

EXHIBIT

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Via E-mail

October 5, 2017

Adam Linkner
Hooper Hathaway, P.C.
126 South Main Street
Ann Arbor, MI 48104

Re: *Advancement of legal expenses in Case Nos. 16-cv-13085 and 16-cv-13088*

Dear Adam:

As you know, my clients requested advancement of legal expenses soon after your clients Atlas and PTC initiated these actions against the Levine Family in August 2016. Under the clear terms of the 2011 Atlas LLC Agreement, legal expenses shall be advanced by Atlas and PTC prior to the final disposition of the actions against my clients. Despite this mandatory language, in a letter dated January 10, 2017, you provided a number of excuses for your clients' refusal to advance legal expenses under the terms of the 2011 Atlas LLC Agreement. Essential to your clients' refusal to abide by the terms of the 2011 Atlas LLC Agreement was the claim that the 2011 Atlas LLC Agreement was "fraudulently executed" by Jesse or "illegitimate." Initial discovery has now shown this claim to be baseless, and I write to renew my clients' request for advancement of legal expenses.

In answering the Levine Family's counterclaims, your clients repeatedly stated that the 2011 Atlas LLC Agreement "speaks for itself," yet they denied that my clients produced the "executed copy" of this contract. Previously, you also represented to the Court that there was a question as to the "legitimacy" of the 2011 Atlas LLC Agreement based on the footer and signature page of that contract. (*See e.g.*, Atlas Doc # 33, p. 14). In response to this allegation, the Court held that: "There is at least some concern about its authenticity that could be addressed through discovery focusing on its provenance. . . . Discovery is needed to explore the details behind that Agreement." (Atlas Doc # 43, p. 9).

In response to the Court's order, we served document requests upon your clients for all versions of the 2011 Atlas LLC Agreement or communications regarding the 2011 Atlas LLC Agreement. On September 22, 2017, you served responses to these requests, stating: "Other than what has been

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produced by Defendant-Counter/Plaintiffs, none.” (*E.g.*, Atlas Resp. Req. 4-5.) Despite this, you continued to contend in these discovery responses that the “so-called 2011 Atlas LLC Agreement is fraudulent.” (*E.g.*, Atlas Resp. Req. 10.) Atlas was required by law to have an operating agreement, and for approximately one year, you questioned the “legitimacy” of this central contract without offering a single scrap of evidence that a *different* contract existed. The reason for this is because no other contract exists—and this has been confirmed by your clients’ initial document production served on October 2, 2017.

Despite all your claims about the 2011 Atlas LLC Agreement being “fraudulent” or “illegitimate,” the only versions of this contract produced by your clients were: (1) an unsigned version of the contract identical to the version produced by my clients (PL 02115-02134) and (2) a version signed by Samuel Seidman for Atlas and PTC with terms identical to those in the version produced by my clients (PL 01264-01283). Your clients therefore refused to advance legal expenses for over a year based on a false claim regarding the legitimacy of a contract that existed in your clients’ records the entire time.¹ Now that the issue concerning the “legitimacy” of the advancement requirement in the 2011 Atlas LLC Agreement has been shown to be a fallacy, there is no reasonable basis for the continued denial of my clients’ contractual rights.

For example, your January 10, 2017 letter repeatedly refers to your clients’ *allegations* against the Levine Family. As you know, my clients have unequivocally denied all allegations that they defrauded or otherwise harmed Atlas or PTC in any way. Further, we are confident that my clients will be completely vindicated in these actions, and your clients’ claims will be shown to have been false and a waste of corporate funds. But the final disposition of these claims is irrelevant for purposes of my client’s rights to advancement.

