

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4440/December 13, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17387

In the Matter of

DONALD F. (“JAY”) LATHEN, JR.,
EDEN ARC CAPITAL MANAGEMENT, LLC, and
EDEN ARC CAPITAL ADVISORS, LLC

ORDER REGARDING MEDIATION

The parties have expressed to my office that they are amenable to mediation and the designation of another administrative law judge from this office (Settlement ALJ) to facilitate the mediation process. To allow for candid discussions, all communications between the parties and the Settlement ALJ will remain confidential. I will not be privy to them or their content, and I will not discuss the proceeding with the Settlement ALJ. No aspect of the mediation process with the Settlement ALJ will be on the record. Accordingly, I ORDER as follows:

Administrative Law Judge James E. Grimes is designated as the Settlement ALJ.

By December 16, 2016, the parties—if they wish to proceed with the mediation process—shall file a joint motion reflecting that:

- The parties are willing to participate in good faith in a confidential mediation process.
- The parties agree that their representations and statements to the Settlement ALJ are confidential. The parties’ representations, including any statement made by any attorney or participant, will not be construed as an admission against interest and nothing said at such sessions may be used in connection with this proceeding or any other litigation.
- The parties understand that the mediation process will be facilitated by another ALJ, who will not discuss any representations or statements of the parties with the presiding ALJ.
- The parties understand that communications with the Settlement ALJ will not be part of this case’s record.
- The parties waive: (1) the right to claim bias or prejudice by the Settlement ALJ based on any views expressed during the settlement process; (2) the right to a public proceeding; (3) the right to a proceeding on the record; and (4) any objection to the

Settlement ALJ conferring with either party ex parte in the course of the mediation process. *See* 17 C.F.R. § 201.240(c)(2).

All e-mail communications regarding the mediation process shall be submitted directly to neitermanj@sec.gov, unless otherwise specified by the Settlement ALJ. DO NOT SEND SUCH COMMUNICATIONS TO THE OFFICE OF THE SECRETARY, THE PRESIDING ADMINISTRATIVE LAW JUDGE, SENIOR COUNSEL ANTHONY BRUNO, OTHER COUNSEL/PARTIES, OR THIS OFFICE'S MAIN E-MAIL BOX (alj@sec.gov).

The Division of Enforcement proposed to my office three caveats:

First, the Division asks that “submissions would be limited to the submissions already made.” This order does not require any submissions; the Settlement ALJ would be in the best position to discuss with each party what would be most helpful for the mediation process. It is therefore unnecessary for me to impose a restriction at the outset.

Second, the Division indicates that its availability will “dwindle after the first week of January given witness prep demands.” This order does not impose any schedule; the Settlement ALJ will discuss with each party when is a good time to communicate.

Third, the Division states that it “will not agree to any adjournment of the trial date to accommodate the mediation schedule.” Unless the parties file a joint motion to stay pursuant to 17 C.F.R. § 201.161(c)(2) or otherwise jointly request an adjournment on the basis that the parties are close to reaching a settlement, I will not adjourn the hearing date to accommodate the mediation process.

Jason S. Patil
Administrative Law Judge