

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, <i>et al.</i> , ¹	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

**JOINT EMERGENCY MOTION OF DEBTORS AND
LEHOTSKY KELLER COHN LLP TO CONTINUE HEARING ON APPLICATION
FOR AN UPDATED ORDER AUTHORIZING THE RETENTION AND
EMPLOYMENT OF LEHOTSKY KELLER COHN LLP
AS SPECIAL LITIGATION COUNSEL
(Relates to Docket Nos. 835 & 897)**

Emergency relief has been requested. Relief is requested not later than 6:00 p.m. (prevailing Central Time) on April 23, 2025.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), by and through their undersigned counsel, and Lehotsky Keller Cohn LLP (“**LKC**”) by and through its undersigned counsel, file this joint emergency motion (the “**Motion**”) to continue the hearing currently scheduled for April 28, 2025 at 3:00 p.m. (prevailing Central Time) and in support thereof respectfully states as follows:

¹ Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



RELIEF REQUESTED

1. By this Motion the Debtors and LKC seek entry of an order substantially in the form attached hereto: (a) resetting the hearing on the *Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* [Docket No. 835] (the “*Updated Application*”) to early June, as the Court’s docket may allow, and (b) granting related relief.

BASIS FOR EMERGENCY RELIEF

2. Emergency relief is requested on or before April 23, 2025. The Debtors, LKC, and the Ad Hoc Group are mediating on April 28, 2025, which is the date set for the hearing on the Updated Application. [See Docket No. 897]. For this reason alone, the hearing date should be reset. Additionally, the Debtors and LKC need additional time to prepare for the hearing in light of other pending cases and personal commitments. Debtors and LKC also plan to seek discovery from the Ad Hoc Group related to the Ad Hoc Group’s objection to the Updated Application, which makes several professional and ethical accusations that appear to be based on no facts at all. The Debtors and LKC contend that such circumstances constitute a basis for emergency relief pursuant to Rule 9013-1(i) of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and this is a core matter pursuant to 28 U.S.C. § 157(b).

4. Venue is proper pursuant to 28 U.S.C. § 1408.

BACKGROUND

5. Almost two years ago, the Debtors engaged LKC to handle potential litigation against Whinstone, along with co-counsel Stris LLP. LKC agreed to provide heavily discounted rates in exchange for a potential success fee. As described in its original engagement letter, LKC would receive (a) \$600,000 if Rhodium’s position on key contractual terms were upheld; (b) a percentage of energy credits (5% up to \$5 million and 1% thereafter); and (c) 10% of damages and all other amounts recovered, including attorneys’ fees. At the time of the engagement, (b) and (c) were highly speculative because they required showing that Rhodium’s interpretation of the contracts at issue was correct, that it never breached the contracts, and also establishing an affirmative case for damages.

6. On September 22, 2024, the Debtors filed the original application to retain LKC [Docket No. 173] (the “*Original Application*”). No party objected to the Original Application, which discloses the existence of the contingency fee eleven times. The proposed order, however, which was reviewed, signed, and filed by Debtor’s bankruptcy counsel and entered by the Court on October 15, 2024 [Docket No. 263] (the “*Original Order*”), does not mention the contingency fee. Not being bankruptcy attorneys, LKC relied on Debtor’s bankruptcy counsel.

7. After entry of the Original Order, LKC continued to bill based on its discounted rates and the contingency fee agreement with the Debtors.² During this time, LKC, along with Stris & Maher LLP, were able to achieve significant results for the Debtors in these chapter 11 cases—achievements which benefited the Ad Hoc Group of SAFE Parties (the *Ad Hoc Group*).

² Each of LKC’s monthly fee statements discloses that LKC’s fees were being discounted. [Docket Nos. 382, 425, 538, 730, 790, and 847].

8. It was not until the eve of mediation in February 2025 that the Ad Hoc Group first raised issues regarding LKC's contingency fee. That was how LKC became aware that anyone had any question with the contingency fee or the Original Order.

9. To promptly address these issues, the Debtors and LKC negotiated an updated engagement letter.

10. On March 6, 2025, the Debtors filed the Updated Application, which attaches the original and updated engagement letters between the Debtors and LKC.

11. On March 27, 2025, the Ad Hoc Group filed the *Objection of the Ad Hoc Group of SAFE Parties to Debtors' Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* [Docket No. 891] (the "**Objection**").

12. On April 8, 2025, DLT Data Center 1 LLP filed an untimely joinder to the Ad Hoc Group's Objection. [Docket No. 927].

BASIS FOR RELIEF

13. The Debtors and the Ad Hoc Group have mediation scheduled for April 28, 2025. All parties agree that the hearing on the Updated Application scheduled for April 28, 2025 at 3:00 p.m. (prevailing Central Time) must be reset. However, the parties have been unable to reach agreement on an alternative date for a hearing.

14. LKC and the Debtors require additional time to prepare for the hearing in light of other pending cases and personal commitments. Debtors and LKC also plan to take discovery of the Ad Hoc Group in connection with its Objection to the Updated Application, which makes several professional and ethical accusations that appear to be based on no facts at all. LKC is interested in the basis, if any, for these accusations. In addition, the Ad Hoc Group waited until

the eve of a mediation to belatedly raise issues with LKC's retention. The Debtors and LKC are entitled to know the circumstances surrounding the Ad Hoc Group's Objection, including its suspect timing.

15. The Debtors and LKC have numerous conflicts in May, so the Debtors and LKC have proposed Friday, June 6, as the date for a hearing, but counsel for the Ad Hoc Group has not agreed. The Ad Hoc Group will not be prejudiced by the Debtors' and LKC's request for a continuance. If the Updated Application is approved by the Court, LKC's fees, including the potential contingency fee, would be subject to approval by this Court. Whether the Updated Application—which does not materially alter the terms in the Original Application—is approved in late April or early June is immaterial to the Ad Hoc Group's interests.

16. Since the Debtors and LKC will need to seek discovery related to the Objection to the Updated Application, the Debtors and LKC assert that cause exists to grant the relief requested herein, and the requested continuance is not sought for the purposes of delay but so that justice may be done.

[Remainder of Page Intentionally Blank]

WHEREFORE, the Debtors and LKC respectfully request entry of an order by the Court substantially in the form attached hereto, granting the relief requested herein and granting such other and further relief to which the Debtors and LKC are justly entitled.

Dated: April 21, 2025
Houston, Texas

Respectfully submitted,

/s/ Joshua W. Wolfshohl

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- and -

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Counsel to Debtors Rhodium Encore LLC, et al.

Certificate of Service

I, the undersigned, certify that on April 21, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on all parties entitled to notice of the foregoing document appearing in the case on that date.

/s/ Joshua W. Wolfshohl
Joshua W. Wolfshohl

Certificate of Conference

I, the undersigned, certify that on April 16, 2025, I had multiple correspondence with counsel for the Ad Hoc Group regarding the relief requested in this Motion. The Ad Hoc Group and the Debtors and LKC could not reach an agreement on a new hearing date.

/s/ Joshua W. Wolfshohl
Joshua W. Wolfshohl

Certificate of Accuracy

I, the undersigned, certify that the statements contained in the foregoing document are true and accurate to the best of my knowledge.

/s/ Joshua W. Wolfshohl
Joshua W. Wolfshohl

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:	§	Chapter 11
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RHODIUM ENCORE LLC, <i>et al.</i> , ¹	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

**ORDER RESETTING HEARING ON APPLICATION FOR AN UPDATED ORDER
AUTHORIZING THE RETENTION AND EMPLOYMENT OF
LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL
(Relates to Docket Nos. 835 & ____)**

The Court has considered the Joint Emergency Motion (the “Motion to Continue”) of the Debtors and Lehotsky Keller Cohn LLP to Continue Hearing on Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Docket No. 835] (the “Updated Application”). The Court finds that the Motion to Continue has merit and should be granted. Accordingly, it is therefore:

ORDERED that the hearing on the Updated Application shall be held on June ____, 2025 at ____, in Courtroom ____, 515 Rusk, Houston, Texas 77002

Signed: _____

Honorable Alfredo R. Perez
United States Bankruptcy Judge

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