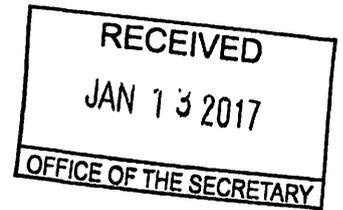


# HARD COPY



UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

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,

Respondents.

## DECLARATION OF JANNA I. BERKE

I, Janna I. Berke, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed as Counsel in the Division of Enforcement (the "Division"). I submit this declaration in support of the Division's Motion *In Limine* To Preclude Respondents From Offering Testimony or Evidence on Advice Received From Attorney Kevin Galbraith. I am fully familiar with the facts and circumstances herein.
2. Appended hereto as Exhibit A is a true and correct of an engagement letter between the Law Office of Kevin Galbraith and Eden Arc Capital Management, LLC.
3. Appended hereto as Exhibit B is a true and correct copy of excerpts of four emails sent to the Division on September 23, 2016 and one email on September 29, 2016, reflecting blind copies to Kevin Galbraith. Each of these email excerpts was attached to the Affirmation of Harlan Protass dated October 3, 2016 and submitted to the Court on that date.

4. Appended hereto as Exhibit C is a true and correct copy of an email chain reflecting an email from Kevin Galbraith to Jay Lathen dated January 6, 2016.
5. On December 20 and December 21, 2016, Mr. Galbraith reached out to Lara S. Mehraban, Associate Regional Director at the Division in the New York Regional Office. Galbraith represented that he was authorized to speak on behalf of Eden Arc Capital Partners.
6. Appended hereto as Exhibit D is a true and correct copy of a Subpoena to Produce Documents to the Law Office of Kevin Galbraith, dated November 15, 2016, with a return date of December 1, 2016 at 5pm.
7. Appended hereto as Exhibit E is a true and correct copy of a letter from Kevin Galbraith to Nancy Brown at the Division, dated December 5, 2016.
8. Appended hereto as Exhibit F is a true and correct copy of an email chain, with the top email from Kevin Galbraith to me, dated December 5, 2016.
9. Appended hereto as Exhibit G is a true and correct copy of an email chain, with the top email from Kevin Galbraith to me, dated December 15, 2016.
10. On December 30, 2016, Ms. Brown and I had a meet and confer with Mr. Galbraith. On that call he told us that he no longer believed that the documents he previously segregated for redaction and production, which he described to the Division in his December 15, 2016 email, had to be produced because he now believed they were not relevant. He also informed the Division that he would not put those documents on any privilege log.
11. Appended hereto as Exhibit H is a true and correct copy of a letter from Harlan Protass to Judge Patil, copying the Division, dated December 30, 2016, enclosing, among other things, a document bearing Bates numbers KG Priv00001-16.

12. Appended hereto as Exhibit I is a true and correct copy of a selection of entries from Respondents' March 2016 Privilege Log, reflecting communications between Respondents and Galbraith, which do not appear to have been produced to the Division by either Respondents or Galbraith.

13. Appended hereto as Exhibit J is a true and correct copy of an email from Alexander Janghorbani, former counsel at the Division, to Harlan Protass, dated September 25, 2016.

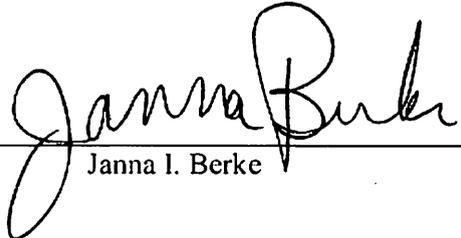
14. Appended hereto as Exhibit K is a true and correct copy of Respondents' Amended Witness List, dated December 15, 2016.

15. Appended hereto as Exhibit L is a true and correct copy of excerpts from emails dated December 31, 2016, January 3, 2017 and January 4, 2017 from me to Kevin Galbraith, and Galbraith's Response on January 5, 2017.

16. Appended hereto as Exhibit M is a true and correct copy of an email from Harlan Protass to me dated January 5, 2017.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 11, 2017  
New York, NY

  
\_\_\_\_\_  
Janna I. Berke

**EXHIBIT A**



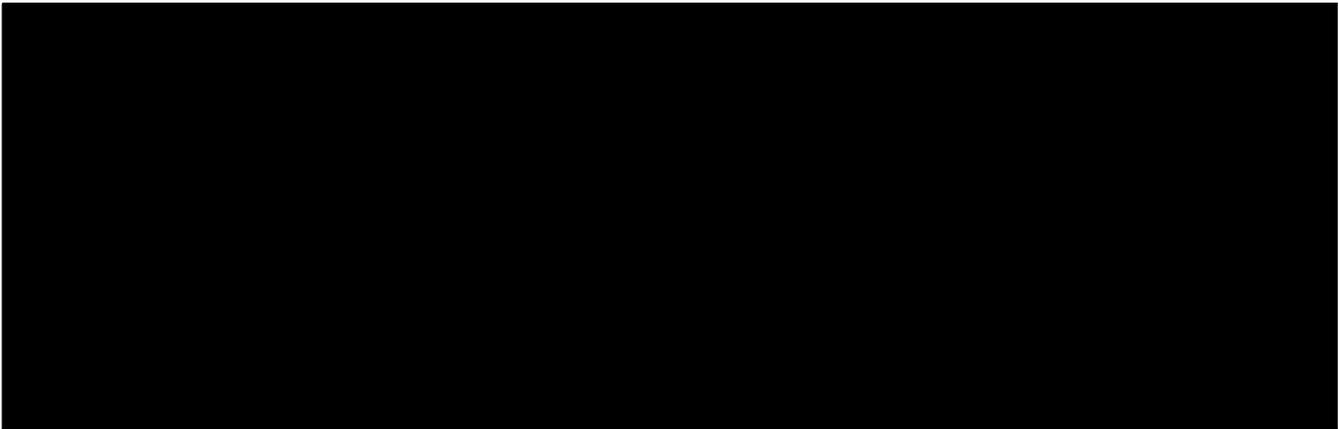
THE LAW OFFICE OF  
KEVIN GALBRAITH LLC

236 West 30th Street, 5th Floor  
New York, New York 10001

212.203.1249 (p)  
646.390.5935 (f)

kevin@kevingalbraithlaw.com  
kevingalbraithlaw.com

[REDACTED]



Adobe EchoSign

**EXHIBIT B**



Harlan Protass <protass@clayro.com>

---

**Email 1 of 4 -- In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397**

18 messages

---

Harlan Protass <protass@clayro.com>

Fri, Sep 23, 2016 at 9:34 PM

To: "Weinstock, Judith" <weinstockj@sec.gov>, Alexander Janghorbani <JanghorbaniA@sec.gov>, "Berke, Janna" <berkej@sec.gov>, "Brown, Nancy A" <BrownN@sec.gov>

Cc: Wayne Gosnell <gosnell@clayro.com>, Christina Corcoran <corcoran@clayro.com>

Bcc: Jay Lathen <Jaylathen@edenarccapital.com>, Kevin Galbraith <kevin@kevingalbraithlaw.com>, Caleb Miller <miller@clayro.com>

Dear Judy --

Please see the attached letter and the attachments to this email.

My initial attempt at sending these materials bounced back. The data was too large for one email. I am therefore trying again and will split the attachments into four separate emails.

Best regards,

Harlan

---

Harlan Protass  
**Clayman & Rosenberg LLP**  
305 Madison Avenue  
New York, NY 10165  
T. 212-922-1080  
M. [REDACTED]  
F. 212-949-8255  
[www.clayro.com](http://www.clayro.com)  
[protass@clayro.com](mailto:protass@clayro.com)

This message is intended only for the personal and confidential use of the designated recipient(s) named above. If you are not the intended recipient of this message you are hereby notified that any review, dissemination, distribution or copying of this message is strictly prohibited.

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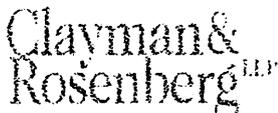
**9 attachments**

**09.23.16 Letter to Judith Weinstock re Advice of Counsel Defense.pdf**  
33K

**\_20160923152013.pdf**  
50K

**\_20160923152021.pdf**  
16K

**\_20160923152107.pdf**  
50K



Harlan Protass <protass@clayro.com>

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**Email 2 of 4 -- In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397**

1 message

---

Harlan Protass <protass@clayro.com> Fri, Sep 23, 2016 at 9:37 PM  
To: "Weinstock, Judith" <weinstockj@sec.gov>, Alexander Janghorbani <JanghorbaniA@sec.gov>, "Brown, Nancy A" <BrownN@sec.gov>, "Berke, Janna" <berkej@sec.gov>  
Cc: Wayne Gosnell <gosnell@clayro.com>, Christina Corcoran <corcoran@clayro.com>  
Bcc: Jay Lathen <Jaylathen@edenarccapital.com>, Kevin Galbraith <kevin@kevingalbraithlaw.com>, Caleb Miller <miller@clayro.com>

Please see the attached.

HP

---

Harlan Protass  
**Clayman & Rosenberg LLP**  
305 Madison Avenue  
New York, NY 10165  
T. 212-922-1080  
M. [REDACTED]  
F. 212-949-8255  
www.clayro.com  
protass@clayro.com

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**13 attachments**

-  **\_20160923173839.pdf**  
72K
-  **\_20160923173901.pdf**  
48K
-  **\_20160923173910.pdf**  
33K
-  **\_20160923173916.pdf**  
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-  **\_20160923173931.pdf**  
1612K
-  **\_20160923193923.pdf**  
1602K
-  **\_20160923194029.pdf**  
28K



Harlan Protass <protass@clayro.com>

---

**Email 3 of 4 -- In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397**

1 message

---

Harlan Protass <protass@clayro.com>

Fri, Sep 23, 2016 at 9:39 PM

To: "Weinstock, Judith" <weinstockj@sec.gov>, Alexander Janghorbani <JanghorbaniA@sec.gov>, "Brown, Nancy A" <BrownN@sec.gov>, "Berke, Janna" <berkej@sec.gov>

Cc: Christina Corcoran <corcoran@clayro.com>, Wayne Gosnell <gosnell@clayro.com>

Bcc: Jay Lathen <Jaylathen@edenarccapital.com>, Kevin Galbraith <kevin@kevingalbraithlaw.com>, Caleb Miller <miller@clayro.com>

Please see the attached.

HP

-----  
Harlan Protass  
**Clayman & Rosenberg LLP**  
305 Madison Avenue  
New York, NY 10165  
T. 212-922-1080  
M. [REDACTED]  
F. 212-949-8255  
www.clayro.com  
protass@clayro.com

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**14 attachments**

[\\_20160923194238.pdf](#)  
2784K

[\\_20160923194345.pdf](#)  
742K

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311K



Harlan Protass <protass@clayro.com>

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**Email 4 of 4 -- In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397**

1 message

---

Harlan Protass <protass@clayro.com>

Fri, Sep 23, 2016 at 9:41 PM

To: "Weinstock, Judith" <weinstockj@sec.gov>, Alexander Janghorbani <JanghorbaniA@sec.gov>, "Brown, Nancy A" <BrownN@sec.gov>, "Berke, Janna" <berkej@sec.gov>

Cc: Wayne Gosnell <gosnell@clayro.com>, Christina Corcoran <corcoran@clayro.com>

Bcc: Jay Lathen <Jaylathen@edenarccapital.com>, Kevin Galbraith <kevin@kevingalbraithlaw.com>, Caleb Miller <miller@clayro.com>

Please see the attached.

