

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

In re:

RHODIUM ENCORE LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-90448 (ARP)

(Jointly Administered)

**DEBTORS' REPLY IN SUPPORT OF APPLICATION FOR AN UPDATED ORDER
AUTHORIZING THE RETENTION AND EMPLOYMENT OF
LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL
(Relates to Docket Nos. 173, 263, 835 & 891)**

INTRODUCTION

Two years ago, facing litigation that threatened the existence of their business, Debtors made an agreement with Lehotsky Keller Cohn LLP (LKC): LKC would join Stris & Maher LLP (Stris) in representing Debtors in their dispute with Whinstone and would provide a discount from their standard rates, in exchange for a contingency tied to the outcome of the case. LKC performed its part of the agreement: Together with Stris, it achieved exceptional results for Debtors. The \$185 million settlement with Whinstone reflects those results. ECF No. 880-1, at 2.

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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.



Debtors' position on this issue is simple: the agreement with LKC, including the contingency, should be honored.

BACKGROUND

LKC's Representation of Debtors in the Whinstone Dispute

This Court is familiar with the history of the Rhodium-Whinstone dispute. ECF No. 579, at 12-17. As relevant here, in early May 2023, Whinstone U.S., Inc. sued four Rhodium entities in Texas state court, seeking to terminate all of Rhodium's power contracts, kick Rhodium out of the Rockdale site, and obtain substantial damages. The relief Whinstone sought would have destroyed Rhodium's business.

On May 16, 2023, Rhodium engaged LKC to represent Rhodium, along with Stris, in the Whinstone litigation. Topping Decl. ¶ 3; ECF No. 835, Ex. A. Following an arms' length negotiation, Rhodium and LKC agreed that LKC would provide a significant discount on its hourly rates in exchange for a potential success fee. Topping Decl. ¶ 4. The potential success fee included components that would apply if Rhodium were to file affirmative claims against Whinstone for damages. *Id.* Specifically, as described in the May 16, 2023 Engagement Letter, LKC would receive (a) \$600,000 if Rhodium's position on key contractual terms were upheld; (b) a percentage of any energy credits (5% up to \$5 million and 1% thereafter); and (c) 10% of damages and all other amounts recovered. ECF No. 835, Ex. A.

LKC agreed to this deal even though there was no guarantee at that time that Rhodium would pursue damages claims against Whinstone. Rhodium's management team still hoped that a good relationship with Whinstone could be restored. Topping Decl. ¶ 4.

Rhodium benefitted from LKC's discounted fees. Whinstone's aggressive tactics, including opposing arbitration and engaging in self-help shutdowns, impinged Rhodium's cash

flow. *Id.* ¶ 5. LKC's discounted fees thus helped preserve Rhodium's cash flow at a critical time. *See id.*

Even more importantly, LKC's services helped preserve Rhodium itself. LKC represented Rhodium for two years through multiple periods of time when the survival of Rhodium's business was on the line. Topping Decl. ¶ 16. Together with Stris, LKC obtained exceptional results for Rhodium. *Id.* LKC and Stris obtained a temporary restraining order and three different injunctions, including two emergency injunctions after Whinstone shut down Rhodium's power. *Id.* ¶ 6. Fighting off Whinstone's tactics often required meeting imminent, after-hours needs and taking on emergency filings and emergency hearings on short notice. *Id.* ¶ 16. As Debtors' general counsel has explained, without those injunctions, Rhodium would likely have been forced out of business. *Id.*

After the bankruptcy petitions were filed, LKC continued to deliver exceptional results for Debtors. As this Court is well aware, the Whinstone dispute was hard fought. Following a 4-day evidentiary hearing, this Court in its Phase 1 ruling rejected Whinstone's contract-interpretation theories and held, as Rhodium had consistently argued, that all of Rhodium's valuable power contracts remained in force. ECF No. 579, at 15-37. LKC was directly involved in the pretrial and trial proceedings, with two LKC attorneys (along with two Stris attorneys) forming the trial team. LKC further represented Debtors' interests by preparing an affirmative complaint against Whinstone to recover energy credits and other damages. *See Rhodium JV LLC et al. v. Whinstone U.S. Inc. et al.*, No. 25-03047, Compl., ECF No. 1 (S.D. Tex. Bankr. filed Feb. 11, 2025).

