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

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

MOTION TO ESTIMATE CONTINGENT AND UNLIQUIDATED CLAIMS OF MIDAS GREEN TECHNOLOGIES LLC AND GRANT RELATED RELIEF
[Relates to ECF Nos. 953, 954, 1069, 1413]

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT HTTPS://ECF.TXSB.USCOURTS.GOV BY AUGUST 12, 2025. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK BY AUGUST 12, 2025. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

Rhodium Encore LLC, and its affiliates, as debtors and debtors in possession (collectively, the "Debtors" or "Rhodium") in the above-captioned chapter 11 cases, hereby file the *Motion Pursuant to Sections 105(A) and 502(C) of the Bankruptcy Code to Estimate Contingent and*

[1] The 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 (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services 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 the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

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Unliquidated Claims of Midas Green Technologies LLC and Grant Related Relief (the "Motion"). In support of this Motion, the Debtors respectfully state as follows:

INTRODUCTION

1. After a year of these chapter 11 cases, the Debtors are ready to move forward with the confirmation of their consensual plan, a plan that will provide full recovery to their creditors and substantial recovery to their equity interest holders. However, the efficient resolution of these cases relies on the Debtors' ability to make timely distributions under the plan.

2. The patent claims filed by Midas Green Technologies LLC ("Midas" and the "Midas Claims") could jeopardize that goal. Despite final resolution in District Court, Midas continues to pursue claims already resolved in Rhodium's favor. Midas's asserted damages range between $25-$43 million; reservation of these amounts would make the distributions contemplated in the plan impossible. It follows that the prompt liquidation of the Midas Claims is necessary to maximize value and minimize prejudice and delay to stakeholders. Section 502(c) of the Bankruptcy Code is designed for exactly this situation.

3. Section 502(c) requires the court to estimate contingent or unliquidated claims, where the fixing or liquidation of such claims would unduly delay administration of the case. The Midas Claims are both contingent and unliquidated: they are contingent on whether Rhodium's cooling systems did in fact infringe on Midas's patents, and they are unliquidated because the monetary damages sought by Midas are based on hypothetical lost profits and reasonable royalties that are not readily observable. Indeed, courts have emphasized that the damages to be awarded for patent infringement claims rely on discretionary calculations.[2]

[2] *See infra* ¶ 41.

4. From previous litigation, the Debtors know that Midas's patent claims would likely take many months, if not years, to fully litigate, and the cost of that litigation will deplete assets available for distribution. To avoid this outcome, the Debtors ask that the Court use its core judicial power over the allowance, disallowance, and liquidation of claims to estimate the Midas Claims.

JURISDICTION AND VENUE

5. The United States Bankruptcy Court for the Southern District of Texas (the "Court") has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the Court's entry of a final order in connection with this Motion.

6. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

7. The bases for the relief requested are sections 105 and 502 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Bankruptcy Rule 3007, and Local Rule 3007-1.

BACKGROUND

I. General Background

8. On August 24 and August 29, 2024 (the "Petition Dates"), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of Texas (the "Court"). The cases are jointly administered.

9. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On November 22, 2024, the U.S. Trustee appointed the Official Committee of Unsecured Creditors

(the "Creditors' Committee"). No trustee or examiner has been appointed in these Chapter 11 Cases.

10. Further details of the Debtors' business, capital structure, governing bodies, and the circumstances leading to the commencement of these Chapter 11 Cases can be found in the *Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief* (the "First Day Declaration") (ECF No. 35).

11. On October 15, 2024, the Debtors filed the *Emergency Motion of Debtors for Entry of an Order (I) Setting Bar Dates for Filing Proofs of Claim, (II) Approving the Form of Proofs of Claim and the Manner of Filing, (III) Approving Notice of Bar Dates, and (IV) Granting Related Relief* (ECF No. 269), which the Court granted on October 18, 2024, setting November 22, 2024, as the general bar date for filing proofs of claim. The Debtors promptly served notice of the bar date on all creditors. (ECF No. 284).

II. The Debtors' Consensual Plan

12. On June 18, 2025, the Debtors filed the *Amended Joint Chapter 11 Plan of Liquidation of Rhodium Encore LLC and its Affiliated Debtors* (ECF No. 1297) (the "Consensual Plan"). The Consensual Plan provides for payment in full of all allowed secured and unsecured claims and the allocation of remaining funds between the Debtors' equity interest holders. It additionally provides for a proposed settlement of claims belonging to the Debtors against the Debtors' founders by the insurance carriers that issued the Debtors' directors' and officers' insurance policies, or alternatively, the creation of a trust to oversee the litigation of such claims, with any proceeds of that litigation to be distributed to equity interest holders.

13. The Debtors obtained the funds for distribution through the marketing and sales of their two bitcoin mining facilities: one facility located at Temple, Texas (the "Temple Facility")

and the other located at Rockdale, Texas (the "Rockdale Facility"). Through these sales, the Debtors can pay all allowed claims in full, with money left over to make distributions to equity interest holders.

14. The Consensual Plan represents the product of extensive negotiations among the Special Committee of Rhodium Enterprises, Inc.'s Board of Directors (the "Special Committee") and its advisors (Barnes & Thornburg LLP), working together with the Debtors' restructuring advisors (Province, LLC) and a number of the Debtors' key stakeholders. Those parties participated in a two-day mediation session with the Honorable Russell Nelms as mediator on April 28 and 29, 2025, in Dallas, Texas, which eventually led to key settlements memorialized in the Consensual Plan. In the absence of the settlements contained in the Consensual Plan, the Debtors' stakeholders could be subject to protracted, costly litigation to resolve their disputes, prolonging these cases and needlessly wasting estate value. Because the Debtors no longer generate income from operations, every dollar spent on litigation represents a dollar that could have gone to the Debtors' stakeholders. The Debtors seek to confirm the Consensual Plan and resolve these cases without delay.

III. The Midas Claims

A. The District Court Litigation

15. Prior to these bankruptcy cases, on January 13, 2022, Midas filed its *Original Complaint for Patent Infringement* against certain Debtor entities (the "District Court Litigation") in the Western District Court of Texas (the "District Court").[3] In its Complaint, Midas alleged that the liquid immersion cooling systems Rhodium used to facilitate its bitcoin mining operations

[3] Midas filed its Operative Complaint (District Court Litigation ECF No. 106) (the "Complaint") on March 29, 2023.

infringed certain claims of two patents, U.S. Patent No. 10,820,446 (the "'446 Patent") and U.S. Patent No. 10,405,457 (the "'457 Patent")[4] both entitled "Appliance Immersion Cooling System." Midas pleaded identical claims of infringement against both patents. As compensation for this alleged infringement, Midas demanded extensive damages and an injunction that would prevent Rhodium from operating its cooling systems.[5]

16. The parties actively litigated Midas's patent claims for two years. They engaged in extensive discovery, including 25 depositions totaling over 130 hours, 6 expert reports, 699 pages of written discovery, and over 700,000 pages of production documents. The Debtors estimate that attorneys and experts spent close to 10,000 hours on the case, and a conservative estimate of the combined fees and costs for both sides exceeds $5 million.

17. On December 20, 2023, after two years of litigation, Midas dropped its claim for infringement of the '446 Patent.

18. On March 1, 2024, Rhodium filed the *Motion for Summary Judgement of Noninfringement* (the "District Court Summary Judgment Motion")[6] arguing that Rhodium's immersion cooling systems lacked key features necessary for a finding of patent infringement. Specifically, Rhodium pointed out that the Midas's patent describes a cooling system that uses the temperature of the fluid in the system's tank containing the bitcoin miners to control two different circulation facilities.[7] However, Rhodium's proprietary cooling systems did not even measure the temperature of the fluid in the tank, let alone use that temperature to control any of its processes.[8]

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4 A true and correct copy of the '457 Patent is attached hereto as **Exhibit A.**

5 Further details regarding Midas's patent claims can be found in the Summary Judgment Motion at ¶¶ 9-14;

6 A true and correct copy of the District Court Summary Judgment Motion (District Court Litigation ECF No. 155) is attached hereto as **Exhibit B.**

7 *See* District Court Summary Judgment Motion at 2.

8 *Id.*

19. Midas subsequently filed a response opposing the motion,[9] and Rhodium filed a reply.[10]

20. At a hearing on April 9, 2024 (the "April 9 Hearing"),[11] the District Court heard arguments concerning, among other issues: (i) Rhodium's *Daubert* motion to exclude Midas's technical expert,[12] (ii) Rhodium's *Daubert* motion to exclude Midas's damages expert,[13] and (iii) Rhodium's summary judgment motion.

21. The District Court heard the *Daubert* motions first and ruled that Midas's damages expert could not testify to damages based on hypothetical "future" infringement that Midas acknowledged had never occurred. It also excluded Midas's technical expert entirely, but granted Midas leave to amend the technical expert's report.[14]

22. The District Court then heard summary judgment arguments.[15] After considering the parties' comprehensive briefing and argument, the District Court issued a bench ruling granting the Summary Judgment Motion, ruling that Rhodium's systems did not infringe the asserted claims of Midas' '457 Patent. It further concluded that its ruling "obviates the need for a trial."[16]

23. The District Court specified that its ruling superseded its previous statement that it would allow amendment to Midas' expert report. In response to Midas's request to "readdress" the issue of summary judgment after amending its expert's report, the District Court said, "you've

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9 District Court Litigation ECF No. 164.

10 District Court Litigation ECF No. 169.

11 A true and correct copy of a transcript of the April 9, 2024 hearing (District Court Litigation ECF No. 187) is attached hereto as **Exhibit C.**

12 District Court Litigation ECF No. 156.

13 District Court Litigation ECF No. 154.

14 Tr., 13:12-18:6, 20:9-23.

15 *Id.*, 32:7-54:13.

16 *Id.*, 54:16.

had your chance" and that it "d[id]n't think it [an amendment] would" benefit the court, but that it would let Midas know.[17]

24. In the year following its summary judgment ruling, the District Court did not request that Midas provide an amended expert report, nor did it allow further argument. To the contrary, the District Court cancelled the trial scheduled for April 22—only two weeks after the April 9 Hearing—and declined to rule on any related motions in limine.[18] Then, in January 2025, the District Court instructed the parties to "submit a joint proposed order reflecting the parties' understandings of Judge Albright's rulings at the 4/9/2024 hearing," and stated that it intended to "enter the order reflecting those rulings shortly thereafter."[19] The District Court never indicated any desire to retract or otherwise modify its ruling, and the email from its chambers showed its intent to memorialize its existing ruling of non-infringement.

25. On January 7, 2025, the Debtors filed the *Debtors' Motion for Entry of an Order Granting Limited Relief from Automatic Stay to Continue District Court Litigation* (the "Stay Relief Motion") (ECF No. 611), seeking limited relief from the automatic stay to allow the District Court to issue an order memorializing its ruling. The Court entered an order granting the Stay Relief Motion on January 30, 2025.

26. On February 3, 2025, the Debtors filed a Notice informing the District Court of this Court's ruling. The District Court clerk instructed the parties to submit their proposed form of order, which they did on February 7, 2025. The District Court has not yet issued a written ruling.

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[17] *Id.*, 54:19-55:3.

[18] *Id.*, 54:14-16.