HP

-----  
Harlan Protass  
Clayman & Rosenberg LLP  
305 Madison Avenue  
New York, NY 10165  
T. 212-922-1080  
M. [REDACTED]  
F. 212-949-8255  
www.clayro.com  
protass@clayro.com

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**14 attachments**

\_20160923194720.pdf  
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860K

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1003K

\_20160923194859.pdf  
604K

\_20160923194921.pdf  
584K

\_20160923194943.pdf  
37K

 **\_20160923195007.pdf**  
1527K

 **\_20160923195041.pdf**  
24K

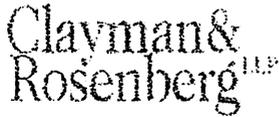
 **\_20160923195052.pdf**  
42K

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 **\_20160923195118.pdf**  
505K

 **\_20160923195140.pdf**  
72K



Harlan Protass <protass@clayro.com>

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**In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397**

---

Harlan Protass <protass@clayro.com>

Thu, Sep 29, 2016 at 1:31 PM

To: "Weinstock, Judith" <weinstockj@sec.gov>

Cc: Alexander Janghorbani <JanghorbaniA@sec.gov>, "Berke, Janna" <berkej@sec.gov>, "Brown, Nancy A" <BrownN@sec.gov>, Wayne Gosnell <gosnell@clayro.com>, Christina Corcoran <corcoran@clayro.com>, Caleb Miller <miller@clayro.com>

Bcc: Jay Lathen <Jaylathen@edenarccapital.com>, Kevin Galbraith <kevin@kevingalbraithlaw.com>

Dear Judy --

Please see the attached letter and the other attachments to this e-mail, both of which relate to the production of e-mails consistent with the invocation of an advice of counsel defense.

Best regards,

Harlan

---

Harlan Protass  
**Clayman & Rosenberg LLP**  
305 Madison Avenue  
New York, NY 10165  
T. 212-922-1080  
M. [REDACTED]  
F. 212-949-8255  
www.clayro.com  
protass@clayro.com

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**11 attachments**

-  **09.29.16 Letter to Judith Weinstock re Production of E-Mails.pdf**  
37K
-  **\_20160929115306\_redacted.pdf**  
394K
-  **\_20160929115347\_redacted.pdf**  
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387K

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3043K

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1132K

**EXHIBIT C**

**Subject:** FW: Update and Check-In  
**Date:** Friday, December 23, 2016 at 7:54:30 AM Eastern Standard Time  
**From:** Kevin Galbraith  
**Attachments:** image001.png

**From:** Kevin Galbraith <kevin@kevingalbraithlaw.com>  
**Date:** Wednesday, January 6, 2016 at 3:55 PM  
**To:** Jay Lathen <Jaylathen@edenarccapital.com>  
**Subject:** Update and Check-In

Jay,

I hope the new year is off to a good start, and that you had some time off over the holidays.

A couple of items:

1. Prospect — no decision yet; I'll just continue checking the docket daily.
2. GE / Synchrony — I have an email and a voicemail in to counsel attempting to schedule the follow-up call I've been requesting since mid-December; I'll stay on them and report back.

Please let me know how the Wells submission is coming along. I'm happy to review a draft and provide comments or any substantive input that you and Susan feel would be helpful.

Best,

Kevin



236 West 30th Street, 5th Floor  
New York, New York 10001

212.203.1249 (p)  
646.390.5935 (f)  
[REDACTED] (m)

[kevin@kevingalbraithlaw.com](mailto:kevin@kevingalbraithlaw.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

**EXHIBIT D**



**SUBPOENA TO PRODUCE DOCUMENTS**

Issued Pursuant to U.S. Securities and Exchange Commission Rules of Practice 111(b) and 232, 17 C.F.R. §§ 201.111(b), 201.232.

<p>1. TO Law Office of Kevin Galbraith 236 West 39th Street 5th Floor New York, NY 10001</p>	<p>This subpoena requires you to produce documents or other tangible evidence described in Item 7, at the request of the Party described in Item 4, in the U.S. Securities and Exchange Commission Administrative Proceeding described in Item 6.</p>
<p>2. PLACE OF PRODUCTION Securities and Exchange Commission 200 Vesey Street, Suite 400 New York, NY 10281</p>	<p>3. DATE AND TIME PRODUCTION IS DUE December 1, 5:00 p.m.</p>
<p>4. PARTY AND COUNSEL REQUESTING ISSUANCE OF SUBPOENA Division of Enforcement Securities and Exchange Commission 200 Vesey Street, Suite 400 New York, NY 10281 Attn: Nancy A. Brown, Esq.</p>	<p>5. THE PRODUCTION OF DOCUMENTS OR OTHER TANGIBLE EVIDENCE IS ORDERED BY  <i>Brenda P. Murray</i>  Administrative Law Judge U.S. Securities and Exchange Commission</p>
<p>6. TITLE OF THE MATTER AND ADMINISTRATIVE PROCEEDING NUMBER  In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17387</p>	
<p>7. DOCUMENTS OR OTHER TANGIBLE EVIDENCE TO BE PRODUCED (ATTACH PAGES AS REQUIRED)</p>	

Please see attachment.

<p>DATE SIGNED <i>11/15/2016</i></p>	<p>SIGNATURE OF ADMINISTRATIVE LAW JUDGE <i>Brenda P. Murray Chief Administrative Law Judge</i></p>
--	---

**GENERAL INSTRUCTIONS**

**MOTION TO QUASH**

The U.S. Securities and Exchange Commission's Rules of Practice require that any application to quash or modify a subpoena comply with Commission Rule of Practice 232(e)(1). 17 C.F.R. § 201.232(e)(1).

## **SUBPOENA ATTACHMENT**

**In the Matter of Donald F. ("Jay") Lathen, Jr., et al., Admin. Proc. File No. 3-17387**

### **DEFINITIONS**

1. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
2. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of the term "documents or electronically stored information" in Fed. R. Civ. P. 34(a)(1)(A). A draft or non-identical copy is a separate document within the meaning of this term.
3. The term "concerning" means relating to, referring to, describing, evidencing or constituting.
4. The following rules of construction apply to all discovery requests:
  - (a) The terms "all," "any," and "each" shall each be construed as encompassing any and all.
  - (b) The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
  - (c) The use of the singular form of any word includes the plural and vice versa.
5. "You" or "Your" shall refer to the Law Office of Kevin Galbraith LLC, and all of its current and former partners, counsel, associates, agents and representatives.
6. For each entity listed below, the entity shall be defined to include any parent corporations, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, limited partners or partnerships, wherever located:

Eden Arc Capital Management, LLC

Eden Arc Capital Advisers, LLC

Eden Arc Capital Partners, LP

EndCare

7. "Lathen" shall refer to Donald "Jay" Lathen, and each of his agents, representatives, associates, affiliates and partners.

### **INSTRUCTIONS**

1. Where any document is withheld, in whole or in part, due to any claim of privilege, please provide the nature of the privilege (including work product) which is being claimed and, if the privilege is governed by state law, indicate the state's privilege rule being invoked; and the following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information:

- (a) the type of document, e.g., letter or memorandum;
- (b) the general subject matter of the document;
- (c) the date of the document; and
- (d) the author of the document, the addressees of the document, and any other recipients, and, where not apparent, the relationship of the author, addressees, and recipients to each other.

2. This Subpoena does not seek the production of any communications between You and Your client relating to the litigation now pending, captioned Prospect Capital Corp. v. Lathen, Index No. 156375/2014 (New York Supreme Court), or any drafts of any documents filed therein.

3. Each document requested is to be produced in its entirety, including all non-identical copies and drafts, without abbreviation, expurgation, or redaction.

4. Each request shall be answered fully unless it is subject to a good faith objection, in which even the reason for the objection shall be stated in detail. If an objection pertains to only a portion of a request, or a word, or phrase, or clause contained within a request, please state the objection to that portion only, and respond to the remainder of the request.

5. If any document sought by these document requests once was, but no longer is, within Your possession, custody or control, please identify each such document and its present or last known custodian, and state: (a) the reason why the document is not being produced; and (b) the date of the loss, destruction, discarding, theft or other disposal of the document.

6. This request is ongoing in nature and You should continue to produce responsive documents as they are found or created on an ongoing basis.

#### **DOCUMENTS AND INFORMATION TO BE PRODUCED**

1. All documents concerning the structure of, and structuring of, Eden Arc Capital Management, LLC, Eden Arc Capital Advisers, LLC, Eden Arc Capital Partners, LP, and/or EndCare ("Lathen Entities") and any investment strategy contemplated or pursued by the Lathen Entities and/or Lathen.

2. All documents concerning the structure of, and structuring of, the joint tenancies at issue in this case, including all communications about any aspect of the joint tenancies, in connection with Your representation of Lathen or the Lathen Entities.

3. All documents concerning any agreements concerning any of the Lathen Entities and/or Lathen, including but not limited to the Participant Agreements, Investment Management Agreement, Discretionary Line Agreement, and Profit Sharing Agreement (collectively, "Lathen Agreements").

4. All documents concerning the disclosure of Lathen's or the Lathen Entities' investment strategies to anyone, including but not limited to, disclosure of the Lathen Agreements.

5. All billing records concerning Your representation of Lathen or the Lathen Entities.

6. All documents concerning any communications between You and Lathen and/or the Lathen Entities related to the advice he sought from You on behalf of himself or the Lathen Entities.

7. All documents concerning any communications between You and any investor or prospective investor in the Lathen Entities.

8. All documents concerning any communications between You and any issuer of any investment instrument containing a Survivor's Option on behalf of, or relating to, Lathen or the Eden Arc Entities.

**EXHIBIT E**



December 5, 2016

**By Email**

Division of Enforcement  
Securities and Exchange Commission  
200 Vesey Street, Suite 400  
New York, NY 10281  
Attn: Nancy A. Brown, Esq.

**In the Matter of Donald F. Lathen, Jr., et al.,  
Administrative Proceeding File No. 3-17387**

Dear Ms. Brown:

Below please find written responses to the items enumerated in the subpoena issued to my firm on November 15, 2016.

Item 1: All documents concerning the structure of, and structuring of, Eden Arc Capital Management, LLC, Eden Arc Capital Advisers, LLC, Eden Arc Capital Partners, LP and/or EndCare (“Lathen Entities”) and any investment strategy contemplated or pursued by the Lathen Entities and/or Lathen.

Response: To my knowledge, all responsive non-privileged documents have been provided to the Division by Clayman & Rosenberg or Respondents’ other prior counsel.

Item 2: All documents concerning the structure of, or structuring of the joint tenancies at issue in this case, including all communications about any aspect of the joint tenancies in connection with Your representation of the Lathen or the Lathen Entities.