Debtors ultimately settled all aspects of the dispute with Whinstone for \$185 million. *See, e.g.*, ECF No. 880, 880-1, 921.

The Retention Applications

After Debtors filed the Chapter 11 petitions, LKC partner Jonathan Cohn drafted a retention application for LKC that set forth the specific terms of the May 2023 engagement letter, including the rate discounts and specific components of the potential success fee. Topping Decl. ¶ 7. At that time, the Rhodium-Whinstone dispute was in active litigation, and no settlement appeared likely. *Id.* It was not in Rhodium’s interest to disclose to Whinstone the details of Rhodium’s agreement with LKC. *Id.* Ultimately, Rhodium (through its bankruptcy counsel) filed a retention application for LKC that disclosed that Rhodium’s agreement with LKC included discounted hourly rates in exchange for a partial contingency fee based upon the successful outcome of the litigation. *Id.* The retention application mentioned the contingency no less than 11 times and clearly explained that “[t]here is also a contingent fee depending on the outcome of litigation that has not changed.” ECF No. 173 at 9 ¶ 26; *see id.* at 13-14 ¶¶ 40, 41, 44; *id.* at 20, 24 Cohn Decl. ¶¶ 6, 25; *id.* at 35 Topping Decl. ¶¶ 9, 10. Rhodium’s General Counsel Charles Topping submitted a declaration in support of the original retention application that likewise specified that “Debtors have agreed with Lehotsky Keller Cohn LLP to a discounted hourly billing arrangement *plus a contingent-fee arrangement for its representation of Debtors in the Whinstone Dispute if this Court grants the Application.*” ECF No. 173 Topping Decl. ¶ 9 (emphasis added).

Because of the ongoing Rhodium-Whinstone litigation, however, the initial retention application did not disclose the specific details of the LKC success fee. Debtors’ general counsel, Mr. Topping, understood at that time that the application’s description of the partial contingency fee was sufficient to inform creditors and other interested parties about the existence of the success

fee. Topping Decl. ¶ 8. To Mr. Topping's knowledge, no creditor or other interested party raised any issue with respect to payment of a contingency fee to LKC until around February 2025. *Id.* ¶ 9. No party objected to LKC's retention.

Mr. Topping learned in mid-February, just before the February 19 mediation with Whinstone, that the AHG had recently asserted that the details of the LKC contingency fee had to be disclosed in order for LKC to be paid any contingency fee, and further that because the retention application did not disclose those details, LKC should not be paid any contingency fee. *Id.* ¶ 9. The AHG did not file anything with the Court, however, and did not object to LKC's First Interim Application for Payment, which again expressly disclosed the contingency fee. *See* ECF No. 765 at 9 ¶ 19 ("LKC's attorneys in this case are compensated on an hourly basis, plus a contingent fee depending on the outcome of the litigation.").

Regardless of whether the AHG's belated concern was valid, Rhodium decided to address it. Topping Decl. ¶ 10. One option for Rhodium was to seek to amend the LKC retention application to include the specific terms of the May 2023 engagement letter. *Id.* ¶ 11. At that point, however, it seemed possible (though by no means certain) that Rhodium and Whinstone might reach a settlement involving *both* the affirmative case for damages *and* the sale to Whinstone of the Rhodium assets in Rockdale. *Id.* The transaction documents for such a settlement might not specify the portion of the total proceeds attributable to the affirmative case and the portion attributable to the Rockdale assets. *Id.* Although the May 2023 engagement letter did not explicitly address this scenario (because Rhodium and LKC did not attempt to address every conceivable scenario in that letter), Rhodium believed that LKC was owed a contingency fee under the terms of the May 2023 agreement. *Id.* A settlement on those terms would necessarily reflect value attributed to Rhodium's affirmative damages claims against Whinstone. *Id.* Paying the contingency

fee under those circumstances was thus consistent with Rhodium’s and LKC’s intent at the outset. *Id.*; *see also, e.g.*, ECF No. 835 at 10 (Ex. A, May 2023 letter, describing success fee in part as percentage of “*any* recovered energy credits” and percentage of “*any* additional amounts” recovered, and referencing payment following utilization, settlement, or judgment (emphasis added)).

