p>14 information may be further disclosed except as permitted by Privacy</p> <p>15 Laws. Litigation Services expects that all parties, parties'</p> <p>16 attorneys, and their HIPAA Business Associates and Subcontractors will</p> <p>17 make every reasonable effort to protect and secure patient health</p> <p>18 information, and to comply with applicable Privacy Law mandates,</p> <p>19 including but not limited to restrictions on access, storage, use, and</p> <p>20 disclosure (sharing) of transcripts and transcript exhibits, and</p> <p>21 applying "minimum necessary" standards where appropriate. It is</p> <p>22 recommended that your office review its policies regarding sharing of</p> <p>23 transcripts and exhibits - including access, storage, use, and</p> <p>24 disclosure - for compliance with Privacy Laws.</p> <p>25 © All Rights Reserved. Litigation Services (rev. 6/1/2019)</p>

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

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

2/6/19
HONORABLE
ELLIOTT A.
SATTLER
DEPT. NO. 10
M. Merkouris
(Clerk)
L. Urmston
(Reporter)

DECISION HEARING

3:02 p.m. – Court convened.

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

Dane Anderson, Esq., and Seth Adams, Esq., were present on behalf of Cross-Claimant Anthanasios Skarpelos.

COURT noted that the case was taken under advisement at the conclusion of the bench trial on February 1, 2019, and this is the time set for the Court to rule on the matter.

COURT set forth findings of fact and conclusions of law.

COURT ORDERED: Weiser's claims are dismissed; Mr. Skarpelos' claim is granted.

COURT FURTHER ORDERED: Mr. Skarpelos shall pay Weiser \$245,464.64.

COURT FURTHER ORDERED: Mr. Skarpelos shall not transfer, sell, gift, bequest, or in any way dispose of his Anavex stock until he has repaid Weiser the \$245,464.64; however, if after respective counsel have researched this issue, they may contact the Department Ten Judicial Assistant, Ms. Mansfield, and advise if this requirement is unnecessary, and if they agree that this condition should be eliminated, they shall submit a stipulation to the Court.

COURT FURTHER ORDERED: The Court shall retain stock certificate #753 during the pendency of this case.

Counsel Anderson shall prepare the order.

4:19 p.m. – Court adjourned.

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

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

3/14/19
HONORABLE
ELLIOTT A.
SATTLER
DEPT. NO. 10
M. Merkouris
(Clerk)
Not reported

CONFERENCE CALL

2:30 p.m. – Court convened in chambers.

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

Dane Anderson, Esq., and Seth Adams, Esq., were present telephonically on behalf of Cross-Claimant Anthanasios Skarpelos.

Counsel Anderson advised the Court that the proposed Findings of Fact and Conclusions of Law is almost completed, however the attorneys are not in agreement with what language they should use regarding the Court's Order that Mr. Skarpelos not do anything with his Anavex stock until he has repaid Weiser the \$245,464.64.

COURT advised respective counsel that it was not his intention to complicate things with this provision, and he will allow the attorneys to brief this limited issue if they wish. Counsel Nork suggested that they submit the agreed upon proposed Findings of Fact and Conclusions of Law to the Court, with the only thing left out being the portion regarding the restriction on Mr. Skarpelos doing anything with his Anavex stock pending the payment to Weiser, and that they be allowed to submit supplemental briefs on that issue; the Court could then review the briefs, decide which language is appropriate, and finalize the Findings of Fact and Conclusions of Law.

Counsel Anderson had no objection to this proposal.

COURT ORDERED: Respective counsel shall be allowed to file supplemental briefs on this limited issue (not to exceed 10 pages in length), and they shall be submitted to the Court, along with the proposed Findings of Fact and Conclusions of Law, no later than 5:00 p.m. on April 8, 2019.

2:45 p.m. – Court adjourned.