[19] *See* Jan 30, 2025 email from Clerk Corey Brown to counsel attached hereto as **Exhibit D.**

B. The Debtors' Objection to Midas's Claims

27. On September 18 and November 21, 2024, Midas filed seven substantially similar proofs of claim in these cases alleging patent infringement against Debtors Rhodium Enterprises, Inc., Rhodium 10MW LLC, Rhodium 30MW LLC, Rhodium 2.0 LLC, Rhodium Technologies LLC, Rhodium Renewables Sub LLC, and Rhodium Encore LLC. To each claim, Midas attached the same Third Amended Complaint filed in the District Court Litigation on March 29, 2023, and listed a wide range as the claimed amount, once again asserting damages based on hypothetical future infringement.

28. Claim 004 was filed against Debtor Rhodium Enterprises, Inc., and does not specify the claimed amount. Claim 062 was filed against Debtor Rhodium 30MW LLC for between $933,685 and $2,442,095. Claim 068 was filed against Debtor Rhodium 10MW LLC for between $410,351 and $913,154. Claim 069 was filed against Rhodium 2.0 LLC for between $1,436,228 and $3,196,039. Claim 070 was filed against Debtor Rhodium Technologies LLC for between $11,899, 377 and 21,2955,440. Claim 071 was filed against Rhodium Renewables Sub LLC for between $9,093,236, and $13,121,268.[20] Claim 072 was filed against Rhodium Encore LLC for between $1,025,877 and $2,282,885. In total, the Midas Claims amount to between approximately $25 million and $43 million in alleged damages. Notably, this amount far exceeds what Midas asserted in District Court based on the exact same claims, and Midas provides no justification for this increase.

29. On April 15, 2025, the Debtors filed the *Amended Omnibus Objection to Claim Numbers 004, 062, and 068-072 Filed by Midas Green Technologies LLC (Filed by Rhodium*

[20] Midas does not appear to have filed a claim against Rhodium Renewables LLC – only Rhodium Renewables Sub LLC. However, Rhodium Renewables LLC is listed in Attachment A to each claim, whereas Rhodium Renewables Sub LLC is not.

Encore LLC (ECF No. 954) (the "Objection"). In the Objection, the Debtors confronted Midas's efforts to use the Bankruptcy Court to relitigate its defunct patent claims. The Debtors argued that because the issue of noninfringement had already been decided, the Midas claims were precluded.

30. On May 8, 2025, Midas filed its *Response to Debtors' Amended Omnibus Objection to Claim Numbers 004, 062 and 068-072 Filed by Midas Green Technologies, LLC (*ECF No. 1069) (the "Response"). In the Response, Midas conceded several key points, including that the Midas Claims concern the same issues the parties already litigated in the District Court, that the District Court had already issued an "oral ruling."[21]

31. Midas also argued that the District Court's ruling was not final, however, it omitted any mention of the fact that District Court canceled the trial and all related proceedings and the case had not moved forward in over a year. Then, after filing a proof of claim in these cases and thereby submitting itself to the jurisdiction of this Court, Midas protested this Court's power and the Debtors' right to resolve its Claims. Instead, Midas argues, the parties should wait indefinitely for the District Court's formal written order.

32. On July 9, 2025, the parties attended a hearing on the Objection in front of this Court. The Court subsequently entered an order (ECF No. 1422) (the "Scheduling Order") containing a briefing schedule for the Debtors to file this Motion and for both parties to file motions for summary judgment.[22]

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[21] ECF No. 1069 at ¶ 9.

[22] The Debtors' *Summary Judgment Motion In Support of Amended Omnibus Objection to Claim Numbers 004, 062, and 068-072 Filed By Midas Green Technologies LLC* (the "Summary Judgment Motion") is filed concurrently with this Motion.

BASIS FOR RELIEF

I. The Midas Claims Are Subject to Mandatory Estimation

33. Bankruptcy Code section 502(c) provides that the Bankruptcy Court "shall" estimate a contingent or unliquidated claim when the "fixing or liquidation" of such claim would otherwise "unduly delay the administration of the case." 11 U.S.C. § 502. What constitutes "undue" delay was left undefined by Congress, meaning that it depends on the facts and circumstances of each case. Courts may exercise discretion in selecting the method used to estimate the value of claims, and that determination will be disturbed on appeal only after a showing of abuse of that discretion. *In re MacDonald*, 128 B.R. 161, 165–66 (Bankr. W.D. Tex. 1991).

34. Estimation "provides a means for a bankruptcy court to achieve reorganization, and/or distributions on claims, without awaiting the results of legal proceedings that could take a very long time to determine." *In re Chemtura Corp*., 448 B.R. 635, 649-50 (Bankr. S.D.N.Y. 2011) (internal quotations and citation omitted); *see In re Federal-Mogul Global, Inc*., 330 B.R. 133, 154 (D. Del. 2005) (stating that estimation helps the court "'avoid the need to await the resolution of outside lawsuits to determine issues of liability or amount owed'"); *In re Stone & Webster, Inc*., 279 B.R. 748, 811 (Bankr. D. Del. 2002) (estimating contractual damages claim); *In re Adelphia Bus. Sols. In*c., 341 B.R. 415, 422 (Bankr. S.D.N.Y. 2003); *In re Specialty Prods. Holding Corp.*, 2013 WL 2177694, at *25 (Bankr. D. Del. May 20, 2013).

35. Courts in the Fifth Circuit interpret section 502(c) as creating "an affirmative, mandatory duty on a Bankruptcy Court to estimate an unliquidated or contingent claim if fixing or liquidating the claim would 'unduly delay' the reorganization proceeding." *In re Cont'l Airlines, Inc.*, 57 B.R. 842, 844 (Bankr. S.D. Tex. 1985); *In re Fairchild Aircraft Corp.*, 1990 WL 119650,

at *10 n.21 (Bankr. W.D. Tex. June 18, 1990) ("Section 502(c) is a mandatory provision."); *In re Trendsetter HR, LLC*, 2017 WL 4457435, at *9 (Bankr. N.D. Tex. Aug. 15, 2017). Therefore, estimation is required where the prerequisites have been met. *See Federal-Mogul Global*, 330 B.R. at 154 ("[I]t is apparent that the Bankruptcy Code requires an estimation in order to prevent undue delay in the administration of the estate."); *In re G-I Holdings, Inc.*, 323 B.R. 583, 599 (Bankr. D.N.J. 2005) (noting that the duty to estimate contingent or unliquidated claims is a "mandatory" obligation of the court where otherwise the claim would cause undue delay); *In re Lane*, 68 B.R. 609, 611 (Bankr. D. Haw. 1986) (same).

36. To invoke the estimation process: (i) the claim must be contingent or unliquidated; and (ii) fixing or liquidating the claim would unduly delay the administration of the case. *In re LightSquared Inc.*, 2014 WL 5488413, at *3 (Bankr. S.D.N.Y. Oct. 30, 2014); *see AL Tech Specialty Steel Corp. v. Allegheny Int'l Credit Corp.*, 104 F.3d 601, 606 (3d Cir. 1997) ("[Section] 502(c) of the Bankruptcy Code specifically provides for estimation, for purposes of allowance, of such unliquidated claims.").[23]

37. Although only one prerequisite need be present, as set forth below, the Midas Claims are both contingent and unliquidated. Moreover, the Midas Claims threaten to prevent distributions to stakeholders and extend these cases by another year or more. The resulting delay could jeopardize the consensual and value-maximizing resolution of these cases. These are the exact circumstances that call out for estimation. *In re Enron Corp.*, 2006 WL 544463, at *2 (Bankr. S.D.N.Y. Jan. 17, 2006) (estimation is "designed" to "avoid the need to await the

[23] *See also In re Lionel L.L.C.*, 2007 WL 2261539, at *4 (Bankr. S.D.N.Y. Aug. 3, 2007) (ordering estimation because, among other things, "[a] liquidation or further reorganization contingency cannot realistically be provided for in a plan, when neither the likelihood of an adverse judgment, nor the timing and amount of such a judgment, can be predicted with any certainty"); *Lane*, 68 B.R. at 611 (ordering estimation because, among other things, "[n]o plan of reorganization can be confirmed so long as this claim remains unliquidated and not estimated").

resolution of outside lawsuits to determine issues of liability or amount owed" and to "promote a fair distribution to creditors through a realistic assessment of uncertain claims").

II. The Midas Claims Are Contingent

38. A claim is contingent if it "has not yet accrued and … is dependent upon some future event that may never happen." *In re Energy Future Holdings Corp*., 531 B.R. 499, 515 & n.71 (Bankr. D. Del. 2015) (citing *In re RNI Wind Down Corp*., 369 B.R. 174, 182 (Bankr. D. Del. 2007)); *Saint Catherine Hosp. of Indiana, LLC v. Indiana Family and Soc. Servs. Admin*., 800 F.3d 312, 317 (7th Cir. 2015) ("A 'contingent' claim is one conditioned upon some future event that is uncertain."); *Felton v. Noor Staffing Grp., LLC (In re Corporate Res. Servs. Inc.)*, 564 B.R. 196, 201 (Bankr. S.D.N.Y. 2017) (same).[24]

39. The Midas Claims are contingent because Rhodium has no duty to pay the patent claim unless and until there is a finding of liability, a future event that will not occur.[25] As described above, the District Court has canceled all future proceedings in the case, including the previously scheduled trial, and after a year, has stated its desire to "memorialize its ruling" and move towards "resolution" of the case. Even if the District Court's ruling was not a final ruling with preclusive effect (and it is), the District Court litigation has remained stagnant for over a year. And, as previewed in the District Court's ruling and more fully described in the Debtor's summary

[24] *See also In re Fostvedt*, 823 F.2d 305, 306 (9th Cir. 1987) (stating that a claim is contingent if "the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor" (citation omitted)); *In re SNTL Corp.*, 571 F.3d 826, 843–44 (9th Cir. 2009) (holding that prepetition contractual right of payment that comes due postpetition is a prepetition, contingent claim that may be estimated under section 502(c) of the Bankruptcy Code); *Coldwell Banker & Co. v. Godwin Bevers Co., Inc.* (*In re Godwin Bevers Co., Inc.*), 575 F.2d 805, 807–08 (10th Cir. 1978) (same).

[25] *See* Summary Judgment Motion ¶ 34-37; 48-50.

judgment motion, Rhodium cannot be found liable because the Midas Claims plainly fail as a matter of law.[26]

III. The Midas Claims Are Unliquidated

40. A claim is unliquidated when it is not subject to ready determination and precise computation of the amount due. *See In re Vaughn*, 276 B.R. 323, 325 (Bankr. D. N.H. 2002); *In re Kreisler*, 407 B.R. 321, 326 (Bankr. N.D. Ill. 2009) (stating that a claim is unliquidated when the discretion or judgment of the court is required to determine the amount of the claim); *In re Chavez*, 381 B.R. 582, 587 (Bankr. E.D.N.Y. 2008) (holding that litigation claims pending outside of bankruptcy court were subject to estimation).[27]

41. The Claims purport to entitle Midas to an absurd range of between $25 million and $43 million as a result of Rhodium's alleged infringement, showing that not even Midas can pinpoint the amount purportedly owed with any reasonable certainty. A significant amount of this uncertainty stems from the anomalous methods Midas uses to calculate those damages, relying on Rhodium's hypothesized future infringement, as well as Midas's decision to arbitrarily inflate its claims to exceed what it asserted in the District Court Litigation. But even putting aside these self-inflicted sources of confusion, the Midas Claims still remain unliquidated. The estimation of damages in patent infringement claims "is not an exact science, and the methodology of assessing and computing damages is committed to the sound discretion of the **[]** [C]ourt." *State Indus., Inc.*

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[26] *See* Summary Judgment Motion ¶ 48-69.