Response: To my knowledge, all responsive non-privileged documents have been provided to the Division by Clayman & Rosenberg or Respondents’ other prior counsel.

Item 3: All documents concerning any agreements concerning any of the Lathen Entities and/or Lathen, including but not limited to the Participant Agreements, Investment Management Agreement, Discretionary Line Agreement, and Profit Sharing Agreement (collectively, “Lathen Agreements”).

Response: To my knowledge, all responsive non-privileged documents have been provided to the Division by Clayman & Rosenberg or Respondents’ other prior counsel.

Item 4: All documents concerning the disclosure of Lathen's or the Lathen Entities' investment strategy, including but not limited to, disclosure of the Lathen Agreements.

Response: To my knowledge, all responsive non-privileged documents have been provided to the Division by Clayman & Rosenberg or Respondents' other prior counsel.

Item 5: All billing records concerning Your representation of Lathen or the Lathen Entities.

Response: My firm produced all documents responsive to this Item on December 2, 2016.

Item 6: All documents concerning any communications between You and Lathen and/or the Lathen Entities related to the advice he sought from You on behalf of himself or the Lathen Entities.

Response: To my knowledge, all responsive documents have been provided to the Division by Clayman & Rosenberg or Respondents' other prior counsel. To the extent such documents pertain to litigation strategy concerning Respondent's private litigation against Prospect Capital Corp., and were inadvertently produced by Clayman & Rosenberg, we are in the midst of reviewing such materials, identifying them for the Division and requesting that they be returned to my firm as a matter of professional courtesy. If the Division will not agree to do so, then we will make an application to the Court seeking their return.

Item 7: All documents concerning any communications between You and any investor or any prospective investor in the Lathen Entities.

Response: No responsive documents exist.

Item 8: All documents concerning any communications between You and any issuer of any investment instrument containing a Survivor's Option on behalf of, or relating to Lathen or the Eden Arc Entities [sic].

Response: To my knowledge, all responsive non-privileged documents have been provided to the Division by Clayman & Rosenberg or Respondents' other prior counsel.

Very truly yours,

/s/ Kevin D. Galbraith

**EXHIBIT F**

**From:** [Kevin Galbraith](#)  
**To:** [Berke, Janna](#)  
**Cc:** [Weinstock, Judith](#); [Brown, Nancy A](#)  
**Subject:** Re: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397  
**Date:** Monday, December 05, 2016 6:11:00 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

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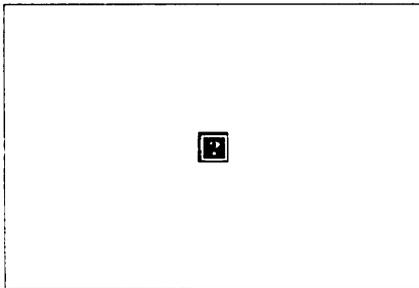
Ms. Berke,

Thanks for the clarification. I am consulting with Mr. Lathen's SEC defense counsel regarding the scope of their productions to date as they pertain to the items you note below. To my understanding, many such communications have already been produced. However, in an abundance of caution and to ensure that our productions are comprehensive, I will review my own emails with Mr. Lathen regarding trustee U.S. Bank, issuer GE Capital and other issuers about which we communicated. To the extent the communications I identify do not pertain to litigation strategy, I will produce them.

As you may know, I have represented Mr. Lathen and his company for well over two years, so gathering and reviewing potentially responsive emails will take a bit of time. Nonetheless, I will make it a priority and will work to produce them in the near-term.

Best,

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

---

**From:** "Berke, Janna" <berkej@SEC.GOV>  
**Date:** Monday, December 5, 2016 at 4:01 PM  
**To:** Kevin Galbraith <kevin@kevingalbraithlaw.com>  
**Cc:** "Weinstock, Judith" <weinstockj@SEC.GOV>, "Brown, Nancy A" <BrownN@SEC.GOV>  
**Subject:** RE: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Mr. Galbraith:

Thank you for your response. As we've indicated below, we are asking that you identify any documents that you are withholding that relate to your representation of Mr. Lathen in connection with disputes he had with GECC and U.S. Bank. Mr. Lathen has waived his privilege with respect to those documents and, to the extent you are withholding such materials, or cannot confirm that we have all of your communications with Mr. Lathen or his associate regarding those disputes, we are asking that you advise us of that fact.

Thank you,  
Janna

---

**From:** Kevin Galbraith [mailto:kevin@kevingalbraithlaw.com]  
**Sent:** Monday, December 05, 2016 3:29 PM  
**To:** Berke, Janna  
**Cc:** Weinstock, Judith; Brown, Nancy A  
**Subject:** Re: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

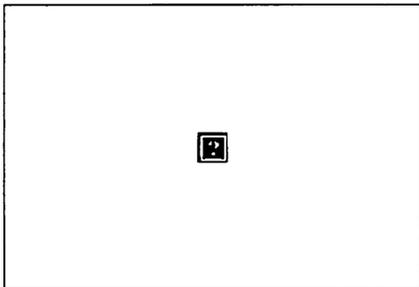
Ms. Berke,

As indicated in my prior correspondence with your colleagues, I will provide a privilege log identifying the Prospect-related documents over which we are asserting privilege; that log will of course include the privilege asserted.

With regard to GECC and U.S. Bank, please provide a further explanation of your request. I am not clear what you are asking.

Thank you.

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

---

**From:** "Berke, Janna" <berkej@SEC.GOV>  
**Date:** Monday, December 5, 2016 at 3:14 PM

**To:** Kevin Galbraith <[kevin@kevingalbraithlaw.com](mailto:kevin@kevingalbraithlaw.com)>

**Cc:** "Weinstock, Judith" <[weinstockj@SEC.GOV](mailto:weinstockj@SEC.GOV)>, "Brown, Nancy A" <[BrownN@SEC.GOV](mailto:BrownN@SEC.GOV)>

**Subject:** RE: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Mr. Galbraith:

Thank you for your response.

Please identify the documents you are withholding respecting your representation of Mr. Lathen in non-litigated disputes concerning the redemptions submitted to GECC and US Bank. If you do not do so, we will ask the Court to preclude any assertion of reliance by Mr. Lathen on your advice.

With respect to the documents already produced to us over which you will at some point assert a claim of privilege, please identify (1) the documents; and (2) the privilege you are asserting. It has already been months since your client became aware of the inadvertent production.

Thank you,  
Janna

---

**From:** Kevin Galbraith [<mailto:kevin@kevingalbraithlaw.com>]

**Sent:** Monday, December 05, 2016 10:05 AM

**To:** Brown, Nancy A

**Cc:** Weinstock, Judith; Berke, Janna

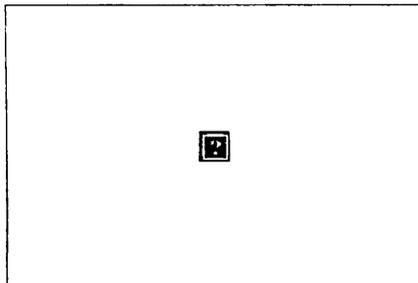
**Subject:** In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Nancy,

Please see attached correspondence concerning the Division's subpoena to my firm in the above-referenced matter.

Best,

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)

[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

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**EXHIBIT G**

**From:** [Kevin Galbraith](#)  
**To:** [Berke, Janna](#)  
**Cc:** [Weinstock, Judith](#); [Brown, Nancy A](#)  
**Subject:** Re: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397  
**Date:** Thursday, December 15, 2016 7:12:22 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)

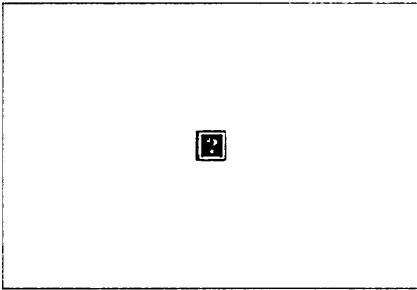
---

Ms. Berke,

Responses in red below.

Best,

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

---

**From:** "Berke, Janna" <berkej@SEC.GOV>  
**Date:** Thursday, December 15, 2016 at 6:05 PM  
**To:** Kevin Galbraith <kevin@kevingalbraithlaw.com>  
**Cc:** "Weinstock, Judith" <weinstockj@SEC.GOV>, "Brown, Nancy A" <BrownN@SEC.GOV>  
**Subject:** RE: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Mr. Galbraith:

To follow up on some outstanding items:

- 1) Are there any documents responsive to our subpoena that you have yet to produce? I have not yet identified additional responsive documents, though there is one more archive I need to search, which I expect to do tomorrow. I have segregated a few documents that must be redacted for privilege and/or responsiveness before production, and that redaction will likely take place by early next week.
- 2)

When can we expect a privilege log for the documents that you are withholding from production, including the basis for withholding such documents? I expect to finish preparing the privilege log once I have completed my review of archived communications, again, likely early next week.

- 3) When can we expect a privilege log as to those documents already in the Division's possession over which you are presently seeking to assert privilege, as described in your email of November 29, 2016? In response to your multiple emails and phone calls concerning my response to the Division's subpoena, my focus and priority have of course been on ensuring my prompt and full compliance with that subpoena. I will continue my work on the second privilege log noted here upon completion of my subpoena responses. I do not have a specific date in mind for that, but certainly I'll aim to get that to you as soon as practicable.

Thank you,  
Janna

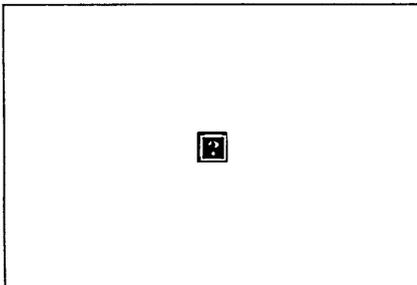
---

**From:** Kevin Galbraith [mailto:kevin@kevingalbraithlaw.com]  
**Sent:** Saturday, December 10, 2016 10:45 AM  
**To:** Berke, Janna  
**Cc:** Weinstock, Judith; Brown, Nancy A  
**Subject:** Re: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Ms. Berke:

I will send a thumb drive (or upload to your FTP) with the bulk of the responsive emails on Monday, and will follow up with any remaining emails, plus the privilege log, later in the week. The first portion of the production, 627 emails plus attachments, have been sent to a third-party service provider for processing.

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

---

**From:** "Berke, Janna" <[berkej@SEC.GOV](mailto:berkej@SEC.GOV)>

**Date:** Wednesday, December 7, 2016 at 10:02 AM  
**To:** Kevin Galbraith <[kevin@kevingalbraithlaw.com](mailto:kevin@kevingalbraithlaw.com)>  
**Cc:** "Weinstock, Judith" <[weinstockj@SEC.GOV](mailto:weinstockj@SEC.GOV)>, "Brown, Nancy A" <[BrownN@SEC.GOV](mailto:BrownN@SEC.GOV)>  
**Subject:** RE: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

330 will work for us.

We will call your office.

Thank you.