Accordingly, Rhodium and LKC decided to amend the May 2023 engagement letter to expressly address this potential settlement scenario. Rhodium then submitted a proposed amendment to LKC’s retention that both disclosed the original May 2023 engagement letter and the amended March 4, 2025 engagement letter. Topping Decl. ¶ 12; ECF No. 835. The amended engagement letter expressly provides that any contingency fee payment to LKC is subject to Bankruptcy Court approval, and Debtors’ proposed order says the same. ECF No. 835 at 14 (Ex. B); ECF No. 835-1 at 3 (proposed order).

ARGUMENT

The AHG’s objection is based on a flawed premise. It claims that, through the request to amend LKC’s retention order, LKC is seeking a “windfall” and “post-hoc success fee grab.” ECF No. 891 at 2, 4. That is not true. LKC’s engagement from the outset two years ago called for a combination of discounted fees plus a contingency, or success, fee. *See* ECF No. 835 at 9-10 (Ex. A). The AHG would likely prefer that the fee not be paid so that the SAFE holders can lay claim to those funds instead. But that’s not a reason to deny LKC part of the fee that was agreed to and that LKC earned.

Debtors did not intend the original retention application to *sub silentio* eliminate the success fee. And in Debtors’ view, LKC has earned a success fee as contemplated by the May 2023 engagement letter, because (1) this Court held that the Whinstone contracts were not terminated

and (2) the Whinstone settlement necessarily reflects value ascribed to Rhodium's affirmative damages claims against Whinstone. The calculation of the amount of the success fee is a separate matter; Debtors take no position here on the amount of the fee and amending the retention order will not determine the amount of the fee. That is subject to negotiation and ultimately this Court's approval. ECF No. 835 at 14-15; ECF No. 835-1 at 3. This Court should, however, exercise its discretion to amend the retention order to provide for the success fee as agreed by LKC and Rhodium and disclosed in the original application.

I. This Court has discretion to amend LKC's retention order to align with the terms agreed to by LKC and Rhodium and disclosed in the original retention application.

The AHG assumes, without citing any support, that Bankruptcy Rules 9023 and 9024 govern Debtors' request to amend LKC's retention order. *See* ECF No. 891, at 8. Rule 9023 governs new trials and altering or amending a judgment, while Rule 9024 governs requests for relief from judgment. *See* Fed. R. Bankr. P. 9023 & 9024. The retention order is not a judgment and Debtors are not seeking relief from any judgment or trial verdict. The AHG offers no explanation for why the time limits and standards in those rules would govern this request to amend a retention order.

Setting aside those inapplicable rules, relevant precedent confirms that this Court has discretion to amend the retention order. As discussed in *In re Wichita River Oil Corp.*, 214 B.R. 308, 309-10 (E.D. La. 1997), under Fifth Circuit law, bankruptcy courts have discretion to approve attorney retention *nunc pro tunc* where through "oversight" approval for the retention was not properly requested. *Wichita River* relies on the Fifth Circuit's decision in *Matter of Triangle Chemicals, Inc.*, 697 F.2d 1280 (5th Cir. 1983). *Triangle Chemicals* specifically holds that, "where through oversight the attorney has neglected to obtain such prior approval but has continued to perform services for the debtor/debtor in possession," the bankruptcy court "retains equitable

power in the exercise of its sound discretion, under exceptional circumstances, to grant such approval *nunc pro tunc*, upon proper showing, and to award compensation for all or part of the services performed by such attorney that have subsequently benefited the debtor's estate and, consequently, its creditors." *Id.* at 1289.

In *Wichita River*, the attorney responsible for filing the retention applications neglected to do so for co-counsel, and no one noticed for six months. 214 B.R. at 309. The bankruptcy court had declined to approve the late-filed application "with regret," indicating that the court had no discretion to do so. *Id.* (cleaned up). On appeal, the district court disagreed, holding that *Triangle Falls* controlled and the bankruptcy court had discretion to approve the order. *Id.* at 309-10.

The facts here present an even stronger basis for exercising discretion to amend the LKC retention order. This Court approved LKC's original retention based on an application that included multiple unambiguous disclosures of the existence of a contingency fee. All parties were thus on notice of the existence of the fee and no party timely objected. The fact that the proposed order submitted with the original application did not reference the contingency is a scrivener's error—that is, an "oversight." The Court has discretion to correct it and, as explained below, should do so.