[27] *See also Fostvedt*, 823 F.2d at 306 (holding that a claim is unliquidated if it is not subject to "ready determination and precision in computation of the amount due" (citation omitted)); *In re Loya*, 123 B.R. 338, 341 (B.A.P. 9th Cir. 1991) (stating that whether a claim is unliquidated "turns on the distinction between a simple hearing to determine the amount of a certain debt, and an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts or liability" (citation omitted)); *In re Interco, Inc.*, 137 B.R. 993, 997 (Bankr. E.D. Mo. 1992) (holding that a retirement fund's withdrawal liability claim against chapter 11 debtors was unliquidated under 502(c), where liquidation of amount of claim under Multiemployer Pension Plan Amendments Act of 1980 would require resolution of many substantial disputed issues).

v. Mor-Flo Indus., Inc., 883 F.2d 1573, 1576–77 (Fed. Cir. 1989); *see* 28 U.S.C.A. § 1499(a) (damages for patent infringement should be "reasonable and entire compensation"); 35 U.S.C. § 28 ("damages for patent infringement no [] less than a reasonable royalty for the use made of the invention by the infringer"). Consequently, any court that attempts to calculate the amount lost by Midas would necessarily rely on approximations and assumptions. *See Mor-Flo Indus., Inc.*, 883 F.2d at 1578. The Midas Claims are thus unliquidated because in the unlikely event they are resolved, Rhodium's liability is unknown today and cannot be easily calculated.[28]

IV. Estimation Will Avoid Undue Delay in Administration of these Cases

42. Determining "undue delay" under Bankruptcy Code section 502(c), "'ultimately rests on the exercise of judicial discretion in light of the circumstances of the case, particularly the probable duration of the liquidation process as compared with the future uncertainty due to the contingency in question.'" *In re Roman Catholic Archbishop of Portland*, 339 B.R. 215, 222 (Bankr. D. Or. 2006) (quoting 3 Collier on Bankruptcy ¶ 502.03, p. 502-73 (15th ed. 1991)). Estimation of an alleged creditor's claim is particularly necessary where, as here, the amount alleged threatens to jeopardize consummation of a chapter 11 plan. *See In re Mud King Prods., Inc.*, 2015 WL 862319, at *4 (S.D. Tex. Feb. 27, 2015) (holding use of estimation process was proper where "no party is able to propose a meaningful plan of reorganization" until the value of the claim was determined) (quoting *In re Texans CUSO Ins. Grp. LLC*, 426 B.R. 194, 204 (Bankr. N.D. Tex. 2010)); *In re Patrick Cudahy Inc.*, 97 B.R. 489, 491 (Bankr. E.D. Wisc. 1989) (estimating claim of National Labor Relations Board because it was necessary to value the claim to proceed with attempting to confirm a plan); *In re AMR Corp.*, 2021 WL 2954824, at *5 (Bankr.

[28] Midas has offered no plausible method to substantiate its damages. Both the lost profits analysis and the reasonable royalty analysis provided by Midas's damages expert in District Court is inflated and unreliable. See Summary Judgment Motion ¶¶ 66-69.

S.D.N.Y. July 14, 2021) (estimating claim of Equal Employment Opportunity Commission to avoid "awaiting the results of legal proceedings that could take a very long time to determine" and to save the estates a "significant amount in U.S. Trustee fees" by putting the debtors in a position to "close out their cases"); *In re Dana Corp*., 2007 WL 2908221, at *1 (Bankr. S.D.N.Y. Oct. 3, 2007) (stating that the court ordered an estimation proceeding for the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act to avoid a delay in the plan process).

43. Estimation of the Midas Claims avoids undue delay in the administration of the Debtors' jointly administered cases. As described above, the Consensual Plan provides for payment in full of all creditors and significant recovery to equity interest holders and has the support of the overwhelming majority of the Debtors' stakeholders. But the Debtors cannot implement that Plan because the Midas Claims would curtail up to $43 million of distributions. Expedited estimation of the Midas Claims is well suited to address these circumstances by avoiding unnecessary delays at confirmation that would be to the detriment of the estates and all stakeholders.

44. At the same time, Midas will suffer little to no prejudice from estimation of its Claims. Through the District Court Litigation, both Midas and the Debtors have had the opportunity to participate in discovery and gather evidence, all of which will be available for use in this proceeding. As detailed in the Debtors' Summary Judgment Motion , Midas has not raised a genuine issue of material fact; therefore, the resolution of this case now turns on matters of law that the Court is well positioned to address.[29]

[29] *See* Summary Judgment Motion ¶ 40-41.

45. Midas requests that the parties await the District Court's ruling, but the District Court Litigation has stagnated for over a year. And, because of the District Court's busy docket, it must first attend to other cases that have been waiting even longer. In sum, "when the liquidation of a claim is premised on litigation pending in a non-bankruptcy court, and the final outcome of the matter is not forthcoming, the bankruptcy court should estimate the claim." *In re Lionel L.L.C.*, 2007 WL 2261539, at *2 (Bankr. S.D.N.Y. Aug. 3, 2007) (citation omitted).

V. The Court Should Estimate the Midas Claims at Zero

46. The District Court's finding of noninfringement means that the Midas Claims should be estimated at zero. When a claim pending in another court would have been dismissed, that claim should be estimated to have no value. *In re Innovasystems, Inc.*, 2014 WL 7235527, at *8 (Bankr. D.N.J. Dec. 18, 2014) ([T]he Proveris Claim is a claim whose contingency may never occur. Moreover, Proveris's ultimately prevailing on its claims, in light of its lack of success at the appellate level, is uncertain at best."); *In re Kaplan*, 186 B.R. 871, 874 (Bankr. D. N.J. 1995) ("[i]t is not inappropriate to value a party's claim at zero where the claim is contingent and where the bankruptcy court finds that the party probably would not succeed on the merits in a state court action" … "the estimation process protects the interests of other creditors in not having their distributions diminished by allowing a claim whose contingency may never occur"); *Matter of Baldwin-United Corp.*, 55 B.R. 885, 902-03 (Bankr. S.D. Ohio 1985). A court should also estimate a claim at zero if it is found to be without merit as a matter of law. *In re Cont'l Airlines Corp.*, 57 B.R. 845, 854 (Bankr. S.D. Tex. 1985) ("[T]he unions' claims…have no validity and are without merit as a matter of law, and the value is estimated, pursuant to 11 U.S.C. § 502(c), to be zero.").

47. Here, the District Court plainly ruled that Midas's patent claims have no merit and requested a proposed order stating as much. Moreover, the District Court Litigation serves as a

preview of the inevitable resolution of this case. Relying on the same Complaint it filed in 2022, Midas has not provided the Court with any new facts or argument in support of its Claims. As a result, the evidence the District Court already considered is the same evidence and arguments available here. And recent developments only further weaken Midas's already feeble claims. Confirming the District Court's findings that Midas's speculative damages were improper, the Debtor has sold both its Temple and Rockdale facilities, making the ongoing infringement described in the complaint impossible. This alone disposes of more than half of Midas's damages. On a record more favorable to Midas, the District Court found no infringement, and this Court would find no differently. Accordingly, the Midas Claims have an estimated value of zero.

CONCLUSION

WHEREFORE, the Debtors respectfully request entry of the proposed order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

RESERVATION OF RIGHTS

48. Nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (vi) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

NOTICE

49. Notice of this Reply will be provided to (i) the Office of the United States Trustee; (ii) counsel to the Creditors' Committee; (iii) Midas, (iv) any other party that has requested notice pursuant to Bankruptcy Rule 2002; and (v) any other party entitled to notice pursuant to Local Rule 9013-1(d).

Respectfully submitted this 29th day of July, 2025.

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CERTIFICATE OF SERVICE

I, Patricia B. Tomasco, hereby certify that on the 29th day of July 2025, a copy of the foregoing Motion was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and to Midas Green Technologies, LLC, c/o Joseph Thomas, 18101 Von Karman Avenue, Suite 230, Irvine, CA 92612, email jthomas@twtlaw.com.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

EXHIBIT A
SEALED

EXHIBIT B
SEALED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MIDAS GREEN TECHNOLOGIES, LLC *
*
VS. *
*
RHODIUM ENTERPRISES, INC., ET AL. *

April 9, 2024

CIVIL ACTION NO. 6:22-CV-50

BEFORE THE HONORABLE ALAN D ALBRIGHT
PRETRIAL HEARING (via Zoom)

APPEARANCES:

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Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

EXHIBIT
C
exhibitsticker.com

09:33 (Hearing begins.)

09:33 DEPUTY CLERK: A civil action in Case 6:22-CV-50, Midas Green Technologies, LLC versus Rhodium Enterprises, Incorporated, et al. Case called for a pretrial conference.

09:33 THE COURT: If I could have announcements from counsel, please.

09:33 MR. SMITH: Your Honor, for plaintiff Midas Green, Michael Smith. And with me today are Mr. Joe Thomas, Mr. Bill Kolegraff, and Mr. Grant Thomas; and we're ready to proceed.

09:33 MR. UNDERWOOD: Good morning, Your Honor. Travis Underwood on behalf of the Rhodium defendants. With me is my law partner Melissa Smith. We also have from the Stris & Maher firm our lead counsel, Liz Brannen, along with two other members from her firm, Peter Brody and Sarah Rahimi; and we're ready to proceed.

09:34 THE COURT: With this group, I feel like I'm an honorary Eastern District of Texas judge. What an honor. If I could have only been picked to serve there.

09:34 I will take up first the motion to correct inventorship. And I'll hear argument on that, please.

09:34 Mr. Thomas, I think that's you, or Mr. Kolegraff. Okay.

09:34 MR. KOLEGRAFF: Good morning. This is William Kolegraff.

09:34 THE COURT: Good morning to you, sir.

09:34 MR. KOLEGRAFF: Yes. So this patent was originally issued with seven named inventors. However, during the process of preparing for this case for trial, we discovered that six of the inventors should not have been named. We provided a correction of inventorship document, which was sent to the Patent and Trademark Office about a year ago. We're still waiting to hear back from them.

09:35 So what we did is, in an abundance of caution, just in case we don't get this resolved by the PTO by the time trial starts, we've asked the Court to order the director of the office to correct the inventorship. So right here, we believe we've met our burden for clear and convincing evidence. Every one of the --

09:35 THE COURT: Does that mean I get to tell Kathi Vidal what to do, or is it someone else?

09:35 MR. KOLEGRAFF: Yes. You do. I could help draft that order for you.

09:35 (Laughter.)

09:35 MR. KOLEGRAFF: But we do believe we've met the burden for clear and convincing evidence. First of all, the package that we have duplicated for you in the filing is the exact package that we submitted to the Patent and Trademark Office, which meets all the statutory requirements. All the six inventors that are being removed have signed declarations that they agree that they should be removed from the patent.

09:35 The remaining inventor, Christopher Boyd, has agreed that he is the sole inventor. And Midas Technology, the assignee of all the rights in interest in the patent, has also agreed to this change. So we don't see any reason why this can't be allowed because there's clear and convincing evidence to remove these inventors.

09:36 Now, Rhodium does try to muddy the water and they bring up the names of two other people that they say may be inventors, Rainone and Christian Best. That really is irrelevant to this particular motion.