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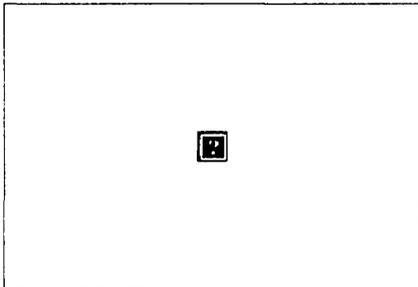
**From:** Kevin Galbraith [<mailto:kevin@kevingalbraithlaw.com>]  
**Sent:** Wednesday, December 07, 2016 9:52 AM  
**To:** Berke, Janna  
**Cc:** Weinstock, Judith; Brown, Nancy A  
**Subject:** Re: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Ms. Berke,

If you are available during that window, please choose a time between 3 and 5:30 you would like to confer, so I can schedule the remainder of my day.

Thank you.

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

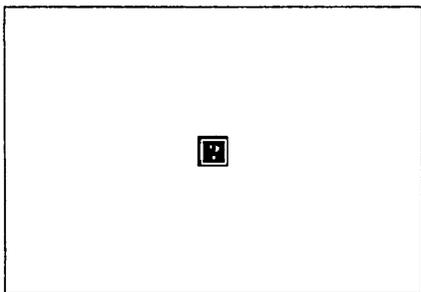
---

**From:** Kevin Galbraith <[kevin@kevingalbraithlaw.com](mailto:kevin@kevingalbraithlaw.com)>  
**Date:** Tuesday, December 6, 2016 at 6:02 PM  
**To:** "Berke, Janna" <[berkej@SEC.GOV](mailto:berkej@SEC.GOV)>  
**Cc:** "Weinstock, Judith" <[weinstockj@SEC.GOV](mailto:weinstockj@SEC.GOV)>, "Brown, Nancy A" <[BrownN@SEC.GOV](mailto:BrownN@SEC.GOV)>  
**Subject:** Re: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Ms. Berke,

I am available tomorrow between 3 and 5:30 pm. Are you referring to the single category of documents referenced below?

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

---

**From:** "Berke, Janna" <[berkej@SEC.GOV](mailto:berkej@SEC.GOV)>  
**Date:** Tuesday, December 6, 2016 at 5:58 PM  
**To:** Kevin Galbraith <[kevin@kevingalbraithlaw.com](mailto:kevin@kevingalbraithlaw.com)>  
**Cc:** "Weinstock, Judith" <[weinstockj@SEC.GOV](mailto:weinstockj@SEC.GOV)>, "Brown, Nancy A" <[BrownN@SEC.GOV](mailto:BrownN@SEC.GOV)>  
**Subject:** RE: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Mr. Galbraith:

Please let us know when you are available for a meet-and-confer telephone call where we can discuss your time table for producing all of the outstanding documents responsive to our subpoena, which had a production date of December 1, 2016.

Thank you,  
Janna

---

**From:** Kevin Galbraith [<mailto:kevin@kevingalbraithlaw.com>]  
**Sent:** Monday, December 05, 2016 6:10 PM  
**To:** Berke, Janna  
**Cc:** Weinstock, Judith; Brown, Nancy A  
**Subject:** Re: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

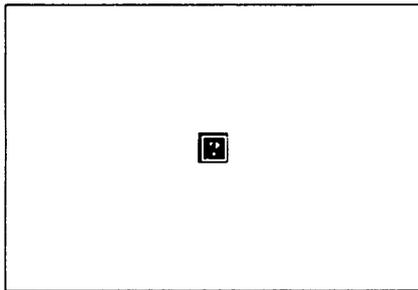
Ms. Berke,

Thanks for the clarification. I am consulting with Mr. Lathen's SEC defense counsel regarding the scope of their productions to date as they pertain to the items you note below. To my understanding, many such communications have already been produced. However, in an abundance of caution and to ensure that our productions are comprehensive, I will review my own emails with Mr. Lathen regarding trustee U.S. Bank, issuer GE Capital and other issuers about which we communicated. To the extent the communications I identify do not pertain to litigation strategy, I will produce them.

As you may know, I have represented Mr. Lathen and his company for well over two years, so gathering and reviewing potentially responsive emails will take a bit of time. Nonetheless, I will make it a priority and will work to produce them in the near-term.

Best,

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

---

**From:** "Berke, Janna" <[berkej@SEC.GOV](mailto:berkej@SEC.GOV)>  
**Date:** Monday, December 5, 2016 at 4:01 PM  
**To:** Kevin Galbraith <[kevin@kevingalbraithlaw.com](mailto:kevin@kevingalbraithlaw.com)>  
**Cc:** "Weinstock, Judith" <[weinstockj@SEC.GOV](mailto:weinstockj@SEC.GOV)>, "Brown, Nancy A" <[BrownN@SEC.GOV](mailto:BrownN@SEC.GOV)>  
**Subject:** RE: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Mr. Galbraith:

Thank you for your response. As we've indicated below, we are asking that you identify any documents that you are withholding that relate to your representation of Mr. Lathen in connection with disputes he had with GECC and U.S. Bank. Mr. Lathen has waived his privilege with respect to those documents and, to the extent you are withholding such materials, or cannot confirm that we have all of your communications with Mr. Lathen or his associate regarding those disputes, we are asking that you advise us of that fact.

Thank you,

Janna

---

**From:** Kevin Galbraith [<mailto:kevin@kevingalbraithlaw.com>]  
**Sent:** Monday, December 05, 2016 3:29 PM  
**To:** Berke, Janna  
**Cc:** Weinstock, Judith; Brown, Nancy A  
**Subject:** Re: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

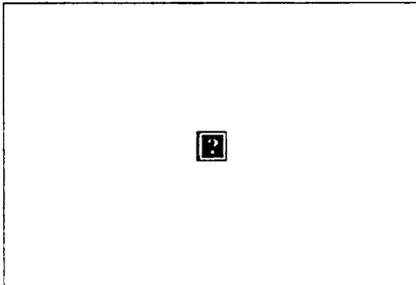
Ms. Berke,

As indicated in my prior correspondence with your colleagues, I will provide a privilege log identifying the Prospect-related documents over which we are asserting privilege; that log will of course include the privilege asserted.

With regard to GECC and U.S. Bank, please provide a further explanation of your request. I am not clear what you are asking.

Thank you.

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

---

**From:** "Berke, Janna" <[berkej@SEC.GOV](mailto:berkej@SEC.GOV)>  
**Date:** Monday, December 5, 2016 at 3:14 PM  
**To:** Kevin Galbraith <[kevin@kevingalbraithlaw.com](mailto:kevin@kevingalbraithlaw.com)>  
**Cc:** "Weinstock, Judith" <[weinstockj@SEC.GOV](mailto:weinstockj@SEC.GOV)>, "Brown, Nancy A" <[BrownN@SEC.GOV](mailto:BrownN@SEC.GOV)>  
**Subject:** RE: In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Mr. Galbraith:

Thank you for your response.

Please identify the documents you are withholding respecting your representation of Mr. Lathen in non-litigated disputes concerning the redemptions submitted to GECC and US Bank. If you do not do so, we will ask the Court to preclude any assertion of reliance by Mr. Lathen on your advice.

With respect to the documents already produced to us over which you will at some point assert a claim of privilege, please identify (1) the documents; and (2) the privilege you are asserting. It has already been months since your client became aware of the inadvertent production.

Thank you,  
Janna

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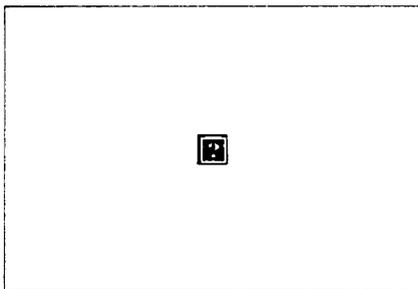
**From:** Kevin Galbraith [<mailto:kevin@kevingalbraithlaw.com>]  
**Sent:** Monday, December 05, 2016 10:05 AM  
**To:** Brown, Nancy A  
**Cc:** Weinstock, Judith; Berke, Janna  
**Subject:** In the Matter of Donald F. Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Nancy,

Please see attached correspondence concerning the Division's subpoena to my firm in the above-referenced matter.

Best,

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

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**EXHIBIT H**



305 Madison Avenue  
New York, NY 10165  
T: 212-922-1080  
F: 212-949-8255

Harlan J. Protass  
Partner  
protass@clayro.com

December 30, 2016

VIA E-MAIL AND UPS OVERNIGHT

Hon. Jason S. Patil  
Administrative Law Judge  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: In the Matter of Donald F. Lathen, Jr., Eden Arc Capital Management, LLC  
and Eden Arc Capital Advisors, LLC, Admin. Proc. File No. 3-17387

Dear Judge Patil:

We write to preview our submission of documents the submission for *in camera* review of which is required by this Court's December 23, 2016 Clarification Order. We also are copying the Division on this letter so that, per the Clarification Order, this letter explanation is not made *ex parte*.

With respect to the Clarification Order's directive to produce defense strategy e-mails related to the Prospect case, we are submitting those documents constituting communications between Mr. Lathen and Kevin Galbraith, Esq. relating to the Prospect case that are listed on Mr. Galbraith's "clawback" log, which was submitted to the Division on December 19, 2016. We also seek to clarify, both for the Court and the Division, that, in reviewing Mr. Galbraith's "clawback" log, we discovered that there are a small number of e-mails that relate to the Prospect case in that they involve the Eden Arc Respondents' strategy with respect to potential litigation against Prospect Capital Corp.'s trustee, U.S. Bank, which handled redemptions for Prospect Capital Corp.'s bonds.

With respect to the Clarification Order's directive to produce communications between Mr. Lathen and Mr. Galbraith through February 2016 that have not been produced to the Division, we have worked with the privilege log Mr. Galbraith created in connection with his response to the subpoena served on him by the Division. Based on the assumption that Mr. Galbraith has all communications with Mr. Lathen (because those communications are between Mr. Galbraith and Mr. Lathen), we believe that the only e-mails between Mr. Lathen and Mr. Galbraith through February 2016 that have not been produced to the Division are those on Mr. Galbraith's privilege log (totaling six categories of e-mails/chains). We will be submitting those e-mails for *in camera* review with this letter.

We also write to inform the Court and the Division that in our recent review of Mr. Galbraith's privilege log, we discovered one additional e-mail chain (bearing Bates numbers KG Priv00001-16) that we believe contains communications that fall within the scope of the Eden Arc Respondents' invocation of an advice of counsel defense. We are enclosing a copy of that e-mail for the Division. It bears noting that we previously produced the substantive content of the communication contained in that e-mail chain in connection with the Eden Arc Respondents' invocation of the advice of counsel defense, in five separate e-mails, and we are re-reproducing those for the Division as well.

We are sending the e-mails the submission of which is required by the Clarification Order to your Honor via UPS Overnight today.

Very truly yours,

/s/

Harlan Protass

cc: Judith Weinstock, Esq. (via e-mail w/ encl.)  
Janna Berke, Esq. (via e-mail w/ encl.)  
Nancy Brown, Esq. (via e-mail w/ encl.)  
Lindsay Moilanen, Esq. (via e-mail w/ encl.)

**EXHIBIT I**

Sample Communications Between Respondents and Galbraith that Respondents Appear to Continue to Withhold

Entry Number	Record Type	Date	From	To	Cc	Email Subject or File Name	Privilege Type	Privilege Description
630	Email	4/4/14 10:25 AM	Galbraith, Kevin	Lathen, Jay		Message from Kevin Galbraith (Jay Lathen)	Attorney Client Privilege	Communication reflecting legal advice of counsel.
631	Email	4/4/14 11:13 AM	Lathen, Jay	Galbraith, Kevin		RE: Message from Kevin Galbraith (Jay Lathen)	Attorney Client Privilege	Communication requesting legal advice of counsel.
632	Email	4/4/14 11:19 AM	Galbraith, Kevin	Lathen, Jay		RE: Message from Kevin Galbraith (Jay Lathen)	Attorney Client Privilege	Communication reflecting legal advice of counsel.
633	Email	4/4/14 11:21 AM	Lathen, Jay	Galbraith, Kevin		RE: Message from Kevin Galbraith (Jay Lathen)	Attorney Client Privilege	Communication requesting legal advice of counsel.
634	Email	4/4/14 11:24 AM	Galbraith, Kevin	Lathen, Jay		RE: Message from Kevin Galbraith (Jay Lathen)	Attorney Client Privilege	Communication reflecting legal advice of counsel.
635	Email	4/4/14 11:36 AM	Lathen, Jay	Galbraith, Kevin		RE: Message from Kevin Galbraith (Jay Lathen)	Attorney Client Privilege	Communication requesting legal advice of counsel.
659	Email	6/19/14 6:36 PM	Galbraith, Kevin	Lathen, Jay		Re: Your Message	Attorney Client Privilege	Communication reflecting legal advice of counsel.
664	Email with Attachment(s)	6/25/14 4:25 PM	Galbraith, Kevin	Lathen, Jay		Engagement Letter (Eden Arc Capital Management, LLC)	Attorney Client Privilege	Communication reflecting legal advice of counsel.
686	Email	7/1/14 8:48 PM	Lathen, Jay	Galbraith, Kevin; Robinson, Michael D.		RE: Signed Engagement Letter & Payment	Attorney Client Privilege	Communication requesting legal advice of counsel.
688	Email	7/1/14 10:56 PM	Galbraith, Kevin	Lathen, Jay; Robinson, Michael D.		RE: Signed Engagement Letter & Payment	Attorney Client Privilege	Communication reflecting legal advice of counsel.

Sample Communications Between Respondents and Galbraith that Respondents Appear to Continue to Withhold

Entry Number	Record Type	Date	From	To	Cc	Email Subject or File Name	Privilege Type	Privilege Description
689	Email	7/2/14 8:14 AM	Lathen, Jay	Galbraith, Kevin		Re: Signed Engagement Letter & Payment	Attorney Client Privilege	Communication requesting legal advice of counsel.
691	Email	7/2/14 1:08 PM	Galbraith, Kevin	Lathen, Jay	Robinson, Michael D.	RE: Signed Engagement Letter & Payment	Attorney Client Privilege	Communication reflecting legal advice of counsel.
692	Email	7/2/14 1:09 PM	Lathen, Jay	Galbraith, Kevin	Robinson, Michael D.	RE: Signed Engagement Letter & Payment	Attorney Client Privilege	Communication requesting legal advice of counsel.
730	Email	7/16/14 9:59 AM	Galbraith, Kevin	Lathen, Jay		RE: Schedule the rest of the week	Attorney Client Privilege	Communication reflecting legal advice of counsel.
745	Email	7/24/14 5:31 PM	Galbraith, Kevin	Lathen, Jay; Robinson, Michael D.		Next week	Attorney Client Privilege	Communication reflecting legal advice of counsel.
746	Email	7/24/14 5:48 PM	Lathen, Jay	Galbraith, Kevin	Robinson, Michael D.	Re: Next week	Attorney Client Privilege	Communication requesting legal advice of counsel.
767	Email	8/26/14 5:13 PM	Galbraith, Kevin	Lathen, Jay		RE: Goldman Correspondence	Attorney Client Privilege	Communication reflecting legal advice of counsel.
778	Email	8/28/14 1:55 PM	Galbraith, Kevin	Lathen, Jay		RE: Legal Research	Attorney Client Privilege	Communication reflecting legal advice of counsel.
786	Email	9/2/14 2:20 PM	Galbraith, Kevin	Lathen, Jay		RE: Letter -- Draft with KG Suggested Revisions	Attorney Client Privilege	Communication reflecting legal advice of counsel.
790	Email with Attachment(s)	9/2/14 6:34 PM	Galbraith, Kevin	Lathen, Jay		Bill 9-2-14	Attorney Client Privilege	Communication reflecting legal advice of counsel.
792	Email	9/3/14 2:05 PM	Galbraith, Kevin	Lathen, Jay		RE: US Bank Recent Reject Letters	Attorney Client Privilege	Communication reflecting legal advice of counsel.
823	Email with Attachment(s)	9/11/14 2:45 PM	Galbraith, Kevin	Lathen, Jay; Robinson, Michael D.		Agenda for 9/15 FINRA Conference Call	Attorney Client Privilege	Communication reflecting legal advice of counsel.

Sample Communications Between Respondents and Galbraith that Respondents Appear to Continue to Withhold

Entry Number	Record Type	Date	From	To	Cc	Email Subject or File Name	Privilege Type	Privilege Description
825	Email	9/11/14 7:20 PM	Galbraith, Kevin	Lathen, Jay	Robinson, Michael D.	RE: Base Indenture	Attorney Client Privilege	Communication reflecting legal advice of counsel.
830	Email with Attachment(s)	9/15/14 6:40 PM	Galbraith, Kevin	Lathen, Jay	Robinson, Michael D.	FWD: Eden Arc Capital -- Follow-Up	Attorney Client Privilege	Communication reflecting legal advice of counsel.
832	Email	9/17/14 1:06 PM	Galbraith, Kevin	Lathen, Jay		RE: WSJ Article on Survivor's Option Securities	Attorney Client Privilege	Communication reflecting legal advice of counsel.
833	Email	9/17/14 3:20 PM	Galbraith, Kevin	Lathen, Jay		[FWD: Eden Arc Capital -- Follow-Up Information]	Attorney Client Privilege	Communication reflecting legal advice of counsel.
834	Email	9/17/14 3:34 PM	Galbraith, Kevin	Lathen, Jay		RE: [FWD: Eden Arc Capital -- Follow-Up Information]	Attorney Client Privilege	Communication reflecting legal advice of counsel.
836	Email	9/17/14 5:25 PM	Lathen, Jay	Galbraith, Kevin		RE: [FWD: Eden Arc Capital -- Follow-Up Information]	Attorney Client Privilege	Communication requesting legal advice of counsel.
837	Email	9/17/14 5:36 PM	Lathen, Jay	Galbraith, Kevin		RE: [FWD: Eden Arc Capital -- Follow-Up Information]	Attorney Client Privilege	Communication requesting legal advice of counsel.
838	Email	9/17/14 5:50 PM	Lathen, Jay	Galbraith, Kevin		FW: Redemption Rejection	Attorney Client Privilege	Communication requesting legal advice of counsel.
839	Email	9/17/14 5:57 PM	Galbraith, Kevin	Lathen, Jay		Re: [FWD: Eden Arc Capital -- Follow-Up Information]	Attorney Client Privilege	Communication reflecting legal advice of counsel.
840	Email	9/17/14 6:55 PM	Lathen, Jay	Galbraith, Kevin		Muccia	Attorney Client Privilege	Communication requesting legal advice of counsel.
869	Email	9/30/14 12:09 PM	Galbraith, Kevin	Lathen, Jay		RE: FWD: Eden Arc Capital -- GE Capital Internotes	Attorney Client Privilege	Communication reflecting legal advice of counsel.
940	Email	10/17/14 10:50 AM	Galbraith, Kevin	Lathen, Jay		GE Capital	Attorney Client Privilege	Communication reflecting legal advice of counsel.

Sample Communications Between Respondents and Galbraith that Respondents Appear to Continue to Withhold

Entry Number	Record Type	Date	From	To	Cc	Email Subject or File Name	Privilege Type	Privilege Description
1059	Email with Attachment(s)	11/12/14 1:55 PM	Galbraith, Kevin	Lathen, Jay; Robinson, Michael D.		Re: Goldman Sachs File	Attorney Client Privilege	Communication reflecting legal advice of counsel.
1369	Email	3/4/15 8:44 AM	Lathen, Jay	Galbraith, Kevin		RE: Survivor's Option Notes	Attorney Client Privilege	Communication requesting legal advice of counsel.
1371	Email with Attachment(s)	3/4/15 11:55 AM	Galbraith, Kevin	Lathen, Jay		FW: Survivor's Option Notes	Attorney Client Privilege	Communication reflecting legal advice of counsel.
1437	Email with Attachment(s)	3/10/15 3:16 PM	Galbraith, Kevin	Lathen, Jay		FW: Survivor's Option Notes	Attorney Client Privilege	Communication reflecting legal advice of counsel.
1688	Email with Attachment(s)	5/12/15 12:08 PM	Lathen, Jay	Galbraith, Kevin		Eden Arc LPA	Attorney Client Privilege	Communication requesting legal advice of counsel.
1691	Email	5/12/15 12:36 PM	Galbraith, Kevin	Lathen, Jay		Re: Eden Arc LPA	Attorney Client Privilege	Communication reflecting legal advice of counsel.
1692	Email	5/12/15 1:37 PM	Galbraith, Kevin	Lathen, Jay		Re: Eden Arc LPA	Attorney Client Privilege	Communication reflecting legal advice of counsel.
2246	Email	9/11/15 6:10 PM	Lathen, Jay	Galbraith, Kevin		RE: U.S. Bank Response re: Gilks (Caterpillar)	Attorney Client Privilege	Communication requesting legal advice of counsel.
2247	Email with Attachment(s)	9/14/15 2:35 PM	Galbraith, Kevin	Lathen, Jay		Re: U.S. Bank Response re: Gilks (Caterpillar)	Attorney Client Privilege	Communication reflecting legal advice of counsel.
2248	Email	9/14/15 3:22 PM	Lathen, Jay	Galbraith, Kevin		Re: U.S. Bank Response re: Gilks (Caterpillar)	Attorney Client Privilege	Communication requesting legal advice of counsel.
2249	Email	9/14/15 3:24 PM	Galbraith, Kevin	Lathen, Jay		Re: U.S. Bank Response re: Gilks (Caterpillar)	Attorney Client Privilege	Communication reflecting legal advice of counsel.
2250	Email	9/14/15 5:19 PM	Lathen, Jay	Galbraith, Kevin		Re: U.S. Bank Response re: Gilks (Caterpillar)	Attorney Client Privilege	Communication requesting legal advice of counsel.
2261	Email	9/17/15 3:14 PM	Galbraith, Kevin	Lathen, Jay		Draft Email to CIT Counsel	Attorney Client Privilege	Communication reflecting legal advice of counsel.

Sample Communications Between Respondents and Galbraith that Respondents Appear to Continue to Withhold

Entry Number	Record Type	Date	From	To	Cc	Email Subject or File Name	Privilege Type	Privilege Description
2262	Email	9/17/15 3:35 PM	Lathen, Jay	Galbraith, Kevin		RE: Draft Email to CIT Counsel	Attorney Client Privilege	Communication requesting legal advice of counsel.
2324	Email with Attachment(s)	9/28/15 3:14 PM	Galbraith, Kevin	Lathen, Jay		CIT and Staples Updates	Attorney Client Privilege	Communication reflecting legal advice of counsel.
2325	Email	9/28/15 3:23 PM	Lathen, Jay	Galbraith, Kevin		Re: CIT and Staples Updates	Attorney Client Privilege	Communication requesting legal advice of counsel.
2326	Email	9/28/15 3:26 PM	Galbraith, Kevin	Lathen, Jay		Re: CIT and Staples Updates	Attorney Client Privilege	Communication reflecting legal advice of counsel.
2157	Email	8/28/15 12:04 PM	Lathen, Jay	Galbraith, Kevin		RE: Caterpillar Submission	Attorney Client Privilege	Communication requesting legal advice of counsel.
2158	Email with Attachment(s)	8/28/15 12:28 PM	Galbraith, Kevin	Lathen, Jay		Re: Caterpillar Submission	Attorney Client Privilege	Communication reflecting legal advice of counsel.
2159	Email	8/28/15 3:14 PM	Galbraith, Kevin	Lathen, Jay	Robinson, Michael D.	Offering Documents Language	Attorney Client Privilege	Communication reflecting legal advice of counsel.
1998	Email	7/28/15 9:52 AM	Galbraith, Kevin	Lathen, Jay		FW: Federal Farm Applications Update	Attorney Client Privilege	Communication reflecting legal advice of counsel.
1999	Email	7/28/15 11:01 AM	Lathen, Jay	Galbraith, Kevin		Re: Federal Farm Applications Update	Attorney Client Privilege	Communication requesting legal advice of counsel.
2016	Email	7/31/15 10:23 AM	Galbraith, Kevin	Lathen, Jay		Re: Federal Farm Applications Update	Attorney Client Privilege	Communication reflecting legal advice of counsel.
2018	Email	7/31/15 10:40 AM	Lathen, Jay	Galbraith, Kevin		Re: Federal Farm Applications Update	Attorney Client Privilege	Communication requesting legal advice of counsel.
2020	Email	7/31/15 12:29 PM	Galbraith, Kevin	Lathen, Jay		Re: Federal Farm Applications Update	Attorney Client Privilege	Communication reflecting legal advice of counsel.
2021	Email	7/31/15 1:12 PM	Lathen, Jay	Galbraith, Kevin		Re: Federal Farm Applications Update	Attorney Client Privilege	Communication requesting legal advice of counsel.
2024	Email	8/1/15 9:55 AM	Galbraith, Kevin	Lathen, Jay		Re: Federal Farm Applications Update	Attorney Client Privilege	Communication reflecting legal advice of counsel.

**EXHIBIT J**

**Janghorbani, Alexander**

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**From:** Janghorbani, Alexander  
**Sent:** Sunday, September 25, 2016 2:42 PM  
**To:** 'Harlan Protass'  
**Cc:** Weinstock, Judith; Berke, Janna; Brown, Nancy A; 'Wayne Gosnell'; 'Christina Corcoran'  
**Subject:** RE: Email 1 of 4 -- In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Harlan,

To confirm the points you made in today's meet and confer telephone conversation:

1. Your clients are not waiving the privilege as to any communications with any lawyer about any topic prior to the launching of the Fund in 2011.
2. Your clients are not waiving the privilege as to any communications with any lawyer about any topic after the launching of the Fund in 2011 except the structure of and structuring of the investment strategy executed by Respondents. Because you believe that that topic was only addressed by the four lawyers mentioned in your letter to Judy Weinstock of September 24, 2016, as well as Mr. Galbraith in 2015, your clients are not waiving the privilege as to communications any of them might have had with any other lawyers, even after the launching of the Fund.
3. Your clients are not waiving privilege as to any communications with any lawyer concerning their Forms ADV, filed with the Commission.

We specifically asked you whether you were waiving the privilege as (1) to issues respecting the disclosure of the true and complete ownership structure of the investments, including the participant agreements, to the issuers or their agents; and (2) advice received concerning compliance with the federal securities laws. First you responded by saying that you couldn't answer that question without conceding that either was an issue relevant to the merits of the Division's case against your client. Later you said that you believed those issues would be covered by the waiver you have made, and finally, you said you wanted to consider the issue further with your associate, and, if he were available, would get back to us with your position. Please confirm in writing whether you are waiving privilege as to the above two issues and the scope of that waiver (if any).

You further advised that you could not give us a timetable for the full production of the materials that you intended to produce, and cited some difficulties with accessing Mr. Lathen's Yahoo emails as the reason for the delay in making a full production. You also said that you had not yet searched for communications with Mr. Galbraith.

Sincerely,  
Alex

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**From:** Janghorbani, Alexander  
**Sent:** Sunday, September 25, 2016 12:10 PM  
**To:** 'Harlan Protass'  
**Cc:** Weinstock, Judith; Berke, Janna; Brown, Nancy A; Wayne Gosnell; Christina Corcoran  
**Subject:** RE: Email 1 of 4 -- In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Harlan,

We will call you at 1:30 on the number provided.

Alex

**From:** Harlan Protass [<mailto:protass@clayro.com>]

**Sent:** Sunday, September 25, 2016 12:08 PM

**To:** Janghorbani, Alexander

**Cc:** Weinstock, Judith; Berke, Janna; Brown, Nancy A; Wayne Gosnell; Christina Corcoran

**Subject:** Re: Email 1 of 4 -- In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Alex --

On such short notice, I can't do 12:30. Bu I can do 1:30 or 2:00, if you'd like. Just tell me which of those two times you choose. And then call me at that time on [REDACTED]

-- Harlan

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Harlan Protass  
**Clayman & Rosenberg LLP**  
305 Madison Avenue  
New York, NY 10165  
T. 212-922-1080  
M. [REDACTED]  
F. 212-949-8255  
[www.clayro.com](http://www.clayro.com)  
[protass@clayro.com](mailto:protass@clayro.com)

This message is intended only for the personal and confidential use of the designated recipient(s) named above. If you are not the intended recipient of this message you are hereby notified that any review, dissemination, distribution or copying of this message is strictly prohibited.

On Sun, Sep 25, 2016 at 11:45 AM, Janghorbani, Alexander <[JanghorbaniA@sec.gov](mailto:JanghorbaniA@sec.gov)> wrote:

Harlan,

We are available for a call at 12:30 pm. Where can we reach you?

Alex

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**From:** Harlan Protass [<mailto:protass@clayro.com>]

**Sent:** Saturday, September 24, 2016 8:03 PM

**To:** Janghorbani, Alexander

Cc: Weinstock, Judith; Berke, Janna; Brown, Nancy A; Wayne Gosnell; Christina Corcoran  
Subject: Re: Email 1 of 4 -- In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Alex --

If you're still interested in doing so, please let me know what time after 11:00 am on Sunday you'd like to speak.

-- Harlan

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Harlan Protass

**CLAYMAN & ROSENBERG LLP**

305 Madison Avenue

New York, NY 10165

T. 212-922-1080

F. 212-949-8255

M. [REDACTED]

protass@clayro.com

www.clayro.com

On Sep 24, 2016, at 3:10 PM, Janghorbani, Alexander <[JanghorbaniA@sec.gov](mailto:JanghorbaniA@sec.gov)> wrote:

Harlan,

I understand that you are not available to speak today. However, any delay plainly prejudices the Division. Thus, we request that you respond to our questions and requests—including that you provide us with all relevant documents—in writing today.

Thank you.

Best,

Alex

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**From:** Harlan Protass [<mailto:protass@clayro.com>]  
**Sent:** Saturday, September 24, 2016 3:06 PM  
**To:** Janghorbani, Alexander  
**Cc:** Weinstock, Judith; Berke, Janna; Brown, Nancy A; Wayne Gosnell; Christina Corcoran  
**Subject:** Re: Email 1 of 4 -- In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Alex --

As I said in my last email, I'm not available today. If you'd like to talk tomorrow, though, just let me know. I'm available any time after 11:00 am. You choose the time.

-- Harlan

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Harlan Protass

**CLAYMAN & ROSENBERG LLP**

305 Madison Avenue

New York, NY 10165

T. 212-922-1080

F. 212-949-8255

M [REDACTED]

[protass@clayro.com](mailto:protass@clayro.com)

[www.clayro.com](http://www.clayro.com)

On Sep 24, 2016, at 2:06 PM, Janghorbani, Alexander <[JanghorbaniA@sec.gov](mailto:JanghorbaniA@sec.gov)> wrote:

Harlan,

We think it is necessary to resolve these issues today. As you cannot speak, please provide us with responses to our below questions and requests today in writing.

In addition to the information in our below email, we note that you have not produced any communications from Katten Muchin Roosenman LLP, Seward Kissel, or any of the other “handful of firms” that Lathen testified that he “pursued conversations” with about “render[ing] an opinion.” (See Tr. of Testimony of Donald F. Lathen at 321.) Moreover, Mr. Lathen testified that he began receiving advice about his business model as early as 2009. (Id. at 329.) Thus, please also let us know whether, with respect to these firms, you will be producing documents, identifying the relevant attorneys, and informing them of your waiver, as to the entire relevant time period.

Thank you.

Sincerely,

Alex

---

**From:** Harlan Protass [<mailto:protass@clayro.com>]

**Sent:** Saturday, September 24, 2016 12:34 PM

**To:** Janghorbani, Alexander  
**Cc:** Weinstock, Judith; Berke, Janna; Brown, Nancy A; Wayne Gosnell; Christina Corcoran  
**Subject:** Re: Email 1 of 4 -- In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Alex --

I am not available to speak today (Saturday). But I will be available to speak tomorrow (Sunday) after 11:00 am. When would you like to speak?

-- Harlan

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Harlan Protass

**CLAYMAN & ROSENBERG LLP**

305 Madison Avenue

New York, NY 10165

T. 212-922-1080

F. 212-949-8255

M. [REDACTED]

[protass@clayro.com](mailto:protass@clayro.com)

[www.clayro.com](http://www.clayro.com)

On Sep 24, 2016, at 10:33 AM, Janghorbani, Alexander  
<[JanghorbaniA@sec.gov](mailto:JanghorbaniA@sec.gov)> wrote:

Harlan,

We write in response to your letter of yesterday, invoking the advice of counsel defense as to “the legal advice [Respondents] received concerning and relating to the structure of, and structuring of, the Eden Arc Respondents’ investment strategy.” In your letter, you stated that you intend to “supplement the attached production of attorney-client privileged correspondence and/or documents consistent with the invocation of the advice of counsel defense detailed above during the week of September 26, 2016.” This letter raises a number of issues, which need to be addressed immediately.

First, during the September 12<sup>th</sup> Prehearing conference, the Court ordered that Respondents make a full waiver by September 23<sup>rd</sup>. However, by your own admission, it appears that you have not yet produced all relevant documents and, thus, have failed to make a complete waiver. Moreover, the documents you have produced indicate additional relevant documents that have not been produced. For example, document 20160932195108 includes a link to a Dropbox file, but does not attach the documents in that Dropbox file. (See also document 20160923173901 (email referencing attachments, but failing to attach them).)

Second, as you know, the Commission alleges that, among other things, your clients failed to disclose to bond issuers the full and accurate picture concerning their purported ownership structure (including, inter alia, the existence and terms of the Participant Agreements, the Investment Management Agreement, the Discretionary Line Agreement, and the Profit Sharing Agreement). However, you purport to waive privilege—not as to the relevant question of disclosure to issuers and other third parties—but only as to the advice Respondents received relating to the “structure of, and structuring of,” their “investment strategy.” Thus, it is unclear whether you are asserting advice of counsel—and waiving privilege—as to the relevant question of whether Respondents needed to disclose their arrangement to issuers and other third parties.

Third, your letter indicates that you are waiving privilege as to communications with only four attorneys, Ms. Farrell, Mr. Flanders, Mr. Roper and Ms. Calaguio. However, your current and prior document productions make it clear that Mr. Lathen discussed these issues with other attorneys, including Mr. Galbraith, Stephen Derosa, Jessica Montello, Jackie Mancini, and

Matt Doring. Mr. Lathen also testified that he had consulted other, unnamed attorneys. Please confirm that you are waiving privilege as to communications with all attorneys, or anyone working at their direction, with whom your client discussed the relevant issues, have produced all relevant communications with those attorneys, and have instructed those attorneys as to your client's waiver and that they are free to speak with the Division of Enforcement.

Given the short time until the Hearing, by the end of today, please (1) inform us whether you are asserting that Respondents received advice of counsel concerning the failure to disclose the relevant information to issuers and others; (2) produce—or confirm that you already have produced—all communications relevant to your advice of counsel defense; and (3) confirm that you have provided us with a complete list of attorneys consulted, including as to the relevant disclosure issues, and have instructed those attorney to speak with the Division.

Should you wish to discuss, we are free to meet and confer today at 2:00 pm.

Sincerely,

Alex

**From:** Harlan Protass [<mailto:protass@clayro.com>]  
**Sent:** Friday, September 23, 2016 9:35 PM  
**To:** Weinstock, Judith; Janghorbani, Alexander; Berke, Janna; Brown, Nancy A  
**Cc:** Wayne Gosnell; Christina Corcoran  
**Subject:** Email 1 of 4 -- In the Matter of Donald F.Lathen, Jr., et al., Admin. Proc. File No. 3-17397

Dear Judy --

Please see the attached letter and the attachments to this email.

My initial attempt at sending these materials bounced back. The data was too large for one email. I am therefore trying again and will split the attachments into four separate emails.

Best regards,

Harlan

-----  
Harlan Protass  
**Clayman & Rosenberg LLP**  
305 Madison Avenue  
New York, NY 10165  
T. 212-922-1080  
M. [REDACTED]  
F. 212-949-8255  
[www.clayro.com](http://www.clayro.com)  
[protass@clayro.com](mailto:protass@clayro.com)

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**EXHIBIT K**

In the Matter of Donald F. Lathen, Jr., Eden Arc Capital Management, LLC  
and Eden Arc Capital Advisors, LLC, Admin. Proc. File No. 3-17387

Respondent's Witness List<sup>1</sup>

<u>Name</u>	<u>Summary of Expected Testimony</u>
<p><i>Dennisse Alamo</i> [Redacted] White Plains, NY</p>	<ul style="list-style-type: none"> <li>● Educational and professional background</li> <li>● Net worth and medical condition of her mother (Doris Cubilette)</li> <li>● Communications with hospices and social workers concerning Donald F. Lathen, Jr., Michael Robinson, Kathleen Lathen, EndCare and/or the Eden Arc entities</li> <li>● Knowledge concerning brokerage accounts, brokerage account agreements, fixed-income securities, joint tenancies with rights of survivorship, limited and general powers of attorney and taxes</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, Kathleen Lathen, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson, Kathleen Lathen and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Augie Celliti</i> SecureVest Financial Group 163 Madison Avenue Morristown, NY 07960</p>	<ul style="list-style-type: none"> <li>● Terms and operation of bonds and CDs featuring a “survivor’s option,” including redemption</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with JP Morgan Clearing Corporation concerning Donald F. Lathen, Jr., the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>

<sup>1</sup> The Eden Arc Respondents respectfully reserve the right to: (A) call witnesses not listed herein for purposes of rebuttal; (B) supplement the instant witness list to the extent additional witnesses are identified as a result of the review of documents that have not yet been produced in response to subpoenas that the Division served herein; and (C) expand the scope of the testimony of the witnesses listed herein to the extent required to respond to testimony elicited by the Division in the presentation of its case-in-chief.

<p><i>Neil Chelo</i>  Benchmark Plus LLC  820 A Street  Suite 700  Tacoma, WA 98402</p>	<ul style="list-style-type: none"> <li>● Terms and operation of bonds and CDs featuring a “survivor’s option,” including redemption</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Michael Cooney</i>  Blue Sand Securities LLC  601 Lexington Ave.  New York, NY 10022</p>	<ul style="list-style-type: none"> <li>● Marketing efforts on behalf of the Eden Arc Entities</li> <li>● Communications with counsel and/or prospective counsel for Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Joy Davis</i>  [Redacted]  Paulsboro, NJ 08066</p>	<ul style="list-style-type: none"> <li>● Educational and professional background</li> <li>● Net worth and medical condition</li> <li>● Communications with hospices and social workers concerning Donald F. Lathen, Jr., Michael Robinson, Kathleen Lathen, EndCare and/or the Eden Arc entities</li> <li>● Knowledge concerning brokerage accounts, brokerage account agreements, fixed-income securities, joint tenancies with rights of survivorship, limited and general powers of attorney and taxes</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, Kathleen Lathen, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson, Kathleen Lathen and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>

<p><i>Darren Domina</i> Haynes and Boone, LLP 30 Rockefeller Plaza 26th Floor New York, NY 10112</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; and (3) disclosures to issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Margaret D. Farrell</i> Hinckley Allen &amp; Snyder LLP 100 Westminster Street Suite 1500 Providence, RI 02903</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; (3) disclosures to issuers of bonds and/or CDs featuring a “survivor’s option”; and/or (4) disputes and/or litigation with issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Robert G. Flanders, Jr.</i> Whelan, Corrente, Flanders, Kinder &amp; Siket LLP 100 Westminster Street Suite 710 Providence, RI 02903</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; (3) disclosures to issuers of bonds and CDs featuring a “survivor’s option”; and/or (4) disputes and/or litigation with issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>

<p><i>Kevin Galbraith</i>  Law Office of Kevin Galbraith  236 West 39th Street  5th Floor  New York, NY 10001</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; (3) disclosures to issuers of bonds and CDs featuring a “survivor’s option”; and/or (4) disputes and/or litigation with issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Robert Grundstein</i>  Sabby Capital Management  10 Mountainview Road  Upper Saddle River, NJ 07458</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; and/or (3) disclosures to issuers of bonds and/or CDs featuring a “survivor’s option”</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>David Hartman</i>  Mission Critical  Services Corp.  641 Lexington Ave.  15th Floor  New York, NY 10022</p>	<ul style="list-style-type: none"> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Services provided to the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>

<p><i>Bruce Hood</i>  Withers Bergman LLP  430 Park Avenue  10th Floor  New York, NY 10022</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; and (3) tax treatment of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Patrick Horsman</i>  111 Kane Concourse  Suite 603  Bay Harbor Isle, FL 33154</p>	<ul style="list-style-type: none"> <li>● Marketing efforts on behalf of the Eden Arc entities</li> <li>● Communications with counsel and/or prospective counsel for Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>David Jungbauer</i>  c/o Harlan Protass  Clayman &amp; Rosenberg, LLP  305 Madison Avenue  New York, NY 10165</p>	<ul style="list-style-type: none"> <li>● Educational and professional background</li> <li>● Inception of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Understanding of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>

<p><i>Darren Kane</i> Mission Critical Services Corp. 641 Lexington Ave. 15th Floor New York, NY 10022</p>	<ul style="list-style-type: none"> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Services provided to the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Donald F. Lathen, Jr.</i> c/o Harlan Protass Clayman &amp; Rosenberg, LLP 305 Madison Avenue New York, NY 10165</p>	<ul style="list-style-type: none"> <li>● Educational and professional background</li> <li>● Relationship to Kathleen Lathen and David Jungbauer</li> <li>● Inception of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Research concerning joint tenancies with rights of survivorship</li> <li>● Research concerning terms and operation of bonds and CDs featuring a “survivor’s option,” including redemption</li> <li>● Identification of prospective Participants</li> <li>● Disclosures to and interactions with prospective Participants and/or their families</li> <li>● Disclosures to and interactions with Participants and their families</li> <li>● Communications with prospective Participants (and/or their families), Participants (and/or their families), hospices, hospice employees, social workers, broker-dealers, clearing houses, issuers of bonds and CDs featuring a “survivor’s option,” trustees, paying agents and other determining agents for issuers of bonds and CDs featuring a “survivor’s options,” investors and prospective investors in Eden Arc Capital Partners, LP, and other individuals and entities related to the development and execution of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities, including, but not limited to, all contracts, agreements, manuals, memoranda, formation documents, marketing material, financial statements, tax returns and “survivor’s option” redemption documentation</li> <li>● Formation of and relationship between Eden Arc Capital Management, LLC, Eden Arc Capital Advisors, LLC and Eden Arc Capital Partners, LP</li> <li>● Execution of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities before and after formation of Eden Arc Capital Partners, LP</li> <li>● Communications with counsel concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; (3) disclosures to issuers of bonds and CDs featuring a “survivor’s option”; and/or (4) disputes and/or litigation with issuers of bonds and CDs featuring a “survivor’s option”</li> </ul>

	<ul style="list-style-type: none"> <li>● Submission and processing of redemption requests</li> <li>● Disputes with trustees and issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency</li> <li>● Impact on issuers of bonds and CDs featuring a “survivor’s option” arising from the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Interpretation of terms and eligibility requirements for the redemption of bonds and CDs featuring a “survivor’s option”</li> <li>● Operation of Eden Arc Capital Partners, LP, including performance, fees, redemptions, preparation of financial statements, payment of taxes and communications with limited partners</li> <li>● Custody of securities held in joint tenancy with rights of survivorship brokerage accounts</li> <li>● Form ADV disclosures of Eden Arc Capital Management, LLC and Eden Arc Capital Partners, LP</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Kathleen Lathen</i>  c/o Harlan Protass  Clayman &amp; Rosenberg, LLP  305 Madison Avenue  New York, NY 10165</p>	<ul style="list-style-type: none"> <li>● Educational and professional background</li> <li>● Relationship to Donald F. Lathen, Jr. and David Jungbauer</li> <li>● Inception of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Understanding of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Execution of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with prospective Participants and their families</li> <li>● Communications with Participants and their families</li> <li>● Communications with hospices, hospice employees and social workers</li> <li>● Communications with the U.S. Securities and Exchange Commission concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>

<p><i>Jeff Maier</i></p>	<ul style="list-style-type: none"> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Knowledge concerning brokerage accounts and brokerage account agreements</li> <li>● Operation of joint tenancy with rights of survivorship brokerage accounts</li> <li>● Redemption of bonds and CDs featuring a “survivor’s option”</li> <li>● Disclosures concerning structure and structuring of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Stephen Mazotti</i> Eisner Ampner c/o William Connelly Drinker Biddle &amp; Reath, LLP One Logan Square Suite 2000 Philadelphia, PA 19103</p>	<ul style="list-style-type: none"> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Preparation of financial statements</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Robert Milius</i></p>	<ul style="list-style-type: none"> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>

<p><i>Jason Neroulis</i></p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; and/or (2) joint tenancies with rights of survivorship</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief in the instant matter</li> </ul>
<p><i>Michael Robinson</i>  c/o Harlan Protass  Clayman &amp; Rosenberg, LLP  305 Madison Avenue  New York, NY 10165</p>	<ul style="list-style-type: none"> <li>● Educational and professional background</li> <li>● Identification of prospective Participants</li> <li>● Communications with prospective Participants (and/or their families), Participants (and/or their families), hospices, hospice employees, social workers, broker-dealers, clearing houses, issuers of bonds and CDs featuring a “survivor’s option,” trustees, paying agents and other determining agents for issuers of bonds and CDs featuring a “survivor’s options,” investors and prospective investors in Eden Arc Capital Partners, LP, and other individuals and entities related to development and execution of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Terms and operation of bonds and CDs featuring a “survivor’s option,” including redemption</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Execution of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr. and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>

<p><i>David Robbins</i>  Kaufmann Gildin &amp;  Robbins LLP  767 Third Avenue  30th Floor  New York, NY 10017</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; and/or (3) disputes and/or litigation with brokerage firms and issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Eric Roper</i>  1025 Fifth Avenue  New York, NY 10028</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; (3) disclosures to issuers of bonds and CDs featuring a “survivor’s option”; and/or (4) disputes and/or litigation with issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Paul Sarkozi</i>  Tannenbaum Helpert  Syracuse &amp; Hirschtritt LLP  900 Third Avenue  New York, NY 10022</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; and/or (3) disputes and/or litigation with issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>

<p><i>Thomas Tabor</i>  c/o Rebecca Brazzao  Thompson Hine, LLP  335 Madison Avenue  12th Floor  New York, NY 10017</p>	<ul style="list-style-type: none"> <li>● Terms and operation of bonds featuring a “survivor’s option,” including redemption</li> <li>● Role and activities of trustees and/or paying agents for issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Michael Tannenbaum</i>  Tannenbaum Helpert  Syracuse &amp; Hirschtritt LLP  900 Third Avenue  New York, NY 10022</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; and/or (3) disputes and/or litigation with issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Beth Trachtenberg</i>  Steptoe &amp; Johnson  1114 Avenue of the Americas  New York, NY 10036</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; and/or (3) disputes and/or litigation with issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>

<p><i>William Yancey</i>  c/o Mike Lyons  Hilltop Securities</p>	<ul style="list-style-type: none"> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Operation of joint tenancy with rights of survivorship brokerage accounts</li> <li>● Redemption of bonds and CDs featuring a “survivor’s option”</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>
<p><i>Dianne Zeydel</i>  Greenberg Taurig  333 SE 2nd Avenue  Suite 4400  Miami, FL 33131</p>	<ul style="list-style-type: none"> <li>● Legal advice concerning: (1) structure and structuring of investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities; (2) joint tenancies with rights of survivorship; and/or (3) disputes and/or litigation with issuers of bonds and CDs featuring a “survivor’s option”</li> <li>● Understanding of the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with the U.S. Securities and Exchange Commission and/or any other governmental or regulatory agency concerning Donald F. Lathen, Jr., Michael Robinson, EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Communications with Donald F. Lathen, Jr., Michael Robinson and/or others concerning EndCare, the Eden Arc entities and/or the investment strategy of Donald F. Lathen, Jr. and the Eden Arc entities</li> <li>● Response to any issues or testimony presented by the U.S. Securities and Exchange Commission during the course of its case-in-chief</li> </ul>

**EXHIBIT L**

**From:** [Berke, Janna](#)  
**To:** ["Kevin Galbraith"](#)  
**Cc:** [Brown, Nancy A](#)  
**Subject:** Matter of Donald F. Lathen, Jr., Admin. Proc. File No. 3-17387  
**Date:** Saturday, December 31, 2016 3:41:21 PM

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Mr. Galbraith:

We would like to interview you in advance of our upcoming hearing, as we've done with Mr. Lathen's other lawyers on whose advice he is now claiming reliance.

Can you please tell us what times will work for you this coming week?

Thank you and have a happy new year,  
Janna

Janna I. Berke  
Enforcement Division  
U.S. Securities & Exchange Commission  
200 Vesey Street, Suite 400  
New York, NY 10281

**From:** Berke, Janna  
**To:** "Kevin Galbraith"  
**Cc:** [Brown, Nancy A](#); [Weinstock, Judith](#); [Moilanen, Lindsay S](#); [Harlan Protass](#)  
**Subject:** RE: In the Matter of Donald F. Lathen, Jr., Admin. Proc. File No. 3-17387  
**Date:** Tuesday, January 03, 2017 8:10:00 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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Mr. Galbraith:

Thank you for your response.

Per my email on December 31, 2016, can you please provide us with some dates and times that will work for an interview.

Thank you,  
Janna

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**From:** Kevin Galbraith [mailto:[kevin@kevingalbraithlaw.com](mailto:kevin@kevingalbraithlaw.com)]  
**Sent:** Tuesday, January 03, 2017 5:35 PM  
**To:** Berke, Janna  
**Cc:** [Brown, Nancy A](#); [Weinstock, Judith](#); [Moilanen, Lindsay S](#); [Harlan Protass](#)  
**Subject:** Re: In the Matter of Donald F. Lathen, Jr., Admin. Proc. File No. 3-17387

Ms. Berke,

Following up on our meet-and-confer, below please find the additional detail I agreed to provide:

12/15/14 entries in which the subjects are listed as "redacted for privilege" refer to emails in which the subject line reveals specific litigation strategy relating to an entity against which Respondent is currently contemplating litigation; providing the subject field would reveal privileged attorney-client communications, and we decline to do so.

1/21/15 entry in which the subject is "Eden Arc Capital" contains (1) confidential attorney-client communications regarding the results of an SEC examination and (2) confidential attorney-client, joint-defense and common-interest communications concerning litigation and regulatory defense strategy.

With regard to the other assertions regarding privilege waiver contained in your message below, they are inaccurate, for the reasons I provided during our meet-and-confer.

Best,

**From:** [Kevin Galbraith](#)  
**To:** [Berke, Janna](#)  
**Cc:** [Brown, Nancy A](#)  
**Subject:** Re: Eden Arc  
**Date:** Thursday, January 05, 2017 3:46:03 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

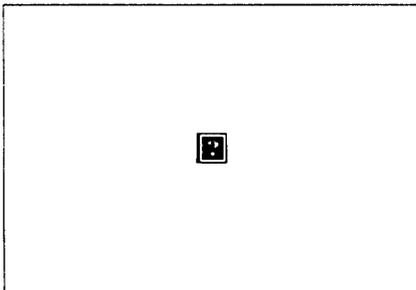
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Ms. Berke,

Regarding your request for a pre-hearing interview, I will respectfully decline.

Best,

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

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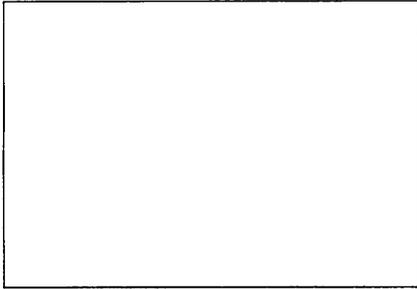
**From:** Kevin Galbraith <[kevin@kevingalbraithlaw.com](mailto:kevin@kevingalbraithlaw.com)>  
**Date:** Thursday, January 5, 2017 at 10:16 AM  
**To:** "Berke, Janna" <[berkej@SEC.GOV](mailto:berkej@SEC.GOV)>  
**Cc:** "Brown, Nancy A" <[BrownN@SEC.GOV](mailto:BrownN@SEC.GOV)>  
**Subject:** Re: Eden Arc

Ms. Berke,

Email service is fine.

Best,

Kevin



[kevin@galbraithlawfirm.com](mailto:kevin@galbraithlawfirm.com)  
[www.kevingalbraithlaw.com](http://www.kevingalbraithlaw.com)

---

**From:** "Berke, Janna" <berkej@SEC.GOV>  
**Date:** Wednesday, January 4, 2017 at 7:41 PM  
**To:** Kevin Galbraith <kevin@kevingalbraithlaw.com>  
**Cc:** "Brown, Nancy A" <BrownN@SEC.GOV>  
**Subject:** Eden Arc

Mr. Galbraith:

I'm attaching a subpoena for your attendance at the Eden Arc hearing. Please let me know if you will agree to accept service by email or if you require formal service of process.

Also, we still have not heard back from you on a date and time for an interview. Please let us know if there is a time this Friday that will work for you.

Thank you,  
Janna

Janna I. Berke  
Division of Enforcement  
U.S. Securities & Exchange Commission  
200 Vesey Street, Suite 400  
New York, NY 10281-1022  
(212) 336-9144  
berkej@sec.gov

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**EXHIBIT M**

**From:** [Harlan Protass](#)  
**To:** [Berke, Janna](#)  
**Cc:** [Brown, Nancy A](#)  
**Subject:** Re: Galbraith  
**Date:** Thursday, January 05, 2017 1:43:00 PM

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Janna --

I'm happy to contact Kevin. But, as I read it, the language you quote from the October 18 Order speaks to what the Division can ask attorneys about at trial. It does not create any new right to speak with those attorneys before trial (or any obligation on their part to speak with the Division).

Harlan

-----  
Harlan Protass  
**Clayman & Rosenberg LLP**  
305 Madison Avenue  
New York, NY 10165  
T. 212-922-1080  
M. [REDACTED]  
F. 212-949-8255  
[www.clayro.com](http://www.clayro.com)  
[protass@clayro.com](mailto:protass@clayro.com)

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On Thu, Jan 5, 2017 at 12:51 PM, Berke, Janna <[berkej@sec.gov](mailto:berkej@sec.gov)> wrote:

Harlan,

We've asked Mr. Galbraith on three separate occasions to set up a time where we can interview him. He has not yet responded. As you know, the Court ordered on October 18, 2016 that we "may fully explore with the attorneys everything Respondents or their representatives told the attorneys about the joint tenancies, what advice the attorneys provided about the joint tenancies, and whether they know if their advice was followed."

Would you let us know when he will make himself available?

Thank you,

Janna

Janna I. Berke

Division of Enforcement

U.S. Securities & Exchange Commission

200 Vesey Street, Suite 400

New York, NY 10281-1022

(212) 336-9144

[berkej@sec.gov](mailto:berkej@sec.gov)

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