It is beyond dispute that advancement and indemnification are distinct legal rights. *See Kaung v. Cole Nat’l Corp.*, 884 A.2d 500, 509 (Del. 2005). The purpose of advancement provisions like those in the 2011 Atlas LLC Agreement is “to promote the desirable end that corporate officials will resist what they consider unjustified suits and claims, secure in the knowledge that their reasonable expenses will be borne by the corporation they have served if they are vindicated.” *See Homestore, Inc. v. Tafeen*, 886 A.2d 502, 505 (Del. 2005) (quotation omitted). The character of the wrongdoing *alleged* by your clients is simply irrelevant for purposes of my clients’ right to advancement. *See Barrett v. Am. Country Holdings, Inc.*, 951 A.2d 735, 744 (Del. Ch. 2008); *Reddy v. Elec. Data Sys. Corp.*, 2002 Del. Ch. LEXIS 69 at *14-16 (Del. Ch. June 18, 2002). In fact, the *Morgan v. Grace* case cited in your January 10, 2017 letter stands for this exact proposition. In *Morgan*, the court addressed an advancement clause almost identical to that in the Atlas LLC Agreement, and held:

4000 Associates seeks to avoid this rather clear advancement obligation by arguing that no advancement is due because the plaintiffs would not be entitled to be

¹ We twice requested available October dates for the deposition of Mr. Seidman and Mr. Stupay, and received no response from you. Our request for these depositions was dictated by your prior claims that the 2011 Atlas LLC Agreement was not genuine. Now that this claim is no longer an issue, we will postpone the depositions of Mr. Seidman and Mr. Stupay until further notice.

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indemnified if the conduct that is alleged in the Superior Court action were eventually proven to be true. This argument is fallacious because it conflates sections 12.4 (indemnification) and 12.5 (advancement) and blurs the distinct purpose of advancement provisions. Under the language of section 12.5, the right to advancement arises when a “Covered Person” incurs “expenses (including legal fees)” “in defending any claim, demand, action, suit or proceeding.” The plaintiffs meet these criteria. Section 12.5 provides for the possibility that a “Covered Person” will not, eventually, prove to be entitled to indemnification by expressly requiring an undertaking “to repay [amounts advanced] if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in section 12.4 hereof.” In this case, that determination can only be made after the Superior Court action has been adjudicated. In the meanwhile, 4000 Associates must advance expenses to the plaintiffs subject to a suitable undertaking.

Morgan v. Grace, 2003 Del. Ch. LEXIS 113, 8-9 (Del. Ch. Oct. 29, 2003). Despite relying on this case, your letter (like the defendant in *Morgan*) improperly conflates indemnification and advancement. By its very nature (and the terms of the 2011 Atlas LLC Agreement) advancement is due *before* the final disposition of these actions, and my clients are not required to wait for final disposition of these actions to receive advancement.

In your letter, you proffer various interpretations of Section 16(a) and 16(b) (dealing with indemnification) as grounds for your clients’ refusal to advance legal expenses under Section 16(c). Your narrow (and incorrect) interpretations of Section 16(a) and 16(b), however, are irrelevant for purposes of advancement under Section 16(c).² Section 16(c) plainly applies to all claims against the broadly defined “Special Manager Covered Persons” or “Covered Persons.” If there is a final determination that such a person is not entitled to indemnification under Section 16(a) or 16(b), the advanced amounts are to be repaid (which my clients have undertaken to do). See *Sun-Times Media Group, Inc. v. Black*, 954 A.2d 380, 404-405 (Del. Ch. 2008) (advancement obligation continues until conclusion of all criminal appeals).

Your letter also states that Michigan law prohibits eliminating liability for the claims *alleged* by your clients. But again, these arguments conflate the issue of advancement with indemnification. Further, the Court has found that Delaware law governs the affairs of Atlas and PTC. (PTC Doc # 25, p. 11 and Atlas Doc # 43, p. 10.)

Your letter further states that the 2011 Atlas LLC Agreement was “fraudulently induced.” But the Court has already dismissed the claim that this contract was fraudulently induced. (Doc # 43, p. 14.) Further, the Delaware Supreme Court has rejected similar arguments, holding that a “party may not escape the obligation [to advance expenses] by injecting...a defense based on the argument that the underlying contract under which the parties are operating is invalid altogether, because of fraud in the inducement.” *Trascent Mgmt. Consulting, LLC v. Bouri*, 152 A.3d 108 (Del. Nov. 28, 2016). It was your clients’ decision to initiate these actions—and trigger my clients’

² For instance, the Court has already rejected your argument that Section 16(a) only applies if there was a Special Manager Control Event. (PTC Doc # 25, p. 8.)