09:36 This motion is merely to remove six named inventors that were wrongly named on the patent, and if they believe others should be added, then they can take that up at a separate -- separate matter. And just as a point of interest, they don't have any standing to do

09:36 this anyway because they don't represent Rainone or
09:36 Christian Best, as far as we know.
09:36 THE COURT: Okay. Response?
09:36 MS. BRANNEN: Good morning, Your Honor.
09:36 Elizabeth Brannen from Stris & Maher on behalf of the
09:37 Rhodium defendants.
09:37 I guess we really should have briefed the
09:37 point about Ms. Vidal, who -- Director Vidal, who I
09:37 remember fondly as Kathi Kelly Lutton, but the reason
09:37 we think this Court should not tell her agency what to
09:37 do:
09:37 First of all, I think they say in their
09:37 reply, they expect the agency to rule soon anyway. So
09:37 there is the chance that we can just see what the
09:37 Patent Office does. But the reason I would ask the
09:37 Court to deny the motion is that the correct
09:37 inventorship is a disputed issue in our litigation.
09:37 We do contend that there are two omitted
09:37 inventors, who they're not even trying to add. And we
09:37 don't think the record that they've submitted to this
09:37 Court even tries to meet their clear and convincing
09:37 burden to prove that all six of the guys they say
09:37 should come off actually didn't contribute.
09:37 You know, two of them, and we've cited
09:37 examples in our brief, testified that they contributed

09:37 to conception of one or more aspects of the claimed
09:38 invention. So I don't -- if you grant the motion, we
09:38 don't believe you'd be correcting anything. We just
09:38 don't think they met their burden. And at this point,
09:38 it may be best to see what the agency does.
09:38 THE COURT: Anything else from the
09:38 plaintiffs?
09:38 MR. KOLEGRAFF: Yeah. Just on the issue
09:38 of disputes of inventorship, there is no dispute on the
09:38 removal of these six. Those six, all six, have agreed
09:38 to do this. All six have testified that they're not
09:38 inventors. All six have testified that they are
09:38 comfortable with, and believe it's correct, that
09:38 Christopher Boyd is the sole inventor.
09:38 That's all, Your Honor.
09:38 THE COURT: Anything else?
09:38 MS. BRANNEN: Your Honor, in our brief,
09:38 we cited testimony from two of them to the effect that
09:38 they contributed to conception, and so that would not
09:38 make it proper to remove them. We don't think they've
09:38 met the clear and convincing burden.
09:38 THE COURT: Okay. I'll be back in a
09:38 second.
09:38 (Pause in proceedings.)
09:43 THE COURT: Okay. I'm going to grant the

09:43 dismissal of the six; but with regard to the additional two, I'm not sure -- I'll hear from defendant. I'm not sure, procedurally, that issue is in front of me. I don't think you're raising it in a response to a motion properly put in front of me.

09:44 I'm really asking you. Is that wrong? I'm thinking if it were, like, in a pleading or something, it would be in front of me, or it's an issue that the Patent Office should take up.

09:44 MS. BRANNEN: Good morning, Your Honor. I think we would agree that doesn't -- the point I was trying to make on this motion is, it wouldn't, from our perspective, be a correction. So we were hoping the Court would deny this motion on that basis. But I think we can present evidence to the jury about whether the patent is invalid for failure to list those two individuals who we believe should be listed, who they're not even asking you to add.

09:44 THE COURT: And have you raised that issue formally in the case?

09:44 MS. BRANNEN: We have, Your Honor.

09:44 THE COURT: Okay. Okay. Well, then we'll take that up at trial.

09:44 Next up, I have -- give me one second -- the motion to exclude rebuttal report and testimony of

09:44 Dr. Alfonso Ortega.

09:45 And for the record, I have: Paragraphs 91, 92, 133 through 146, 178, 184, 189 and 90, 213, 222, 239 and 277.

09:45 I'll hear argument on that, please.

09:45 MR. THOMAS: Good morning, Your Honor. Joseph Thomas on behalf of the plaintiff Midas Green Technology.

09:45 Your Honor, this is a case that is, in my 40 years of practice, I've never seen. A law firm directly engage a party who was supporting an expert and use the privilege to shield from discovery all communications, all test data, all test parameters, and produce nothing but a simple result file, which is what happened here today -- or happened in this case.

09:46 We think the law's very clear under Rule 26 that anything the expert relies upon must be produced in a case, and had Mr. Ortega functioned, as the defendants claim, as his support staffer -- is the term that they've used -- all of this would have been discoverable, none of this would have been hidden from us.

09:46 And as it stands, the only thing we have access to is a simple result file that, of course, shows a result that Dr. Ortega likes and counsel for

09:46 Rhodium likes, but none of the underlying test
09:46 parameters, test conditions, test failures, the
09:46 convergence data has been produced. And this kind
09:46 of -- I guess it's almost a policy argument, I mean,
09:46 whether the Court would sanction and allow lawyers
09:46 to --
09:46 THE COURT: I got it. I got it.
09:47 Is there anything else you need to add?
09:47 MR. THOMAS: No, Your Honor. We briefed
09:47 this and it seems like you've read it. I would just
09:47 point out, we think the Cellular Communications
09:47 Equipment case is really on point here, and this report
09:47 should be excluded.
09:47 THE COURT: The portion -- the paragraphs
09:47 I just read out should be excluded, right?
09:47 MR. THOMAS: Well, we think the --
09:47 there's a basis to exclude the entire report. We've
09:47 also, alternatively, cited specifically paragraphs that
09:47 rely on and use in reference to this CFD report. I can
09:47 recite those for you if you want, Your Honor. They're
09:47 in our moving papers.
09:47 THE COURT: No. I -- okay.
09:47 I'll hear a response.
09:47 MS. BRANNEN: Good morning, Your Honor.
09:47 We think that the criticisms are wrong on

09:47 1 the facts about what happened, and also about the law.
09:47 2 So Dr. Ortega, to start with, opines that limitations
09:48 3 of the patent claims are missing and this motion, as I
09:48 4 think the Court has observed, only affects one
09:48 5 limitation, the plenum limitation.
09:48 6 And what Dr. Ortega did for that
09:48 7 limitation, it requires a plenum at the bottom of the
09:48 8 tank; and that has to be adapted to dispense the
09:48 9 dielectric fluid in the tank substantially uniformly
09:48 10 upwardly through each appliance slot.
09:48 11 The first thing that Dr. Ortega did was
09:48 12 to look at the design of the tank, the thing they're
09:48 13 pointing to is the plenum. One part of it has a bunch
09:48 14 of holes in it and it's designed to send the fluid
09:48 15 where things are hottest and need to be cooled the
09:48 16 most.
09:48 17 And he used his expertise to say this --
09:48 18 you know, this doesn't go substantially uniformly
09:48 19 upwardly. He reached that conclusion separately on the
09:48 20 plenum limitation.
09:48 21 Then he used data from the CFD analysis
09:48 22 that they challenge. Now, whether they're right, that
09:49 23 the -- his graduate student, who he trained how to do
09:49 24 CFD -- whether they're right, that that was an
09:49 25 independent expert, nontestifying expert, or whether

09:49 we're right, that that was his support staff, his
09:49 graduate student, the standard for what we had to do
09:49 was the same. Any of the data that Dr. Ortega relied
09:49 upon, reviewed and relied upon, we had to produce to
09:49 them. And we did that.
09:49 And their motion says we didn't give CAD
09:49 files, for example. That's flatly wrong. We can look
09:49 at their own expert's report at Paragraphs 132 and 52,
09:49 and he cites those CAD files because we produced them
09:49 in November.
09:49 They're also -- they also try to say that
09:49 there was cherry-picking. No. Dr. Ortega said,
09:49 here's -- that's a very large set of data. I want to
09:49 see the part that's right -- you know, he chose the
09:49 place he wanted to see it based on the claim language,
09:49 which requires the fluid to be going substantially
09:50 uniformly upwardly through the appliance slot.
09:50 That data that he relied upon, we have
09:50 produced to them. They never asked for additional data
09:50 from us in discovery. They never used this Court's
09:50 robust and efficient discovery dispute processes to say
09:50 we should have given them anything more.
09:50 And they're just wrong that
09:50 communications with support staff or nontestifying
09:50 experts get produced under Rule 26. They don't. The

thing that gets produced is what we have produced, what the expert relied upon.

There is a case in response to the argument they make in reply that I would like to call the Court's attention to where the fact pattern is very similar and the expert who was undisclosed was found to be -- there was no exclusion of the testifying expert's report. That is National Wildlife Insurance Company versus Western National Life Insurance Company. It's a 2011 case, 2011 Westlaw 840976, from the Western District of Texas on March 3rd of 2011.

And there is also a major goose/gander violation going on here, because we haven't had a privilege log or the production of any communications with the support staff of any of Midas Green's experts.

They want to have their Dr. Lee testify about claim charts that he admittedly did not prepare. They want to have their damages expert Mr. O'Bryan be able to rely on hearsay from his subordinates.

So with everything going on, there's certainly no basis, no authority whatsoever, for excluding the entirety of Dr. Ortega's opinions. But even his opinions about the CFD that they're challenging, there is no basis to exclude those, not under the facts of what actually happened and not under

09:52 1 the law of what Rule 26 protects from discovery and
09:52 2 what it allows to be discoverable.
09:52 3 THE COURT: I'll be back in just a
09:52 4 second.
09:52 5 (Pause in proceedings.)
09:52 6 THE COURT: The Court is going to grant
09:52 7 the motion with respect to those paragraphs.
09:52 8 With respect to the issues that counsel
09:52 9 brought up at the end under the goose/gander standard,
09:52 10 if you have issues with what they've done, I'll
09:53 11 certainly entertain those separately.
09:53 12 Next I have the motion to exclude
09:53 13 Dr. Pokharna.
09:53 14 MS. BRANNEN: Good morning, Your Honor.
09:53 15 We are asking to control aspects of
09:53 16 Dr. Pokharna's expert report that we learned about for
09:53 17 the first time in the -- in his report itself that were
09:53 18 not in the final infringement contentions and also to
09:53 19 exclude his opinion about a system at the Temple
09:53 20 facility of my client that is admittedly inoperable
09:53 21 because they ran out of money and they never actually
09:53 22 finished installing what is accused. And so we think
09:53 23 it would not be -- it's just unreliable to convene a
09:53 24 jury, and there's no fact issue over that.
09:53 25 So to start with the new opinions that

were undisclosed, we set those forth in our brief, but I would point out, Your Honor, this is a case where they didn't even tell us they were planning to amend the contentions. They didn't move to amend earlier, give us any warning.

And so the prejudice that we are complaining about is that if we had known that these theories might be something Dr. Pokharna would present, we would have had the ability to take fact discovery and conduct our fact discovery with that in mind.

And it's not a simple case of just getting to depose Dr. Pokharna again for an hour. There are seven named inventors, six of whom are coming off. There were two -- there was a corporate witness for Midas Green and another witness for Midas Green about their systems. There were many Rhodium witnesses.

It's just really unfair, and it shows a disrespect for the rules to have not even alerted us that they wanted to amend the final infringement contentions and to disclose these theories for the first time there.

With regard to the systems that are inoperable, that's just silly to have a trial about that. There's no fact dispute over that, and it would

09:55 be a waste of judicial and party resources to do it.

09:55 So we would ask that that not -- you know, the system was over two years ago. Our client concededly ran out of money, never installed it.

