EXHIBIT
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November 3, 2017

Adam Linkner
Hooper Hathaway, P.C.
126 South Main Street
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Re: *Advancement of legal expenses in Case Nos. 16-cv-13085 and 16-cv-13088*

Dear Adam:

I am writing in response to your letter dated October 19, 2017 in a final effort to resolve the issue of advancement without the need for motion practice.

The mandatory advancement agreement in the PTC bylaws states:

> Section 5. 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.

Your October 19, 2017 letter does not refute the above unambiguous language of the PTC bylaws, yet you continue to deny Jesse his contractual rights of advancement and unreasonably increase the costs of these proceedings almost exclusively on the language of the 2011 Atlas LLC Agreement. Not only are your arguments regarding the 2011 Atlas LLC Agreement incorrect, but the PTC bylaws cover all of my clients' expenses in these actions independently from the 2011 Atlas LLC Agreement for the reasons explained below. [1]

[1] Your letter offers a number of incorrect and unreasonable interpretations of the 2011 Atlas LLC Agreement. Because the issue of advancement can be resolved solely under the PTC bylaws, it is not necessary to respond to all the arguments raised in your letter. This is not a waiver of any rights

In the PTC case, PTC alleges that Jesse breached his duties as director and officer of PTC by "falsely claiming warrants, improperly filing [UCC] liens [and] failing to return PTC's property." (Am. Compl., ¶ 113). PTC further claims that Jesse breached his duties as a director and officer of PTC for the reasons alleged in the Atlas complaint and PTC expressly incorporates all allegations from the Atlas case as further support for PTC's claims against Jesse. (Am. Compl., ¶ 114). Jesse's entire defense of both the PTC and Atlas actions therefore are necessitated by reason of the fact he is or was a director and officer of PTC, and advancement is required for Jesse's expenses in defending both actions.

Further, because the actions of my clients in defending these actions would have been undertaken even if Jesse had been the sole defendant, your clients must advance all fees and expenses incurred by my clients (regardless of whether Julius or the Trust were ever officers of PTC). *See Danenberg v. Fitracks, Inc.*, 2012 Del. Ch. LEXIS 4, *18 (Del. Ch. Jan. 3, 2012); *Danenberg v. Fitracks*, Inc., 58 A.3d 991, 998-999 (Del. Ch. Mar. 5, 2012) ("Although other third-party defendants were named, the target was clearly Danenberg, and all of the fraud claims were based upon allegedly fraudulent statements that he made. Virtually all of the arguments made by the six third-party defendants were arguments that Danenberg would have advanced on his own behalf if he were the sole defendant."). Moreover, even if there was a legitimate question regarding the allocation of expenses between my clients (there is not), under Delaware law, these types of allocation arguments are deferred until the amount of indemnification is determined. *Danenberg v. Fitracks, Inc.*, 58 A.3d 991, 998 (Del. Ch. Mar. 5, 2012).

Your latest letter, however, continues to vexatiously confuse the distinct concepts of advancement with indemnification.[2] For instance, you continue to argue that because of the allegations in your clients' complaints, your clients will not be required to provide indemnification. But as you know, under long-established Delaware law, including cases cited in your letter, "rights to indemnification and advancement are . . . . independent and discrete entitlements." *See, e.g., Tafeen v. Homestore, Inc.*, 2004 Del. Ch. LEXIS 38, 20-21 (Del. Ch. Mar. 16, 2004) (rejecting argument that former officer should not receive advancement due to his alleged actions); *Reddy v. Elec. Data Sys. Corp.*, 2002 Del. Ch. LEXIS 69, 28-29 (Del. Ch. June 18, 2002) ("[T]he clear authorization of advancement rights presupposes that the corporation will front expenses before any determination is made of the corporate official's ultimate right to indemnification."); *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 214 (Del. Nov. 17, 2005) ("If it is subsequently determined that a corporate official is not entitled to indemnification, he or she will have to repay the funds advanced.").

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under the 2011 Atlas LLC Agreement, but an offer to resolve this issue under the uncontested PTC bylaws.

[2] Contrary to your letter, we do not "recognize" that the Levines are not entitled to indemnification. Instead, we simply recognize that indemnification will be determined after final disposition, whereas advancement is required now.

Your argument that my clients are not entitled to advancement for their counterclaims because they are "personal in nature" is also baseless. Under Delaware law, expenses for counterclaims are advanceable if they are "part of the same dispute" and "advanced to defeat, or offset" your clients' claims. *Pontone v. Milso Indus. Corp.*, 2014 Del. Ch. LEXIS 89, 7-8 (Del. Ch. May 29, 2014). The Levines' counterclaims clearly meet this threshold as the counterclaims arise out of the subject matter of your clients' claims and are advanced to defeat your clients' claims.

For instance, your clients allege that Jesse breached his duties by "demanding" that PTC and Atlas enter into the 2011 Atlas LLC Agreement and Fee and Reimbursement Agreement. My clients' counterclaims for breach and interference with these same contracts are obviously advanced to defeat your clients' claims and are compulsory counterclaims because they are part of the same dispute. Jesse's breach of employment contract is also compulsory because your clients have brought actions alleging that Jesse owed Atlas duties under a separate employment "contract" and was "removed" from Atlas (in breach of his employment contract). Counterclaims regarding Jesse's warrant are also clearly compulsory because PTC filed claims to void Jesse's warrant. Further, the derivative counterclaims against Mr. Seidman and Mr. Stupay stem directly from the disputes initiated by your clients.

The *Gentile* case cited in your letter is inapposite because it dealt with a personal action initiated by a former director—not compulsory counterclaims. *Gentile v. SinglePoint Fin., Inc.*, 787 A.2d 102, 110 (Del. Ch. Jan. 5, 2001) ("The *Citadel* court allowed the advancement of expenses relating to the assertion of counterclaims as part of the costs of defense because, it reasoned, the Federal Rules of Civil Procedure create some peril that, if a counterclaim is not asserted, it will 'be thereafter barred.' There is, of course, no similar rule in the context of an internal corporate investigation. Thus, Gentile was not faced with a 'use-it-or-lose-it' scenario that was the logical underpinning of *Citadel*."). Unlike in *Gentile*, my clients were *required* to bring their counterclaims. The *Shearin* case cited in your letter is likewise distinguishable because it did not deal with counterclaims. However, even that case found that advancement may have been proper if the plaintiff's claims had been brought in the interest of the corporation and its shareholders (like the Levines' claims under the GLC). *See Shearin v. E.F. Hutton Group*, 652 A.2d 578, 594-595 (Del. Ch. June 7, 1994). Further, even if there is any allocation required between counterclaims (there is not), this determination should be deferred until the amount of indemnification is determined. *See Thompson v. ORIX USA Corp.*, 2016 Del. Ch. LEXIS 84 *15 (Del. Ch. June 3, 2016) ("[I]t is more appropriate [to] address [such] granular disputes as necessary at the indemnification stage.").

Your letter also claims Jesse's contractual rights to advancement can be avoided based on your allegation of "unclean hands" and your clients' claimed concern that my clients will hide assets if required to return advanced fees. However, the case law cited in your letter directly refutes your argument. In *Tafeen*, the court said there was a genuine issue of fact as to whether a former officer bought an expensive home *for the purpose of sheltering assets* and increasing the difficulty of a potential reimbursement of advanced fees.[3] *Tafeen*, 2004 Del. Ch. LEXIS 38, *24-26. Importantly

[3] This defense was rejected after an advancement hearing. *Homestore, Inc. v. Tafeen*, 888 A.2d 204, 208-209 (Del. Nov. 17, 2005).

for purposes of these actions, the *Tafeen* court explicitly held that this defense would not have been available if the alleged unclean hands had been based on the former officer's "conduct relating to the underlying claims." Your reference to your clients' allegations in the complaints relating to the so-called "Secret Account" as support for this defense is precisely the type of argument the *Tafeen* court said is unavailable under Delaware law.[4] *Reddy v. Elec. Data Sys. Corp.*, 2002 Del. Ch. LEXIS 69, 28-29 (Del. Ch. June 18, 2002) ("If adopted, EDS's [unclean hands] rule would turn every advancement case into a trial on the merits of the underlying claims of official misconduct.").

You letter also claims that even if my clients are entitled to *some fees*, there is no way my clients incurred $300,000 in fees to date in connection with their status as directors and officers of PTC or Atlas. Again, all fees incurred in these actions are in connection with Jesse's role as a director and officer of PTC. Moreover, the PTC bylaws refer to the mandatory advancement of expenses—not "reasonable" expenses, and Delaware case law has rejected similar attempts to "second-guess" legal fees in connection with advancement rights. *Danenberg v. Fitracks, Inc.*, 58 A.3d 991, 1000 (Del. Ch. Mar. 5, 2012) ("This objection asks the Court to second-guess the judgment of Danenberg's counsel, something the Court is loath to do. Danenberg has carried his burden by showing that the services rendered were thought prudent and appropriate in the good faith professional judgment of competent counsel.").

Like in *Danenberg*, we had to "investigate [] wide-ranging factual allegations, research the legal theories, and develop a defense," and "the record in [these actions] strongly suggests that [your clients] adopted a litigation strategy designed to overwhelm [Jesse] by forcing him to incur significant expenses defending a wide-ranging, unfocused action." *Danenberg*, 58 A.3d at 998-999. In *Danerberg*, the court approved $292,000 in fees for advancement after the preliminary defense of a 43-page, 186-paragraph, 11-count counterclaim. *Id.* at 989. In these actions, we have had to defend a 47-page, 257-paragraph, 16-count complaint (Atlas) ***and*** a 23-page, 115-paragraph, 6-count complaint (PTC). Like the other arguments raised in your letter, the unsupported claim that the fees incurred to date are unreasonable does not avoid your clients' mandatory advancement obligations.[5]

Since my clients first requested advancement in September 2016, you have raised a number of baseless excuses designed to delay or deny my clients' contractual rights.[6] Your latest letter seems

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[4] As you know, my clients deny any wrongdoing (or any secret) with regard to the so-called "Secret Account."

[5] In *Danenberg*, the party resisting advancement argued the other party's fees were unreasonable in comparison to the fees incurred by the resisting party. The Court denied this argument, but conspicuously absent from your letter is the amount your clients have incurred in connection with these actions.

[6] For instance, you claimed the 2011 Atlas LLC Agreement was not "legitimate" because of Jesse's signature despite knowing this same agreement had been signed by Mr. Seidman. Your latest letter

to finally concede that my clients are entitled to the advancement of "some fees," but there is simply no good-faith basis under clear Delaware law to continue the denial of advancement of all legal fees incurred by my clients in these actions. Continuing to contest this matter is a waste of PTC assets and subjects Mr. Seidman and Mr. Stupay to further potential personal liability. If required to file a motion to enforce Jesse's advancement rights, we will seek all applicable sanctions and fees and indemnification for all fees incurred to date in seeking advancement. *See Danenberg*, 2012 Del. Ch. LEXIS at *4 ("Danenberg has been successful on the merits in seeking advancements in this action. He therefore is entitled to indemnification for the fees and expenses incurred in this proceeding.").

If you have anything to add to your previous letters that you believe justifies the continued denial of advancement in these actions, I am generally available early next week to further discuss under LR 7.1. Otherwise, we will have no choice but to file a motion with the Court to resolve this issue.

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 PTC bylaws or the 2011 Atlas LLC Agreement.

Sincerely,

RJ LANDAU PARTNERS PLLC

/s/ Richard J. Landau

Richard J. Landau

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also continues to ignore the clear terms of the 2011 Atlas LLC Agreement by pretending advancement is only required for actions taken after a "Special Manager Control Event."