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right to advancement—and your clients “could not reasonably believe that [they] could deny that right simply by alleging that the contract was invalid.” *See Id.* at 112.

As noted by the *Massey* case cited in your January 10, 2017 letter, it is common for corporate parties like Atlas and PTC to “find religion” and argue for narrow interpretations of broadly written advancement provisions in order to improperly delay advancing legal expenses to former officers. *See In re Massey Energy Co. Derivative & Class Action Litig.*, 2011 Del. Ch. LEXIS 83, *99, n. 174 (Del. Ch. May 31, 2011) (citation omitted). But courts have unanimously rejected these self-serving arguments, and found that parties like Atlas and PTC that breach clear duties to advance expenses commit corporate waste. *See, e.g., Barrett v. Am. Country Holdings, Inc.*, 951 A.2d 735 at 737, 747 (Del. Ch. 2008) (“stockholders will now endure not only the cost of [defense], but also the costs needlessly run up by the corporation because it chose to assert a baseless and illogical defense that wasted...resources...”).

Further, not only are your arguments regarding the 2011 Atlas LLC Agreement baseless, but Jesse is separately entitled to mandatory advancement under the PTC By-Laws—the terms of which your clients admitted to in their answers to the Levine Family’s counterclaims.

Under Section 5, Article VII of the PTC By-Laws,

Expenses (including attorneys’ fees) incurred by an officer or director of the Corporation in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such officer or director to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article. Such expenses (including attorneys’ fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the board of directors deems appropriate.

There is no dispute that Jesse is a director of PTC. As a result, advancement of Jesse’s expenses is mandatory under the PTC By-Laws upon receipt of an undertaking by Jesse to repay advanced amounts if it shall be determined he is not entitled to indemnification under the PTC By-Laws.³ Enclosed is an undertaking by Jesse to trigger the advancement of legal expenses under Section 5, Article VII of the PTC By-Laws.

For more than a year, my clients have incurred substantial legal expenses defending the actions brought against them by Atlas and PTC. My good faith estimate of fees incurred to date in

³ The legal expenses incurred by Julius may also be advanced under this Article, but, unlike for Jesse, the board of directors has discretion to deem such advancement *appropriate*. Given the prior actions of Seidman and Stupay, we believe requesting advancement specifically for Julius pursuant to the PTC By-Laws would be futile. However, very little of the legal expenses incurred to date would be allocated solely to defending the actions against Julius, so the issue of Julius’s rights under the PTC By-Laws is largely academic.

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defending these actions is approaching \$300,000, and I expect these expenses to increase substantially as we progress through discovery and, if necessary, related motion practice (for instance, you have issued burdensome requests seeking all documents related to my clients' involvement with PTC and Atlas over the last two decades, yet you have refused to produce even basic documents regarding the finances of the companies that you falsely claim my clients harmed). It was the decision of your clients to initiate these actions and trigger my clients' advancement rights. Continuing to deny my clients' rights will only further damage the PTC shareholders and waste additional corporate assets, and if you continue to take such baseless positions we will be forced to seek sanctions against your firm under 28 U.S. Code § 1927.

In order for the parties to have a meaningful mediation in these actions, we require that funds be advanced by your clients without further delay. Please respond to this letter by October 19, 2017 so we can discuss the practical procedure for advancement of fees incurred to date and fees moving forward.

Nothing in this letter should be considered a waiver of any rights by my clients to seek additional advancement or indemnification under the terms of the 2011 Atlas LLC Agreement or the PTC By-Laws.