09:55 Their expert has conceded it cannot measure temperature. It's not wired in. There's just nothing to present to the jury.

09:55 And it would be unreliable for Dr. Pokharna to opine that systems in that state practice any of the limitations.

09:55 THE COURT: A response?

09:55 MR. KOLEGRAFF: Yes. This is William Kolegraff.

09:55 First of all, there's absolutely no -- nothing was hidden here from them. There's nothing new that was put in Dr. Pokharna's report. For example, this whole idea that Prime Controls, they were surprised about, is, well, just very surprising.

09:56 Because on March 15th, 2023, we fully set out to them in a supplement to Interrog 4 (sic), which is Exhibit D here, the exact way that the Prime Controls was set up and that Prime Controls was going to be the infringing set of devices.

09:56 In response to our having done that supplement to Rog 10, they came back in their

09:56 Supplement Rog 1 and said: As a result of the system
09:56 described in plaintiff's supplemental response to
09:56 Interrogatory No. 10 and accused in plaintiff's final
09:56 infringement contentions...
09:56 They admitted that what was in the final
09:56 infringement contentions were these Prime Control
09:56 devices. So there's absolutely no surprise here.
09:56 Also, this actually is in the
09:56 contentions. We don't say the name "Prime Controls"
09:56 with the name "Prime Controls," but it's actually set
09:56 out that says: The control -- from the contentions --
09:57 the control facility includes an automated controlling
09:57 with software that measures and monitors and controls
09:57 the pumps, dry coolers, and temperature of the fluid.
09:57 That's exactly what the Prime Control
09:57 systems does. So Prime Control has been fully set out,
09:57 including Exhibit E, which is a manual that we have
09:57 cited to, that is the exact Prime Controls manual.
09:57 As far as the Kelvion coolers, in the
09:57 contentions themselves, we lay out that there are two
09:57 Kelvion coolers. There's a Guntner coolers at the
09:57 Rockdale facilities; there's Kelvion coolers at the
09:57 Temple facility. And they form the second -- secondary
09:57 cooling facility.
09:57 Again, those are fully disclosed in the

09:57 contentions, and they were the basis for Dr. Pokharna's report.

09:57 As far as what was installed not being reliable, yes. It is true that they installed significant portions of the Prime Control systems at Temple, and then because they ran out of money, they did delay that process.

09:58 However, we do know that there is evidence that says that they are planning on re- -- turning that system on -- finishing that system and turning it on later.

09:58 So they have substantially installed the Prime Control systems. They're on the 99-yard line. They just haven't flipped the actual switch.

09:58 The system is still adapted to -- it's still capable of taking these measurements once they finish and flip the switch.

09:58 So they also have this issue where they don't believe that we have disclosed the slots, that they were surprised that we have the slots.

09:58 Well, again, if you look through the -- our opposition, we put pictures of the slots in the first amended complaint. We had -- in our supplement to No. 4, we actually had a picture of the tape with red lines showing where the slots were.

09:59 There's absolutely no surprise whatsoever to anything in the -- Dr. Pokharna's report.

09:59 THE COURT: I'll be back in just a second.

09:59 (Pause in proceedings.)

10:00 THE COURT: The Court grants that motion.

10:00 The next motion we have up is the motion the exclude James Lee. I'll hear from defendants on that.

10:00 MS. BRANNEN: Your Honor, on this motion, we had two aspects of it. Sorry. For a moment, I wasn't sure if you were calling on us or the other counsel.

10:00 But the first aspect is a correction -- what they call a correction, but it's really an addition to Dr. Lee's report that he served at the end of a deposition.

10:00 Their position just doesn't make any sense on this. They argue simultaneously that it is duplicative of what was already in his report and that it's necessary.

10:01 It can't be both. And all I know is that it's too late, and we ask Your Honor to exclude it.

10:01 The other thing that we are focusing on in this motion is the fact that Dr. Lee is their

10:01 rebuttal expert, not their opening expert.

10:01 And he gave an opinion that based on charts that he did not prepare, that apparently counsel prepared, as they say they had been produced in discovery, he gave an opinion that Midas' products practice the patents.

10:01 We think that opinion is unreliable. But in any event, it's too late -- too late for their damages expert, their opening expert to have relied upon it.

10:01 And that's basically about it for that opinion. It's not plausible, and it also is too late for the purposes they want to use it for in the case.

10:02 THE COURT: Who's going to respond to this?

10:02 MR. THOMAS: Joseph Thomas.

10:02 THE COURT: Is there any reason why -- I think I've gone over this -- why this couldn't be taken care of by just allowing this gentleman to be deposed now?

10:02 I'm asking you, Counsel.

10:02 MR. THOMAS: You're asking Mr. Thomas?

10:02 THE COURT: I'm asking you. I'm asking you. I don't know how to make it any clearer. I'm asking you to respond.

10:02 MR. THOMAS: The -- Mr. Thomas. Yes.

10:02 THE COURT: Yes.

10:02 MR. THOMAS: We're happy to let him be deposed again if they want to. We don't think they need to. They had his --

10:02 THE COURT: Well, I'm -- stop while you're ahead. I'm going to allow them -- I'm going to deny the motion and allow them to depose the witness.

10:02 Now, going back to Mr. -- or Dr. Pokharna. Is he your only infringement expert?

10:03 MR. THOMAS: Yes.

10:03 THE COURT: So what I'm going to do is -- it will obviously impact the trial setting, but I'm going to allow you to amend his report, see if you can fix it. And you all will need to get together with opposing counsel and figure out how long you think it'll take for Dr. Pokharna to address any of the issues that you think would make his opinion survive a future challenge.

10:03 And then y'all can set up a schedule to figure out how to deal with that in terms of rebuttal reports and all that. So I'm going to allow him to amend his report.

10:03 Next up I have the motion to exclude -- I don't know if it's a doctor or not. I don't think it

10:03 is -- Duross O'Bryan. This is the defendants' motion.

10:04 MS. BRANNEN: Thank you, Your Honor.

10:04 THE COURT: This one -- this one has both lost profits and a reasonable royalty analysis.

10:04 MS. BRANNEN: That's correct.

10:04 Is my screen successfully sharing? We prepared a few slides on this one.

10:04 Midas' damages opinion -- damages expert makes four main errors that we believe are substantial and not just matters that we should have to cross them on, Your Honor. The first error pervades both his lost profits and his reasonable royalty damages.

10:08 (Clarification by Reporter.)

10:08 (Recess taken.)

10:08 THE COURT: Let's go back on the record.

10:08 MS. BRANNEN: Thank you, Your Honor. This is Elizabeth Brannen, addressing the motion to exclude Midas' damages expert, Mr. O'Bryan.

10:08 The first error he made pervades his lost profits and reasonable royalty opinions, both of them. And he basically doubles his damages number by assuming that Rhodium would continue infringing for almost three years past trial, even if there's a jury verdict of infringement.

10:09 Now, the patent -- he's -- the patent

10:09 doesn't expire till something like 2035. He's not
10:09 giving an opinion about a fully paid-up license. This
10:09 is something different going on. He's saying he has
10:09 the ability to award damages after trial based on
10:09 speculation that my client would continue to infringe.
10:09 And there's just no basis for that. Certainly no
10:09 reliable basis.
10:09 If we look at the basis he said he had --
10:09 I'll try sharing my screen here to put some of this --
10:09 make some of this visible -- he's relying only on a
10:09 single projection, and that projection is something
10:09 that Rhodium filed in connection with a potential
10:09 merger transaction. And that document just says that
10:09 Midas -- that Rhodium -- excuse me -- plans to expand
10:09 its operations to full capacity if the merger goes
10:10 through.
10:10 Well, two problems. First of all,
10:10 expanding your operations doesn't say anything about
10:10 whether you would continue infringing or ignore an
10:10 infringing verdict. And even more importantly, that
10:10 merger never happened. It was canceled. And
10:10 Mr. O'Bryan omitted the -- didn't take into account the
10:10 fact that he just assumed that --
10:10 THE COURT: Let me interrupt you and hear
10:10 a response to that argument.

10:10 MR. THOMAS: Your Honor, the representations made in that S-1 were for a merger that was canceled, but the representations were not conditional. They did not say, If we get the merger, we'll do this expansion. They just said that our business plan is to expand.

That's what they told their investors. They had existing investors and the prospective new investors through the merger. So those representations are from Rhodium of their own expansion plans, which are reasonable for Mr. O'Bryan to rely upon.

THE COURT: Did he or did he not rely on that merger when he -- when he comes in and he says, This is what I did. I looked and there's this document that shows there's going to be a merger and -- to rely on and the merger didn't happen, is that what he's going to say?

MR. THOMAS: No. He's going to say these are representations that they issued that were not conditioned upon the merger. They were made in the public forum. And I'm going to rely on their representations to their investors that they had a plan -- they have a plan to expand.

THE COURT: Okay. Is there anything else you'd like to say with respect to the lost profits

10:11 argument that the defendant is making?

10:11 MR. THOMAS: Yes, Your Honor. The lost profit analysis was done correctly. It was based on information that was available to the experts. Both sides' experts have acknowledged there are no licenses. This is relatively brand-new technology in this field. This immersion cooling technology hasn't been licensed.

10:12 Mr. O'Bryan properly used the sales of the product as a basis, and there's good case law we cited for him to rely upon the sales as a basis to determine the reasonable royalty, and the profits from those sales to support that reasonable royalty analysis.

10:12 THE COURT: Would you give me an example?

10:12 MR. THOMAS: Yes. They -- they -- our deadlines made a significant sale to a company known as RITE. It's a public company. It's one of the largest bitcoin mining companies in the -- North America, if not the U.S. -- if not nationally -- internationally.

10:12 And those sales occurred well within months or within a year or so of the time that the license would have been negotiated. And under the Book of Wisdom, Mr. O'Bryan used those sales to forecast what the expected profits would be of my client in terms of making assumption on how to --

10:13 THE COURT: How does the Book of Wisdom, what does that have to do with lost profits?

10:13 MR. THOMAS: Well, the lost -- we believe that the sale of the --

10:13 THE COURT: No, no. What does the book of profits -- what does that have to do with lost profits? I don't understand.

10:13 MR. THOMAS: Well, the -- we believe that the case law allows Mr. O'Bryan --

10:14 THE COURT: Tell me any case that discusses the Book of Wisdom in a context of lost profits.

10:14 MR. THOMAS: Okay. Well, Your Honor, we don't need the Book of Wisdom. Rhodium installed 200 megawatts. He's using their actual installation as the basis to determine a sale that would have been made by my client to Rhodium of those products. And using those -- that sales information, he projected his lost profits.

10:14 THE COURT: Okay. I'll be back in just a second.

10:14 (Pause in proceedings.)

10:15 THE COURT: This question is for -- sorry for all the coughing -- either party, but I'll start with the party that is moving for this, the defendant.

10:15 What specific paragraphs in his -- in the report are you asking me to strike on lost profits? Can you articulate those into the record?

10:16 MS. BRANNEN: Your Honor, I would need a moment to pull it up and articulate them into the record, but we're asking to strike his entire lost profits opinion, because he has no basis --

10:16 THE COURT: Is it -- I'm sorry. Is it divided up, lost profits -- I'm making this up -- Page 1 through 10, reasonable royalty, 11 through 20. Is it -- is it that clean?

10:16 MS. BRANNEN: I believe it's fairly clean. Let me show my screen to give an example of one page. Let me see if I can do it.