II. Amending the retention order is fair and equitable.

The Court should exercise its discretion to amend LKC's retention order because doing so is fair and equitable given (1) the agreement between LKC and Debtors; (2) the substantial value LKC brought to the estate, in reliance on the terms of that agreement; and (3) the AHG's undue delay in raising any concerns about the contingency fee disclosed in the original retention application.

First, there is no dispute that LKC and Debtors agreed to the success fee as part of the original engagement and that both LKC and Debtors believed the fee had been approved for purposes of the bankruptcy retention. LKC has provided its services to Debtors, at discounted rates, in reliance on that agreement.²

Contrary to the AHG's claims, the revised engagement letter does not change the agreement. The new agreement does not alter the substantive terms and it is certainly not "much worse" or "vastly inferior" to the May 2023 engagement letter. With respect to each component of the success fee:

- The \$600,000 payment tied to a ruling on the Rhodium-Whinstone contracts was triggered by this Court's interim ruling following Phase 1 of the motion to assume hearings. ECF No. 835, at 10 (Ex. A). The March 2025 letter merely recognized that and specified the timing for payment based on current circumstances. *Compare* ECF No. 835 at 10 (Ex. A) *with id.* at 14 (Ex. B).
- With respect to recovered energy credits, the only substantive change in the March 2025 letter is to require Bankruptcy Court approval for this component of the fee. *Compare* ECF No. 835 at 10 (Ex. A) *with id.* at 14 (Ex. B).
- With respect to the 10% success fee for "any additional amounts" recovered, the May 2023 letter already provided that this fee applied to a settlement or a judgment. ECF No. 835 at 10 (Ex. A). The March 2025 provision is the same, except again providing for Bankruptcy Court approval. *Compare* ECF No. 835 at 10 (Ex. A) *with id.* at 14 (Ex. B).

² The fact that LKC throughout the proceeding charged discounted rates, not its "normal" rates referenced in the retention order, confirms that the wording of the retention order was an oversight.

The March 2025 letter adds a procedural provision for determining the amounts of the latter two components of the fee in the event that the dispute settled either with Whinstone acquiring Debtors or Whinstone acquiring Debtors' assets at Rockdale. ECF No. 835 at 14 (Ex. B). All this provision does is make explicit what was already implicit in the May 2023 engagement letter: if a settlement doesn't specify the values attributed to portions of the recovery, LKC and Debtors would have to seek to determine those values for purposes of calculating the success fees. The provision in the March 2025 letter hardly breaks new ground: it merely provides that the parties will attempt in good faith to reach agreement and otherwise the Bankruptcy Court will decide. *Id.*

The AHG wrongly insists that Debtors have to justify this request by showing that LKC will be providing additional services, because otherwise LKC would receive a "windfall." ECF No. 891, at 13. There's no windfall here, because, to be clear: LKC is not seeking, and Debtors are not requesting approval for, any new or different contingency fee. Rhodium believes that, in the context of the type of settlement that the Court approved with Whinstone, LKC was owed a contingency fee under the terms of the May 2023 agreement. Topping Decl. ¶ 11. That's because settling "on those terms would necessarily reflect value attributed to Rhodium's affirmative damages claims against Whinstone." *Id.* "Paying the contingency fee under those circumstances was thus consistent with Rhodium and LKC's intent at the outset." *Id.* All that the March 2025 letter does is (1) provide for Bankruptcy Court approval³ and (2) call for Debtors and LKC to attempt to reach agreement on the allocation of the settlement or have the Bankruptcy Court decide.

Second, LKC provided enormous value to the estate. In partnership with Stris, LKC successfully litigated the motion to assume through discovery, hearing, and post-hearing motions.

³ The AHG's references to a "backroom deal" (ECF No. 891, at 13) make no sense given the express provisions for court approval.

Following a lengthy hearing, this Court ruled in Rhodium’s favor on every key issue of contract interpretation and alleged termination. *See generally* ECF No. 579. That win is what brought Whinstone to the table and facilitated the \$185 million settlement—the settlement fund that is central to formulating a plan resolving the bankruptcy.

The Court should not entertain any after-the-fact armchair quarterbacking from the AHG, which had no role in litigating against Whinstone. *See* ECF 891 at 10. There is no merit to any suggestion that LKC’s services were not needed in this case. From the outset, Whinstone litigated this case aggressively and tenaciously. Throughout the litigation and during the motion to assume proceedings, the resources of both firms—LKC and Stris—were needed to handle this fast-paced, hard-fought case.⁴ Further, no party timely objected to the retention of LKC and Stris to handle the Whinstone litigation, and it is far too late to do so now.

In short, LKC’s contributions were substantial and critical to the value of the estate. That too weighs heavily in favor of amending the retention order to align with the agreed-upon financial terms.

Third, the AHG’s objection is exceptionally weak given the facts here. The existence of the contingency was disclosed from the outset in unambiguous terms. *See supra* at 6. Neither the AHG nor any other party could reasonably claim to be unaware that LKC’s engagement included a contingency based on the outcome of the matter. To the extent any party believed the contingency had to be disclosed in more detail, that party could have objected to the original retention or

⁴ To provide one example: the parties took 14 fact and expert depositions in a two-week period, often with two or even three taking place simultaneously. That deposition period overlapped with dispositive motion briefing and the motion to assume proceedings began just 16 days after depositions ended.

otherwise timely raised that concern. No party, including the AHG, even objected to LKC's first interim application for payment, *which again disclosed the contingency*. See ECF Nos. 765, 836.

Instead, the AHG waited for months and until after LKC had provided substantial services to the estate at discounted rates before raising any concern. It would be fundamentally *inequitable* to reward the AHG's delay in raising this issue. LKC has provided exceptional services to the Debtors in good-faith reliance on the terms of their agreement. That agreement should be honored.

CONCLUSION

For the reasons given here and in Debtors' Application (ECF No. 835), the Court should grant the application and issue an updated order for LKC's retention.

Dated: May 16, 2025.

STRIS & MAHER LLP

/s/ Colleen R. Smith

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Certificate of Service

I, Collen R. Smith, hereby certify that on the 16th day of May, 2025, a copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Colleen R. Smith
Colleen R. Smith

**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)
	§	

DECLARATION OF CHARLES TOPPING

I, Charles R. Topping, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am General Counsel and Secretary of Rhodium Enterprises, Inc., which directly or indirectly manages other Rhodium-family entities, including but not limited to Rhodium 30MW LLC, Rhodium JV LLC; Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium Encore LLC, Jordan HPC LLC, and Air HPC LLC (collectively referred to as “Rhodium” herein). Except for any matters stated to be based upon information and belief, I have personal knowledge of the facts set forth below, and if called as a witness, I could and would competently attest to them.

2. I submit this Declaration in support of Debtors’ Response to 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.

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), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

3. On May 16, 2023, Rhodium retained Lehotsky Keller Cohn LLP (“LKC”) to represent Rhodium in connection with a lawsuit that Whinstone commenced in Milam County, Texas, on May 2, 2023.

4. Rhodium and LKC negotiated the terms of the engagement at arms’ length. Rhodium and LKC agreed that LKC would provide a significant discount on its hourly rates in exchange for a potential success fee. The potential success fee included components that would apply if Rhodium were to file affirmative claims against Whinstone for damages. The success fee is described in Rhodium’s May 16, 2023 engagement letter with LKC. At the time, I understood that Rhodium’s management team was unsure whether such a claim would be necessary because Rhodium’s management team hoped instead that a good relationship with Whinstone could be restored.

5. LKC’s discounted fees benefitted Rhodium by preserving cash flow. And indeed, over the course of the litigation, Whinstone’s aggressive tactics, including refusal to arbitrate and self-help shutdowns, impinged on Rhodium’s cash flow. The potential success fee aligned Rhodium’s and LKC’s incentives if Rhodium later pursued affirmative claims against Whinstone. The engagement letter also included a fixed fee for Jonathan Cohn’s time that was intended to approximate his expected monthly fees at discounted rates.

6. Over the course of the engagement, LKC helped Rhodium successfully defend itself against Whinstone. LKC and Stris & Maher LLP obtained a temporary restraining order and three different injunctions, including two emergency injunctions after Whinstone shut down Rhodium’s power. It is my belief that without the injunctions, Rhodium would likely have been forced out of business.

7. After Rhodium filed for bankruptcy, on September 14, 2024, Jonathan Cohn prepared a draft LKC retention application that set forth the specific terms of the May 2023 engagement letter, including the rate discounts and specific components of the potential success fee. At that time, the Rhodium-Whinstone dispute was in active litigation. It was not in Rhodium's interest to disclose to Whinstone the details of Rhodium's agreement with LKC. Ultimately, Rhodium via its bankruptcy counsel filed a retention application for LKC that disclosed that Rhodium's agreement with LKC included discounted hourly rates in exchange for a partial contingency fee based upon the successful outcome of the litigation. The retention application did not, however, disclose the specific details of the success fee.

8. It was my understanding at the time that the initial retention application was filed that its description of the partial contingency fee based upon the outcome of the litigation was sufficient to inform creditors and other interested parties about the existence of the success fee. This continued to be my understanding at least until February 2025.

9. To my knowledge, no issue was raised by a creditor or any other interested party with respect to payment of a contingency fee to LKC until around February 2025. On or around February 17, 2025, which was just two days before the scheduled mediation on February 19, 2025, I learned that counsel for the Ad Hoc Group had recently asserted that the details of the LKC contingency fee had to be disclosed in order for LKC to be paid any contingency fee. At that time I also learned that the Ad Hoc Group further asserted that because LKC's retention application did not disclose additional details, LKC should not be paid any contingency fee.

10. After Rhodium became aware that the Ad Hoc Group had raised this issue, Rhodium decided to address it regardless of whether the Ad Hoc Group's belatedly expressed concern was valid.

11. One option for Rhodium was to seek to amend the LKC retention application to include the specific terms of the May 2023 engagement letter. At that point, however, it appeared to be possible that Rhodium and Whinstone might reach a settlement involving *both* the affirmative case for damages *and* the sale to Whinstone of the Rhodium assets in Rockdale. Rhodium was concerned that the transaction documents might not identify what portion of the total proceeds is attributable to the affirmative case and what portion is attributable to the Rockdale assets. Although the engagement letter did not explicitly address this scenario (because Rhodium and LKC did not attempt to address every conceivable scenario that might hypothetically arise when they entered into the engagement in May 2023), Rhodium believed that LKC was owed a contingency fee under the terms of the agreement. A settlement on those terms would necessarily reflect value attributed to Rhodium's affirmative damages claims against Whinstone. Paying the contingency fee under those circumstances was thus consistent with Rhodium and LKC's intent at the outset.

12. Accordingly, Rhodium and LKC decided to amend the May 2023 engagement letter to expressly address this potential settlement scenario. Rhodium then submitted a proposed amendment to LKC's retention that both disclosed the original May 2023 engagement letter and the amended March 4, 2025 engagement letter.

13. Rhodium fully recognizes the value of the services that LKC provided over the past two years and also recognizes that LKC provided those services at a discounted rate in reliance on the potential success fee. LKC helped save Rhodium from going out of business multiple times and paved the way for a settlement with Whinstone. The value of LKC's services includes the affirmative claims against Whinstone that LKC helped develop and pursue in both the arbitration and the bankruptcy proceeding.

14. Rhodium had no intent to structure a deal with Whinstone that would attempt to circumvent LKC's success fee. Not paying the fee would be inconsistent with my understanding of Rhodium and LKC's intent. It is my opinion that it would also be unfair in light of LKC's successes and the discounted rates it provided for nearly two years.

15. Rhodium and LKC negotiated the language of the March 4, 2025 engagement letter in good faith and at arms' length. Rhodium and LKC also made other minor clarifying changes to the letter, including, for instance, specifying more precisely the trigger for the fee related to prevailing on Rhodium's interpretation of the contracts, which this Court addressed in resolving Debtors' Motion to Assume. The clarifying changes were consistent with the parties' intent from the beginning of the engagement, and in Rhodium's view, it was in the best interest of the estates to provide clarification.

16. Finally, although the objection to LKC's fee is being pressed by the Ad Hoc Group, I do not view payment of the fee as a matter between LKC and the Ad Hoc Group. LKC has represented Rhodium for two years through multiple periods of time when the survival of Rhodium's business was on the line. Together with Stris & Maher LLP, LKC obtained exceptional results for Rhodium and doing so often meant meeting imminent, after-hours needs and taking on emergency filings and emergency hearings on short notice. Rhodium has a reciprocal obligation to LKC and is committed to having LKC fully compensated for the work it has done and the success fee it has earned.

Dated: May 14, 2025

/s/Charles R. Topping
Charles R. Topping