1 **2630**

2 Jeremy J. Nork (SBN 4017)
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6 Attorneys for Defendants/Cross-claimants Weiser

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

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

Case No. CV15 02259

Dept. No. 10

12 Plaintiff,

13 v.
14

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

20 Defendants.

21 AND RELATED ACTIONS.

22 **DEFENDANTS/CROSS-CLAIMANTS WEISER'S OBJECTIONS TO FINDINGS
23 OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

24 Defendants/Cross-claimants (collectively, "Weiser"), hereby object to the proposed
25 Findings of Fact, Conclusions of Law, and Judgment submitted to the Court by
26 Defendant/Cross-claimant Athanasios Skarpelos ("Skarpelos") on or about March 18, 2019,
27 attached hereto as **Exhibit 1**.¹

28 ¹ On March 14, 2019, the Court conducted a telephonic status conference wherein the parties discussed the necessity and content of a proposed final paragraph to be added to the end of the Findings of Fact, Conclusions of Law, and

OBJECTIONS

1
2 1. Findings of Fact, Conclusions of Law, and Judgment at page 3, line 19: “On
3 April 2, 2013, there was a sale of 3,316,666 shares of Skarpelos’ Anavex stock represented
4 by Certificate 753 to an unidentified third party.”

5 Weiser’s proposal: “On April 2, 2013, there was a sale of 3,316,666 shares of
6 Skarpelos’ Anavex stock represented by Certificate 753 ~~to an unidentified third party.~~”

7 In the Transcript of Proceedings (the “Transcript”, attached hereto as **Exhibit 2**), the
8 Court’s finding is clear: “The Court also finds that there was a sale of 3,316,666 shares of
9 Anavex stock in April of 2013, specifically in April 2nd of 2013.” *Transcript* at 18:10-12.
10 Skarpelos’s addition of the phrase, “to an unidentified third party,” is unnecessary,
11 misleading, and does not reflect the Court’s ruling. Elsewhere, in two separate findings, the
12 Court notes that the stock was sold from Skarpelos, through Weiser Asset Management
13 (“WAM”), which then transferred the stock to another party. *Transcript* at 21:24-22:2 and
14 23:11-13. In other words, the party to whom Skarpelos sold the stock was not
15 “unidentified;” rather, it was WAM, which then immediately transferred the stock to a third
16 party. While it may be more accurate for the finding to be that “[o]n April 2, 2013, there
17 was a sale of 3,316,666 shares of Skarpelos’ Anavex stock represented by Certificate 753 to
18 WAM, which then transferred the stock to a third party,” Weiser’s above proposal is an
19 offered compromise.

20 2. Findings of Fact, Conclusions of Law, and Judgment at page 3, line 25: “The
21 withdrawn money was provided from Skarpelos’ WAM account to Pedafronimos, and
22 Pedafronimos withdrew that money through transactions in May, July, August and
23 September of 2013 and presumably gave that money to Skarpelos.”

24 Weiser’s proposal: “The withdrawn money was provided from Skarpelos’ WAM
25 account to Pedafronimos, and Pedafronimos withdrew that money through transactions in
26

27
28 Judgment. The Court ordered that briefing be submitted to address this issue. The instant objections are separate
and apart from the briefing ordered by the Court, which will be filed separately on or before April 8, 2019.

1 May, July, August and September of 2013 and presumptively gave that money to
2 Skarpelos.”

3 Skarpelos’s use of the word, “presumably,” simply does not reflect the holding of the
4 court, which is “that money was provided to Mr. Pedafronimos presumptively to be given to
5 Mr. Skarpelos.” *Transcript* at 19:15-17 (emphasis added). The Court’s choice of the word
6 “presumptively” connotes that such an arrangement is likely or plausible, whereas the
7 substitution by Skarpelos with the word “presumably” suggests a less certain conclusion.
8 Indeed, the Transcript specifically provides that “the Court finds that Mr. Skarpelos did
9 withdraw money or had people withdraw money on his behalf from the account.”
10 *Transcript* at 15:12-13. And elsewhere the Court explains that “I find that circumstantially
11 it’s reasonable to conclude that Mr. Pedafronimos was contacting Mr. Livadas and asking
12 Mr. Livadas to forward money to Mr. Pedafronimos. And that money would then logically
13 be given to Mr. Skarpelos for some reason. Again, it’s based on circumstantial evidence,
14 but circumstantial evidence is just as compelling as direct evidence. . . the Court simply
15 finds that it’s reasonable to conclude that that money was being sent from WAM to Mr.
16 Pedafronomis for Mr. Skarpelos’s benefit.” *Transcript* at 19:20-20:9. The element of doubt
17 intimated by the use of the word, “presumably,” is inappropriate and misleading and should
18 be changed to “presumptively”.

19 3. Findings of Fact, Conclusions of Law, and Judgment at page 4, line 9:
20 “However, Livadas also testified that WAM was not even the purchaser of the stock under
21 the April 2, 2013 transaction and that the stock was just transferred through WAM to a third
22 party.”

23 Weiser’s proposal: “However, Livadas also testified that WAM was not even the
24 owner of the stock after the April 2, 2013 transaction and that the stock was just transferred
25 through WAM to a third party.”

26 As referenced above at page 2, the description in the Transcript reflects what was
27 depicted in the demonstrative exhibit that Mr. Livadas provided to the Court as a means of
28 explanation – that stock is sold from an owner of stock, through WAM, and then to a buyer

1 of the stock: “Mr. Livadas testified that Weiser Capital and WAM don’t own the stock,
2 because the stock really was just transferred through them.” *Transcript* at 21:24-22:2. Mr.
3 Livadas testified that WAM was never the intended final owner of the stock, but rather that
4 it was an intermediary, being an owner of the stock only for an infinitesimal moment before
5 transferring it to the final owner. In that regard, it is true that “Weiser Capital and WAM
6 don’t own the stock,” but it is not true that WAM never was the owner. Weiser’s proposed
7 change addresses this distinction.

8 4. Findings of Fact, Conclusions of Law, and Judgment at page 4, line 15:
9 “WAM was never intended to be the purchaser of that stock, and there was no such
10 agreement between Skarpelos and WAM.”

11 Weiser’s proposal: “WAM was never intended to be the final purchaser of that
12 stock, and there was no such agreement between Skarpelos and WAM.”

13 For this finding, Weiser proposes the addition of the word “final” to more accurately
14 describe the arrangement of the transaction. The Court’s repeated explanation that WAM
15 transferred the stock to a third party (*see, Transcript* at 21:24-22:2 and 23:11-13.) can only
16 make sense if WAM, as Mr. Livadas explained, was briefly an owner of the stock before
17 transferring it to a third party. Weiser’s proposed change is more consistent with the
18 Court’s ruling.

19 The undersigned affirms that this document does not contain the social security of
20 any person.

21 DATED this 3rd day of April, 2019.

22 HOLLAND & HART LLP

23 By: /s/ Jeremy J. Nork
24 Jeremy J. Nork (SBN 4017)
25 Frank Z. LaForge (SBN 12246)
26 5441 Kietzke Lane, Second Floor
27 Reno, NV 89511
28 (775) 327-3000 | Fax (775) 786-6179

Attorneys for Weiser

1 **CERTIFICATE OF SERVICE**

2 I, Martha Hauser, certify:

3 I am employed in the City of Reno, County of Washoe, State of Nevada by the law
4 offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor,
Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

5 On April 3, 2019, I electronically filed the foregoing **DEFENDANTS/CROSS-**
6 **CLAIMANTS WEISER'S OBJECTIONS TO FINDINGS OF FACT,**
7 **CONCLUSIONS OF LAW, AND JUDGMENT**, with the Clerk of the Second Judicial
District Court via the Court's e-Flex system. Service will be accomplished by e-Flex on all
registered participants.

8 Clayton P. Brust
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14 /s/ Martha Hauser
15 Martha Hauser
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EXHIBIT INDEX

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EXHIBIT 1

EXHIBIT 1

1 1750

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

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

Case No. CV15-02259
Dept. No. 10

10 Plaintiff,

11 vs.

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT

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

15 Defendants.

16 _____/
ATHANASIOS SKARPELOS, an individual,

17 Cross-Claimant,

18 vs.

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

22 Cross-Defendants.

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

25 Cross-Claimants.

26 vs.

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

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

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

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

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

18 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **CONCLUSIONS OF LAW**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **JUDGMENT**

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

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

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

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

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

4 [POSSIBLE ADDITIONAL PARAGRAPH PENDING BRIEFING]

5 Dated this _____ day of March, 2019.

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7 _____
8 DISTRICT JUDGE
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EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

In the Matter Of:

Department 10

TRANSCRIPT OF PROCEEDINGS

February 06, 2019

Job Number: 526770

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

5

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

9

10 NEVADA AGENCY & TRANSFER CO.,

11 Plaintiff,

Case No. CV15-02259

12 vs.

Dept. No. 10

13 WEISER ASSET, ET AL.,

14 Defendants.

15 _____/

16

17 TRANSCRIPT OF PROCEEDINGS

18 Wednesday, February 6, 2019

19 Reno, Nevada

20

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23 Job No.: 526770

24 Reported by: LORI URMSTON, CCR #51

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APPEARANCES:

FOR WEISER ASSET MANAGEMENT AND WEISER BAHAMAS, LTD.:

HOLLAND & HART
By: JEREMY L. NORK, ESQ.
5441 Kietzke Lane, Second Floor
Reno, Nevada 89511

FOR ANTHANASIOS SKARPELOS:

WOODBURN AND WEDGE
By: DANE W. ANDERSON, ESQ.
SETH J. ADAMS, ESQ.
6100 Neil Road, Suite 500
Reno, Nevada 89509

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

2 --o0o--

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

7 Good afternoon, Mr. Nork.

8 MR. NORK: Good afternoon, Your Honor.

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

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

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

14 MR. NORK: That's right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 One moment.

24 Okay. The Court makes the following findings of

1 fact:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Mr. Skarpelos on October 29th of 2009.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 The Court also finds that Mr. Skarpelos did contact

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

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

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

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

1 wasn't true.

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

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

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

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

21 THE COURT: There it is.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 One moment.

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

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

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

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

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

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

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

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

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

22 Additionally, regarding declaratory relief --

23 Hold on.

24 The Court will cite the parties to a number of

1 Nevada cases --

2 One moment. I had it right here.

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

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

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

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

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

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

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

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

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

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

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

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

1 and in his argument.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 Mr. Nork, what are your thoughts?

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

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

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

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

23 MR. NORK: Yes, Your Honor.

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

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

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

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

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

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

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

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

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

17 MR. NORK: Thank you, Your Honor.

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

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

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

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

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

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

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

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

1 actually go back and look at it myself.

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

13 Do you need anything else regarding the facts?

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

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

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

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

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

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

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

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

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

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

24 MS. CARDINALLI: I am.

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

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

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

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

15 THE COURT: 975?

16 MS. CARDINALLI: Yes, the replacement shares.

17 THE COURT: Okay.

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

24 THE COURT: What are your thoughts on that,

1 Mr. Anderson?

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

13 THE COURT: Thank you, Mr. Anderson.

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

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

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

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

5 THE COURT: Theoretically.

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

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

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

1 exactly who owns all the shares is in question.

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

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

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

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

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

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

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

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

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

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

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5 I, LORI URMSTON, Certified Court Reporter, in and
6 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
11 supervision; that the foregoing is a full, true and
12 correct transcription of the proceedings to the best
13 of my knowledge, skill and ability.

14 I further certify that I am not a relative nor an
15 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 laws
18 of the State of Nevada that the foregoing statements
19 are true and correct.

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

22

LORI URMSTON, CCR #51

23

24

LORI URMSTON, CCR #51

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

13 ***

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

Case No. CV15-02259

Dept. No. 10

16 Plaintiff,

17 vs.

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

21 Defendants.

22 _____/
ATHANASIOS SKARPELOS, an individual,

23 Cross-Claimant,

24 vs.

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

28 Cross-Defendants.
_____ /

**SKARPELOS' RESPONSES TO
WEISER'S OBJECTIONS TO
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
JUDGMENT**

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

4 Cross-Claimants.

5 vs.

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

8 **SKARPELOS' RESPONSES TO WEISER'S OBJECTIONS TO FINDINGS OF**
9 **FACT, CONCLUSION OF LAW AND JUDGMENT**

10 Cross-claimant Athanasios Skarpelos ("Skarpelos") submits the following
11 responses to the four (4) objections asserted by Weiser to the proposed findings of fact
12 and conclusions of law submitted to the Court for consideration ("Weiser's Objections"):

13 Response to Objection No. 1: The language as proposed by Skarpelos is consistent
14 with Mr. Livadas' testimony that the purchaser was a third party WAM client and the
15 Court's finding, based on that testimony, that WAM was just transferring the stock to
16 "somebody else." Transcript of Proceedings, February 6, 2019, at 21:21-22:2; 23:11-13.
17 Mr. Livadas refused to identify the buyer, and therefore it is accurate to say the sale was
18 to an unidentified third party, i.e., "somebody else" other than WAM or Weiser Capital.
19 That was the finding of the Court. The Court also found it was "never the agreement" that
20 Skarpelos would sell the Disputed Stock to either Weiser entity. Id. at 23:9-13. Lastly,
21 the Court found "there is no evidence that I can use to conclude there was in fact a
22 contract for the sale of shares of stock to either Weiser Asset Management or to Weiser
23 Capital." Id. at 20:23-21:2. These findings directly contradict Weiser's statement in its
24 objection that the April 2, 2013 sale was "to WAM." Weiser's Objections at 2:14-18.

25 Response to Objection No. 2: Skarpelos used the word "presumably" because that
26 is the word the Court used at page 36, line 11 of the transcript. Skarpelos acknowledges
27 that the Court also used the word "presumptively" in the same context at page 19, line 16.
28 In Skarpelos' view, the word "presumptively" carries with it the connotation of an

1 evidentiary presumption, i.e., it was a rebuttable presumption that the money was given to
2 Skarpelos and Skarpelos failed to rebut that presumption. The Court's use of the word
3 "presumably" at 36:11 is a more accurate description of the Court's finding.

4 Response to Objection No. 3: Skarpelos' response to this objection is largely the
5 same as his response to Objection No. 1. Weiser's proposed language suggests that WAM
6 was, at one point, the owner of the Disputed Stock. The Court did not make that finding.
7 As discussed above, WAM was never intended to be, nor was it ever, the owner of the
8 Disputed Stock. There is no evidence to support such a finding. None of the prerequisites
9 to an effective stock transfer, as testified to by Alex Walker, took place such that WAM
10 could be the owner of the Disputed Stock even for an instant on April 2, 2013.

11 Response to Objection No. 4: Skarpelos incorporates his responses to Objections
12 Nos. 1 and 3. Skarpelos would also refer the Court to the Transcript of Proceedings at
13 page 30, line 22 to page 31, line 21, where the Court discussed the lack of clarity as to
14 which Weiser entity claimed to be the owner of the Disputed Stock and noted that Weiser
15 had failed to establish even that "basic premise."

16 **AFFIRMATION**

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

19 DATED: April 8, 2019.

WOODBURN AND WEDGE

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21 By /s/ Dane W. Anderson

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25 *Attorneys for Defendant/*

Cross-Claimant

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

13 NEVADA AGENCY AND TRANSFER
14 COMPANY, a Nevada Corporation,

Case No. CV15 02259

Dept. No. 10

15 Plaintiff,

16 v.

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

Defendants.

AND RELATED ACTIONS.

21 **DEFENDANTS/CROSS-CLAIMANTS WEISER'S SUPPLEMENTAL BRIEF**
22 **PURSUANT TO COURT ORDER**

23 Defendants/Cross-claimants (collectively, "Weiser"), hereby respond to the Court's
24 March 14, 2019 Order, directing the parties to file supplemental briefs on the limited issue
25 of the proposed restriction on the sale or transfer of stock by Defendant/Cross-claimant
26 Athanasios Skarpelos ("Skarpelos").¹

27 ¹ The Order is set forth in Court minutes filed on March 15, 2019, entered following a March 14, 2019 telephonic
28 status conference wherein the parties discussed the necessity and content of a proposed final paragraph to be added
to the end of the Findings of Fact, Conclusions of Law, and Judgment in this matter.

1 This Supplemental Brief is supported by the following Points and Authorities.

2 **POINTS AND AUTHORITIES**

3 1. Weiser's Proposed Final Paragraph.

4 "IT IS HEREBY FURTHER ORDERED AND ADJUDGED that Athanasios "Tom"
5 Skarpelos shall not transfer, sell, gift, bequest or in any other way dispose of or liquidate
6 any of his Anavex stock until he has paid WAM the \$245,464.64 that is ordered by this
7 Court."

8 2. The Court's Oral Order Restricting the Disposal of Anavex Stock Is Well-
9 Founded.

10 The above-offered language tracks very closely the order of the Court orally entered
11 on February 6, 2019, wherein the Court stated, "the Court orders that Mr. Skarpelos shall
12 not transfer, sell, gift, bequest, or in any other way dispose of or liquidate any of his Anavex
13 stock until he has paid WAM the money back." *February 6, 2019 Transcript of*
14 *Proceedings ("Transcript"*, attached hereto as **Exhibit 1**) at 38:19-22.

15 The Court's rationale in placing this restriction was based upon two findings made
16 by the Court in this matter – that Weiser Asset Management ("WAM") was owed
17 \$245,464.64 from Skarpelos as a result of money that had been withdrawn from Skarpelos's
18 WAM account (*Transcript* at 35:23 – 37:22), and also that Skarpelos had engaged in
19 activities that strongly suggested he either was attempting to conceal or dispose of his
20 assets, or would at a minimum be very difficult to locate for purposes of collecting the
21 money the Court had ordered. Specifically, the Court found that Skarpelos had recently
22 been giving away millions of shares of his stock in Anavex Life Sciences Corp. ("Anavex")
23 to unidentified parties (*Transcript* at 39:3-5, 39:9-11), that Skarpelos claimed not to have
24 any bank accounts (*Transcript* at 19:18-20), and that Skarpelos had enlisted his relative,
25 Lambros Pedafronimos, to assist him in withdrawing money and channeling the cash to
26 Skarpelos from his WAM account (*Transcript* at 15:12-14, 19:15-20:9).

27 These findings led the Court to conclude as follows: "I'm just concerned that Mr.
28 Skarpelos would liquidate his assets unnecessarily or make it more difficult to reimburse

1 WAM for the money that was forwarded to him on his account.” *Transcript* at 42:11-14.
2 For these reasons, the Court fashioned a remedy such that “Mr. Skarpelos cannot transfer
3 any of his assets in Anavex until he pays Mr. Livadas the money that is due and owing.”
4 *Transcript* at 40:10-12.

5 2. The Court’s Oral Order Is Supported by the Application of the Law to the
6 Facts.

7 The instant matter is an interpleader action. “Interpleader is an equitable proceeding
8 to determine the rights of rival claimants to property held by a third person having no
9 interest therein.” *Balish v. Farnham*, 92 Nev. 133, 137, 546 P.2d 1297, 1299 (1976).

10 As a court sitting in equity, the remedies that are available are extremely broad. The
11 Nevada Supreme Court “has expressly stated that district courts have full discretion to
12 fashion and grant equitable remedies, *Bedore v. Familian*, 122 Nev. 5, 11-12, 12 n.21, 125
13 P.3d 1168, 1172, 1172 n.21 (2006), and [the court] will review a district court’s decision
14 granting or denying an equitable remedy for abuse of discretion.” *Am. Sterling Bank v.*
15 *Johnny Mgmt. LV, Inc.*, 126 Nev. 423, 428, 245 P.3d 535, 538 (2010) (citing *Douglas*
16 *Disposal Inc. v. Wee Haul, LLC*, 123 Nev. 552, 557, 170 P.3d 508, 512 (2007); *Jacoby v.*
17 *Jacoby*, 100 P.3d 852, 855 (Wyo. 2004) (noting that trial courts have broad discretion to
18 grant equitable relief)); *see also Alaska Plastics, Inc. v. Coppock*, 621 P.2d 270, 274-75
19 (Alaska 1980) (stating that “[t]he trial court has full discretion to fashion equitable remedies
20 that are complete and fair to all parties involved) (cited in *Bedore*, 112 Nev. at 12 n.21, 125
21 P.3d at 1172 n.21).

22 Here, the Court has explained that “allowing Mr. Skarpelos to both retain the stock
23 and to have no responsibility regarding the monies that were forwarded to him is an
24 unreasonable windfall to Mr. Skarpelos.” *Transcript* at 37:23-38:2. And for that reason, the
25 Court ordered that “it is the equitable thing to do under the circumstances to force Mr.
26 Skarpelos to disgorge those funds.” *Transcript* at 38:16-18. In furtherance of fashioning
27 this equitable remedy, the Court took the additional step of placing the restriction on
28

1 disposing of his Anavex stock until Skarpelos paid back the money to WAM. “I just want
2 him to get WAM paid back the money I think that they are owed.” *Transcript* at 39:6-7.

3 This limitation is abundantly fair and within the Court’s discretion. Skarpelos
4 apparently resides in Greece and spends little if any time in Nevada. Further, as noted
5 above, he claims not to have any bank accounts, engages friends and relatives in supporting
6 him and providing him cash despite him not having a bank account, and has been in the
7 process of assigning away his only known asset, namely his Anavex stock. Added to these
8 specific facts are the general observations the Court made as to Skarpelos’s veracity – that
9 his testimony was “unpersuasive” and “simply not true.” *Transcript* at 14:11 and 17:21. In
10 light of this, any proceedings in aid of execution on the judgment in favor of WAM would
11 likely be fruitless, and it is therefore a very real possibility that any Nevada judgment
12 entered against Skarpelos would be uncollectible without the additional limitation imposed
13 by the Court. For these reasons, the Court’s proposed order is well within its discretion.
14 *See, MacDonald v. Krause*, 77 Nev. 312, 318, 362 P.2d 724, 727 (1961) (noting “the
15 recognized province of the courts of equity to do complete justice between the parties . . .”);
16 *Landex, Inc. v. State ex rel. List*, 94 Nev. 469, 477, 582 P.2d 786, 791 (1978) (“a court has
17 the inherent power, ancillary to its general equity jurisdiction, to order restitution in an
18 appropriate case. . .”).

19 3. A Supersedeas Bond Is Not Necessary.

20 At the hearing on February 6, 2019, counsel for Skarpelos raised the possibility that
21 the Court’s limitation on Skarpelos’s ability to further dispose of his Anavex stock could be
22 an improper stay pending an appeal without a supersedeas bond being posted. *Transcript* at
23 40:15-21. This is simply not the case, not only because this is an equitable matter and the
24 Court has broad discretion as outlined above, but also because the purpose of a supersedeas
25 bond is not at issue in this matter.

26 In *Nelson v. Heer*, 121 Nev. 832, 835–36, 122 P.3d 1252, 1254 (2005), the Nevada
27 Supreme Court stated that “[t]he purpose of security for a stay pending appeal is to protect
28 the judgment creditor’s ability to collect the judgment if it is affirmed by preserving the

1 status quo and preventing prejudice to the creditor arising from the stay.” Here, the Court
2 has awarded the Anavex stock that was in dispute in this matter to Skarpelos. The specific
3 stock certificate that was in dispute is presently in the possession of the Court (*Transcript* at
4 48:14-17), and the actual tradable shares of Anavex stock are under the control of Nevada
5 Agency and Transfer Company (“NATCO”) (*Transcript* at 47:8-16). In other words, since
6 the asset that was awarded to Skarpelos is not possessed or controlled by Weiser, there is no
7 protection to Skarpelos that must be afforded by a supersedeas bond. A court may waive or
8 reduce the amount of an appeal bond when the “security will maintain the status quo and
9 protect the judgment creditor pending an appeal....” *Id.* In this case, a bond is simply not
10 necessary, and the bond requirements set forth in NRCP 62(d)(1) do not provide a
11 compelling basis for rejecting the Court’s oral order limiting the continued disposal of
12 Anavex stock until Skarpelos pays WAM the awarded amount.

13 4. The Parties Have Already Agreed to a Limitation Similar to the Court’s Oral
14 Order.

15 On January 17, 2019, the parties in this matter filed a Stipulation to Motion for
16 Discharge, a copy of which is attached hereto as **Exhibit 2**. In this stipulation, which is
17 signed by counsel for all parties in this matter, the parties stipulated that NATCO was “to
18 maintain possession of certificate number 753, pending further order of the Court, which
19 order shall clearly declare the party entitled to possession of certificate 753 and ownership
20 of the shares represented thereby, and which shall provide for delivery of certificate 753
21 upon the expiration of any date for appeal of final judgment in this matter if no appeal is
22 taken, or the date of final order resulting from an appeal in this matter. . .” (emphasis
23 added).

24 In other words, before this matter went to trial, it was the agreement of the parties
25 that NATCO was to retain possession of Anavex stock certificate 753 and “the shares
26 represented thereby” until the time for appeal had expired, or until the entry of a “final order
27 resulting from an appeal in this matter.” And while this stipulation certainly did not
28 contemplate a money award being made in favor of WAM, it was well within the

1 expectation of the parties that the Anavex stock was not to be touched, at least until this
2 matter was concluded. This agreement by the parties provides yet another reason why the
3 Court's exercise of its broad discretion is proper and fair.

4 CONCLUSION

5 Based on the above, it is respectfully requested that, in order to give effect to the oral
6 order the Court made at the February 6, 2019 hearing, the Court amend the Findings of Fact,
7 Conclusions of Law, and Judgment that were previously submitted to the Court by inserting
8 the following final paragraph:

9 "IT IS HEREBY FURTHER ORDERED AND ADJUDGED that Athanasios "Tom"
10 Skarpelos shall not transfer, sell, gift, bequest or in any other way dispose of or liquidate
11 any of his Anavex stock until he has paid WAM the \$245,464.64 that is ordered by this
12 Court."

13 The undersigned affirms that this document does not contain the social security of
14 any person.

15 DATED this 8th day of April, 2019.

16 HOLLAND & HART LLP

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1 **CERTIFICATE OF SERVICE**

2 I, Martha Hauser, certify:

3 I am employed in the City of Reno, County of Washoe, State of Nevada by the law
4 offices of Holland & Hart LLP. My business address is 5441 Kietzke Lane, Second Floor,
Reno, Nevada 89511. I am over the age of 18 years and not a party to this action.

5 On April 8, 2019, I electronically filed the foregoing **DEFENDANTS/CROSS-**
6 **CLAIMANTS WEISER'S SUPPLEMENTAL BRIEF PURSUANT TO COURT**
7 **ORDER**, with the Clerk of the Second Judicial District Court via the Court's e-Flex system.
Service will be accomplished by e-Flex on all registered participants.

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EXHIBIT INDEX

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2	Stipulation to Motion for Discharge	11

EXHIBIT 1

EXHIBIT 1

In the Matter Of:

Department 10

TRANSCRIPT OF PROCEEDINGS

February 06, 2019

Job Number: 526770

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

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

9

10 NEVADA AGENCY & TRANSFER CO.,

11 Plaintiff,

Case No. CV15-02259

12 vs.

Dept. No. 10

13 WEISER ASSET, ET AL.,

14 Defendants.

15 _____/

16

17 TRANSCRIPT OF PROCEEDINGS

18 Wednesday, February 6, 2019

19 Reno, Nevada

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23 Job No.: 526770

24 Reported by: LORI URMSTON, CCR #51

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

2 --o0o--

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

7 Good afternoon, Mr. Nork.

8 MR. NORK: Good afternoon, Your Honor.

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

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

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

14 MR. NORK: That's right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 One moment.

24 Okay. The Court makes the following findings of

1 fact:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Mr. Skarpelos on October 29th of 2009.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 The Court also finds that Mr. Skarpelos did contact

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

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

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

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

1 wasn't true.

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

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

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

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

21 THE COURT: There it is.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 One moment.

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

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

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

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

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

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

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

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

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

22 Additionally, regarding declaratory relief --

23 Hold on.

24 The Court will cite the parties to a number of

1 Nevada cases --

2 One moment. I had it right here.

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

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

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

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

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

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

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

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

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

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

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

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

1 and in his argument.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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