10:16 So here's an example of a table in his report. And he's very clear at the top about what his reasonable royalty number is. And then underneath that, he's clear -- he's got a separate line item for what his lost profits opinion is. And so the report is well organized in the sense that his lost profits opinions are coherent. And I apologize that I don't know exactly those, but if we take a short break, I can --

10:17 THE COURT: Here's what I'm going to do. We've gone over -- I'm going to grant the motion with

10:17 respect to lost profits. Same deal. If the
10:17 defendant -- I'm sorry -- the plaintiff wants to have
10:17 their expert redo the lost profits and try and go
10:17 again, that's fine. You all need to figure out how to
10:17 do the schedule.
10:17 I'm going to deny the motion with respect
10:17 to the -- his reasonable royalty calculations.
10:17 Next up, I have the motion for summary
10:17 judgment of noninfringement. I'll hear from the
10:17 defendant on that, please.
10:17 MS. BRANNEN: Thank you, Your Honor.
10:17 May I clarify the Court's ruling on
10:17 Mr. O'Bryan? The posttrial damages period that he has
10:17 is in his lost profits, but it also pervades his
10:18 reasonable royalty. Is there a separate ruling on the
10:18 aspect of damages --
10:18 THE COURT: So I usually don't have a
10:18 problem with the jury answering future reasonable
10:18 royalty, because then at least we have a reasonable
10:18 royalty rate. And if the plaintiff is successful, then
10:18 the jury will have spoken as to the reasonable royalty
10:18 rate, which is probably what I would consider applying
10:18 on damages going forward, if you continued to make
10:18 sales.
10:18 And they're not going to get those

10:18 1 damages, future damages, unless you -- the sales were
10:18 2 actually made. And the way I've done it in the past,
10:18 3 both as a lawyer and as a judge, is let's say plaintiff
10:18 4 wins. Reasonable royalty rate -- I'll make up
10:18 5 something -- 5 percent. I would allow you -- allow the
10:18 6 defendant to continue to sell and -- but they would
10:18 7 have to put into the registry of the Court the
10:19 8 6 percent. If you stopped selling, there would be no
10:19 9 future damages under a reasonable royalty deal. Does
10:19 10 that sound -- is that what you were asking me?
10:19 11 MS. BRANNEN: Thank you, Your Honor.
10:19 12 Yes. I think it clarifies it. In other words, as I
10:19 13 understand it, lost profits, they've got to completely
10:19 14 redo it if they want to try to get it in.
15 THE COURT: Correct.
10:19 16 MS. BRANNEN: Reasonable royalty, they --
10:19 17 THE COURT: And I'll say right now, lost
10:19 18 profits -- is there -- let me ask the plaintiffs: Is
10:19 19 there no request for an injunction here?
10:19 20 MR. THOMAS: No. No, Your Honor. There
10:19 21 isn't.
10:19 22 THE COURT: Okay. Is there a reason
10:19 23 there's not a request for injunction?
10:19 24 MR. THOMAS: I'm sorry. I misspoke.
10:19 25 There is a request for an injunction.

10:19 THE COURT: Okay. So generally speaking again, what I will do is, with regard -- if it's a lost profits, I probably will have to -- I probably won't give them a question on future lost profits, but again, and this is because we don't know whether there'd be any, I will take up the injunction question because you all, I assume, are competitors or you wouldn't have lost profits.

And so but I will -- so don't anticipate getting a lost profits question going forward, but if you can redo it and you think you can get past a Daubert challenge, I'll do it for both prior. And then if -- again, only if the plaintiff wins, if the defendant comes in and says, No, you shouldn't give an injunction, well, then we'll have to figure out a way to be fair to the plaintiff to make sure how we assess damages going forward. And I'll take care of that.

So did I make it clearer or less clear on what I just said for everyone? I'm happy to answer any questions that you have.

MS. BRANNEN: Your Honor, this is Elizabeth Brannen for Rhodium. Just I think it's clear with respect to the original question I was asking.

So for their reasonable royalty, they're not going to get a damages award past trial

automatically, they have to present what it is through trial and then they can get a separate ruling on if Rhodium were to continue to infringe, what could the reasonable royalty be after that. Have I --

THE COURT: Right. And I've seen it handled two ways, and I would let you all argue what's fair. I've seen it where the jury's given an amount -- I'm making this up again -- 5 percent. And so you give the 5 percent. This is where the Book of Wisdom does come in. You know, they will have figured that out.

But I've also seen judges who have considered giving a slightly higher, going forward, because it's now -- the jury's now found infringement. So but they're -- I'm not going to award -- now, I didn't hear anyone talk about a lump sum. If there is a lump-sum award that goes through the end of the -- that would go through the end of the patent, whenever that is, which is a period going forward, but obviously, it's an amount that neither of y'all have done yet and that someone would say, as opposed to reasonable royalty, we would take -- the plaintiff would have taken a lump sum of X and y'all would have paid a lump sum of X and -- y'all have -- but y'all haven't done that. So that's not an issue here.

So as far as I can tell, from the way the

10:22 plaintiffs have structured their damages model, they
10:22 won't be getting future damages until we see if they
10:22 win and what I do on the injunction, and then if there
10:22 is not an injunction and you all do continue to sell
10:22 what the jury has determined to be infringing, I'll
10:22 make sure we come up with some way of making sure the
10:22 plaintiff is protected financially.
10:22 Anything else?
10:22 MS. BRANNEN: Just I would like to
10:22 clarify, my client is not a competitor of Midas Green,
10:23 not even allegedly. And that's part of why they have
10:23 such a trouble of meeting the lost profits standard.
10:23 THE COURT: Well, then they're going to
10:23 have a really tough time getting an injunction.
10:23 MS. BRANNEN: I don't even believe
10:23 there's a live injunction request, Your Honor. That
10:23 was news to me. I do not think they've preserved it.
10:23 I certainly don't think they have --
10:23 THE COURT: Well, they've told me there's
10:23 an injunction request. Maybe there is; maybe there
10:23 isn't. I don't know.
10:23 MS. BRANNEN: Thank you.
10:23 THE COURT: I'm up with the law, that
10:23 they only get one if y'all are competitors. And I
10:23 don't know -- I'll know much better after trial whether

10:23 or not I think you're competitors.

10:23 MR. THOMAS: Your Honor, that is a disputed issue in this case. We contend, Your Honor, we are competitors.

10:23 THE COURT: Well, I have no way of knowing which of you is right.

10:23 So next up we have the motion for summary judgment of noninfringement. I'll take that up.

10:23 MS. BRANNEN: Thank you, Your Honor.

10:23 So the technology at issue involves systems for pooling bitcoin miners. The computers that do the mining get very hot when they're mining bitcoin.

10:24 And in particular, the patent and the accused systems -- and you can see a picture -- some of the accused systems, they relate to their immersion cooling systems. Meaning, there are miners that get immersed in dielectric fluid. It doesn't conduct electricity. And as the liquid is circulated through the system, it removes heat from the miners.

10:24 We believe a lot of limitations are missing, but we focused our motion on a single claim limitation. And we believe it's the rare case where Midas doesn't have any evidence that Rhodium uses anything like this limitation that's shown here.

10:24 And it requires the system to have a

10:24 1 control facility, and that control facility has to be
10:24 2 adapted to coordinate the operation of two different
10:25 3 fluid circulation facilities, a primary facility and a
10:25 4 secondary facility.
10:25 5 And it has to be adapted to coordinate
10:25 6 their operation based on this recited variable as a
10:25 7 function of the temperature of the dielectric fluid in
10:25 8 the tank containing the bitcoin miners.
10:25 9 And we don't -- basically, for the
10:25 10 primary fluid circulation facility, you can think of
10:25 11 that as the pipes and pumps. That's what they say it
10:25 12 is. We may take issue with that at trial, but not for
10:25 13 purposes of this motion.
10:25 14 Similarly, for the secondary fluid
10:25 15 circulation facility, they point to these large coolers
10:25 16 that have fans in them. So you can think of the
10:25 17 primary as pumps and pipes; secondary, they say it's
10:25 18 the fans and the dry coolers.
10:25 19 And we pointed out in our motion that we
10:25 20 don't take the temperature of the fluid in the tank,
10:26 21 and we don't use it for anything, let alone to
10:26 22 coordinate either of those facilities, those fluid
10:26 23 circulation facilities.
10:26 24 Reading their opposition, you could be
10:26 25 forgiven for assuming that I'd be standing in front of

you asking for a very narrow special construction of this term, but that's not what we're doing.

Our motion, we construed nothing. We agree that this term gets its plain meaning, and we don't have this limitation or anything like it.

And so in our motion, we went through all the various theories their expert had put forth, some of which have been addressed in the motion to exclude Dr. Pokharna, where the opinions weren't in their final infringement contentions.

But we went through all the various theories of why they said this limitation was present, and we debunked each of them. And we showed why the limitation isn't there literally and why, in those instances when he had offered an opinion under the doctrine of equivalents, there was no -- nothing in the report, no evidence that could satisfy that standard for insubstantial differences for same function-way-result.

So the first thing I'd like to hopefully establish in this motion is that based on the DMM Specialities case, which we cite in our reply at Page 2 and also just common sense, their opposition makes no attempt whatsoever to defend or salvage any of Dr. Pokharna's theories under the doctrine of

10:27 equivalents.

10:27 You can scour their opposition. The word
10:27 "equivalent" isn't there. "Equivalents" isn't there.
10:27 "DOE" isn't there. "Insubstantial" or "substantial
10:27 differences," it's just not discussed. They have
10:27 waived this.

10:27 And I'm happy also to go through each of
10:27 the things that they have -- all the various theories
10:27 they pointed to and show why there is a failure under
10:27 the plain meaning of this limitation to show that we
10:27 have anything like it.

10:28 But the first system that they accuse are
10:28 the Prime Controls and Kelvion sensors. Those are the
10:28 ones that are admittedly inoperable that I believe have
10:28 been excluded in connection with Dr. Pokharna's report.

10:28 And I don't think this is fixable, Your
10:28 Honor. There is no -- there's attorney argument, and
10:28 we heard some of the attorney argument from
10:28 Mr. Kolegraff.

10:28 But this is a system where most of the
10:28 sensors are missing and none of the sensors they're
10:28 pointing to is wired in. And perhaps more importantly,
10:28 their expert, you can see the interrogatory response
10:28 they cite to in their opposition at Page 13, saying:
10:28 Even where a sensor is connected, it is not wired in.

