

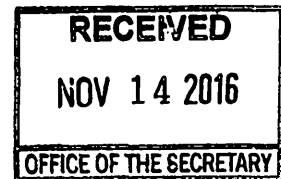
UNITED STATES OF AMERICA  
Before the  
U.S. SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-17387

In the Matter of

DONALD F. LATHEN, JR.,  
EDEN ARC CAPITAL MANAGEMENT, LLC,  
EDEN ARC CAPITAL ADVISERS, LLC,

Respondents.



AFFIRMATION OF HARLAN PROTASS IN SUPPORT OF THE  
EDEN ARC RESPONDENTS' OPPOSITION TO THE DIVISION  
OF ENFORCEMENT'S SECOND MOTION TO PRECLUDE  
RELIANCE ON THE ADVICE OF COUNSEL DEFENSE

HARLAN PROTASS hereby affirms under the penalty of perjury that the following statements are true and correct, except where otherwise indicated:

1. I am a member of the law firm Clayman & Rosenberg LLP, which has offices at 305 Madison Avenue, New York, NY, 10165. Clayman & Rosenberg LLP represents respondents Donald F. Lathen, Jr., Eden Arc Capital Management, LLC and Eden Arc Capital Advisors, LLC (the "Eden Arc Respondents") in the referenced matter. I am admitted to the practice of law before the courts of the State of New York, the United States District Courts for the Southern and Eastern Districts of New York and the United States Court of Appeals for the Second Circuit.

2. I submit this Affirmation in support of the Eden Arc Respondents' Opposition to the Division of Enforcement's Second Motion to Preclude Reliance on the Advice of Counsel Defense, dated November 2, 2016.

3. On September 23, 2016 I sent a letter to Judith Weinstock, Esq. advising the Division of Enforcement (the "Division") and this Court of the Eden Arc Defendants' intent to rely on the advice of counsel defense at the hearing herein. In doing so, the Eden Arc Respondents: (A) disclosed the names and contact information for five attorneys who provided the legal advice upon which they relied; and (B) produced all communications with those attorneys relevant to the Eden Arc Respondents' invocation of the advice of counsel defense. A copy of my September 23, 2016 letter to Judith Weinstock, Esq. is attached hereto as Exhibit 1.

4. One business day later, on September 26, 2016 the Division filed a motion seeking to preclude the Eden Arc Respondents from relying on the advice of counsel defense.

5. On October 3, 2016 the Eden Arc Respondents submitted a memorandum of law in opposition to the Division's preclusion motion.

6. On October 6, 2016 the Division submitted a memorandum of law in further support of its preclusion motion.

7. On October 18, 2016 this Court issued its "Order on Motion to Preclude Advice-of-Counsel Defense." A copy of this Court's "Order on Motion to Preclude Advice-of-Counsel Defense" is attached hereto as Exhibit 2.

8. As required by this Court's "Order on Motion to Preclude Advice-of-Counsel Defense," on October 25, 2016 the Eden Arc Respondents produced a chart to the Division listing the names and contact information for eighteen attorneys with whom they consulted, at any time through approximately February 2016, about the structure of and structuring of the joint

tenancies at issue in this case. A copy of my October 25, 2016 letter to Judith Weinstock, Esq. is attached hereto as Exhibit 3. A copy of the chart of attorneys enclosed with the foregoing letter to Ms. Weinstock is attached hereto as Exhibit 4.

9. The foregoing list of attorneys included, among others: (A) the names of attorneys with whom Mr. Lathen held only preliminary discussions (but who he never retained and from whom he never received legal advice); (B) the names of other attorneys with whom Mr. Lathen consulted concerning the structure of his investment strategy before the existence of Eden Arc Capital Partners, LP; and (C) the names of still other attorneys with whom Mr. Lathen consulted with respect to potential changes to the structure of his investment strategy that were never implemented.

10. As required by this Court's "Order on Motion to Preclude Advice-of-Counsel Defense," on November 1, 2016 the Eden Arc Respondents produced 824 e-mails (with attachments) to the Division constituting communications between the Eden Arc Respondents and any of the attorneys on the list of attorneys provided to the Division on October 25, 2016. A copy of my November 1, 2016 letter to Judith Weinstock, Esq. is attached hereto as Exhibit 5.

11. As required by this Court's "Order on Motion to Preclude Advice-of-Counsel Defense," on November 7, 2016 the Eden Arc Respondents produced 198 e-mails (with attachments) extracted from Mr. Lathen's yahoo.com account constituting additional communications between the Eden Arc Respondents and any of the attorneys on the list of attorneys provided to the Division on October 25, 2016. The Eden Arc Respondents had engaged an outside vendor, Anthony Whitledge of Arlington, VA, to extract those e-mails from Mr. Lathen's yahoo.com account that I, in turn, reviewed for purposes of production to the

Division. A copy of my November 7, 2016 letter to Judith Weinstock, Esq. is attached hereto as Exhibit 6.

12. Upon information and belief, Mr. Whitledge used Mr. Lathen's login credentials to create a Microsoft Outlook e-mail account. Upon information and belief, Mr. Whitledge then used the "iMap software" to connect that Microsoft Outlook account to Mr. Lathen's yahoo.com account and, using that software, downloaded all e-mails from Mr. Lathen's yahoo.com account into .PST files within that Microsoft Outlook account. Upon information and belief, Mr. Whitledge next filtered the e-mails in that Microsoft Outlook account by date, focusing (per my instructions) on the January 1, 2009 to July 2012 time frame (the time frame at issue herein with respect to Mr. Lathen's yahoo.com account, which he discontinuing using for business purposes after July 2012). Upon information and belief, Mr. Whitledge then transmitted those files to Driven, Inc., our outside database vendor. I then reviewed those e-mails for purposes of production to the Division.

13. Upon information and belief, the foregoing is the only means that could be developed for the review of Mr. Lathen's yahoo.com e-mails because those e-mails cannot be downloaded directly from his yahoo.com account. Thus, upon information and belief, it was the foregoing technical complications associated with extracting e-mails from Mr. Lathen's yahoo.com account that precipitated production of those e-mails on November 7, 2016, rather than on November 1, 2016.

14. Upon information and belief, the foregoing issues are not unique to Mr. Lathen. Rather, upon information and belief, any individual seeking to extract e-mails from any yahoo.com account would contend with the same difficulties.

15. After their receipt of my November 1, 2016 letter (which, as detailed above, identified the foregoing issue relating to extraction of e-mails from Mr. Lathen's yahoo.com account), the Division did not engage me (or any member of my team) in any negotiations concerning the Eden Arc Respondents' production of e-mails and did not call nor send an e-mail or otherwise communicate with me (or any member of my team) concerning that delayed production of yahoo.com emails. If the Division had done so, and in light of the problems experienced in the production of Mr. Lathen's yahoo.com e-mails, I, on behalf of the Eden Arc Respondents, would have consented to an application by the Division to this Court to extend the November 4, 2016 deadline in this Court's "Order on Motion to Preclude Advice-of-Counsel Defense."

16. The Eden Arc Respondents continue to have no objection to a reasonable extension of that November 4, 2016 deadline, and respectfully submit that this Court can easily resolve this issue by reasonably extending that November 4, 2016 deadline.

17. Such a remedial measure could easily have been implemented if the Division had only picked up the phone and called me or even e-mailed me concerning same rather than filing the instant motion.

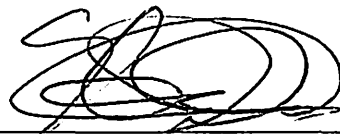
18. Attached as Exhibits 7, 8, 9, 10, 11, 12, 13, 14, 15 are examples of e-mails that the Eden Arc Respondents produced to the Division on November 7, 2016.

19. The Division's Investigative File contained approximately 600,000 pages, including approximately 90,000 e-mails.

20. Attached as Exhibit 16 is a letter from Janna Berke, Esq. to me, dated August 22, 2016.

21. Attached as Exhibit 17 is a letter from Judith Weinstock, Esq. to me, dated September 21, 2016.
22. Attached as Exhibit 18 is a letter from Janna Berke, Esq. to me, dated September 22, 2016.
23. Attached as Exhibit 19 is a letter from Janna Berke, Esq. to me, dated September 23, 2016.
24. Attached as Exhibit 20 is a letter from Alexander Janghorbani, Esq. to me, dated September 27, 2016.
25. Attached as Exhibit 21 is a letter from Janna Berke, Esq. to me, dated September 27, 2016.
26. Attached as Exhibit \_\_ is a letter from Janna Berke, Esq. to me, dated November 7, 2016.

Dated: New York, NY  
November 9, 2016



Harlan Protass

September 23, 2016

VIA E-MAIL

Judith Weinstock, Esq.  
U.S. Securities and Exchange Commission  
New York Regional Office  
Brookfield Place  
200 Vesey Street, Suite 400  
New York, NY 10281-1022

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 Ms. Weinstock:

Per our conference call earlier today (and pursuant to the Order Following Prehearing Conference, dated September 13, 2016), we write to advise you that Donald F. Lathen, Jr., Eden Arc Capital Management, LLC and Eden Arc Capital Advisors, LLC (the "Eden Arc Respondents") intend to invoke the advice of counsel defense at the hearing in the referenced matter with respect to (and hereby waive the attorney-client privilege with respect to attorney-client communications, whether written, oral or electronic, concerning) the legal advice they received concerning and relating to the structure of, and structuring of, the Eden Arc Respondents' investment strategy.

In connection therewith, the Eden Arc Respondents relied on legal advice they received concerning and relating to the structure of, and structuring of, the Eden Arc Respondents' investment strategy from Margaret F. Farrell, Esq. and Robert G. Flanders, Jr., Esq. of Hinckley Allen & Snyder LLP. Ms. Farrell remains a Partner at Hinckley Allen & Snyder LLP. Mr. Flanders is now a Partner at Whelan, Corrente, Flanders, Kinder & Siket LLP. Contact information for Ms. Farrell and Mr. Flanders is:

Margaret D. Farrell, Esq.  
Hinckley, Allen & Snyder LLP  
100 Westminster Street, Suite 1500  
Providence, RI 02903  
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Robert G. Flanders, Jr., Esq.  
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Providence, RI 02903  
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[rflanders@whelencorrente.com](mailto:rflanders@whelencorrente.com)

Additionally, the Eden Arc Respondents relied on legal advice they received concerning and relating to the structure of, and structuring of, the Eden Arc Respondents' investment strategy from Eric Roper, Esq. and Cherryl J. Calaguio, Esq. of Gersten Savage LLP, a law firm that no longer exists. Mr. Roper is now retired. Ms. Calaguio is now Counsel at Sichenzia Ross Friedman Ference LLP. Contact information for Mr. Roper and Ms. Calaguio is:

Eric Roper, Esq.  
T. 917-535-0038  
[eric@ericropersq.com](mailto:eric@ericropersq.com)

Cherryl J. Calaguio, Esq.  
Sichenzia Ross Friedman Ference LLP  
61 Broadway  
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T. 212-930-9700  
[ccalaguio@srff.com](mailto:ccalaguio@srff.com)

Finally, consistent with the invocation of the advice of counsel defense, attached to the e-mail with which this letter is sent is the initial production of attorney-client privileged communications with Ms. Farrell, Mr. Flanders, Mr. Roper and Ms. Calaguio. We will produce the attached communications to you in Concordance-ready production format during the week of September 26, 2016. Additionally, we will 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.

Please contact me if you have any questions concerning the foregoing or the attached.

Very truly yours,

/s/

Harlan Protass

Encls.

cc: Nancy Brown, Esq. (via e-mail w/ encls.)  
Alex Janghorbani, Esq. (via e-mail w/ encls.)  
Janna Berke, Esq. (via e-mail w/ encls.)



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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 4272/October 18, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-17387

In the Matter of

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

ORDER ON MOTION TO PRECLUDE  
ADVICE-OF-COUNSEL DEFENSE

Respondents want to present an advice-of-counsel defense. The Division of Enforcement opposes Respondents’ plan. For the reasons that follow, the Division’s motion to preclude Respondents’ defense is denied in part.

*Background*

Following a prehearing conference held on September 12, 2016, Respondents filed a notice:

that the Eden Arc Respondents intend to invoke the advice of counsel defense at the hearing in the referenced matter with respect to (and hereby waive the attorney-client privilege with respect to attorney-client communications, whether written, oral or electronic, concerning) the legal advice they received concerning and relating to the structure of, and structuring of, the Eden Arc Respondents’ investment strategy.

Letter from Harlan Protass (Sept. 23, 2016).<sup>1</sup> The Division of Enforcement later moved to preclude Respondents from relying on this defense. The Division contends that Respondents’ proposed defense is irrelevant because this case is not about the structure of Respondents’ investment strategy but is instead about disclosures Respondent Donald F. Lathen made when he redeemed securities held in various joint tenancies. Mot. at 4-5.

<sup>1</sup> The term “Eden Arc Respondents”—as used by Respondents’ counsel in certain letters—appears to collectively refer to all three Respondents, including Donald F. Lathen. See Janghorbani Decl. (Sept. 26, 2016), Ex. J; Letter from Harlan Protass (Sept. 23, 2016).

Respondents contend that it is not for the Division to say what is or is not relevant. They concede that “the Eden Arc Respondents are not asserting that they sought, received or relied on legal advice concerning whether Mr. Lathen was required to disclose his ‘contractual regime’ when redeeming survivor’s option bonds and CDs, as the Division maintains.” Opp’n at 4; *see id.* at 5 (“[T]he genesis of the Division’s argument is its misguided attempt at imposing a requirement on Mr. Lathen to have sought legal advice that he did not seek - that is, advice concerning the sufficiency of his disclosures to issuers of survivor’s option bonds and CDs.”). In other words, the Eden Arc Respondents have waived any claim that they sought or relied on advice about what disclosures Lathen was required to make.

### *Legal Principles*

In a bench trial, “it is virtually impossible for a trial judge to commit reversible error by receiving incompetent evidence, whether objected to or not.”<sup>2</sup> Courts should hesitate to exclude evidence during a bench trial and should instead “take factors that otherwise might affect . . . admissibility into consideration in determining . . . weight.”<sup>3</sup> Applying this principal to administrative agencies, courts have “strongly advise[d] administrative law judges: if in doubt, let it in.”<sup>4</sup> Following this guidance, the Commission has held that “all evidence which ‘can conceivably throw any light upon the controversy’ should normally be admitted.”<sup>5</sup> Administrative “law judges should [thus] be inclusive in making evidentiary determinations.”<sup>6</sup>

The attorney-client privilege protects from disclosure certain “communications between a client and his attorney.”<sup>7</sup> Courts construe the attorney-client privilege narrowly “because [it] . . . obstructs the search for the truth and” provides “benefits [that] are, at best, ‘indirect and

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<sup>2</sup> *Builders Steel Co. v. Comm’r*, 179 F.2d 377, 379 (8th Cir. 1950); *see Herlihy Mid-Continent Co. v. N. Ind. Pub. Serv. Co.*, 245 F.2d 440, 444-45 (7th Cir. 1957).

<sup>3</sup> *In re Unisys Sav. Plan Litig.*, 173 F.3d 145, 164 (3d Cir. 1999) (Becker, C.J., dissenting); *see Builders Steel Co.*, 179 F.2d at 379-80; *see Eagle-Picher Indus., Inc. v. Liberty Mut. Ins. Co.*, 682 F.2d 12, 18 (1st Cir. 1982) (“[A] district judge, sitting without a jury, might be well advised to admit provisionally all extrinsic evidence of the parties’ intent, unless it is clearly inadmissible, privileged, or too time consuming, in order to guard against reversal.”).

<sup>4</sup> *Multi-Med. Convalescent & Nursing Ctr. of Towson v. NLRB*, 550 F.2d 974, 978 (4th Cir. 1977); *see Samuel H. Moss, Inc. v. FTC*, 148 F.2d 378, 380 (2d Cir. 1945).

<sup>5</sup> *Charles P. Lawrence*, Admin. Proc. File No. 3-609, 1967 WL 87762, at \*4 (Dec. 19, 1967).

<sup>6</sup> *City of Anaheim*, Exchange Act Release No. 42140, 1999 WL 1034489, at \*2 (Nov. 16, 1999).

<sup>7</sup> *In re EchoStar Commc’ns Corp.*, 448 F.3d 1294, 1298-99 (Fed. Cir. 2006).

speculative.”<sup>8</sup> It is “established that if a party interjects the ‘advice of counsel’ as [a] . . . defense, then that party waives the privilege as to *all* advice received concerning the same subject matter.”<sup>9</sup>

The question of what constitutes “the same subject matter” is fact specific and necessarily determined on a case-by-case basis.<sup>10</sup> A party asserting advice of counsel as defense may not selectively define the “same subject matter” in a way that prevents the party’s opponent from determining whether the party asserting the defense provided counsel with all relevant facts and then followed the advice in good faith.<sup>11</sup>

Because the advice-of-counsel defense operates to waive the privilege as to all advice received concerning the same subject matter, a party asserting this defense may not “disclos[e] [some] communications that support its position while simultaneously concealing communications that do not.”<sup>12</sup> It follows that a litigant may not limit the temporal reach of his or her waiver of the attorney-client privilege to prevent disclosure of communications related to that subject matter.<sup>13</sup>

#### *Discussion*

I reject the Division’s argument that Respondents’ defense is irrelevant and should be disallowed. Because the defense is at least “conceivably” relevant, disallowing it would be inconsistent with Commission precedent.<sup>14</sup> Whether Respondents will be able to establish all of

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<sup>8</sup> *In re Grand Jury Investigation*, 599 F.2d 1224, 1235 (3d Cir. 1979); see *In re Grand Jury Proceedings*, 219 F.3d 175, 182 (2d Cir. 2000); see also *Trammel v. United States*, 445 U.S. 40, 50 (1980).

<sup>9</sup> 1 Kenneth S. Broun et al., *McCormick on Evidence* § 93 (7th ed. 2013) (emphasis added); see *EchoStar Commc’ns Corp.*, 448 F.3d at 1299.

<sup>10</sup> *Fort James Corp. v. Solo Cup Co.*, 412 F.3d 1340, 1349-50 (Fed. Cir. 2005).

<sup>11</sup> *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 486 (3d Cir. 1995); see *Trouble v. Wet Seal, Inc.*, 179 F. Supp. 2d 291, 304 (S.D.N.Y. 2001) (“When a party intends to rely at trial on the advice of counsel as a defense to a claim of bad faith, that advice becomes a factual issue, and ‘opposing counsel is entitled to know not only whether such an opinion was obtained but also its content and what conduct it advised.’” (quoting *Vicinanzo v. Brunschwig & Fils, Inc.*, 739 F. Supp. 891, 894 (S.D.N.Y. 1990))).

<sup>12</sup> *Fort James Corp.*, 412 F.3d at 1349; see *United States v. Workman*, 138 F.3d 1261, 1263-64 (8th Cir. 1998).

<sup>13</sup> *Bd. of Trustees of Leland Stanford Junior Univ. v. Roche Molecular Sys., Inc.*, 237 F.R.D. 618, 627 (N.D. Cal. 2006).

<sup>14</sup> See *Charles P. Lawrence*, 1967 WL 87762, at \*4.

the elements of the defense, including full disclosure to counsel and subsequent good faith reliance on that advice,<sup>15</sup> remains to be seen. If, as the Division suggests, Respondents' advice-of-counsel defense misses the point, then it will not matter what Respondents discussed with counsel about the structure of the joint tenancies. In that case, the Division is free to ignore the defense. On the other hand, as discussed below, the Division is free to explore the circumstances surrounding the advice Respondents sought and received.

Respondents state that they are waiving "the attorney-client privilege . . . with respect to the *entirety* of the 'transaction,' not some portion of it – to wit, 'the legal advice they received concerning and relating to the *structure* of, and *structuring* of, the Eden Arc Respondents' investment strategy.'" Opp'n at 6. The Division counters that Respondents are selectively disclosing evidence relating to their proposed defense.

Assuming Respondents have not adopted an overly narrow construction of the "entirety of the 'transaction,'" *i.e.*, one that does not include the transaction's conclusion, as to the attorneys with whom Respondents discussed the "the structure of and structuring of" the joint tenancies at issue in this case, Respondents have necessarily waived the privilege "as to *all* . . . communications relating to the same subject matter."<sup>16</sup> And the "same subject matter" is the joint tenancies. This means that if Respondents consulted with an attorney at any time "through approximately February 2016"—the end of the period of alleged misconduct—about the structure or structuring of the joint tenancies, they must disclose the name of the attorney and all communications with that attorney about the joint tenancies.<sup>17</sup> Put another way, once it is established that Respondents consulted with a given attorney, the Division must be able to test (1) whether Respondents made full disclosure to that attorney; (2) what advice the attorney provided; and (3) whether the advice given was followed in good faith.<sup>18</sup>

To the extent Respondents have not already done so, they shall forthwith disclose to the Division every attorney they consulted, at any time "through approximately February 2016,"

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<sup>15</sup> See *United States v. DeFries*, 129 F.3d 1293, 1308 (D.C. Cir. 1997).

<sup>16</sup> *In re Sealed Case*, 676 F.2d 793, 809 (D.C. Cir. 1982) (emphasis added).

<sup>17</sup> OIP ¶ 2. The Division asserts that Respondents purport to limit their waiver of their attorney-client privilege so as to exclude communications before their Fund was formed in 2011. Respondents cannot limit their waiver in this manner. See *Bd. of Trustees of Leland Stanford Junior Univ.*, 237 F.R.D. at 627. Additionally, this purported limitation is inconsistent with their counsel's letter through which Respondents unequivocally waived their attorney-client privilege without any such limitation. See Letter from Harlan Protass (Sept. 23, 2016). The privilege waiver does not, however, encompass attorney-client communications related to the Division's investigation or this administrative proceeding. See *Bowne of N.Y. City, Inc. v. AmBase Corp.*, 150 F.R.D. 465, 487 (S.D.N.Y. 1993).

<sup>18</sup> See *DeFries*, 129 F.3d at 1308.

about “the structure of and structuring of” the joint tenancies at issue in this case.<sup>19</sup> They shall also disclose all communications in their possession that concern discussions with those counsel about any aspect of the joint tenancies. In other words, if Respondent Lathen exchanged e-mails with an attorney in which a discussion occurred about the “the structure of and structuring of” the joint tenancies, those e-mails shall be disclosed even if they contain discussions about other aspects of the joint tenancies. Finally, Respondents shall inform these attorneys of their waiver. Failure to comply with the above will preclude Respondents from relying on an advice-of-counsel defense.<sup>20</sup>

Given Respondents’ waiver, the Division may inquire of the attorneys who were consulted, regarding their discussions with Respondents or their representatives about the joint tenancies. This means that the Division 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.<sup>21</sup>

Respondents should complete any disclosures required by this order by November 1, 2016. The parties are encouraged to engage in good faith negotiations about production in compliance with this order. If such negotiations fail, the Division may renew its request for documentary subpoenas by November 4, 2016.

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James E. Grimes  
Administrative Law Judge

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<sup>19</sup> As noted, Respondents’ waiver does not encompass attorney-client communications related to the Division’s investigation or this administrative proceeding.

<sup>20</sup> See *Minn. Specialty Crops, Inc. v. Minn. Wild Hockey Club, L.P.*, 210 F.R.D. 673, 676-77 (D. Minn. 2002).

<sup>21</sup> See *Glenmede Trust Co.*, 56 F.3d at 486; see also *United States v. Jones*, 696 F.2d 1069, 1072 (4th Cir. 1982) (citing *Garfinkle v. Arcata Nat’l Corp.*, 64 F.R.D. 688, 689 (S.D.N.Y. 1974), for the proposition that “where defendant injected his counsel’s opinion letter as a defense, plaintiff was entitled to probe into the circumstances surrounding issuance of the letter and could not be limited to the letter itself”).



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Harlan J. Protass  
Partner  
protass@clayro.com

October 25, 2016

VIA E-MAIL

Judith Weinstock, Esq.  
U.S. Securities and Exchange Commission  
New York Regional Office  
Brookfield Place  
200 Vesey Street, Suite 400  
New York, NY 10281-1022

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 Ms. Weinstock:

Pursuant to Judge Grimes' Order on Motion to Preclude Advice-of-Counsel Defense, dated October 18, 2016, enclosed please find a chart listing the names and contact information for every attorney (except for this firm and Brune Law P.C.) with whom Donald F. Lathen, Jr., Eden Arc Capital Management, LLC and Eden Arc Capital Advisors, LLC "consulted, at any time 'through approximately February 2016.' about 'the structure of and structuring of' the joint tenancies at issue in this case."

Very truly yours,

/s/

Harlan Protass

Encl.

cc: Nancy Brown, Esq. (via e-mail w/ encl.)  
Alex Janghorbani, Esq. (via e-mail w/ encl.)  
Janna Berke, Esq. (via e-mail w/ encl.)

October 25, 2016

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

Attorney List

(Produced Pursuant to Order on Motion to Preclude  
Advice-of-Counsel Defense, dated October 18, 2016)

<u>Name</u>	<u>Contact Information</u>
Kim Baptiste	Schulte Roth & Zabel LLP 919 Third Avenue New York, NY 10022 T: 212-756-2317 kim.baptiste@srz.com
Jonathan Blattmacher (formerly of Milbank Tweed Hadley & McCloy)	Pioneer Wealth Partners 515 Madison Avenue Suite 13B New York, NY 10022 T. 212-328-0312 jblattmachr@pioneerwealthpartners.com
Cherryl J. Calaguio (formerly of Gersten Savage LLP)  Please Note: Ms. Calaguio has expressed a preference for e-mail communications through personal (i.e., gmail.com) e-mail address.	Sichenzia Ross Friedman Ference LLP 61 Broadway New York, NY 10006 T. 212-930-9700 [REDACTED]
Stephen DeRosa	DraftLaw <a href="https://www.draftlaw.com/">https://www.draftlaw.com/</a> (No other contact information available)
Daren Domina (formerly of Katten Muchin Rosenman LLP)	Haynes and Boone, LLP 30 Rockefeller Plaza 26th Floor New York, NY 10112 T. 212-659-4963 daren.domina@haynesboone.com
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November 1, 2016

VIA E-MAIL AND HAND DELIVERY

Judith Weinstock, Esq.  
U.S. Securities and Exchange Commission  
New York Regional Office  
Brookfield Place  
200 Vesey Street, Suite 400  
New York, NY 10281-1022

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 Ms. Weinstock:

Enclosed please find a CD containing .pst files of e-mails the production of which is required by Judge Grimes' Order on Motion to Preclude Advice-of-Counsel Defense, dated October 18, 2016. These .pst files are also being shared with you today (November 1, 2016) via DropBox. As you know from the prior production of e-mails, Mr. Lathen utilized a yahoo e-mail address to conduct business from January 1, 2009 to early July 2012. We have engaged an outside vendor, Anthony Whitledge in Arlington, VA, to extract those yahoo e-mails from Mr. Lathen's yahoo e-mail account, a laborious and time-consuming process that Mr. Whitledge has not yet been able to complete but that Mr. Whitledge anticipates completing in the next 24-48 hours. Upon completion of that extraction, we will supplement the production of e-mails produced to you today. Please let me know whether you would prefer to receive such additional e-mails on a CD or via DropBox.

Very truly yours,

/s/

Harlan Protass

Encl.

cc: Nancy Brown, Esq. (via e-mail)  
Alex Janghorbani, Esq. (via e-mail)  
Janna Berke, Esq. (via e-mail)



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

Harlan Protass  
Partner  
protass@clayro.com

November 7, 2016

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

Judith Weinstock, Esq.  
U.S. Securities and Exchange Commission  
New York Regional Office  
Brookfield Place  
200 Vesey Street, Suite 400  
New York, NY 10281-1022

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 Ms. Weinstock:

Enclosed please find a CD containing PDFs of 198 e-mails (and 150 attachments to those e-mails) the production of which is required by Judge Grimes' Order on Motion to Preclude Advice-of-Counsel Defense, dated October 18, 2016. Such e-mails supplement the 824 e-mails produced to you on November 1, 2016 pursuant to the same Order.

Per your request, these PDF files have already been shared with you today (November 7, 2016) via Accellion. Please confirm for me via e-mail that you have received such files via Accellion.

Very truly yours,

/s/

Harlan Protass

Encl.

cc: Nancy Brown, Esq. (via e-mail)  
Alex Janghorbani, Esq. (via e-mail)  
Janna Berke, Esq. (via e-mail)

---

**From:** [REDACTED]  
**Sent:** Tuesday, August 17, 2010 7:20 PM  
**To:** Eric Roper  
**Subject:** Running 10 mins late

Sent from my Verizon Wireless BlackBerry

---

**From:** Jay Lathen [REDACTED] >  
**Sent:** Friday, February 19, 2010 6:35 PM  
**To:** Flanders, Robert G.  
**Cc:** Bouton, William W.  
**Subject:** Re: Conference Call This Afternoon?

Gentlemen,

I am available this afternoon between 3 and 6. I would propose 3 o'clock. Please advise if that works for you or, if not, please provide an alternative time that would work. I am available all day on Monday if today does not work.

Regards,

Jay

Jay Lathen  
President  
EndCare  
One Penn Plaza, Ste. 3671  
New York, NY 10119  
212-786-7414 Work  
[REDACTED] Cell  
646-349-5964 Fax  
[REDACTED]

---

**From:** "Flanders, Robert G." <[rflanders@haslaw.com](mailto:rflanders@haslaw.com)>  
**To:** Jay Lathen [REDACTED] >  
**Cc:** "Bouton, William W." <[wbouton@haslaw.com](mailto:wbouton@haslaw.com)>  
**Sent:** Fri, February 19, 2010 10:23:08 AM  
**Subject:** Conference Call This Afternoon?

Jay:

Are you able to do a conference call sometime this afternoon with my partner, Bill Bouton, and me to discuss the project you have outlined for us to undertake in your attached letter to me and our proposed terms for doing so (see our attached engagement letter)?

Please let me know if this works for you. Thanks.

Bob

Robert G. Flanders, Jr.  
Partner | Hinckley, Allen & Snyder LLP

50 Kennedy Plaza, Suite 1500 | Providence, RI 02903-2319

p 401.457.5184 | f 401.277.9600

Assistant: Donna M. Falcoa | p 401.274.2000 x 5634 | [dfalcoa@haslaw.com](mailto:dfalcoa@haslaw.com)

---

**From:** [REDACTED]  
**Sent:** Wednesday, March 31, 2010 3:09 PM  
**To:** Robert Flanders

Bob,

I got your message last week. I have been on vacation last week and this week. Will be back in the office on Tuesday 4/6. Will reach out to you then.

Thanks,

Jay

Jay Lathen  
President  
EndCare  
One Penn Plaza, Suite 3600  
New York, NY 10119  
[REDACTED]  
212-786-7414 Work  
[REDACTED] Cell  
646-349-5964 Fax

Sent from my Verizon Wireless BlackBerry

---

**From:** Nicoletta Sarno <NSarno@gerstensavage.com>  
**Sent:** Wednesday, August 18, 2010 8:24 PM  
**To:** [REDACTED]  
**Subject:** Retainer Letter  
**Attachments:** EndCareCapital Aug 18 2010 Retainer Ltr.pdf

Dear Mr. Lathen,  
Attached please find the initial engagement letter, for your review and signature. If you have any questions please feel free to contact Mr. Roper.

Best regards,

*Nicoletta DeJoseph*  
*Billing Coordinator*  
*GERSTEN SAVAGE LLP*  
*600 Lexington Avenue*  
*9th Floor*  
*New York, New York 10022*  
*Tel.: 212.752.9700*  
*Direct: [REDACTED]*  
*Fax. 212.980.5192*

**BEFORE PRINTING. PLEASE THINK ABOUT THE ENVIRONMENT.**



---


**From:** Judith Russell <JRussell@gerstensavage.com>  
**Sent:** Friday, October 08, 2010 7:33 PM  
**To:** [REDACTED]  
**Cc:** Eric Roper  
**Subject:** FROM ERIC ROPER'S OFFICE  
**Attachments:** Lathen, Jay..Offshore & Domestic.doc

Hello Mr. Lathen,

Mr. Roper has asked me to forward a draft of the Retainer Agreement, said he wanted you to have something to review.

Regards,

*Judith Russell*  
*Assistant to Mr. Eric R. Roper*  
*Gersten Savage LLP*  
*600 Lexington Avenue*  
*9th Floor*  
*New York, NY 10022*  
*phone- 212-752-9700*  
*fax- 212-980-5192*  
[jrussell@gskny.com](mailto:jrussell@gskny.com)

 Before printing, please think about the environment.

---

**From:** Eric Roper <ERoper@gerstensavage.com>  
**Sent:** Tuesday, January 04, 2011 7:16 PM  
**To:** Jay Lathen  
**Subject:** FW: J. Lathen - Retainer  
**Attachments:** gersten\_savage\_eng\_ltr\_10\_20\_10.pdf

---

Hey Jay - Happy New Year and best to you and your family. Per our engagement letter, enclosing the next installment of our fees. I also spoke with Bob Kaufman and know that CJ sent him the docs, as she did with the administrator. Was going to follow up with Bob in the next few days.

Any more thoughts on the foundation issue?

Keep me posted and best, Eric.

---

**From:** [REDACTED]  
**Sent:** Thursday, August 19, 2010 8:24 PM  
**To:** David Robbins  
**Subject:** Re: Robbins

670 west End ave, #11F  
Ny, ny 10025

Sent from my Verizon Wireless BlackBerry

---

**From:** "David E. Robbins" <[drobbins@kaufmannGildin.com](mailto:d Robbins@kaufmannGildin.com)>  
**Date:** Thu, 19 Aug 2010 16:10:41 -0400  
**To:** 'Jay Lathen' <[REDACTED]>  
**Subject:** Robbins

Dear Jay

Please provide me with your home contact information for our records. I only have your office address.

**David E. Robbins**  
Kaufmann Gildin Robbins & Oppenheim LLP  
777 Third Avenue, 24th Floor  
New York, NY 10017  
(212) 755-3100  
Direct [REDACTED]  
Cell [REDACTED]  
Fax (212) 755-3174

[www.securitieslosses.com](http://www.securitieslosses.com)  
Author of [Securities Arbitration Procedure Manual \(5th Ed. 2009\)](#)

Nothing in this message should be interpreted as a digital electronic signature that can be used to authenticate a contract or other legal document. The information contained in this electronic mail transmission is privileged and confidential, subject to the attorney client and work product doctrine. It is intended only for the use of the individual or entity to whom it is addressed. If you have received this communication in error, please notify us immediately by telephone collect, purge any copies of the transmission stored in any electronic medium, and return any printed copies of the original message to us at the above address via the U.S. Postal Service. We will reimburse you for the postage. Thank you.

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**From:** Eric Roper <ERoper@gerstensavage.com>  
**Sent:** Thursday, November 11, 2010 7:53 PM  
**To:** [REDACTED]; Cheryl Calaguio  
**Subject:** Contacts

Jay:


Two administrators to contact are:  
Brenda Mauro – Partnership Administration LLC – 212-221-6045  
Dan Hart – Cortland Fund Services – 312-564-5065

D & O Insurance:  
Siller, Randy [Randy.Siller@lfg.com] – John Repetti’s contact  
Marc McCabe CIC Sr. VP – 212441-1307 - Arthur Marcus from our office

Waiting for another insurance referral Jay.

Eric

Eric R. Roper, Esq.  
Gersten Savage LLP  
600 Lexington Avenue  
9th Floor  
New York, NY 10022-6018  
Phone 212-752-9700 x9024  
Fax 212-980-5192  
Mobile [REDACTED]  
[eroper@gsknv.com](mailto:eroper@gsknv.com)

 Before printing, please think about the environment.


---

**From:** Eric Roper <ERoper@gerstensavage.com>  
**Sent:** Wednesday, November 17, 2010 2:11 PM  
**To:** [REDACTED] DNorensberg@johnthomasbd.com  
**Cc:** Kevinglodek; Thomas Belesis  
**Subject:** FW: D & O Insurance

Jay – call Daniel Norensberg at 516 314 7580 regarding the D & O insurance. He is with John Thomas Financial listed below. Let me know and best, Eric



Eric R. Roper, Esq.  
Gersten Savage LLP  
600 Lexington Avenue  
9th Floor  
New York, NY 10022-6018  
Phone 212-752-9700 x [REDACTED]  
Fax 212-980-5192  
Mobile [REDACTED]  
[eroper@gskny.com](mailto:eroper@gskny.com)

 Before printing, please think about the environment.

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office  
Brookfield Place, 200 Vesey Street, Room 400  
New York, New York 10281

JANNA BERKE  
(212) 336-9144  
berkej@sec.gov

DIVISION OF ENFORCEMENT

August 22, 2016

**By Overnight UPS and Email**

Harlan Protass, Esq.  
Clayman & Rosenberg, LLP  
305 Madison Avenue, Suite 1301  
New York, NY 10017

**Re: In the Matter of Eden Arc Capital Management, LLC,  
Admin Proc File No. 3-17387**

Dear Mr. Protass:

Pursuant to Rule 230(a) of the Commission's Rules of Practice, 17 C.F.R. § 201.230(a), we hereby provide you notice that documents collected in the Division of Enforcement's investigation of the above-referenced matter are available for your inspection and copying.<sup>1</sup> Please call me at 212.336.9144 to schedule a time for inspection of our documents.

In addition, we call to your attention that on July 13, 2016, the Commission voted to amend certain of its Rules of Practice related to administrative proceedings, as detailed in Exchange Act Release No. 34-78319, *Amendments to the Commission's Rules of Practice*, [81 FR 50212 (July 29, 2016)]. The amended rules will become effective on September 27, 2016 and shall apply to proceedings initiated on or after that date. But some of the amendments will apply to proceedings initiated before that date, depending on the circumstances, as detailed in Exchange Act Release No. 34-78319, *Amendments to the Commission's Rules of Practice*, at 75-76. Additionally, for proceedings instituted on or after July 13, 2016 but before September 27, 2016, the parties may elect to have the amended rules (except for the amendments to Rule 141, regarding service of orders instituting proceedings) apply to such proceedings if, within 14 days of service of the Order Instituting Proceedings (OIP), every party to the proceeding, including the Division of Enforcement, submits a request in writing to the Office of the Secretary of the Commission that the proceedings be conducted under the amended rules. Moreover, various other of the amended rules will apply in cases in which the initial prehearing conference pursuant to Rule 221 has not been held as of September 27, 2016 or where the proceedings have been stayed as of September 27, 2016 (except for proceedings stayed pursuant to Rule 161(c)(2)(i)), *see* Exchange Act Release No.

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<sup>1</sup> The Division is attaching a list of categories of documents withheld pursuant to Rule of Practice 230(b)(1)(i)-(iv) hereto as Exhibit A.

Harlan Protass  
August 22, 2016

34-78319, *Amendments to the Commission's Rules of Practice*, at 73-74, [81 FR 50212, at 50228-29 ].

Finally, pursuant to the Commission's Rule of Practice 230(b)(2), 17 C.F.R. § 201.230(b)(2), I write to inform you that the staff of the Division of Enforcement ("Division") prepared memoranda and notes of witness interviews that may potentially constitute material as to certain theories of liability or relief pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.<sup>2</sup> The Division does not hereby acknowledge or concede that any statement below is material, exculpatory, and/or relevant either in itself, or when taken together with other evidence, but has identified them out of an abundance of caution. The Division expressly reserves the right to dispute any assertion that any statement below is, in fact, material, exculpatory, or relevant. Furthermore, by describing these statements, the Division does not waive, and specifically reserves, any applicable privilege as to its internal notes of interviews and related communications, including any applicable privilege as to its internal notes of interviews and related communications, including any applicable work-product, attorney-client, or law-enforcement privilege; nor is this letter itself admissible as evidence in this (or any other) proceeding for any purpose.

**Ally Financial Inc. (formerly GMAC Inc.) ("Ally Financial")**

According to Division staff memoranda and notes, Jeff Belisle, an in-house attorney for Ally Financial, made the following statements to Division staff in connection with the civil action captioned SEC v. Staples, Civ. A. No. 3:13-2575-MBS (D.S.C.):

Mr. Belisle stated that he could not give Division staff a definitive legal position regarding whether Ally Financial would have approved Benjamin Sydney Staples and Benjamin Oneal Staples (the "Staples") requests to redeem bonds pursuant to the survivor's option provisions if it had been provided the side agreements between the Staples and the terminally-ill individuals participating in the Staples's "Estate Assistance Program." He stated that, if Ally Financial had been made aware of the true nature of the "Estate Assistance Program", it would still have redeemed the bonds because the potential cost and litigation risk for not redeeming the bonds outweighed any benefits from not redeeming them. Mr. Belisle stated that the amounts of money in question were so insignificant that it was considered a rounding error for Ally Financial. Mr. Belisle could not confirm the accuracy of a prior declaration made by Ally Financial during the course of the staff's investigation In the Matter of Staples, Ben and Brian (SL-2570).

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<sup>2</sup> References to "statements" herein are to passages derived from notes and memoranda prepared by the Division staff. Such notes and memoranda (1) are not written statements made and signed, or otherwise adopted, by said witness; (2) are not substantially verbatim recitals of a witness' oral statements made contemporaneously with the making of such oral statements; and (3) do not reflect statements made by a witness to a grand jury.

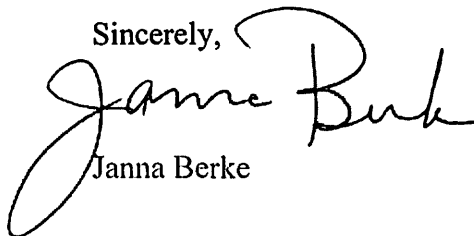
Harlan Protass  
August 22, 2016

**Springleaf Financial Services (formerly American General Financial) (“Springleaf”)**

According to Division staff memoranda and notes, William Reynolds and Jack Erkill, both attorneys at Springleaf, made the following statements to Division staff in connection with the civil action captioned SEC v. Staples, Civ. A. No. 3:13-2575-MBS (D.S.C.):

Mr. Reynolds and Mr. Erkill stated that they deferred to Brian Binyon, the retired Vice President and Treasurer of Springleaf Finance Corporation who completed a declaration during the course of the staff’s investigation, as to the substance of Mr. Binyon’s declaration on behalf of Springleaf. They stated, however, that the Staples’ “Estate Assistance Program” was not one contemplated by Springleaf and, while the side agreements between the Staples and the terminally-ill patients in the Estate Assistance Program would have raised doubts as to the legitimacy of the Staples’s redemption requests, they would have redeemed the bonds anyway. Mr. Reynolds further stated that, based on his review of the documents, Ben Staples had simply identified a legal loophole in the terms of the bond offering materials that was permissible under the terms of the bonds.

Sincerely,

A handwritten signature in cursive script that reads "Janna Berke". The signature is written in black ink and is positioned above the printed name.

Janna Berke

Encl.

cc: Judith A. Weinstock, Esq.  
Alexander Janghorbani, Esq.



## EXHIBIT A

### **List of Withheld Documents by Category Pursuant to Rule of Practice 230(c) In the Matter of Eden Arc Capital Management, LLC, Admin. Proc. File No. 3-17387**

<b>Documents Not Produced</b>	<b>Basis</b>
Communications between and among Securities and Exchange Commission ("SEC") staff members and with the SEC.	Law Enforcement Privilege ("LE") Attorney-client Privilege ("AC") Work Product Protection ("WP") Deliberative Process Privilege ("DP") Securities Exchange Act of 1934, § 24(f) Privilege ("24(f)")
Drafts and final versions of internal memoranda, outlines, and analyses prepared by SEC staff.	LE, WP, AC, DP
Drafts of SEC external correspondence and litigation papers.	LE, WP, AC
Communications between the SEC staff and representatives of law enforcement and regulatory agencies.	LE, WP, AC, 24(f)
Notes and memoranda authored by SEC attorneys or others working at their direction, including but not limited to non-verbatim notes of witness interviews, internal communications, and notations on documents.	LE, WP, AC
Drafts and final versions of examination report, notes, memoranda, presentations, and draft correspondence authored by staff of the SEC's Office of Compliance Inspections and Examinations.	LE, WP, AC, DP, SEC Rule of Practice 230(a)(1)(iv) & (b)(1)(ii)
Attorneys' legal research, including court and Commission opinions compiled by the staff.	LE, WP, AC, DP
Various Commission computer records, including selected court opinions compiled by SEC staff attorneys and Tips Complaints and Referrals.	LE, WP, AC, DP



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office  
Brookfield Place, 200 Vesey Street, Room 400  
New York, New York 10281

JUDITH WEINSTOCK  
(212) 336-9078  
weinstockj@sec.gov

DIVISION OF ENFORCEMENT

September 21, 2016

**BY OVERNIGHT UPS (copy by e-mail)**

Harlan Protass  
Clayman & Rosenberg LLP  
305 Madison Avenue  
New York, NY 10165

**Re: In the Matter of Eden Arc Capital Management, LLC**  
**Admin. Proc. File No. 3-17387**

Dear Mr. Protass:

Please find a CD bates numbered SEC-09197- 000000001B, containing additional documents related to Grace Financial Group's production to the SEC. We believe you have most of these documents, however, in an abundance of caution we are producing the entirety of Grace Financial Group's production to you. The documents on the CD will be further processed, bates-numbered and produced to you in a Concordance-ready production format, consistent with the documents on the hard drives, once that processing is complete. Pursuant to Rules 230(a) and (b) of the Commission's Rules of Practice, 17 C.F.R. §§ 201.230(a) and (b), these files are part of the non-privileged documents that are the Division of Enforcement's investigative files in this matter.

Please call me at (212) 336-9078 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith Weinstock".

Judith Weinstock

Encl.

cc: Janna Berke, Esq.  
Alexander J. Janghorbani, Esq.  
Nancy I. Brown, Esq.



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office  
Brookfield Place, 200 Vesey Street, Room 400  
New York, New York 10281

JANNA BERKE  
(212) 336-9144  
berkej@sec.gov

DIVISION OF ENFORCEMENT

September 22, 2016

**BY OVERNIGHT UPS (copy by e-mail)**

Harlan Protass  
Clayman & Rosenberg LLP  
305 Madison Avenue  
New York, NY 10165

**Re: In the Matter of Eden Arc Capital Management, LLC  
Admin. Proc. File No. 3-17387**

Dear Mr. Protass:

Enclosed please find two CDs bates numbered SEC-9197-000000001C and SEC-9197-000000001D, containing documents that were inadvertently withheld from the production of the Division of Enforcement's investigative files in this matter. The documents on the CDs will be further processed, bates-numbered and produced to you in a Concordance-ready production format as soon as they are available.

The CDs are password protected and the passwords will be provided to you under a separate cover. Please call me at (212) 336-9144 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Janna Berke".

Janna Berke

Encls.

cc: Judith A. Weinstock, Esq.  
Alexander J. Janghorbani, Esq.  
Nancy Brown, Esq.



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office  
Brookfield Place, 200 Vesey Street, Room 400  
New York, New York 10281

JANNA BERKE  
(212) 336-9144  
berkej@sec.gov

DIVISION OF ENFORCEMENT

September 23, 2016

**BY OVERNIGHT UPS (copy by e-mail)**

Harlan Protass  
Clayman & Rosenberg LLP  
305 Madison Avenue  
New York, NY 10165

**Re: In the Matter of Eden Arc Capital Management, LLC  
Admin. Proc. File No. 3-17387**

Dear Mr. Protass:

Enclosed please find a CD containing documents bearing bates numbers SEC-NY-09197-000604251 - SEC-NY-09197-000613707. These documents are (1) documents that were previously produced to Respondents on August 23, 2016, but are now being reproduced in Concordance-ready production format; (2) document productions that have come in from third parties since the institution of this action; and (3) one email chain, plus attachment, inadvertently withheld from previous productions, which reflects a communication from InCapital LLC.

The CD is password protected and the password will be provided to you under a separate cover. Please call me at (212) 336-9144 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Janna Berke".

Janna Berke

Encls.

cc: Judith A. Weinstock, Esq.  
Alexander J. Janghorbani, Esq.  
Nancy Brown, Esq.



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
NEW YORK REGIONAL OFFICE  
BROOKFIELD PLACE  
200 VESEY STREET, ROOM 400  
NEW YORK, NY 10281-1022

Alexander Janghorbani  
WRITER'S DIRECT DIAL  
TELEPHONE: (212) 336-0177  
JanghorbaniA@sec.gov

September 27, 2016

By E-mail

Harlan Protass, Esq.  
Clayman & Rosenberg, LLP  
305 Madison Avenue, Suite 1301  
New York, NY 10017

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

Dear Mr. Protass:

Pursuant to the Commission's Rule of Practice 230(b)(2), 17 C.F.R. § 201.230(b)(2), I write to inform you that the staff of the Division of Enforcement ("Division") prepared memoranda and notes of witness interviews that may potentially constitute material as to certain theories of liability or relief pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.<sup>1</sup> The Division does not hereby acknowledge or concede that any statement below is material, exculpatory, and/or relevant either in itself, or when taken together with other evidence, but has identified them out of an abundance of caution. The Division expressly reserves the right to dispute any assertion that any statement below is, in fact, material, exculpatory, or relevant. Furthermore, by describing these statements, the Division does not waive, and specifically reserves, any applicable privilege as to its internal notes of interviews and related communications, including any applicable work-product, attorney-client, or law-enforcement privilege; nor is this letter itself admissible as evidence in this (or any other) proceeding for any purpose.

Una Kang

According to Division staff notes, Una Kang made the following statements to the staff:

CIT Bank ("CIT") initially rejected several requests by Eden Arc to redeem certificates of deposit. Eden Arc was threatening to sue the bank. Eden Arc provided CIT with a participant agreement and an affidavit. CIT felt that under the language of their documentation they did not really see anything that permitted them to withhold the funds because their language was

---

<sup>1</sup> References to "statements" herein are to passages derived from notes and memoranda prepared by the Division staff. Such notes and memoranda (1) are not written statements made and signed, or otherwise adopted, by said witness; (2) are not substantially verbatim recitals of a witness' oral statements made contemporaneously with the making of such oral statements; and (3) do not reflect statements made by a witness to a grand jury.

September 27, 2016

Page 2

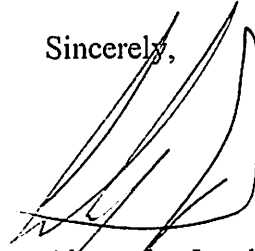
somewhat permissive compared to other issuers' offering documents. CIT also decided that it was not worth the litigation cost and the dispute was proving a distraction.

\*

\*

\*

Sincerely,

A handwritten signature in black ink, appearing to read 'Alexander Janghorbani', written over a large, stylized scribble or flourish.

Alexander Janghorbani  
Senior Trial Counsel



**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

New York Regional Office  
Brookfield Place, 200 Vesey Street, Room 400  
New York, New York 10281

JANNA BERKE  
(212) 336-9144  
berkej@sec.gov

DIVISION OF ENFORCEMENT

September 27, 2016

**BY FTP (Accellion) (cover by email)**

Harlan Protass  
Clayman & Rosenberg LLP  
305 Madison Avenue  
New York, NY 10165

**Re: In the Matter of Eden Arc Capital Management, LLC  
Admin. Proc. File No. 3-17387**

Dear Mr. Protass:

Attached please find a folder containing documents bearing bates numbers SEC-NY-09197-000613708 - SEC-NY-09197-000624227. These documents are (1) documents that were previously produced to Respondents on September 21, 2016 and September 22, 2016, but are now being reproduced in Concordance-ready production format; and (2) document productions that have come in from third parties since the institution of this action.

The CD is password protected and the password will be provided to you under a separate cover. Please call me at (212) 336-9144 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Janna Berke".

Janna Berke

Encls.

cc: Judith A. Weinstock, Esq.  
Alexander J. Janghorbani, Esq.  
Nancy A. Brown, Esq.  
Wayne Gosnell, Esq.  
Christina Corcoran, Esq.



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

New York Regional Office  
Brookfield Place, 200 Vesey Street, Room 400  
New York, New York 10281

JANNA BERKE  
(212) 336-9144  
berkej@sec.gov

DIVISION OF ENFORCEMENT

November 7, 2016

**BY FTP (Accellion)**

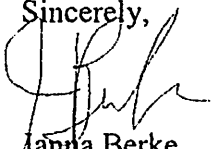
Harlan Protass  
Clayman & Rosenberg LLP  
305 Madison Avenue  
New York, NY 10165

**Re: In the Matter of Eden Arc Capital Management, LLC  
Admin. Proc. File No. 3-17387**

Dear Mr. Protass:

As I noted in my Declaration dated October 31, 2016, the Division recently became aware of an issue with approximately 20 emails produced from its own files. The text in these emails appears to be cut off in the middle, so certain text is lost at the end of the emails. We are now reproducing these emails to you in full form. The new bates range is SEC-NY-09197-000628268 - SEC-NY-09197-000628409. This production also contains one new production from a third party, at SEC-NY-09197-000628268 - 352, which has come in since the institution of this action.

The attachments are password protected and the password will be provided to you under a separate cover. Please call me at (212) 336-9144 with any questions.

Sincerely,  
  
Janna Berke

Encls.

cc: Judith A. Weinstock, Esq.  
Alexander J. Janghorbani, Esq.  
Nancy Brown, Esq.  
Wayne Gosnell, Esq.  
Christina Corcoran, Esq.