Sincerely,

RJ LANDAU PARTNERS PLLC

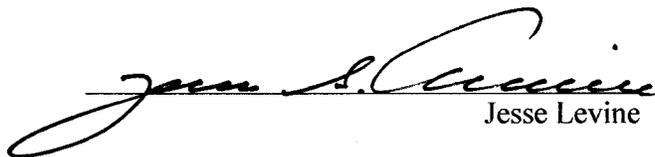
A handwritten signature in black ink, appearing to read "Richard J. Landau", written in a cursive style.

Richard J. Landau

Enclosure

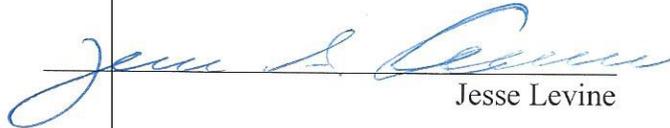
I, Jesse Levine, am a director of Productivity Technologies Corporation (“PTC”) and a defendant in Eastern District of Michigan Case Nos. 16-cv-13085 and 16-cv-13088 (the “Litigations”). I hereby agree and affirm that I will repay PTC any expenses (including legal fees) advanced to me by PTC pursuant to Article VII, Section 5 of the By-Laws of PTC for purposes of defending the Litigations if it shall ultimately be determined that I am not entitled to be indemnified by PTC as authorized under Article VII of the By-Laws of PTC.

Dated: October 5, 2017


Jesse Levine

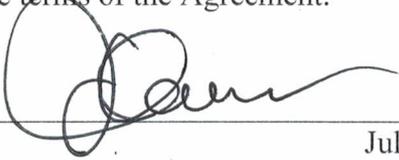
I, Jesse Levine, am a defendant in Eastern District of Michigan Case No. 16-cv-13088 (the "Litigation"). I hereby agree and affirm that I will repay Atlas Technologies, LLC ("Atlas") and Productivity Technologies Corp. ("PTC") any expenses (including legal fees) advanced to me by Atlas or PTC pursuant to § 16(c) of the Limited Liability Company Agreement of Atlas Technologies, LLC signed November 16, 2011 (the "Agreement") for purposes of defending the Litigation in the event that it is determined that I am not entitled to be indemnified under the terms of the Agreement.

Dated: December 28, 2016


Jesse Levine

I, Julius Levine, am a defendant in Eastern District of Michigan Case No. 16-cv-13088 (the "Litigation"). I hereby agree and affirm that I will repay Atlas Technologies, LLC ("Atlas") and Productivity Technologies Corp. ("PTC") any expenses (including legal fees) advanced to me by Atlas or PTC pursuant to § 16(c) of the Limited Liability Company Agreement of Atlas Technologies, LLC signed November 16, 2011 (the "Agreement") for purposes of defending the Litigation in the event that it is determined that I am not entitled to be indemnified under the terms of the Agreement.

Dated: December 28, 2016



Julius Levine

I, Jesse Levine, am a defendant in Eastern District of Michigan Case No. 16-cv-13085 (the "Litigation"). I hereby agree and affirm that I will repay Atlas Technologies, LLC ("Atlas") and Productivity Technologies Corp. ("PTC") any expenses (including legal fees) advanced to me by Atlas or PTC pursuant to § 16(c) of Limited Liability Company Agreement of Atlas Technologies, LLC signed November 16, 2011 (the "Agreement") for purposes of defending the Litigation in the event that it is determined that I am not entitled to be indemnified under the terms of the Agreement.

Dated: September 22, 2016


Jesse Levine

I, Julius Levine, am a defendant in Eastern District of Michigan Case No. 16-cv-13085 (the "Litigation"). I hereby agree and affirm that I will repay Atlas Technologies, LLC ("Atlas") and Productivity Technologies Corp. ("PTC") any expenses (including legal fees) advanced to me by Atlas or PTC pursuant to § 16(c) of Limited Liability Company Agreement of Atlas Technologies, LLC signed November 16, 2011 (the "Agreement") for purposes of defending the Litigation in the event that it is determined that I am not entitled to be indemnified under the terms of the Agreement.

Dated: September 22, 2016

A handwritten signature in black ink, appearing to read 'Julius Levine', is written over a horizontal line.

Julius Levine