10:28 Their expert, Dr. Pokharna, conceded that
10:28 in its present state, this system cannot measure
10:28 temperature.
10:28 Now, even if this was operational, they
10:29 haven't explained what they believe the plain meaning
10:29 of this limitation is or why what this system was
10:29 designed to measure would actually be adapted to
10:29 coordinate both control facilities.
10:29 And so that's also another problem with
10:29 this whole theory, that you can see up here the
10:29 sensors, where they would go, are in an entirely
10:29 different building and they have a little sign they
10:29 have labeled -- their own expert has labeled that the
10:29 building containing the tanks with the miners is in a
10:29 completely different place.
10:29 This wouldn't be the variable they need
10:29 to show that we're using, and they also can't show that
10:29 it would be adapted to coordinate both fluid
circulation facilities.
10:29 The only evidence they give is shown
10:29 here, that it would be adapted to adjust the fan speed.
10:29 Well, that's what they say is the secondary circulation
10:29 facility. In order to survive summary judgment, they
10:29 should have to present evidence and explain how that
10:30 evidence could lead a reasonable juror to believe that

10:30 1 the claim language is satisfied with respect to both
10:30 2 circulation facilities and being adapted to coordinate
10:30 3 the operation of both of them. And they just can't do
10:30 4 that for the main thing that they spent the most time
10:30 5 on in their brief, which is this Prime Controls and
10:30 6 Kelvion coolers.
10:30 7 And by the way, they briefed those
10:30 8 separately, but Prime Controls and other vendors were
10:30 9 hired to build the monitoring system for the Kelvion
10:30 10 cooler. So even though they talk about the Prime
10:30 11 Control system and then they talk about the Kelvion
10:30 12 coolers, you can see, for example, from their brief at
10:30 13 Page 18, the thing they're citing to for the Kelvion
10:30 14 coolers as evidence that those infringe, that's all
10:30 15 design documents of Prime Controls. That was
10:30 16 admittedly never installed and is admittedly
10:30 17 inoperable, cannot measure any temperature.
10:30 18 So at the last page of their brief, they
10:30 19 give a couple throwaways to try to defend a theory of
10:31 20 infringement based on the Guntner coolers. These are
10:31 21 shown here. These are only at Rhodium's Rockdale
10:31 22 facility.
10:31 23 And again, the tanks containing the
10:31 24 miners are in one place, and the coolers they're
10:31 25 pointing to are outside the building. And what their

10:31 theory is here is that Rhodium measures the temperature
10:31 of the fluid after it comes out of the cooler.
10:31 Well, that obviously is not literally the
10:31 same thing as the fluid in the tanks nor is it even
10:31 arguably insubstantially different.
10:31 And they also -- for this one too, all
10:31 they say is that we might use it to adjust the fan
10:31 speed in these coolers. There's no evidence they can
10:31 point the Court to of how this is in any way adapted to
10:31 coordinate the operation of what they've pointed to as
10:31 the primary fluid circulation facility, the pumps and
10:31 the pipes.
10:31 So it's deficient in multiple respects.
10:31 And the single paragraph in their opposition that's
10:32 dedicated to try to revive this doesn't answer the
10:32 question of how this is using the right variable in any
10:32 way, let alone using any variable to control both fluid
10:32 circulation facilities. They only talk about fans.
10:32 Then the final thing that they also try
10:32 to revive is the fact that in both facilities, Temple
10:32 and Rockdale, Rhodium can measure the temperature of
10:32 the chips in the miners and the printed circuit boards
10:32 in the miners.
10:32 Their expert, though -- obviously
10:32 measuring a chip temperature or a board temperature is

10:32 1 not measuring the temperature of the tank fluid. And
10:32 2 their expert admitted those are different. So there's
10:32 3 no literal infringement. There's no analysis of why it
10:32 4 would be insubstantially different.
10:32 5 And again, here too, all they say with
10:32 6 PCB temperature is that we can monitor it. All they
10:32 7 say with chip temperature is that we can shut off the
10:33 8 miner or reduce power to the miner.
10:33 9 But what they haven't said is what
10:33 10 evidence is there anywhere in the record that we could
10:33 11 use either the chip or PCB temperature to coordinate
10:33 12 the operation of the pumps and pipes or of the fans,
10:33 13 which they say are the primary and the secondary
10:33 14 circulation facilities.
10:33 15 There is no evidence. It's a rare case
10:33 16 where none of their theories even make sense. And we
10:33 17 hope they should have to articulate one that we can at
10:33 18 least understand what this jury is going to be asked to
10:33 19 decide before they would be allowed to proceed.
10:33 20 THE COURT: A response?
10:33 21 MR. KOLEGRAFF: Yes. So as -- there are
10:33 22 just a lot of triable issues of material fact here.
10:33 23 And what Rhodium has done to try to eliminate those
10:33 24 facts is they've taken a very unusual reading -- a
10:33 25 plain reading of Claim 1.

10:33 And what they're trying to say is that you have to have your temperature sensor in the tank to take the temperature of the fluid.

10:34 Their entire motion is based upon that premise, that they have to require a sensor in the tank taking the temperature of the fluid. But the claim just doesn't say that.

10:34 Now, this is extremely important to it. On Page 2 of their motion, they say: In other words, to infringe Midas' asserted claims, a cooling system must take advantage of the dielectric fluid while it is -- must take the temperature while it is in the tank.

10:34 They say the same thing on Page 4: Neither of the tanks have a fluid temperature in the tank.

10:34 This is repeated throughout their motion. That is the basis for this entire motion, is that there has to be a temperature sensor inside the tank in order to take the temperature.

10:34 If we look at Claim 1 and parse it, it talks about: A control facility adapted to coordinate the operation of the primary and secondary fluid circulation facilities as a function of the temperature of the dielectric fluid in the tank.

10:35 That plain reading does not say where a temperature sensor has to be. It certainly doesn't place it in the tank. It certainly doesn't even say you have to take the measurement of the fluid itself.

10:35 All you have to do is collect enough information so that you can coordinate the operation of the two circulation facilities.

10:35 So here you can have that sensor -- that temperature sensor, you could have it in the tank. You don't have to. But you could have it on the pipe leading out of the tank. You could have it on the inlet pipe to the tank. You could have it further down towards the coolers.

10:35 Every one of those data points, every one of those points, is going to give you sufficient data in order to make decisions on how you want to run your pumps and fans.

10:35 For example, we are talking about the Guntner coolers, which are the coolers that sit out in the -- outside the building, there, we are measuring the fluid temperature that comes out of the cooler.

10:36 That is the exact same temperature as is going into the tank. So we are measuring the temperature of the fluid in the tank, and we adjust the fan speeds of that Guntner -- excuse me -- Rhodium

10:36 adjusts the fan speeds of the Guntner cooler to make sure that that inlet temperature to the tank remains very constant.

We know for a fact that the claim does not require that the temperature sensor be in the tank, and we know it for at least a couple of reasons.

First of all, if we look at Figure 13 of the patent, there are sensors that are shown not only in the reservoir, which is separate from the tank, but the temperature sensors are also shown in the fluid pipes and shown in the fluid pipes of the primary circulation facility and shown as the temperature sensors in the secondary facility.

So even the embodiments that we have in the patent do not show the sensor in the tank.

It's also shown in Figures 4 and 12 where you have the tank, which is numbered 14, the tank 14 does not have a sensor in it. The only sensor is in the recovery reservoir, which is No. 42. So again, even the embodiments that we have in the patent do not require that the sensor be in the tank.

So let's talk a little bit about Prime Controls. Prime Controls is a very sophisticated control system that has no other purpose in life but to control and manage the system at the Temple facility.

10:37 There are temperature sensors, there are pump controls, there are reporting facilities. They spent millions of dollars putting this thing in, and it has no noninfringing functionality.

Again, if you look at Exhibit G of our opposition, you can see that they have the layout of the complete system, the entire plumbing and design system. H shows a picture of the Kelvion and Temple coolers that have the temperature sensors installed. They're already there in the pipes.

They talked about saddles being installed. They purchased saddles to put on those pipes so they can make the finishing of the installation even easier.

If you look at Exhibit I, there is an issued-for-approval manual on how this whole system is supposed to be put together, this Prime Control system, and it shows all of these things working and in operation. So it's almost fully installed. They just haven't flipped the final switch.

And let's -- we're going to suggest here, is that they have just not turned on that switch because of this litigation. As soon as this litigation is over, you know, they're very likely to turn this thing back on because, again, they've got a million

10:39 dollars of sunk costs, that they're going to need to turn on. And we have an e-mail, this is from a Depo Exhibit 77, that says: Our plan -- and that's referring to Rhodium -- Our plan is to get Prime Controls paid back and then have Prime Controls finish the rest of the work on the site.

So that is a huge issue of fact, whether or not Rhodium is going to reactivate or activate this Prime Controls when this litigation is over.

Also, so -- also, how much work they have left to do is also a huge issue of fact as it goes to Prime Controls.

As far as any waiver, we've waved nothing. We attached the entire report of Dr. Pokharna, where he goes not only through literal infringement, he goes through doctrine of equivalents infringement on all of these issues.

As far as the Kelvion systems at Temple, that really reduces down to the same arguments we were just talking about with Prime Controls. That is, the temperature sensors are there. The computers are in place. It's basically all set to go, they just have to finish wiring it up and then they're going to be able to control the Kelvion coolers based upon the temperature of the coolant.

10:40 At Guntner, which is at the Rockdale facility, that we do know is in operation. They actually have the Guntner coolers that sense the temperature of the fluid as it's exiting the Guntner coolers. And based upon that temperature, they adjust the fan speed. This is in the Guntner motor managing manual.

They adjust the speed of the fans to keep that outlook temperature the same. That outlook temperature fluid is the temperature of the fluid as it's going into the tank.

Finally, we get to the Restful API, which is this idea that we're checking the temperature of the fluid in the tank by using functionality built into the miners. These miners, which are just very sophisticated computers, actually have a couple different sets of temperature gauges, sensors inside of the miners. One of those is to measure the temperature of the PCB board, the printed circuit board. And the printed circuit board is what's setting up against the fluid. So that is measuring the temperature of the fluid.

And based upon that, the system automatically puts more power on to the miner, if it can handle warming the fluid similar. If the fluid is

too warm, then it actually powers down the miner; it has the miner generate less power. That way it adjusts the amount of heat that is injected into the system, which is controlling the circulation of both the primary and the secondary circulation facilities.

So here we just have a lot of issues of fact as to whether or not Prime Controls is going to be actually finished. We've got questions of fact as to how the Guntner is actually managing the fan speed to control the temperature of the tank; and really, all gets down to their assertion that the temperature probe has to be in the tank, which is just not the plain meaning of this claim.

So with that, I'll turn it back.

MS. BRANNEN: May I respond?

THE COURT: Rebuttal?

Please.

MS. BRANNEN: Thank you.

So I'll try to make five or fewer points. First, I want to talk about what we did not hear. Normally, to oppose summary judgment where we would -- you would hear the plaintiff saying, This is what I think the plain meaning of this limitation is, and this is the evidence I'm pointing you to, Judge, where a reasonable jury could find that the temperature of the

10:43 fluid in the tank is part of the -- is adapted to
10:43 control both of these variables.
10:43 We've never heard that.
10:43 We've heard them saying that I'm asking
10:43 you to give an overly narrow claim construction. I'm
10:43 not. But they need to be doing something. If they're
10:43 not measuring it with a sensor in the tank, they need
10:43 to be explaining what evidence there is that we do
10:43 anything like using that temperature of the fluid in
10:43 the tank to coordinate the operation -- to be adapted
10:43 to coordinate the operation of two different control
10:43 facilities.
10:43 And I didn't hear counsel give an
10:43 explanation of what that limitation means or what
10:43 evidence satisfies it.
10:43 With respect to Prime Controls -- and
10:43 this applies to Prime Controls and the Kelvion coolers
10:43 where they were going to install sensors but never did.
10:43 The most -- this is where we heard counsel try to point
10:43 to evidence, but he points to some unidentified
10:44 deposition testimony that I'm not sure was even in the
10:44 opposition brief, and is from several years ago, I
10:44 believe, saying that at one point Rhodium planned to
10:44 have Prime Controls finish its work.
10:44 That is of no moment now.

10:44 If we're going to have a trial now, we can't have an advisory opinion about a system that isn't in place. And that would -- even if we could, that would be an enormous waste of resources. We need to have a trial over the system as it exists now. And Mr. Kolegraff is not pointing to any evidence that all Rhodium needs to do is turn on the switch. The evidence is to the contrary.

Their own evidence that they cite to this Court is that none of the sensors is wired in. Their expert concedes that the system is incapable of measuring temperature. We really ought not to have a trial over Prime Controls and Kelvion, which may never be finished, may be changed. It's not the province of federal courts to have a trial over something that might happen with a system in the future.

There also is no evidence of how these sensors, which are nowhere near the tank containing the bitcoin miners, if they were operational, would be used to coordinate the operation of both the fans and the coolers. That's what they say they would do, but how would that be adapted to coordinate the operation of what they say counts as the primary circulation facility, the pumps and the pipes?

We didn't hear that. We won't hear that,

10:45 from them or their expert, because they have no
10:45 evidence of that. And they haven't tried to point Your
10:45 Honor to that evidence now.
10:45 The third point I'd like to make is about
10:45 Guntner. Mr. Kolegraff misstated the record. I will
10:45 show -- this is their opposition brief, Docket 164.
10:46 Near the end, I think we're at Page 21. Yeah.
10:46 Page 21.
10:46 The Guntner coolers -- which he
10:46 acknowledges are outside the building -- the
10:46 temperature sensors there sense the temperature -- I'm
10:46 quoting from their brief -- sense the temperature of
10:46 the dielectric fluid flowing out of the evaporative
10:46 cooler.
10:46 The job of that cooler is to cool. So
10:46 it's obviously not the same as the temperature of the
10:46 liquid when it's in the tank with the miners. And
10:46 their expert concedes as much, and they have completely
10:46 abandoned any effort to explain how it's
10:46 insubstantially different or how, under the doctrine of
10:46 equivalents, this theory could survive.
10:46 And the second thing about Guntner, all
10:46 they say at that page of their brief is that the sensor
10:46 there in that Guntner cooler is adapted to adjust the
10:46 cooler's fan speed. Okay. So they have evidence to

10:47 get to the jury on one of the two circulation facilities that they need.

10:47 But we didn't even hear Mr. Kolegraff point to any evidence about coordination of the primary facility, the pumps and the pipes, because Guntner, there is no evidence from which a reasonable juror could conclude that this claim limitation is satisfied.

10:47 And finally, on Restful API, I will say, we heard attorney argument, but all they're really saying is that Rhodium can monitor the temperature of the chips. They're not pointing to any evidence that the chip temperature or the PCB board temperature is actually adapted to coordinate the operation of anything that they've pointed to as the primary or secondary circulation facilities.

10:47 And to -- just to conclude, at minimum, Your Honor, I hope we have at least made the case narrower on doctrine of equivalents, because they did not -- they can't save that by just saying, Oh, but we attached our expert report.

10:48 Well, our brief went through the expert report and explained why what the expert said couldn't count -- wasn't enough to get to a jury on doctrine of equivalents. And they made no attempt to defend that, and they shouldn't get to revive it now.

10:48 MR. KOLEGRAFF: Your Honor?

10:48 THE COURT: Yes, sir.

10:48 MR. KOLEGRAFF: May I address those points or...

10:48 Yes. So you asked if we ever described where we get our plain meaning that the temperature probe does not have to be in the tank. I don't want to repeat myself, but yes. We did have evidence that we've shown the Court today.

10:48 For example, Figure 4 and Figure 12 of the patent shows that the sensors don't have to be in the tank. Figure 13 actually shows that you could have the sensors on the fluid lines and the reservoir. You could have it on the -- on the coolant lines. You could have it in the primary. You could have it in the secondary.

10:48 You can put that -- those temperature probes wherever you want them and still control the primary and secondary circulation of those.

10:48 Something we have to understand when we look at the Rhodium system, because we're talking about primary versus secondary, here the primary is the portion of the system that takes the fluid and flows it through the tank, which extracts heat from the miner. The secondary's what happens out at the coolers, where

10:49 you take that fluid and cool it through the evaporative
10:49 cooler.
10:49 So where do we have to measure? This is
10:49 our Point No. 2.
10:49 So she's saying we haven't talked about
10:49 where we actually take the measurements. Well, if
10:49 you're talking about Prime Controls, they take the
10:49 measurements all over the place.
10:49 Their system has no noninfringing
10:49 functionality. It is adapted to take the temperatures
10:49 and control the fans.
10:49 True. At this exact moment in time the
10:49 wires haven't been hooked up, but we have evidence, we
10:49 have the e-mail that says they are planning to hook
10:49 these things up when they get the chance.
10:49 So they are going to use this system at
10:49 some point. It's just not believable that you're going
10:49 to have millions of dollars worth of control equipment
10:49 sitting there, all of these computers, a room full of
10:49 computers meant to control this facility, and you're
10:50 not going to turn it on.
10:50 So again, the same thing with the Prime
10:50 Control and the Kelvion. Even though it can't measure
10:50 today, it certainly is adapted to.
10:50 Now, again, Ms. Brannen said that I

misquoted how the Guntner works. I thought I got that right, because I do understand that what's flowing -- what we are measuring is the output of the Guntner cooler. That is true.

And that -- and I think I pointed out that the output of the Guntner cooler is actually the input to the tank.

So we are measuring the fluid temperature of the temperature in the tank. It's just we're measuring that at the input line rather than the output line.

So she asked: How is that coordinating primary and secondary?

Well, you have the fans on the Guntner cooler, which are adjusting to keep that output at a certain temperature or temperature range to make sure the miners are being cooled. That is affecting the temperature of the fluid as it flows through the primary system and through the secondary system.

We are coordinating the control of the facilities by using the output temperature from that Guntner cooler.

As far as the Restful API, I think we've shown pretty strongly in the expert report that we are measuring at a temperature of the fluid using the PCB

10:51 inside the miner itself, and then that is used to reset
10:51 the miner to either increase power if it can be run
10:51 warmer or decrease power if you need it to run cooler.
10:51 So I think we've shown this in all of it.
10:51 Again, there's a -- plenty of genuine issues of fact
10:51 here for denying this motion.
10:51 THE COURT: I'll be back in a few
10:51 seconds.
10:51 (Pause in proceedings.)
10:54 THE COURT: The Court is going to grant
10:55 the motion for summary judgment of noninfringement. I
10:55 think that fully takes care of the case for the time
10:55 being.
10:55 I'm not going to take up the motions in
10:55 limine given my ruling on that motion, which I think
10:55 obviates the need for a trial at this time.
10:55 Is there anything else we need to take up
10:55 today?
10:55 MR. KOLEGRAFF: Your Honor, would we be
10:55 able to readdress this -- after we get Pokharna's
10:55 report redone, would we be able to readdress this issue
10:55 on the motion for summary judgment?
10:55 THE COURT: Well, you know, you have --
10:55 you've had your chance, but obviously, it's a fairly
10:55 severe ruling. Let me talk to my clerks and see if

10:55 they think anything additional that an expert would say might benefit us. And if it is, we'll let you know. As of right now, I don't think it would.

So anything besides that?

MR. SMITH: Your Honor, if I could ask one more question about the Court's ruling.

There's been a fair amount of argument today about how the systems are today versus after how the systems are turned on or wired or whatever.

So I think we'd want to confirm the scope of the Court's ruling so we would know whether a claim against the facilities, once they're put into operation, would be affected by the Court's ruling today, or would that be a different set of facts?

THE COURT: That would be a different set of facts. I don't know --

MR. SMITH: Thank you, Your Honor.

THE COURT: Yeah. I don't know that it would change the ruling ultimately, but, you know, that clearly is an issue in this case.

MR. SMITH: Okay. Thank you, Your Honor.

THE COURT: Okay. Have a good day. Take care.

(Hearing adjourned.)

UNITED STATES DISTRICT COURT)

WESTERN DISTRICT OF TEXAS)

I, Kristie M. Davis, Official Court Reporter for the United States District Court, Western District of Texas, do certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Certified to by me this 11th day of April 2024.

/s/ Kristie M. Davis
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Official Court Reporter
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10:56

From: Corey Brown <Corey_Brown@txwd.uscourts.gov>
Sent: Thursday, January 30, 2025 2:25 PM
To: becca.skupin@solidcounsel.com; Elizabeth Brannen; gthomas@twtlaw.com; henry.pogorzelski@klgates.com; travis@gillamsmithlaw.com; jthomas@twtlaw.com; Ken Halpern; melissa@gillamsmithlaw.com; michael.smith@solidcounsel.com; Peter Brody; Sarah Rahimi; bkolegraff@twtlaw.com
Subject: Omnibus Order for 6.22.cv.0050

[External Email]
Counsel,

Given the time that has passed, it is necessary that the parties in this case submit a **joint** proposed order reflecting the parties' understandings of Judge Albright's rulings at the 4/9/2024 hearing (if there are disputes, please include proposed language in different colors). Please submit an omnibus order for all of the pretrial motions and a separate single order comprising all of the MILs. The Court will compare with its internal notes and enter the order reflecting those rulings shortly thereafter. Please prepare and submit these orders via response to this email (in Word form) by the end of day on February 7, 2024.

This will help this case begin to progress towards a resolution.

Regards,

Corey W. Brown
Law Clerk for the Honorable Alan D Albright
United States District Court, Western District of Texas
Direct: 254-750-1517
Corey_Brown@txwd.uscourts.gov

EXHIBIT
D

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

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90451 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

ORDER ESTIMATING CONTINGENT AND UNLIQUIDATED CLAIMS OF MIDAS GREEN TECHNOLOGIES LLC AT ZERO
(Relates to ECF No. _____)

Upon consideration of *Debtors' Motion to Estimate Contingent and Unliquidated Claims of Midas Green Technologies LLC and Grant Related Relief* (the "Motion");[2] and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation thereon; and good and sufficient cause appearing therefor;

[1] The 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 (3973), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Shared Services 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 the Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein.

2. Pursuant to section 502(c) of the Bankruptcy Code, the all Midas's Claims are hereby estimated at zero dollars ($0.00).

3. The foregoing estimation shall apply and be binding for all purposes, including allowance, voting, reserves, and distribution pursuant to the provisions of the Bankruptcy Code and the Plan or any other plan confirmed by this Court.

4. Any stay of this order pending appeal by any holder of a Claim or any other party with an interest in such Claims that are subject to this order shall only apply to the contested matter which involves such party and shall not act to stay the applicability and/or finality of this order with respect to the other contested matters arising from the Motion or this order.

5. The Debtors, the Debtors' Court-appointed claims and noticing agent, and the Clerk of this Court are authorized to modify the Debtors' claim registers in compliance with the terms of this order and to take all steps necessary or appropriate to carry out the relief granted in this order.

6. Nothing in this order or the Motion is intended or shall be construed as a waiver of any of the rights the Debtors may have to enforce rights of setoff against the claimants.

7. Nothing in the Motion or this order, nor any actions or payments made by the Debtors pursuant to this order, shall be construed as: (i) an admission as to the amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (ii) a waiver of the Debtors' or any other party in interest's right to dispute any claim; (iii) a promise or requirement to pay any particular claim; (iv) an implication or admission that any particular claim is of a type specified or defined in this order; (v) an admission

as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (vi) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law.

8. This order is immediately effective and enforceable.

9. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this order.

Dated: _____ , 2025

ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE