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. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)

SAFE AHG'S EMERGENCY REQUEST FOR A STATUS CONFERENCE REGARDING DEBTORS' PUTATIVE D&O INSURANCE SETTLEMENT AGREEMENT AND SAFE AHG MOTION TO COMPEL

The Ad Hoc Group of SAFE Parties (the "**SAFE AHG**")[2] in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**") of Rhodium Encore LLC and its affiliated debtors and debtors in possession (the "**Debtors**") files this emergency request for a status conference regarding the Debtors' putative settlement with their directors' and officers' insurance carriers relating to claims against the Debtors' insiders (the "**Putative Insurance Settlement**"), which the Debtors announced during the July 2, 2025 hearing (the "**July 2 Hearing**"), and the May 12, 2025 *Emergency Motion of the SAFE AHG to Compel Production by Imperium Parties and Debtors* [Dkt. Nos. 1079 & 1080] (the "**Motion to Compel**").

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

[2] As defined in the *Third Supplemental Verified Statement of Ad Hoc Group of SAFE Parties Pursuant to Bankruptcy Rule 2019* [Dkt. No. 1346].

DISCUSSION

1. The SAFE AHG respectfully asks the Court to schedule a status conference at its earliest convenience to address (a) a [redacted] discrepancy between the distributable value assumptions apparently underlying the Putative Insurance Settlement, and distributable value representations made by the Debtors to this Court as recently as the July 2 Hearing, and (b) entry of an order requiring Imperium Investments Holdings LLP ("**Imperium**") and Chase Blackmon, Cameron Blackmon, and Nathan Nichols (collectively, the "**Imperium Parties**") to produce documents and a privilege log in connection with the SAFE AHG's Motion to Compel as contemplated at the May 21, 2025 hearing (the "**May 21 Hearing**").

2. The Debtors ignored the SAFE AHG's request for an explanation of the distributable asset value discrepancy. The SAFE AHG also notes that Debtors still have not spoken to the SAFE AHG concerning a consensual resolution of these cases since May 17, 2025 – more than ten weeks ago – despite the SAFE AHG comprising 80% of the estates' largest stakeholder category (by far). The SAFE AHG submits that the Debtors' singular focus on litigation over negotiation and coordination with its key stakeholders is unproductive, and ultimately will come at the expense of common stockholder recoveries, an unfortunate consequence of the Debtors' approach, and entirely outside of the SAFE AHG's control.

A. The Debtors Refuse to Provide the SAFE AHG with Basic Information and/or Documents Concerning the Putative Insurance Settlement, and Take Positions in Connection Therewith that Appear Contrary to Prior Representations the Debtors Made to This Court

3. With limits of $25 million, the Debtors' directors' and officers' insurance policies (the "**D&O Policies**") are among the estates' most valuable assets. The SAFE AHG was a primary actor in developing claims against the insiders that are covered by the D&O policies. In fact, when the Debtors provided notice to their insurance carriers of the insider claims – which even the

Debtors value at $75 million or more[3] – the Debtors did so by providing to the carriers copies of letters detailing those claims that were prepared by the SAFE AHG. Ex. A, Email with Notice of Claim from Claims Advocate to Rhodium's Insurance Carriers re: SAFE AHG Letters (Jan. 22, 2025) and attaching SAFE AHG Letters to the Debtors dated December 26, 2024 and January 10, 2025. Notably, the insiders continue to dominate and control the Debtors' full board of directors.

4. Despite the SAFE AHG's key role in developing the insider claims, and its representation of more than 80% of the estates' remaining creditors, the Debtors have rejected the SAFE AHG's efforts to help maximize recoveries on the insider claims under the D&O Policies. The SAFE AHG had to move this Court to compel production of basic coverage correspondence related to the D&O Policies and potentially covered claims against the Debtors' insiders. In addition, the Debtors initially concealed, and sought to exclude, both the Official Committee of Unsecured Creditors (the "**UCC**") and the SAFE AHG from the mediation that produced the Putative Insurance Settlement, and in fact did not reveal the existence of the mediation until just days before it was scheduled to begin. *See, e.g.*, *SAFE AHG and UCC Joint Emergency Request for Status Conference Concerning June 23, 2025 Mediation Related to Claims Against the Debtors' Insiders* [Dkt. No. 1313].[4]

5. During a telephonic status conference on June 20, 2025, the Court cautioned the Debtors that they had "created a big hole for themselves in terms of . . . approval" of any potential insurance settlement by electing not to seek "buy-in at the beginning" from key stakeholders. *See* Ex. B, June 20, 2025 Hr'g Tr. [Dkt. No. 1359], at 26. After the conference on Friday, June 20, 2025, the Debtors invited the UCC to the in-person mediation session that apparently proceeded

[3] The claims against the insiders actually are worth multiples of that sum.

[4] Disclosure of the planned mediation was buried at page 50 of the Amended Disclosure Statement filed on June 18, 2025. The mediation was scheduled to begin just days later, on June 23, 2025.

on Monday, June 23, 2025. However, the UCC appears to have been excluded from any actual negotiations, as a UCC member reported at the July 2 Hearing. *See* Ex. C, July 2, 2025 Hr'g Tr. [Dkt. No. 1434], at 128 ("I was invited to the mediation" but "I was not a participant in any conversation. I waited the whole day."). And of course, the Debtors refused to allow the SAFE AHG even to come to the mediation.

6. The Debtors continue to ignore this Court's direction that they coordinate with their key stakeholders. *See, e.g.*, Ex. B, June 20, 2025 Hr'g Tr. [Dkt. No. 1359], at 26. The Debtors did not disclose the existence of the Putative Insurance Settlement to the SAFE AHG until it was announced in open court at the July 2 Hearing. Even then, the Debtors provided no information concerning the terms of the deal, and the SAFE AHG heard nothing more in the days that followed. On July 8, 2025, the SAFE AHG emailed Debtor representatives and asked that they "please immediately provide us with the terms of the putative settlement, and any related term sheets, correspondence and other documentation." *See* Ex. D, Email Chain between SAFE AHG, Debtors, and Special Committee (July 8, 2025). The Debtors failed to do so, though they admit that by then they had provided the settlement terms to multiple other stakeholders. On July 23, 2025, the SAFE AHG wrote again: "Please provide us with the proposed terms of the purported settlement announced in court on July 2, 2025 by close of business today, together with copies of writings (if any, and inclusive of any email confirmations or the like) reflecting the proposed settlement." *See* Ex. D, Email Chain between SAFE AHG, Debtors, and Special Committee (July 23, 2025).

7. Rather than produce existing documentation, advising the amount of the Putative Settlement Agreement, or identifying any of its other terms, the Debtors purported to delay indefinitely disclosure of settlement terms to the SAFE AHG. Specifically, the Debtors responded that they had provided a draft document to a common stockholder party – the Transcend Group

("**Transcend**") – and that the SAFE AHG would have to wait for that document to be finalized before learning any of the terms of the Putative Insurance Settlement. The Debtors warned that they had no idea what Transcend's "turnaround time," would be, and therefore could not "promise" when settlement terms would be disclosed to the SAFE AHG. *See* Ex. D, Email Chain between SAFE AHG, Debtors, and Special Committee (July 24, 2025). Transcend has no incentive to maximize settlement value under the Debtors' proposed plan (which Transcend unsurprisingly has signed on to support), since the Debtors' insider-release plan guarantees Transcend a $15 million recovery on its less than $10 million common stock investment no matter what.

8. The Debtors' response also evaded the SAFE AHG's actual request, which included any ***existing*** document memorializing the agreement that the Debtors claimed already to have reached at the July 2 Hearing. On July 24, 2025, the SAFE AHG again asked for the terms of the settlement, and repeated its demand relating to any existing settlement documentation:

> In addition, by mid day, please either confirm that no writing of any kind memorializing the alleged settlement with the carriers (whether an exchange of emails or anything else) existed on July 2, 2025 when you advised the Court a deal had been reached, or provide that writing to us.

See Ex. D, Email Chain between SAFE AHG, Debtors, and Special Committee (July 24, 2025). The Debtors again ignored the SAFE AHG's request for existing documentation, and referenced only the draft then under review by Transcend. This time, they sought to justify concealing the Putative Insurance Settlement terms from the SAFE AHG (the estates' largest stakeholder category) by arguing that other stakeholders (who were provided those terms) are "under the governing mediation privilege." *See* Ex. D, Email Chain between SAFE AHG, Debtors, and Special Committee (July 24, 2025).

9. But the SAFE AHG was not seeking only confidential information. Notably, the Debtors represented to the Court on July 2 that the mediation already had "resulted in a settlement,"

which they touted as an example of "how much success and progress" the Debtors supposedly have "achieved in this case to date." *See* Ex. C, July 2, 2025 Hr'g Tr. [Dkt. No. 1434], at 8-9. Given that representation, the SAFE AHG, at least, concluded that the Debtors had an actual agreement with the insurance carriers as of July 2, 2025, which must have been memorialized in some kind of writing, even if only an exchange of emails. Any such agreement between Debtors and their insurance carriers – potential litigation adversaries – could not be privileged from disclosure in these cases, particularly after the Debtors celebrated the agreement in open court, and should not be withheld from the SAFE AHG.

10. On July 24, 2025, twenty-two days after the Debtors announced the Putative Settlement Agreement, the Debtors finally produced to the SAFE AHG a draft "summary of terms." The economic terms of the proposed settlement are manifestly inadequate, which may explain the Debtors' extreme reluctance to share them with the SAFE AHG.[5] But the Debtors still have not produced to the SAFE AHG whatever writing(s) currently exists (including confirming emails or similar) between Debtors and the carriers memorializing the claimed agreement or advised that such writing(s) does not exist. *See* Ex. D, Email Chain between SAFE AHG, Debtors, and Special Committee (July 25, 2025).

11. In addition to the inadequate proposed consideration, other aspects of the draft "summary of terms" the Debtors produced were also deeply concerning. The summary indicated that [redacted] ("**Technologies**") and that Imperium's recovery [redacted] As an initial matter, Imperium would not be entitled to [redacted] under any

[5] Having deliberately excluded the SAFE AHG from any settlement discussions with or relating to the insurance carriers and D&O Policies, the Debtors have no right to unilaterally declare communications with the SAFE AHG as "confidential," particularly when they relate to a deal the Debtors announced publicly, on the record and in open court. *See* Ex. D, Email Chain between SAFE AHG, Debtors, and Special Committee (July 24, 2025).

circumstances. Indeed, before Imperium receives a single dollar based on its equity interest in Technologies, Technologies is required to pay at least $87 million to Debtor Rhodium Enterprises, Inc. ("**REI**") based on the Whinstone transaction, which constitutes a "dissolution" or "liquidation." *See* Exs. E, F, and G (attaching 2021 "Contribution Agreements" requiring Technologies to repay to REI the $87 million in SAFE proceeds that REI transferred to Technologies in 2021 upon the occurrence of a "dissolution" or "liquidation"). In addition, the Debtors have identified another $8 million in net obligations owed by Technologies to REI, for a total of $95 million in debt owed by Technologies to REI.

12. Hence, the maximum distribution to which Imperium would be entitled in these cases, even if its interests were not subordinated or otherwise reduced (and they should be), would be 60.8% of the proceeds that remain at Technologies once Technologies has paid REI's senior claims. If Technologies started with $100 million, that would entitle the insiders to just 60.8% of the remaining $5 million balance (or about $3 million). And any such distribution should be frozen pending resolution of the estates' claims against the insiders in any event, to ensure that those funds are available to be paid towards any judgment the estates obtain against the insiders in the future based on their rank breaches of fiduciary and other duties.

13. But when it reviewed the "summary of terms" provided by the Debtors, the SAFE AHG was deeply troubled to learn that there may be far less than $100 million available for distribution to stakeholders in these cases, despite the Debtors' repeated representations to the contrary. Indeed, the figures included in the summary imply that the total distributable value at Technologies is [redacted] This is materially contrary to what the Debtors have been representing to the Court and the SAFE AHG for weeks, i.e. that such distributable value is between $100 to $110 million. *See, e.g.*, Ex. C, July 2, 2025 Hr'g Tr. [Dkt.

No. 1434], at 56 (Debtors representing to the Court that the Debtors' proposed plan would provide SAFE creditors "something more akin to $55 million of ***$100 to $110 million*** in distributable proceeds" (emphasis added)).

14. The SAFE AHG has repeatedly asked the Debtors about this material discrepancy between the representations the Debtors have made to the Court and the terms apparently underlying the Debtors' putative resolution of one of the estates' most valuable remaining assets. *See* Ex. D, Email Chain between SAFE AHG, Debtors, and Special Committee (July 25, 2025). While the Debtors have claimed that the SAFE AHG's "arithmetic" is incorrect, they have failed to detail how their July 2, 2025 representation of $100 to $110 million in distributable value can be harmonized with the draft term sheet, which implies distributable value of just around [redacted] *See* Ex. D, Email Chain between SAFE AHG, Debtors, and Special Committee (July 25 and 28, 2025). According to the Debtors, their representations about distributable value at the July 2 Hearing were meant to demonstrate the "fairness aspect to the current [Debtor-proposed] plan," which the Debtors presumably believe is relevant to their SAFE objection. If those representations in fact are inaccurate, they should be corrected immediately.[6]

15. The SAFE AHG advised the Debtors that if the discrepancy were not explained by July 29, 2025, it planned to bring the issue to the Court. The Debtors never responded. The

[6] The Debtors' claim on July 2 that SAFE creditors would receive $55 million in respect of their $87 million claims appears to be inaccurate even if $100 million were available for distribution. Under the Debtors' proposed insider-release plan, the Debtors would distribute $13.2 million to Imperium, and $15 million to Transcend "off the top." Applying 55% to the balance of $71.8 million would leave about $39 million for SAFEs, not $55 million. If the real amount of distributable value is [redacted] the 55% SAFE recoveries contemplated by the insider release plan would be worth just [redacted] That approximately [redacted] for SAFE creditors compares to a return of about 150% by Transcend in respect of its less than $10 million investment in ***common stock***, and insider recoveries amounting to many tens of millions of dollars (considering the more than $15 million in distributions earmarked for insiders, and the release of breach of fiduciary duty and other claims worth at least $75 million). Even if the insider release plan delivered a $55 million recovery in respect of the $87 million in SAFE contracts, there would be nothing "fair" about providing SAFE creditors fractional recoveries while common stockholders and insiders receive massive windfalls under the proposed insider-release plan.

SAFE AHG accordingly requests that the Court schedule a status conference to address the serious concerns it has regarding the Debtors' representations with regard to the Putative Insurance Settlement and their refusal to provide basic information regarding whether there is a writing of any kind with the insurance carriers memorializing the alleged resolution, or any explanation whatsoever regarding the approximately [redacted] discrepancy in the distributable proceeds amount the Debtors have previously represented.

B. The Imperium Parties Have Not Made the Production Contemplated During the Hearing on the SAFE AHG's Motion to Compel

16. Despite the passage of over sixty-five days since the Court's oral ruling on the Motion to Compel, the Imperium Parties have not produced a single additional document to the SAFE AHG. Production of the outstanding materials remains of critical importance to these cases, including for the reasons outlined in the Motion to Compel (pertinent portions of which are attached hereto as Exhibit H for ease of reference). The SAFE AHG therefore requests a status conference to address the Imperium Parties' ongoing noncompliance and establish a definitive schedule for their long-delinquent productions.

17. As set forth in greater detail in the Motion to Compel and at the Hearing, the Imperium Parties produced a substantial number of documents to the Special Committee to Debtor REI (the "**Special Committee**") that the Imperium Parties did not produce to the SAFE AHG. At the hearing, the Imperium Parties acknowledged that they had agreed during a meet and confer that approximately 80 of the withheld documents were based solely on a claim of privilege by the Imperium Parties, and the Imperium Parties agreed that those documents would be promptly produced. Ex. C, July 2, 2025 Hr'g Tr. [Dkt. No. 1434], at 90:13-22.

18. The Imperium Parties claimed that other responsive documents withheld from production also were subject to a claim of privilege by the Debtors. The Court indicated that the

Imperium Parties should produce non-privileged responsive documents, and provide a privilege log for any such documents withheld from production to the SAFE AHG. *Id.* at 89:7-91:5. Under applicable rules, the Imperium Parties are required to identify in their log any claimed basis for withholding, including to the extent the Imperium Parties claim a document is subject to a Debtor claim of privilege, and any basis the Imperium Parties have for claiming that any such Debtor privilege was not waived by disclosure to the Imperium parties. *See In re Royce Homes, LP*, 449 B.R. 709, 728 (Bankr. S.D. Tex. 2011) ("A privilege log should 'not only identify the date, the author, and all recipients of each document listed therein, but should also describe the document's subject matter, the purpose of its production, and a specific explanation of why the document is privileged or immune from discovery.'" (quoting *Cashman Equip. Corp. v. Rozel Operating Co.*, No. 08–363–C–M2, 2009 WL 2487984, at *2 (M.D. La. Aug. 11, 2009))).

19. On May 28, 2025, the SAFE AHG filed a proposed order (the "**May 28 Proposed Order**") pursuant to the Court's oral directives to the parties during the Hearing. *Notice of Filing of Proposed Order for the Emergency Motion of the Ad Hoc Group of SAFE Parties to Compel Production of Documents* [Dkt. No. 1200] (the "**Notice of Proposed Order**"). In its Notice of Proposed Order, the SAFE AHG explained that the May 28 Proposed Order incorporated in full all comments received regarding the May 28 Proposed Order with the exception of certain comments received from counsel to the Imperium Parties and the Special Committee.

20. The Imperium Parties had proposed a deadline of June 6, 2025 to produce non-privileged responsive documents and the required privilege log. The SAFE AHG argued those documents should be produced prior to June 6, 2025, including because Imperium already had produced them to the Special Committee, and could reproduce them to the SAFE AHG at the push of a button. Now, even the later date proposed by the Imperium Parties has long since passed, but

the Imperium Parties have yet to produce a single additional document. Nor have they filed a response or opposition to the May 28 Proposed Order (or the First Revised Proposed Order discussed below) or a request for additional time for compliance with the Court's ruling.

21. On June 13, 2025, the SAFE AHG submitted a revised version of the May 28 Proposed Order (the "**First Revised Proposed Order**"), which was attached as an exhibit to the *SAFE AHG Request Concerning Order Granting Motion to Strike* [Dkt. No. 1274]. The First Revised Proposed Order was the same as the May 28 Proposed Order except that it reflected a revision the SAFE AHG made to paragraph 2(c) of the May 28 Proposed Order to reflect the resolution at the Hearing that the "mediation privilege" designation be removed from all demand letters ("**Demand Letters**") sent by the Special Committee to certain Imperium Parties, including but not limited to the Demand Letters dated April 5, 2025 and April 19, 2025, such that parties may treat the Demand Letters as if they had been marked Confidential within the meaning of the Protective Order [Dkt. No. 152], subject to such parties' continuing right pursuant to Section 6 thereof. *See* Ex. I, May 21, 2025 Hr'g Tr. [Dkt No. 1178], at 72:18-73:7 ("we'll enter an order" providing that such documents [the Demand Letters] can be used by the parties "in your filings," provided that confidential information is "file[d]" subject to redactions from the public record "as we do in this Court").[7]

[7] The Special Committee's original comments to the May 28 Proposed Order appear to have been mooted. The Special Committee had sought to maintain redactions to the "Timeline and Key Facts" section of the Special Committee's Investigative Report (the "**Investigation Facts**") on the basis of alleged confidentiality agreements with third parties, and to delay until June 13, 2025 its required production of an unredacted copy of the Investigation Facts and a log of any remaining redactions. *See Special Committee's Opposition to the SAFE AHG's Proposed Order [ECF No. 1200] on Its Motion to Compel Production of Documents* [Dkt. No. 1207] (the "**Special Committee Opposition**"). On June 26, 2025, thirteen days after its own proposed deadline, the Special Committee produced a less redacted copy of its Investigation Facts, along with a redaction log concerning the remaining redactions. The redaction log the Special Committee produced did not indicate that any redactions were being maintained on confidentiality grounds. The SAFE AHG understands that the Special Committee has dropped its claimed right to redact any material from the Investigation Facts on any basis other than an alleged claim of privilege, and that the issue previously raised by the Special Committee is now therefore moot.

22. For consideration at the requested status conference, the SAFE AHG has attached hereto as Exhibit J, a second revised proposed order regarding the Motion to Compel (the "**Second Revised Proposed Order**"). The Second Revised Proposed Order is the same as the First Revised Proposed Order except that the Second Revised Proposed Order provides the Imperium Parties until August 4, 2025 to produce the withheld documents and privilege log. If entered, the Second Revised Proposed Order would provide the Imperium Parties eight weeks longer than the Imperium Parties themselves originally proposed for completion of the production and privilege log required in connection with the May 12, 2025 Motion to Compel. The SAFE AHG hopes that entry of the Second Revised Proposed Order would result in the Imperium Parties producing the documents and privilege log for which the Court compelled production more than two months ago.

23. Finally, the SAFE AHG regrets to report that the Debtors have continued to maintain "radio silence" with the SAFE AHG concerning a resolution of these cases. Indeed, no Debtor representative has engaged with the SAFE AHG concerning the terms of a Plan of liquidation in these cases since May 17, 2025 – more than seventy days ago – despite the SAFE AHG comprising more than 80% of the largest category of stakeholders in these cases. Notably, the Debtors have made detailed presentations to other stakeholders concerning the Plan and allegedly salient legal issues in these cases, but have instructed those stakeholders not to share the substance of the Debtors' views with the SAFE AHG, because they supposedly are "confidential." Needless to say, the Debtors have refused to make the same presentation to the SAFE AHG directly, limiting its circulation only to a selected subset of stakeholders in these cases. The SAFE AHG submits that the Debtors' conduct is deeply unproductive, and contrary to this Court's admonishment that they coordinate with their key stakeholders in these cases in an effort to arrive

at a resolution, instead of more costly litigation that serves only to line the pockets of estate professionals.

RESERVATION OF RIGHTS

24. This Request is submitted without prejudice to, and with a full reservation of, the SAFE AHG's rights, claims, defenses and remedies, including the right to amend, modify or supplement this Request to raise additional objections and to object to and introduce evidence at any hearing relating to the Request, and without in any way limiting any other rights of the SAFE AHG, as may be appropriate.

EMERGENCY CONSIDERATION

25. The SAFE AHG respectfully requests emergency consideration of this Request at the Court's earliest convenience. There appear to be material discrepancies between representations made by the Debtors on the record at the July 2 Hearing and information disclosed in connection with the Putative Insurance Settlement. Presumably, the Debtors made those representations because they believed them to be relevant to their claim objection. To the extent those representations are inaccurate, they should be corrected immediately. Immediate consideration of the Imperium Parties' ongoing failure to produce the documents and privilege log contemplated by this Court's oral ruling at the May 21 Hearing on the Motion to Compel is likewise warranted given the continued importance of the outstanding materials to key issues in these cases and the already months-long delay in their production. Accordingly, the SAFE AHG submits that emergency consideration of the Request is appropriate.

CONCLUSION

For the foregoing reasons, the SAFE AHG respectfully requests that the Court schedule a status conference at its earliest convenience regarding the Motion to Compel and Putative Insurance Settlement and grant such other relief as may be just and proper.

[*Remainder of page left intentionally blank*]

Dated: July 31, 2025

Respectfully Submitted,

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Certificate of Service

I hereby certify that on July 31, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Sarah Link Schultz
Sarah Link Schultz

FILED UNDER SEAL

EXHIBIT A

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	Case No. 24-90448
	Chapter 11
RHODIUM ENCORE LLC, et al.	
	515 Rusk Street
	Houston, TX 77002
Debtors.	
	Friday, June 20, 2025
	11:00 a.m.

TRANSCRIPT OF SAFE AHG AMENDED EMERGENCY MOTION TO TERMINATE EXCLUSIVITY [1247];
DEBTORS' AND SPECIAL COMMITTEE'S EMERGENCY MOTION FOR STATUS CONFERENCE CONCERNING AND MOTION TO STRIKE SAFE AHG AMENDED EMERGENCY MOTION TO TERMINATE EXCLUSIVITY [1268]
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY COURT JUDGE

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doesn't ultimately get confirmed.

THE COURT: All right. Are we done? All right. I -- I'm not very happy about the way this has been handled. I actually thought that I had asked you all to, you know, coordinate on matters.

Nevertheless, I think the debtor -- I'm not going to substitute my business judgment for the debtor's business judgment in terms of, you know, how it conducts a mediation, how it doesn't conduct a mediation. Obviously they're going to have -- you know, the fact that you haven't brought other people in is going to create a much more difficult 9019.

And what it looks to me like is, we've now set up another -- you know, first, we're going to have a trial on the SAFE AG. And now looks like, if there's a settlement, we're going to have another trial on the settlement that's going to have to be done or not done before we ever go to plan confirmation. You know, it seems to me that, had there been, you know, buy-in at the beginning, you wouldn't have -- you know, you wouldn't have created that situation.

Anyway, as I said, I'm not going to substitute my business judgment for the debtor's business judgment. The debtor can participate in mediation. I just think that, you know, the debtor's kind of created a big hole for themselves in terms of, you know, approval and being able to proceed with the case. And I'm not going to agree that within five business

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	Case No. 24-90448
	Chapter 11
RHODIUM ENCORE LLC, et al.	
	515 Rusk Street
	Houston, TX 77002
Debtors.	
	Wednesday, July 2, 2025
	10:00 a.m.

TRANSCRIPT OF DEBTORS' OMNIBUS OBJECTION TO CLAIMS PURSUANT TO BANKRUPTCY CODE SECTIONS 502(B), BANKRUPTCY RULE 3007, AND LOCAL RULE 3007-1 BECAUSE SAFE HOLDERS DO NOT HOLD CLAIMS [1126]
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY COURT JUDGE

TELEPHONIC APPEARANCES:

For the Debtors:	Quinn Emanuel Urquhart & Sullivan, LLP By: PATRICIA B. TOMASCO, ESQ. 700 Louisiana Street, Suite 3900 Houston, TX 77002 (713) 221-7000
	Quinn Emanuel Urquhart & Sullivan, LLP By: RACHEL HARRINGTON, ESQ. 295 5th Avenue, 9th Floor New York, NY 10016 (212) 849-7000
APPEARANCES CONTINUED.	
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Proceedings recorded by electronic sound recording, transcript produced by transcription service.

TELEPHONIC APPEARANCES (Continued):

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For the Ad Hoc Group of SAFE Parties:	Akin Gump Strauss Hauer & Feld LLP By: MITCHELL P. HURLEY, ESQ. Bank of America Tower 1 Bryant Park New York, NY 10036 212-872-1011
	Akin Gump Strauss Hauer & Feld LLP By: SARAH A. SCHULTZ, ESQ. 2300 N. Field Street, Suite 1800 Dallas, TX 75201 214-969-4367
For the Official Committee of Unsecured Creditors:	McDermott Will & Emery LLP By: GRAYSON WILLIAMS, ESQ. 2801 N. Harwood St., Suite 2600 Dallas, TX 75201 214-295-8063
	McDermott Will & Emery LLP By: NATHANIEL ALLARD, ESQ. One Vanderbilt Avenue Manhattan, NY 10017-3852 (212) 547-5400
For Imperium Investment Holdings LLC, et al.:	Streusand Landon Ozburn Lemmon LLP By: RHONDA MATES, ESQ. 1801 S. Mopac Expressway, Suite 320 Austin, TX 78746 (512) 220-2689
For Nicholas Cerasuolo:	Shannon & Lee LLP By: KYUNG LEE, ESQ. 2100 Travis Street, Suite 1525 Houston, TX 77002 (713) 714-5770

TELEPHONIC APPEARANCES (Continued):

For the Special Committee:	Barnes & Thornurg By: TRACE SCHMELTZ, ESQ. One North Wacker Drive, Suite 4400 Chicago, IL 60606-2833 (312) 357-1313
For Proof Capital Special Situations Fund:	Cole Schotz, P.C. By: BRYANT CHURBUCK, ESQ. 1325 Avenue of the Americas 19th Floor New York, Ny 10019 (212) 752-8000
For DLT Data Center 1 LLC (DLT 1):	Olshan Frome Wolosky LLP By: THOMAS J. FLEMING, ESQ. MICHAEL S. FOX, ESQ. 1325 Avenue of the Americas New York, NY 10019 (212) 451-2300
For GR Fairbairn Family Trust, GRF Tiger Trust, Grant Fairbairn Revocable Trust, NC Fairbairn Family Trust, NCF Eagle Trust, Nina Claire Fairbairn Revocable Trust, and Transcend Partners Legend Fund LLC:	Munsch Hardt Kopf & Harr, P.C. By: BRENDA LYNN FUNK, ESQ. 700 Milam Street, Suite 800 Houston, TX 77002 (713) 222-5832
For Ad Hoc SAFE Claimants:	Genevieve Graham Law, PLLC By: GENEVIEVE MARIE GRAHAM, ESQ. P.O. Box 130378 Houston, TX 77219 (832) 367-5705
For Ranger Investment Partners, L.P. and Winchester Partners, L.P.:	Greenberg Traurig, LLP By: JAMES TILLMAN GROGAN III, ESQ. 1000 Louisiana Street, Suite 6700 Houston, TX 77002 (713) 374-3600

TELEPHONIC APPEARANCES (Continued):

For Liquid Mining Fund II, LLC:	Lessne Hoffman PLLC By: MATTHEW I. ROCHMAN, ESQ. 100 Southeast 3rd Avenue, 10th Floor Fort Lauderdale, FL 33065 (954) 372-5759
Also Present:	DAVID EATON MANISH KUMAR ANDREW POPESCU FARZAN SABZEVARI

MS. MATES: Sorry. Thank you. Rhonda Mates for Chase and Cameron Blackmon, Nathan Nichols, and Imperium Investment Holdings.

THE COURT: Thank you. All right. Anyone else?

All right. Who's going to lead us off?

MS. TOMASCO: Your Honor, this is the debtors' claim objection at 1126 filed on May 19th of 2025. This is the result of a scheduling order that we negotiated with the ad hoc safety committee. The point of today, Your Honor, is for -- to put the evidence before the Court with respect to the merits of the claim objection and the responses there, too.

The order of operations, as far as I -- as far as we would propose, is to first address the parties' exhibits for admissibility so that, when we refer to one, we're not interrupting the presentation to determine admissibility or any other evidentiary objections with respect to that exhibit. That will make the presentations go a little quicker. And we have a presentation with -- along with the Special Committee of Rhodium Enterprises that we can put up and walk through the exhibits once they're admitted and the arguments that are contained in the papers. Before -- and that would just be my proposal.

But before we get started with the festivities today, I just would like to point out how much success and progress we've achieved in this case to date. We obviously have

prosecuted the Whinstone litigation. We successfully settled that litigation embodied in the Whinstone settlement, to which there were no objections.

We went to a plan mediation in front of -- in Dallas for two days and in front of Judge Nelms on April 28th and 29th. The parties have worked extremely hard over the last few months after that mediation to come to the PSA, which is filed on the docket. And that has culminated in the filing of an amended plan, which has the support of all potentially impaired creditors, as well as a significant portion of the debtors' equity stack.

I'm advised -- and Mr. Schmeltz can get into this further is there was an additional mediation with respect to D&O coverage, which has resulted in a settlement with the D&O insurance carrier obviously subject to approval by the Court. With that, I would like to turn the virtual podium over to my colleague, Mr. Izakelian, unless somebody wants to propose a different order of operations. We did discuss this with the ad hoc committee. (Indiscernible) get back with us on whether or not this order of operations was going to work. I think it makes logical sense to proceed this --

MR. HURLEY: Good morning, Your Honor. Can you hear me?

THE COURT: I can hear you fine.

MR. HURLEY: Okay. Again, it's Mitch Hurley on

that it's just a number. It's 87 million and that's a number.

But certainly in a situation in which you are treated like common stock and you are to get a ratable proportion, that calculation is easily done and it's easily done in the same way the SAFEs were given dividends in the past. And that dividend calculation applies here and it has a -- you take the purchase amount of the SAFEs. You take the liquidity price, which is the price per share equal to the valuation cap divided by the liquidity capitalization, and the liquidity capitalization includes everyone in the cap stack except for the SAFEs. And that gives you a conversion of the SAFEs to a number of shares. And then you would take that number of shares by the amount of money to be distributed relative to the total number of shareholders in the mix. And this is just by way of example. There are some levers that might change to change the calculation.

But if you go to the next slide, putting the SAFEs proportionate in the capital stack as proportionate to other common shareholders gives them a right to $3.6 million, not $87 million at this point. And as Your Honor is aware, under the plan support agreement and the plan that was filed based on it, the concept is to give them a much greater number at this point in the process, you know, something more akin to $55 million of $100 to $110 million in distributable proceeds. Just note that to suggest, you know, there's a fairness aspect

They were required to leave within three days by Whinstone, three days of April 28th.

The Whinstone transaction, we submit, clearly constitutes a dissolution event, including because it resulted in a voluntary termination of operations, Your Honor. Again, there is no doubt or dispute that the debtors' operations terminated as a result of the Whinstone transaction. The debtors argue only that it doesn't qualify because REI did not itself have operations. According to debtors, REI was just an inert holding company, never had or could have had an operational role, so its operations couldn't terminate.

There are many problems with this argument, Your Honor. I'll start that Romanette 1 of the definition of dissolution event that refers to termination of operations actually doesn't say anything about the company at all. It's not so limited. Now, the debtors argue that the reference in Romanette 3 to the company and any other liquidation means that the company is supposed to modify Romanette 1. I don't think that is at all a natural reading of the agreement. In fact, the more natural reading of the agreement is that any other liquidation refers to the kind of liquidation that would be a part of a liquidity event, not to Romanette i. So again, any termination of operations is sufficient under the terms of the agreement to constitute a dissolution event.

Second, the debtors had previously characterized REI

as an active part of the debtors' operation. According to their chief (indiscernible) officer on day one in these cases, they say REI controlled and was responsible for all operational management and administrative decisions of the debtors. Now, post Whinstone transaction, those REI activities have obviously come to an end, because there's no operations to oversee anymore. So in that sense, REI's own role in operations has terminated.

Third, if the debtors' current contention were correct that REI was a wholly inert company and had never had any operational role, under Delaware law, the Court would be required to read Romanette 1 to include subsidiary operations, because otherwise Romanette 1 would be entirely superfluous and meaningless. It would be impossible for Romanette 1 to be triggered because, according to the debtors, REI never had or could have operations.

And then fourth, and I -- this is a really important point, I think, Your Honor. The reading which the debtors are arguing here, not just on dissolution event, the liquidity event, is -- it has to be rejected because it's utterly commercially unreasonable and would result in a forfeiture. According to the debtors, they had the power at any time to render the SAFE investment worthless.

They claim that their assets -- because their assets operations didn't reside directly at REI, they could simply at

any time have transferred all their assets and operations to an entity not owned by REI, no triggering event would occur, and the SAFEs would be stuck with a contract with an empty shell. They're arguing that the minute REI got the $87 million which transferred down to the subsidiaries, it could have transferred that 87 million and all the other assets to some other entity not owned by REI, and it would not have triggered the SAFEs, and the SAFEs would have no recourse whatsoever, because the assets are owned a level below REI.

(Indiscernible) the words of the SAFE contracts require that outcome, and I would submit that that kind of conclusion would be forbidden under settled Delaware law that provides that you cannot read a contract to provide for a forfeiture or an unreasonable outcome if you don't have to. And here, you certainly do not have to.

Okay. So we have lots of other arguments, Your Honor. Again, I'm not going to -- I'm not going to address them again here. Maybe before I -- before I move on, perhaps I'll just ask if the Court has any questions on this front. Otherwise, I'll just plan to rely on my submission. Okay.

THE COURT: No, go ahead. Keep going.

MR. HURLEY: All right. So finally, the debtors just filed a plan of liquidation. So if somehow the Whinstone transaction were not deemed a dissolution event or a liquidity event, there can be no doubt that the liquidating plan would be

MS. FUNK: Your Honor, I -- apologies. I'd also like to clarify. In addition to the UCC, the Class A shareholders, including my clients and Mr. Fox, were also invited to mediation. I actually did participate in mediation and spoke to the mediator at length about our concerns about the founder's contact -- conduct and part -- and the potential for D&O claims. So I wanted to support Mr. Schmeltz in this, and he has opened it up to constituencies here. And again we'll get back to Mr. Hurley with additional information as time permits. Thank you, Your Honor.

THE COURT: All right. Dr. Kamara (phonetic), you raised your hand. If you want to speak, hit five star one time.

(Pause)

THE COURT: Yeah. Hit five star one time. I just sent you a note where to call in. You have to call in.

(Pause)

THE COURT: All right.

MR. KAMARA: Hi, can you hear me?

THE COURT: Yeah, I can hear you now. Yes, sir.

MR. KAMARA: Excellent. I just -- I was invited to the mediation as that SAFE member, and I was not a participant in any conversation. I waited the whole day.

THE COURT: All right. Thank you.

All right. Anything else? All right. So we'll be

EXHIBIT D

Stanley, Michael

From: Hurley, Mitchell
Sent: Tuesday, July 29, 2025 10:15 AM
To: 'Schmeltz, Trace'; Schultz, Sarah A.; Underwood, Charlotte; Patty Tomasco; Razmig Izakelian
Cc: Scott, Elizabeth D.; Rhodium Bankruptcy Investigation
Subject: RE: Rhodium: Putative Insurance Settlement

Please immediately detail the "things that would not hit at the RTL level" and the "arithmetic" that allegedly harmonizes your claim at the July 2 hearing that there will be $100 million to $110 million in proceeds available for distribution, with the statement in the term sheet that [redacted] Your continuing disregard of the Debtors duty, and the Court's express direction, to coordinate with key stakeholders is deeply inappropriate and unproductive. Please stop the games. If this apparent discrepancy is not explained to our satisfaction today, and in your next response, we intend to bring it to the Court's attention immediately.

Mitchell P. Hurley
Akin
Direct: +1 212.872.1011

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Tuesday, July 29, 2025 2:41 AM
To: Schultz, Sarah A. <sschultz@AkinGump.com>; Hurley, Mitchell <mhurley@AkinGump.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: Re: Rhodium: Putative Insurance Settlement

Sarah —

Also, your arithmetic is flawed if you discern [redacted] in distributable cash from these numbers. You are leaving out a number of things that would not hit at the RTL level of you are just reverse engineering that from the anticipated amount available to Imperium.

Regards,

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Schultz, Sarah A. <sschultz@AkinGump.com>
Sent: Tuesday, July 29, 2025 2:02:45 AM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>; Hurley, Mitchell <mhurley@AkinGump.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: [EXTERNAL] RE: Rhodium: Putative Insurance Settlement

Caution: This email originated from outside the Firm.

You announced a settlement agreement in open Court, Trace, that means it is already not confidential. As indicated below, the SAFE AHG has been deliberately excluded from settlement discussions, and we do not accept your bid unilaterally to require us to conceal from the Court the absurd settlement terms you told the Court you had reached with the insurance carriers.

You have provided no substantive response of any kind to (i) our repeated inquiries concerning the existence (vel non) of a writing(s) with the insurance carriers memorializing the agreement you claimed on July 2, 2025 already had been reached and (ii) our request that, to the extent such writings exist, they be provided to us without further delay. Nor have you sought to explain why you told the Court on July 2 that there are $100 to $110 million in distributable proceeds, but the insurance company term sheet indicates proceeds of just approximately [redacted] In light of your continuing failure to provide the requested information, we intend to raise these issues with the Court promptly.

Nothing herein constitutes a waiver of any of the SAFE AHG's rights, remedies, claims or objections, all of which expressly are reserved.

Regards,

Sarah Link Schultz
Akin
2300 N. Field Street | Suite 1800 | Dallas, TX 75201 | USA | Direct: +1 214.969.4367
Mobile: +1 214.729.9937 | sschultz@akingump.com | akingump.com | Bio
Pronouns: she/her/hers (What's this?)

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Friday, July 25, 2025 1:32 PM
To: Hurley, Mitchell <mhurley@AkinGump.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: Re: Rhodium: Putative Insurance Settlement

When it is finalized, it won't be confidential anymore, Mitch. It isn't final yet.

And we disagree with your reading of the contribution agreements, but you already know that.

Regards,

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Hurley, Mitchell <mhurley@AkinGump.com>
Sent: Friday, July 25, 2025 6:13:29 PM
To: Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: [EXTERNAL] RE: Rhodium: Putative Insurance Settlement

Caution: This email originated from outside the Firm.

With all due respect, your response is both inadequate and inappropriate.

First, you continue to ignore our request that you either (i) advise that no writing of any kind currently exists between the Debtors and the carriers memorializing the agreement the Debtors purported to announce on July 2, 2025 in open court, or (ii) produce to the SAFE AHG whatever writing(s) exists (including if in the form of confirming emails or similar). Please comply with our request today.

Second, we do not agree that the terms of the purported settlement are, or could be, subject to "confidentiality." On July 2, the Debtors claimed in open court that they reached an agreement with their insurance carriers, who are (or at least should be) ***adversaries*** of the Debtors. The Debtors do not get to keep the terms of that agreement sealed. Certainly, we understand why the Debtors would wish to conceal these terms (and have kept them from the SAFE AHG and the Court now for at least three weeks). [redacted] is patently unreasonable, and yet another demonstration that the Debtors are inadequate stewards of the Debtors' litigation assets. Notably, the Debtors deliberately have ***excluded*** the SAFE AHG from all settlement discussions with insurance carriers, and cannot now unilaterally declare that the SAFE AHG somehow is bound by a Rule 408 confidentiality agreement concerning the absurd terms to which you purport to agree.

Third, we note that this term sheet indicates that [redacted] As an initial matter, and as you know, at least $95 million must be paid by Technologies to REI before Imperium receives a single dollar based on its equity interest in Technologies. We note, moreover, that the Debtors' own figures imply that the total distributable value at Technologies is [redacted] But the Debtors have been telling the Court and the SAFE AHG for weeks that such distributable value actually exceeds $100 million. *See, e.g.* July 2 Tr. at 56 (Trace Schmeltz representing to the Court that the Debtors proposed plan would give SAFE

creditors "something more akin to $55 million ***of $100 to $110 million*** in distributable proceeds"). Please explain this material discrepancy today.

Nothing herein constitutes a waiver or relinquishment of any of the SAFE AHG's rights, remedies, claims or objections, all of which are reserved.

Mitchell P. Hurley
Akin
Direct: +1 212.872.1011

From: Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Sent: Thursday, July 24, 2025 9:31 PM
To: Hurley, Mitchell <mhurley@AkinGump.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: RE: Rhodium: Putative Insurance Settlement

[redacted]

[redacted]

Charlotte H. Underwood
Counsel
Direct: (646) 746-2192 | Mobile: (518) 321-3498
New York, NY

Barnes & Thornburg

From: Underwood, Charlotte
Sent: Thursday, July 24, 2025 2:43 PM
To: Hurley, Mitchell <mhurley@AkinGump.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: RE: Rhodium: Putative Insurance Settlement

To the extent we have disclosed the terms of the settlement, it has been with those under the governing mediation privilege. We are actively working on the term sheet with relevant parties as we speak. Again, we will share it as soon as we can.

Charlotte H. Underwood
Counsel
Direct: (646) 746-2192 | Mobile: (518) 321-3498
New York, NY

Barnes & Thornburg

From: Hurley, Mitchell <mhurley@AkinGump.com>
Sent: Thursday, July 24, 2025 8:13 AM
To: Underwood, Charlotte <Charlotte.Underwood@btlaw.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: [EXTERNAL] Re: Rhodium: Putative Insurance Settlement

Caution: This email originated from outside the Firm.

You have disclosed the terms of the purported settlement to multiple other stakeholders in the weeks since you announced its existence on the record nearly three weeks ago, notwithstanding the fact that the particular document you refer to in your email apparently is not yet complete. If you do not disclose those terms to us by mid day today, we in fact are at an impasse. In addition, by mid day, please either confirm that no writing of any kind memorializing the alleged settlement with the carriers (whether an exchange of emails or anything else) existed on July 2, 2025 when you advised the Court a deal had been reached, or provide that writing to us. The SAFE AHG reserves all of its rights, remedies, claims, defenses and objections.

From: Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Sent: Thursday, July 24, 2025 6:53:42 AM
To: Hurley, Mitchell <mhurley@AkinGump.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: RE: Rhodium: Putative Insurance Settlement

Good morning Mitch,

We are not at an impasse. I am sending an updated draft of the terms to Brenda this morning and while I will ask her to review it quickly, I can't promise her turnaround time. I'll get it to you as soon as I can.

Trace is now in Europe and will have limited access to his email during that time.

We reserve all rights with respect to the remainder of your email below.

Thank you,

Charlotte

Charlotte H. Underwood
Counsel
Direct: (646) 746-2192 | Mobile: (518) 321-3498
New York, NY

Barnes & Thornburg

From: Hurley, Mitchell <mhurley@AkinGump.com>
Sent: Wednesday, July 23, 2025 7:29 PM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: [EXTERNAL] RE: Rhodium: Putative Insurance Settlement

Caution: This email originated from outside the Firm.

Twenty-one days ago, on the record, the Debtors advised the Court that the Debtors have an agreement with insurance carriers relating to the estates' valuable claims against the Debtors' insiders, including Imperium and the founders who continue to dominate and control the Debtors' board of directors. Although we understand you have disclosed the terms of the purported settlement to other stakeholders, you have failed and refused to disclose those terms to the SAFE AHG, despite our repeated requests. If you do not provide us with the terms of the settlement and ***existing*** writing(s) memorializing those terms (if any) by mid-day tomorrow, we will conclude we are at an impasse and proceed accordingly.

You also claim that the SAFE AHG has failed "since last November" to identify for you valuable claims against the insiders. That is false. As you know, on December 26, 2024 we provided the Special Committee with a detailed letter identifying claims against the insiders arising from Winter Storm Uri, the Rollup Transaction, the insiders' usurpation of Debtors' corporate opportunity by selling their own stock in Debtors in 2021 for a profit of at least $33 million while Debtors were actively fundraising, the insider's fraudulent use of Debtor assets to pay the insiders' personal capital gains taxes arising from their sale, among other things. [redacted] As we explained in our January 10, 2025 letter, however, (i) Whinstone publicly disclosed that it had received power credits ***before*** the insiders released their Winter Storm Uri claims, and, incredibly, did so in a document [redacted] and (ii) even if the insiders could reasonably have believed Winstone's false claims to the contrary, that would itself have given rise to a claim against Whinstone for breach of contract worth $50 million or more. The referenced letters are attached here again for your ease of reference. Additional claims were identified and/or further detailed in the SAFE AHG's motions to compel, and to terminate exclusivity. *See* Docket Nos. 1079 and 1246.

The SAFE AHG also pointed out that the Special Committee's original collection of information from the Debtors and the insiders was woefully inadequate, including because the Special Committee [redacted] in connection with the Special Committee's so-called "investigation" of Imperium and the other insiders. It was only after the Special Committee reviewed the SAFE AHG's detailed correspondence, and gathered additional pertinent discovery from the Debtors and Imperium (under pressure from the SAFE AHG to do so), that the Special Committee finally acknowledged that the claims against the insiders are enormously valuable, though the Special Committee has grossly underestimated the value of those claims at $75 million. In reality, the harm caused by the insiders relating to their usurpation of corporate opportunity alone is worth multiples of that number, while the other claims separately are worth additional tens of millions of dollars, and warrant total subordination of the insiders' putative claims in these cases (which are nearly worthless

anyway since Technologies must distribute virtually all Proceeds of the Whinstone Transaction to REI before any recovery can be provided to Imperium in respect of its equity). As you know, the SAFE AHG views the Special Committee's proposal to give the insiders a release of the valuable estate claims against them, plus distributions in excess of $15 million, to be a rank breach of its fiduciary and other duties, and reserves all of its rights, remedies, claims and objections.

Regards,

Mitchell P. Hurley
Akin
Direct: +1 212.872.1011

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Wednesday, July 23, 2025 11:13 AM
To: Hurley, Mitchell <mhurley@AkinGump.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: RE: Rhodium: Putative Insurance Settlement

We continue to work on a term sheet with the parties and will circulate it when we are ready.

Regards,

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Hurley, Mitchell <mhurley@AkinGump.com>
Sent: Wednesday, July 23, 2025 10:12 AM
To: Schmeltz, Trace <TSchmeltz@btlaw.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: [EXTERNAL] RE: Rhodium: Putative Insurance Settlement

Caution: This email originated from outside the Firm.

Please provide us with the proposed terms of the purported settlement announced in court on July 2, 2025 by close of business today, together with copies of writings (if any, and inclusive of any email confirmations or the like) reflecting the proposed settlement. Thank you.

Mitchell P. Hurley
Akin
Direct: +1 212.872.1011

From: Schmeltz, Trace <TSchmeltz@btlaw.com>
Sent: Wednesday, July 9, 2025 4:48 PM
To: Hurley, Mitchell <mhurley@AkinGump.com>; Patty Tomasco <pattytomasco@quinnemanuel.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schultz, Sarah A. <sschultz@AkinGump.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>
Subject: RE: Rhodium: Putative Insurance Settlement

EXTERNAL Email

Mitch,

Adopting none of your characterizations of our conduct below, I can tell you that we are preparing the term sheet and related materials and will circulate them in good order. Nothing is being delayed. In the meantime, my offer (pending since last November) stands to review your long alluded to evidence of additional valuable claims.

Best regards,

Trace

Trace Schmeltz
Partner
Direct: (312) 214-4830 | Mobile: (312) 731-1980
Chicago, IL

Barnes & Thornburg

From: Hurley, Mitchell <mhurley@AkinGump.com>
Sent: Tuesday, July 8, 2025 7:18 AM
To: Patty Tomasco <pattytomasco@quinnemanuel.com>; Schmeltz, Trace <TSchmeltz@btlaw.com>; Razmig Izakelian <razmigizakelian@quinnemanuel.com>; Underwood, Charlotte <Charlotte.Underwood@btlaw.com>
Cc: Scott, Elizabeth D. <EDScott@AKINGUMP.com>; Schultz, Sarah A. <sschultz@AkinGump.com>
Subject: [EXTERNAL] Rhodium: Putative Insurance Settlement

Caution: This email originated from outside the Firm.

Ms. Tomasco announced at the July 2, 2025 hearing that the Debtors have purported to reach a settlement with insurance carriers on estate-owned insurance policies related to claims against the Debtors' insiders (i.e. the persons who dominate the board that hired Ms. Tomasco, and to which she continues to report, and that stand to receive releases and windfall recoveries under the Debtors' recently proposed plan of liquidation). As you know, the Debtors elected to exclude the SAFE AHG from negotiations with the carriers and the insiders, including the "mediation" (the existence of which the SAFE AHG discovered just days before it was convened by you, the insiders and equity holders who themselves stand to receive enormous returns on their common stock investments in Rhodium, but only if they can help deliver releases to the insiders) and indeed have excluded the SAFE AHG from all plan discussions for over two months.

You told the Court on July 2 that you would provide details to us concerning the settlement, but you have provided us nothing. Please immediately provide us with the terms of the putative settlement, and any related term sheets, correspondence and other documentation. Needless to say, the SAFE AHG reserves all rights, remedies, claims and objections, including with respect to the putative settlement, the decision by the Debtors' board (whether the plenary board or the allegedly independent subgroup of that board) and its professionals to exclude the estates' only significant remaining creditor group from plan discussions and insurance negotiations, and the continuing involvement of Ms. Tomasco and her firm in a host of Conflict Matters. Please provide the settlement information without further delay.

Mitchell P. Hurley
Akin
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Fax: +1 212.872.1002 | mhurley@akingump.com | akingump.com | Bio

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FILED UNDER SEAL

EXHIBIT E

FILED UNDER SEAL

EXHIBIT F

FILED UNDER SEAL

EXHIBIT G

EXHIBIT H

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. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)

EMERGENCY MOTION OF THE SAFE AHG TO COMPEL PRODUCTION BY IMPERIUM PARTIES AND DEBTORS

Emergency relief has been requested. If the Court considers the motion on an emergency basis, then you will have less than 21 days to answer. If you object to the requested relief or if you believe that the emergency consideration is not warranted, you should file an immediate response. Emergency relief is requested by May 21, 2025.

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

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The Ad Hoc Group (the "SAFE AHG") of parties to Simple Agreements for Future Equity ("SAFEs") with Debtor Rhodium Enterprises, Inc. ("REI") in the above-captioned chapter 11 cases (the "Chapter 11 Cases") of Rhodium Encore LLC and its affiliated debtors and debtors in possession (the "Debtors" or "Rhodium"), respectfully submits this motion (the "Motion") to compel production of documents by Imperium Holdings LLC ("Imperium") and insiders Chase Blackmon, Cameron Blackmon, Nathan Nichols, and Nicholas Cerasuolo (collectively with Imperium, the "Imperium Parties") and the Debtors, including the Special Committee of REI's board of directors (the "Special Committee") as appropriate.

PRELIMINARY STATEMENT

Parties to SAFE agreements are the largest single class of creditors in these cases by far, having invested $87 million in cash in the Debtors. As the representative of approximately 80% of those SAFEs by value, the SAFE AHG has taken an active role in these cases, including as a key participant in the mediation before Judge Mark X. Mullin on February 19, 2025 (the "February Mediation"). The February Mediation led directly to the recently closed transaction with Whinstone, pursuant to which the Debtors sold all or substantially all of their assets and ceased operations (the "Whinstone Transaction"). As a result of the Whinstone Transaction, the SAFEs' right to receive the "Cash Out Amount" – repayment in full of the aggregate $87 million advanced to the Debtors – has been triggered. According to the Debtors, they will have at least approximately $90 million in tangible and intangible asset value for distribution to the SAFEs and other remaining stakeholders, after repayment of administrative costs and senior creditors. This figure appears to be substantially understated, likely by at least $10 million, including because it materially overestimates tax and professional fee liability.

The SAFE AHG is concerned, however, that the Imperium Parties – including current and

former Rhodium board members Nathan Nichols, Chase Blackmon, Cameron Blackmon and Nicholas Cerasuolo, and Imperium, the investment vehicle they own and control – will seek unfairly to siphon off much of that value for themselves. To accomplish that end, the Imperium Parties may try to take advantage of their continuing domination and control of the Debtors' plenary board of directors, and transactions that they fraudulently engineered pre-petition. Worse, the Imperium Parties may even try to push through a plan that diverts millions of dollars of Debtor assets to pay them in respect of claims and interests that are entitled to recover nothing, including on grounds of equitable subordination, all while gifting themselves with releases of claims against the insiders that are among the estates' most valuable assets.

The SAFE AHG has sought for months to investigate the claims and allegations arrayed against the insiders, and the results already are damning. As discussed in more detail below, evidence suggests that the Imperium Parties (i) usurped the Debtors' corporate opportunity by pocketing for themselves more than $33 million in investment proceeds that should have been used to build, and potentially save, the Debtors' businesses (the "Private Sale"), (ii) misappropriated Debtor assets to pay capital gains tax obligations they personally incurred from the Private Sale, (iii) engaged in widespread fraud (by commission and omission) in connection with the so-called "Roll-Up Transaction" and solicitation of SAFE and other outside investors, among other matters, (iv) wrongfully took a "control premium" for their own benefit that artificially increased the insiders' ownership in the Debtors' enterprise at the expense of stakeholders in REI, including SAFEs and outside equity, (v) cost the Debtors and their innocent stakeholders $50 million or more through their gross negligence related to Winter Storm Uri power credits, and (vi) engaged in other rank self-dealing, including by advancing their own financial interests over those of REI stakeholders while purportedly acting as REI fiduciaries (collectively, the "Insider Allegations").

Unfortunately, the SAFE AHG's efforts to investigate the Insider Allegations have been met with substantial resistance from both Imperium and the Debtors, and important categories of documents relevant to the Insider Allegations and plan issues remain unproduced. For example, on supposed "privileged grounds," Imperium has refused to produce key documents that Imperium previously produced to the Special Committee of the Debtors' board of directors (the "Special Committee") in connection with the Special Committee's investigation. To the extent such materials ever were privileged – a contention that the SAFE AHG does not concede [2] – the privilege was waived by their disclosure to the Special Committee, and they must be turned over to the SAFE AHG without further delay. Imperium also should be ordered remove its "professional eyes only" designation from documents related to the insiders' alleged tax fraud, so that these critical materials can be shared with and considered by parties in interest in these cases.

For its part, the Debtors have refused to provide correspondence exchanged with Imperium concerning the Insider Allegations, except on terms that unduly limit their use. The correspondence at issue is not privileged and should be produced without delay. Likewise, the Special Committee has finished its investigation of Insider Allegations and prepared a detailed report, but has refused to provide the full report to the SAFE AHG or other stakeholders. The investigation was conducted and the report prepared at substantial estate expense, and it should be made available promptly and in full to Rhodium's stakeholders, just as Debtors have long promised. Indeed, in correspondence copied to the Special Committee, the Debtors specifically refused to produce further discovery until the Special Committee's "investigation is complete and the Special Committee has published its conclusions," and then only if "the SAFE AHG (or another

[2] As discussed below, Imperium never produced the privilege log required under applicable rules. *See* FED. R. BANKR. P. 7026.

party)" can "point to flaws in the investigation" or "disagrees with the Special Committee's conclusions." Ex. A, Letter from Debtors to the SAFE AHG (Jan. 23, 2025). Having for months induced reliance by parties-in-interest on receipt of these "findings," the Debtors and Special Committee cannot now refuse their promised "publication."

The Debtors also should be required to turn over non-privileged correspondence with their directors and officers insurance carriers, and to remove the "professional eyes only" designation from their years-old general ledgers and other documents that relate directly to Imperium's alleged tax fraud. Plan and estate asset-related documents also have been improperly withheld from disclosure by the Debtors. For instance, the Debtors notified the SAFE AHG for the first time just days ago that they purport to have engaged ***post-petition*** in a transaction "equitizing" a debt holder. But they have refused to produce the documents memorializing the transaction except pursuant to "mediation privilege," and have failed to produce correspondence and other material relating to this extraordinary and unauthorized transaction. The Debtors also have failed and refused to produce documents concerning payments made to law firms and others pre-petition that relate to, among other things, potential preference liability.

Production of these materials is urgent. The Debtors recently sought a brief extension of exclusivity but also noted that they may file what their counsel refers to as a "food fight" plan, leaving stakeholders to contend among themselves for shares in the Debtors' liquidated assets. Certainly, any plan that calls for, or could result in, a material recovery to Imperium (much less a release of the estates' valuable claims against the insiders) will require careful examination by the Court of the veracity of the Insider Allegations, including the Special Committee's own findings concerning valuable claims against the Imperium Parties. The materials sought also will be relevant to depositions relating to the Insider Allegations and plan proposals, which are beginning

this week. The SAFE AHG respectfully asks the Court to order the Debtors and Imperium to make the requested disclosures without further delay.

BACKGROUND

I. Debtors Sell Substantially All Assets To Whinstone, And Cease Operations

1. When these cases were filed, the Debtors' operations consisted in their entirety of two mining facilities: One located in Temple, Texas, and one located in Rockdale, Texas. Post-petition, the Debtors sold their Temple facility to a third party, leaving Rockdale as the Debtors' only operating asset as of approximately December 18, 2025. On February 19, 2025, a mediation was convened before Judge Mark X. Mullin amongst (a) the Debtors, (b) Whinstone, (c) its publicly traded parent company, Riot, Inc., (d) the SAFE AHG and (e) the Official Committee of Unsecured Creditors ("UCC"). With the SAFE AHG's active participation, the mediation was successful, as the Debtors have since acknowledged publicly. Audio Rec. of Mar. 19, 2025 Hearing, *Whinstone US, Inc. v. Imperium Inv. Holdings LLC, et al.*, Case No. 24-03240 (ARP) [Docket No. 46]. Among other things, Whinstone agreed to acquire all of the Debtors' tangible assets located at Rockdale (previously defined as the "Whinstone Transaction"). On or around April 28, 2025, the Whinstone Transaction closed, all or substantially all of the Debtors' assets were transferred to Whinstone, and the Debtors' ceased operations. *See* Riot Platforms, Inc., *Riot Platforms Announces Closing of the Acquisition of Rhodium Assets at the Rockdale Facility Following the Previously Announced Settlement Agreement,* Riot Platforms (Apr. 28, 2025), https://www.riotplatforms.com/riot-platforms-announces-closing-of-the-acquisition-of-rhodium-assets-at-the-rockdale-facility-following-the-previously-announced-settlement-agreement.

2. In return, Whinstone transferred to the Debtors proceeds of the Whinstone Transaction then valued at $185 million: $129.9 million in cash, $6.1 million in the form of a

returned security deposit, and $49 million in publicly traded Riot stock using the volume-weighted average price for the 10 days preceding the closing to set the number of shares of stock. *Id.* The SAFE AHG understands that favorable price action related to Riot stock increased the value of the Whinstone Transaction proceeds by at least several million dollars above the $185 million amount identified in the Sale Motion. After repaying the Debtors' secured and unsecured notes and administrative costs, the Debtors have indicated at least $90 million in proceeds will remain for other stakeholders, before adding in the value of claims against the insiders.

II. The Whinstone Transaction Triggered SAFEs Right to Cash Out Amount

3. The SAFE parties provided more capital to the Debtors than any other stakeholder in these cases – $87 million.[3] The SAFE agreements provide that REI is required to repay the full amount that the SAFE holders advanced – referred to in the agreements as the "Cash Out Amount" – upon the occurrence of either a Liquidity Event or a Dissolution Event. On the petition date, no triggering event had yet occurred, and the SAFE holders therefore were contingent "creditors" within the plain terms of the United States Bankruptcy Code (the "Bankruptcy Code").[4]

[3] In fact, the value of the SAFEs' claims is greater than the value of all of Rhodium's other creditors ***combined***. As of the Petition Date, the face value of notes in Rhodium Encore and Rhodium 2.0 totaled approximately $50 million. *See, e.g.*, Decl. of David M. Dunn in Supp. of Chapter 11 Pets. and First Day Relief, *In re Rhodium Encore LLC*, No. 24-90448 (Bankr. S.D. Tex. Aug. 29, 2024), ECF No. 35 ("First Day Decl.") at ¶ 76. The value of the Rhodium Technologies promissory notes, whose holders comprise six of the seven members of the UCC, is approximately $14.5 million. The total value of the Debtors' trade debt appears to be modest, with the exception of an approximately $4.5 million claim by a pre-petition law firm that likely will be subject to challenge.

[4] "Creditor" is defined by the Bankruptcy Code to include any "entity that has a claim against the debtor that arose at the time of or before the order of relief." "Claim," in turn, is defined to include any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, ***contingent***, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A) (emphasis added). When the petition was filed in these cases, the SAFE holders right to receive "payment" of the Cash Out Amount was still contingent, because there had not yet been a Liquidity Event or Dissolution Event. Hence, even prior to the Whinstone Transaction, the SAFE holders were creditors, since a contingent right to payment is a "claim" within the meaning of the Bankruptcy Code. *See In re JNL Funding Corp.*, 438 B.R. 356, 363 (Bankr. E.D.N.Y. 2010) ("A contingent right to payment constitutes a claim, and the holder of such a contingent right is a creditor.").

4. The SAFEs' right to the cash out amount is no longer contingent. The Whinstone Transaction either constitutes a Liquidity Event, which includes an "all or substantially all" asset sale, or a Dissolution Event, which includes a "voluntary termination of operations" or "any other liquidation, dissolution or winding up" that is not a Liquidity Event. *See* Ex. B, SAFE Agreement of James M. Farrar and Adda B. Delgadillo Farrar, at 3 (containing materially identical terms to other SAFE Agreements). Upon the occurrence of either event, the SAFE holders are entitled to receive "a portion of Proceeds" from the Liquidity Event or Dissolution Event "equal to" the "Cash Out Amount," which in turn is equal to the total amount paid by the SAFE holders to REI pursuant to the SAFE. *See id.* at 1-2. Here, the Proceeds of the Whinstone Transaction include cash, and Riot stock that has since been converted to cash, in an amount equal to at least $185 million. In the aggregate, SAFE holders are entitled to payment of $87 million worth of those Proceeds in the form of the Cash Out Amount. Under the absolute priority rule, and the terms of the SAFEs themselves, the SAFE holders have the right to be repaid the Cash Out Amount in full before any recoveries are provided to equity.

III. The SAFE AHG Investigates Insider Allegations

5. Despite their status as creditors, the SAFEs have an interest in ensuring that insiders are properly subordinated, since substantial value could be trapped by Imperium at Rhodium Technologies LLC ("Technologies"). The insiders organized the Debtors in a manner designed to provide themselves with a structural payment advantage by holding Imperium equity at Technologies. Remarkably, moreover, the insiders handed board control of REI – the entity that is the SAFEs' counterparty, and issuer of outside common stock – to Imperium, despite its lack of an economic interest in that entity.

6. The insiders' scheme ultimately will not succeed in robbing REI and its stakeholders of recoveries. For one thing, Technologies is required by contract and otherwise to repay to REI at least $87 million in SAFE proceeds that REI transferred to Technologies in 2021, a claim that is of course senior to any Imperium equity interest at Technologies. In addition, the claims and interests of the insiders to whatever residual value is left at Technologies after REI is repaid must be subordinated in view of the insiders' remarkable pre-petition fraud and other misconduct, some of which is discussed below.

A. Usurping Debtors' Corporate Opportunity, Insiders Pocket $33 Million

7. In the Spring of 2021, Imperium sold shares it owned in Debtor Rhodium Technologies for approximately $33 million (the "Insider Stock Sale"), which the insiders promptly pocketed for themselves. At the exact same time, the Debtors were actively courting some of those investors to put their money in the Debtors, and specifically to help fund the Debtors' proposed launch of a new 100 MW mining facility located at the Rockdale facility [redacted] Ex. D, Presentation to Rhodium Investors Regarding the Roll-Up Transaction, at 10 (May 13, 2021). All the Debtors needed to make Building D a reality was enough cash to buy mining rigs and other equipment. And they had that cash within their grasp: potential investors told Debtors they wanted to invest millions of dollars in Building D. But instead of selling those investors equity issued by the Debtors and using the proceeds to build out Rhodium's mining business, at the last minute, the insiders changed the deal

so that investors instead would buy shares owned indirectly by the insiders in Technologies. Starved of critical funding, the Building D project collapsed.

8. A clearer breach of the duty of loyalty by the insiders could hardly be imagined, with the resulting harm simply staggering. During a presentation concerning the Roll-Up Transaction on May 13, 2021, insiders represented to potential investors that Building D would begin operations as soon as the first quarter of 2022.[5] Ex. D, Presentation to Rhodium Investors Regarding the Roll-Up Transaction, at 10 (May 13, 2021). If funds misappropriated by the insiders had instead been used to launch Building D on that schedule, the additional 100 MW of capacity ***likely would have yielded an additional approximately 9,000 bitcoins for the Debtors and their stakeholders***. If sold when mined, that would have added about $260 million in gross profit, or almost $900 million if the coins were held today. Rhodium also would have instantly become one of the largest players in the bitcoin mining space and might well have avoided the crash landing and bankruptcy that followed instead. The notion that these insiders should recover even a penny before satisfaction in full of all innocent creditors, and distributions to other non-insider stakeholders, is all but unthinkable under these circumstances.

B. Use By Insiders of Debtor Assets To Pay Personal Tax Liabilities

9. Compounding their malfeasance, the insiders also appear to have caused the Debtors to pay their personal income taxes associated with the Private Sale. [redacted]

[5] As discussed below, when that representation was made, the insiders knew or should have known that it was false or misleading, because by then they already had fleeced the Debtors out of the cash that otherwise would have been available to develop Building D.

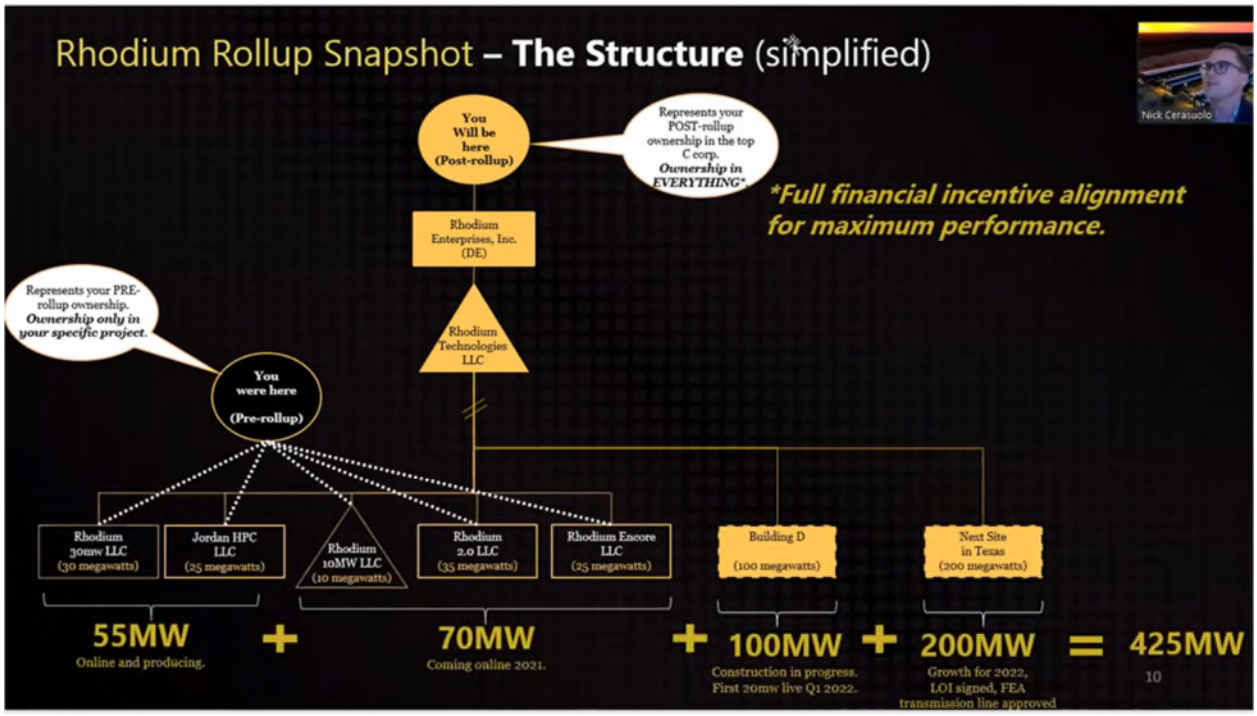
[redacted] and appear to reflect the transfer by the Debtors to Imperium of funds to pay the Insiders' personal capital gains tax liabilities relating to the Insider Stock Sale. To the extent further validated, these allegations would give rise to claims against the Insiders of the most serious kind, including for fraud, conversion and breach of the fiduciary duty of loyalty, liability for knowing receipt of illegal distributions in violation of DEL CODE ANN. tit. 6 § 18-607, and to claw back sale proceeds and other transfers that may have been fraudulently transferred. Notably, both the Debtors and Imperium have "over-designated" documents concerning these allegations as "professional eyes' only" under the protective order, preventing the Debtors' actual stakeholders from evaluating the relevant evidence for themselves. As discussed below, Imperium and the Debtors should be required to remove those designations.

C. Fraud On SAFEs And Other Investors

1. Roll-Up Transaction Fraud and Breaches of Fiduciary Duty

10. The Insiders also masterminded a corporate restructuring that closed on or around June 30, 2021 (the "Roll-Up Transaction") that resulted in an immediate, and incurable, fiduciary conflict of interest. Pursuant to the Roll-Up Transaction, outside investors were induced to trade their equity interests at the operating company level for shares in REI, the newly created ultimate Rhodium holding company, while Imperium kept its economic interest at Rhodium Technologies. Incredibly, however, the Roll-Up Transaction provided exclusive voting control over REI, and control of REI's board of directors, to ***Imperium***, even though Imperium had no economic interest at REI (only at Technologies, one step down the chain). Hence, the economic interests of REI's board, and those of REI's outside stakeholders, were not aligned.

11. The insiders sought to conceal this aspect of the transaction at their May 13, 2021 investor presentation. They claimed repeatedly that "the only thing changing" as a result of the Roll-Up Transaction would be that the investors would have a stake "in a stronger, healthier company," with "financial incentives 100% aligned." In a slide displayed during a presentation regarding the Roll-Up Transaction, the Insiders correctly disclosed that outsiders were trading their interests in the operating companies ("You were here") for REI interests ("You will be here"), but failed to point out Imperium would own its interests at Rhodium Technologies (indeed, they did not mention Imperium at all):



See supra Ex. D, at 10.

12. The diversion of interests between the Imperium insiders in control of REI, and the actual economic stakeholders of REI, unsurprisingly, led to deeply inequitable outcomes. Indeed, the conflicted board of REI (also the managing member of Technologies) repeatedly took steps designed to advance the interests of Technologies at the expense of REI. As just one example, the

conflicted REI board caused Technologies to amend its operating agreement in a manner designed (ultimately unsuccessfully, the SAFE AHG will argue) to free Technologies from its obligation to repatriate $87 million in SAFE proceeds that REI transferred to Technologies before making any "pro rata" distributions to Imperium. The conflicted REI board engaged in more clumsy self-dealing when it agreed to make the SAFEs an obligation of REI in the first place, rather than an obligation of Technologies. Other examples of Imperium using its control over REI (an entity in which it had no economic interest) to favor itself abound.

13. But when they sought to induce investors to agree to the Roll-Up Transaction, the insiders made-believe that it would be good for everyone. That was flatly false. Among other things, Imperium used the Roll-Up Transaction to help itself to a so-called "control premium," which increased Insider ownership of the enterprise by about 6.5%, at the expense of REI and its non-Insider stakeholders. [redacted] and indeed, there can be no doubt that the insiders were required either to allocate the control premium entirely to REI – since it was REI (as Imperium's marionette) that in fact controlled the enterprise – or at least distribute that interest to Imperium and REI on a pro rata basis. Instead, REI "fiduciaries" turned that value over disproportionally to themselves, choosing yet again enrich themselves at the expense of innocent REI stakeholders.

14. The Insiders also touted the Roll-Up Transaction as a means of participating in profits generated by "Building D." *See, e.g.*, *id*. During the May 13, 2021 presentation, Building

D was characterized as a done deal, and as a key driver of value for a potential IPO. The Insiders failed to disclose, however, that they had just scooped up for themselves more than $30 million in investor proceeds that could and should have been available for the build out, thus dooming Building D to failure. On or around June 21, 2021, Whinstone sent an email to the Insiders cancelling the power contract for Building D, signaling its final death-knell. Ex. F, Email from Chad Harris to Nathan Nichols (June 21, 2021). Incredibly, however, when the Insiders circulated an "Amended Disclosure" for the Roll-Up Transaction to investors on June 23, 2021, they did not bother to advise investors that Building D had been cancelled a week earlier. *See* Ex. G, Email from Rhodium Management to Investors (June 23, 2021); Ex. H, Roll-Up Transaction Addendum dated June 22, 2021 (attached to the foregoing email). The Roll-Up Transaction closed two days later with full participation by the Debtors' investors, including based on knowingly false information. This kind of fraud by commission and omission would warrant, if proven, equitable subordination of the Insiders' claims and interests in these cases, among other remedies.

2. Winter Storm Uri Fiduciary Breaches By Insiders

15. The Insiders appear also to have committed clear breaches of their fiduciary duties when they settled Rhodium's claims against Whinstone relating to Winter Storm Uri for pennies on the dollar. Pursuant to Rhodium's power agreements with Whinstone, Whinstone was required to sell power to the grid, and turn the profits over to Rhodium whenever the price for power exceeds [redacted]

16. During Winter Storm Uri in February 2021, power prices spiked as high as $9,000 per MW or more, resulting in Whinstone receiving an estimated $125 million in power credits, a substantial portion of which contractually should have been turned over to Rhodium, as Rhodium's Insiders were well aware. *See, e.g.*, Ex. K, Riot Blockchain, Inc., Quarterly Report (Form 10-Q) (Aug. 23, 2021) (excerpted). Indeed, even as the storm raged, Insider Nathan Nichols boasted about the "windfall" Rhodium would receive related to "this huge credit from this winter storm." *See* Ex. L, WhatsApp Conversation between Chad Harris (Whinstone) and Nathan Nichols (Rhodium) (Feb. 15, 2021, 8:31 PM) (excerpted). Incredibly, however, on May 19, 2021, the Insiders agreed to release the Debtors' claims for Winter Storm Uri payments from Whinstone for [redacted] *See* Ex. M, Settlement Letter Agreement between Whinstone and Rhodium (May 19, 2021). The Insiders apparently claimed they had been tricked by Whinstone into believing that Whinstone did not sell power back to the grid during the storm, and that there were no profits to share with Debtors.

17. As the SAFE AHG explained in a January 10, 2025 letter to the Special Committee, however, the sale by Whinstone of power back to the grid was disclosed publicly weeks before the insiders released Debtors' claims against Whinstone. On April 8, 2021, Riot publicly filed the stock purchase agreement (the "SPA") pursuant to which it acquired Whinstone. The SPA contained an entire section (titled "Energy Credits") revealing that Whinstone in fact had sold power to the grid in connection with Winter Storm Uri. Remarkably, the agreement signed by the insiders releasing claims against Whinstone relating to Winter Storm Uri – supposedly because Whinstone had deceived them into believing it had sold no power during the storm – [redacted] No competent fiduciary would have accepted Whinstone's alleged representations under these circumstances.

18. Moreover, the power contracts ***required*** Whinstone to sell power to the grid during Winter Storm Uri and turn the profits over to the Debtors. *See supra*, Ex. I (July 9, 2020) – Ex. J (July 7, 2020). If, as the insiders claim to have believed, Whinstone had failed to do so, the Debtors would have had a breach of contract claim against Whinstone equal to the amount of profits lost as a result. Releasing these immensely valuable claims for a pittance, without first acquainting themselves with readily available pertinent facts, constitutes a clear violation of (at least) the Insiders' fiduciary duties of care. *See, e.g.*, *In re Bridgeport Holdings, Inc.*, 388 B.R. 548, 569 (Bankr. D. Del. 2008) (holding that the failure of directors and officers to consider "all material information reasonably available" to them in making a consequential business decision constituted a breach of the duty of care); *see also San Antonio Fire & Police Pension Fund v. Amylin Pharm., Inc.*, 983 A.2d 304, 318 (Del. Ch. 2009) (same).

3. Additional Insider Self-Dealing And Breaches of Fiduciary Duty

19. The SAFE AHG anticipates still more other examples of insider self-dealing, fraud and breaches of duty will be revealed when discovery is completed. Indeed, as discussed above, every step taken by the Imperium-dominated REI board was subject to a debilitating conflict of interest, given Imperium owned its economic interest not at REI, but at Technologies. Compliance with the SAFE AHG's long-outstanding discovery demands is critical to seeking to surface as much of the associated misconduct as is possible before any plan is considered or confirmed.

IV. The SAFE AHG Discovery Concerning Insider Allegations And Plan Issues

20. The SAFE AHG sought Rule 2004 discovery from the Debtors beginning on October 8, 2024, and added additional requests for information concerning the Insider Allegations by letter dated November 7, 2024. *See, e.g.*, Ex. N, Letter from the SAFE AHG to the Debtors (Oct. 8, 2024); Ex. O, Letter from the SAFE AHG to Debtors (Nov. 7, 2024). The Debtors agreed

to produce responsive documents without requiring the SAFE AHG to file a Rule 2004 notice or motion. *Id.* As an accommodation to the Debtors, who claimed that they needed to focus their energy on pending litigation with Whinstone, the SAFE AHG was patient with the Debtors' failure promptly to respond to its requests.[6]

21. After Phase I of the Whinstone litigation concluded, however, the Debtors still failed to produce much of the information sought by the SAFE AHG. Among other things, the Debtors repeatedly claimed that the SAFE AHG should simply rely on the Special Committee to carry out a diligent investigation of insider misconduct, and report back the results. *See, e.g.*, *supra*, Ex. A, Letter from Debtors to the SAFE AHG (Jan. 23, 2025) (refusing to produce any further documents to the SAFE AHG responsive to its search terms until the Special Committee produced its findings). Given its position as the potential fulcrum creditor in these cases, and its views of the merits of the claims against the insiders, the SAFE AHG was unwilling to stand down. Ex. P, Response Letter from the SAFE AHG to Debtors (Jan. 27, 2025) (refusing to accede and requesting again that Debtors produce responsive documents to the SAFE AHG's search terms). The SAFE AHG's decision turned out to be prescient, including because the Special Committee has since refused to produce the report of its investigation (as discussed below and elsewhere).

22. On or around January 8, 2025, the Debtors offered to disclose documents reviewed by the Special Committee as part of its investigation. The SAFE AHG quickly realized, however, that the electronically stored information ("ESI") against which the Special Committee had run its

[6] The Debtors' initial production, made on or around October 10, 2024, was comprised almost entirely of a package of information Debtors previously had prepared to satisfy books and records requests made by other parties, and that Debtors were able to provide to the SAFE AHG at the push of a button. As of November 22, 2024, the Debtors had produced only 319 documents total to the SAFE AHG. The vast majority of these documents were already gathered and produced previously to others in connection with prepetition demands, or constitute Whinstone litigation materials, other pleadings, SAFE agreements, joinder agreements, and promissory notes – all of which should have required very little effort on Debtors' part to collect and produce.

search terms omitted critical documents. For example, [redacted] The search terms initially employed by the Special Committee also omitted concepts critical to evaluating the Insider Allegations. [redacted] *See supra*, Ex. Q, Letter from the SAFE AHG to the Special Committee (Jan. 10, 2025) (identifying Special Committee criteria for gathering ESI, including custodians and search terms).

23. The SAFE AHG pointed out that it understood that the Debtors already had gathered all ESI from the insiders and others, including Imperium-domained emails, without date restriction, in connection with the Whinstone assumption litigation (the "Litigation ESI"), and proposed that more robust search terms be applied to that already-gathered Litigation ESI. At first, the Debtors argued that their provision to the Special Committee of Litigation ESI that Debtors produced to Whinstone in the assumption litigation was sufficient, even though most of the documents relevant to the Insider Allegations would have been irrelevant to the assumption litigation, and therefore not included amongst the Litigation ESI produced to Whinstone. Finally, on February 5, 2025, the Special Committee advised that [redacted] *See* Ex. R, Email from the Special Committee to the SAFE AHG (Feb. 5,

2025). The Special Committee never explained why it did not simply run additional searches against the Debtors' existing database of Litigation ESI, and never identified any basis for the Omitted Searches.

24. After much wrangling, the Debtors agreed to run the SAFE AHG's search terms against the full Litigation ESI universe, and de-duplicate the results against ESI otherwise produced by the Debtors to the SAFE AHG. On or around May 2, 2025, the Debtors made a substantial production, but have withheld approximately 2,900 documents on grounds of privilege. The Debtors have refused to provide the SAFE AHG with the search terms used by the Debtors as an initial "privilege screen." To save resources, the SAFE AHG asked the Debtors to prepare a metadata log – an entirely automated report that can be run at the push of a button – but nearly two weeks later, none has been produced.[7] Like Imperium, the Debtors also have failed and refused to produce certain discrete categories of documents of manifest relevance to these cases, and should be ordered to do so without further delay.

ARGUMENT

I. Imperium Should Be Compelled To Produce Responsive, Non-Privileged Documents, And Modify Overly Restrictive Confidentiality Designations

A. Imperium's Assertion of Privilege Is Meritless

25. In or around early 2025, Imperium produced a substantial number of documents to the Special Committee, including based on the Special Committee's revised search terms, and addressed to Imperium ESI omitted from prior productions to the Special Committee (the "Imperium Special Committee Production"). On or around March 25, 2025, Imperium agreed to produce to the SAFE AHG only a subset of the Imperium Special Committee Production

[7] On May 9, 2025, the Debtors advised that they "think" they will be able to get the metadata log to the SAFE AHG "early" this week. It has not yet arrived.

comprising "approximately 1,700 documents" that the Special Committee apparently had identified as particularly relevant to the Insider Allegations (the "Special Committee Production Subset"). Initially, Imperium said it would produce all approximately 1,700 documents during the week March 31, 2025. *See* Email from SAFE AHG to Imperium (Apr. 2, 2025). They did not. On or around April 17, 2025, for the first time, Imperium claimed the production of the Special Committee Production Subset had to wait until Imperium had completed a "privilege review." Ex. S, Imperium Email to the SAFE AHG (Apr. 17, 2025). Imperium finally produced what it claimed was most of the Special Committee Production Subset on April 21, 2025, but excluded approximately 80 such documents on alleged grounds of privilege.

26. Imperium's privilege claim is meritless on its face. As an initial matter, Imperium never bothered to provide a privilege log, in violation of applicable rules. *See* Fed. R. Bank. P. 7026 (incorporating by reference Fed R. Proc. 26(5) providing that "when a party withholds information … by claiming that the information is privileged … the party must … describe the nature of the documents … not produced … in a manner that … will enable other parties to assess the claim"). The obligation to produce a log is mandatory, and automatic. *See, e.g. id.; In re Harmon*, 2011 WL 302859, *10 (Bankr. S.D. Tex. Jan. 26, 2011) (Isgur, J.) ("It is fundamental that [producing party] had a duty to produce a privilege log listing withheld documents, even without request from [the requesting party].").

27. But no matter the basis that Imperium might one day claim for privilege (if Imperium ever provides the log required by the rules), that protection from disclosure would have been waived. Every single document subject to this prong of the SAFE AHG's motion was, by definition, produced previously by Imperium to the Debtors' Special Committee, in connection with the Special Committee's investigation of claims against Imperium and its principals worth

tens of millions of dollars. It is axiomatic that disclosure of documents to a current or potential adversary waives any immunity from production that might otherwise have prevailed. *S.E.C. v. Brady*, 238 F.R.D. 429, 441, 444 (N.D. Tex. 2006).

28. Imperium claimed that it had an email agreement of some kind with the Special Committee that served to protect Imperium's privilege, notwithstanding its disclosure. The SAFE AHG repeatedly requested a copy of the alleged agreement, but it was never produced. Needless to say, Imperium's *ipse dixit* assertion that it has an effective no-waiver agreement does not satisfy its burden of establishing the existence of a privilege. Notably, Imperium does not contend that its agreement with the Special Committee was incorporated in a Court order pursuant to Federal Rule of Evidence 502(d). But even a 502(d) agreement does not prevent waiver based on the ***deliberate*** disclosure of attorney-client communications that appears to be at issue here. *See, e.g., Hosteler v. Dillard*, 2014 WL 6871262, *4 (S.D. Miss. Dec. 3, 2014) ("Fed R. Evid. 502(d) [is] not applicable to the ***intentional*** disclosures at issue.") (emphasis in original); *see also T&W Holding Co., LLC v. City of Kemah, Tex.*, 641 F. Supp. 3d 378, 383 (S.D. Tex. 2022) (deliberate production of documents inclusive of privileged materials not "inadvertent" within meaning of Rule 502).[8]

29. Moreover, the attorney client privilege will be waived even by an inadvertent disclosure if the disclosing party fails to promptly claw them back. Here, Imperium produced the documents at issue to the Special Committee months ago, and did so deliberately, and to a party

[8] Several courts have noted that extending Rule 502(d) to intentional disclosures may enable a party to use the rule as a means to produce documents favorable to its position while holding back harmful materials. *See RTC Indus., Inc. v. Fasteners for Retail, Inc.*, 2020 WL 1148813, at *8 (N.D. Ill. Mar. 9, 2020) (stating that the court's prior comments regarding a Rule 502(d) order were not "inten[ded] to give [plaintiff] license to selectively disclose and withhold privileged documents at its will"); *XY, LLC v. Trans Ova Genetics*, Lc, 2018 WL 11000694, at *4 (D. Colo. May 14, 2018) ("this court concludes that Rule 502 does not permit the selective, intentional waiver of communications protected by the attorney-client privilege").

that expressly was seeking to develop viable claims against Imperium and its insiders. Imperium does not claim ever to have tried to "claw back" any of the subject documents from the Special Committee, nor indicated it has any intention of trying to recover those materials. That makes sense, because Imperium apparently agreed the Special Committee could use the allegedly "privileged" documents in its investigation. In any event, Imperium's inaction would constitute a further waiver. *Apex Mun. Fund v. N-Group Sec.*, 841 F. Supp. 1423, 1433–34 (S.D. Tex. 1993) (holding that documents inadvertently disclosed without any effort to timely retrieve the documents constituted a waiver of privilege); *Zapmedia Services, Inc. v. Apple Inc.*, 2010 WL 5140672, at *2 (E.D. Tex. Sept. 24, 2010) (similar); *Adaptix, Inc. v. Alcatel-Lucent USA, Inc.*, 2015 WL 12815316, at *3 (E.D. Tex. July 23, 2015) (similar). The Imperium Parties should be required to produce the entirety of the Imperium Special Committee Production, without further delay; or, at a minimum, all documents withheld from the Special Committee Production Subset.

B. Imperium's Overly Restrictive Confidentiality Designations Must Be Modified

30. Imperium also should be required to remove the "Professional Eyes Only" designation from income tax-related documents it produced to the SAFE AHG on or around February 2, 2025 (the "Tax Materials"). The Tax Materials are directly related to one of the most serious charges against the insiders: that they used Debtor assets to pay their personal capital gains tax liabilities associated with their tortious Private Sale of Imperium-owned stock in Technologies while the Debtors were actively fundraising.

31. While perhaps confidential (despite their age), the Tax Materials do not constitute trade secrets or confidential research development or commercial information, nor defamatory matter, and do not warrant the undue restriction associated with a Professional Eyes' Only designation. The SAFE AHG and its constituents who have signed onto this Court's protective

order should be permitted to examine the Tax Materials to consider the merits of the tax-related claims arrayed against the insiders and decide for themselves whether any proposed plan release is appropriate. Client access is particularly important because the SAFE AHG does not have an outside financial advisor, and instead relies on the expertise of one of its members, the Blockchain Recovery Investment Consortium., to analyze complex financial information, including the kind embodied in the Tax Materials. Imperium's unduly restrictive designation should be removed. *See, e.g.*, *Martinez v. City of Ogden*, 2009 WL 424785, *1 (D. Utah Feb. 18, 2009) (rejecting attorneys' eyes only label because it improperly impeded client's "ability to direct his own litigation").

II. The Debtors Should Be Ordered To Make Additional Disclosures

A. The Debtors Must Produce Documents Concerning Post-Petition Equitization

32. The SAFE AHG recently learned that the insiders may, post-petition, have caused the Debtors to "equitize" a loan agreement with Proof Capital Alternative Growth Fund ("Proof"), without any prior notice to the Debtors' stakeholders, approval by the Court, or apparent oversight from the Debtors' Special Committee. The SAFE AHG reserves all of its rights, remedies, claims and objections relating to this unauthorized transaction. However, to the extent valid, the transaction could impact the Debtors' capital structure, and plan negotiations. The SAFE AHG promptly requested that the Debtors turn over the relevant transaction materials, and all related documents. After ignoring the SAFE AHG's request for about ten days, the Debtors finally produced a single document (with attachments), which they purported to designate as being subject to "Rule 408" and "Mediation Privilege." The document in question constitutes a business record, and is subject to a valid document request from the SAFE AHG. The Debtors cannot hide behind the mediation order to prevent it from being produced, and to the extent appropriate, examined and used in connection with these cases. They should be ordered to produce it without restriction.

EXHIBIT I

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS (HOUSTON)

IN RE:	.	Case No. 24-90448
	.	Chapter 11
RHODIUM ENCORE LLC and AIR HPC LLC,	.	515 Rusk Street
	.	Houston, TX 77002
Debtors.	.	
	.	Wednesday, May 21, 2025
. . . . .	.	1:00 p.m.

TRANSCRIPT OF MOTION TO EXTEND TIME - NICHOLAS CERASUOLO'S MOTION FOR AN ORDER ALLOWING LATE FILED CLAIM TO BE TREATED AS TIMELY FILED [881]
EMERGENCY MOTION OF THE SAFE AHG TO COMPEL PRODUCTION BY IMPERIUM PARTIES AND DEBTORS [1080];
EMERGENCY MOTION FOR A PROTECTIVE ORDER REGARDING REQUESTS FOR PRODUCTION OF DOCUMENTS FROM AD HOC GROUP OF SAFE PARTIES AND OPPOSITION TO MOTION TO COMPEL [1113]
BEFORE THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES CONTINUED.

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Also Present:	NICHOLAS CERASUOLO

Committee findings effect and the slides had been provided to parties. You asked him, can those materials be used, for example, in court? And the answer he gave you was yes, and that's not right.

Your Honor, the order governing the mediation in these cases incorporates the complex procedures, including Section S, which provides "the mediator and participants in mediation are prohibited from divulging, outside of mediation, any oral or written information disclosed by the parties in the course of mediation. No person may rely on or introduces evidence in any arbitral, judicial, or other proceeding, evidence pertaining to any aspect of the mediation effort, including but not limited to," and it goes on.

Having designated the materials mediation privilege, we absolutely cannot use the material --

THE COURT: All right. So --

MR. HURLEY: -- in the way that he described.

THE COURT: -- we'll enter an order saying that with respect to these documents that -- regardless of the designation as -- or he can de-designate mediation privilege, they will still be confidential. But to the extent that you, other professionals, and the clients can see them, my understanding is there was no objection to that. Just don't make them public, if you will.

MR. HURLEY: Well, see them and use them.

THE COURT: Yeah, see them and use them, correct. Yeah, see them and use them, and in your filings, to the extent, you know, like you did, you know, block it out -- block out the specific thing --

MR. HURLEY: Uh-huh.

THE COURT: -- that you want to do it, and file it as we do.

Mr. Schmeltz, is that -- does that work? Wait, wait, hold on a second. I think I -- okay, sorry about that. I accidentally muted you.

MR. SCHMELTZ: I -- well, after my, you know, earlier profanity at this -- my camera, I could see why you muted me, Your Honor. But listen, I -- we don't have a problem with that, provided they're treated as confidential in filing. Although, I suppose I find it ironic, given that Mr. Hurley stood in front of you and told you almost word for word something we had discussed in mediation, and said, this is mediation privilege, and I'm just going to tell it to you, but pretend I'm not. I suppose I find it ironic, but I don't have a problem with it.

THE COURT: Okay. All right. So we'll -- let's agree on an order with Mr. Schmeltz as it relates to the Special Committee findings, the slides, the general ledger, that's not an issue anymore, and the Committee demand letter to Imperium. So those aren't issues.

EXHIBIT J

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. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)

REVISED ORDER REGARDING THE EMERGENCY MOTION OF THE SAFE AHG TO COMPEL PRODUCTION BY IMPERIUM PARTIES AND DEBTORS

Upon consideration of the *Emergency Motion of the SAFE AHG to Compel Production by Imperium Parties and Debtors* [Dkt. No. 1080] (the "Motion") and the responses and replies thereto, the Court having jurisdiction to consider this matter and the relief requested therein pursuant to 28 U.S.C. § 1334; and this Court having found that venue of this proceeding in this district is proper pursuant to 28 U.S.C. § 1408; and this Court having reviewed the Motion and the responses and replies thereto; and in accordance with the Court's oral ruling at the May 21, 2025 hearing on this Motion; it is **HEREBY ORDERED THAT**:

1. To the extent set forth herein, the Motion is **GRANTED.**

2. The Special Committee of the Board of Directors of Debtor Rhodium Enterprises, Inc. (the "Special Committee") shall:

   a. on or before May 30, 2025, produce to the SAFE AHG all documents and

[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

communications exchanged between the Special Committee and the Debtors' directors and officers' liability insurance carriers ("Carriers") concerning alleged misconduct of the Debtors' insiders, Chase Blackmon, Cameron Blackmon, Nathan Nichols, and Nicholas Cerasuolo, such as (but not limited to) the alleged breaches of duty summarized in the SAFE AHG's letters to the Special Committee and Debtors dated December 26, 2024, and January 10, 2025, including, for the avoidance of doubt, all claims notices provided to Carriers and any coverage letters or opinions provided by Carriers in response, but excluding, for the time being, any correspondence that constitutes settlement communications, and, for the further avoidance of doubt, nothing shall preclude the SAFE AHG or any other parties from renewing its request for documents or communications that constitute settlement communications;

b. on or before May 30, 2025, produce an unredacted copy of the "Timeline and Key Facts" section of the Special Committee's Investigative Report (the "Investigation Facts") as transmitted to the SAFE AHG on or around March 24, 2025, unless the Special Committee contends that the redacted material is protected from disclosure by the attorney-client privilege or work product doctrine, in which case the Special Committee, at its option, may instead produce to the SAFE AHG a redaction log identifying and describing the basis for each redaction made to the Investigation Facts in accordance with Federal Rule of Civil Procedure 26, and, for the avoidance of doubt, the SAFE AHG's right to challenge any redactions shall be preserved; and

c. promptly remove the "mediation privilege" designation from all demand letters

("Demand Letters") sent by the Special Committee to insiders Chase Blackmon, Cameron Blackmon, Nathan Nichols, and Nicholas Cerasuolo (the "Insiders"), including but not limited to the Demand Letters dated April 5, 2025 and April 19, 2025; the Investigation Facts; and the slide deck providing a summary of the conclusions of law reached by the Special Committee (the "Investigation Conclusions") in connection with its investigation of allegations concerning Imperium Investment Holdings LLP ("Imperium") and the Insiders (together with Imperium, the "Imperium Parties"), such that parties may treat the Demand Letters, Investigation Facts, and Investigation Conclusions as if they had been marked Confidential within the meaning of the Protective Order [ECF No. 152], subject to such parties' continuing rights pursuant to Section 6 thereof.

3. The Debtors shall:

   a. on or before May 30, 2025 produce to the SAFE AHG all pre-petition invoices, redacted for privilege as, and to the extent appropriate, issued by the firm Stris & Maher LLP for services provided to any of the Debtors from November 2023 through August 2024;

   b. on or before May 30, 2025 produce to the SAFE AHG all pre-petition invoices, redacted for privilege as and to the extent appropriate, issued by the firm Lehotsky Keller Cohn LLP for services provided to any of the Debtors from May 16, 2023 through August 2024;

   c. promptly file a submission with the Court that describes the transaction or transactions pursuant to which purported debt held by Proof Proprietary

Investment Fund, Inc., Proof Capital Alternative Income Fund, and Proof Capital Alternative Growth Fund (together, the "Proof Funds"), purportedly was equitized (the "Equitization Transaction"), which shall attach or otherwise include all documents associated with the Equitization Transaction, as well as all communications concerning or leading up to the Equitization Transaction.

4. On or before May 30, 2025, Imperium shall produce to the SAFE AHG copies of all documents from the subset of documents that Imperium had initially produced to the Special Committee and that the Special Committee had marked as relevant for its investigation (the "Special Committee Marked Subset") but that were previously withheld from the SAFE AHG on the basis of the Imperium Parties' alleged privilege, and, for the avoidance of doubt, such production shall not by itself constitute a subject-matter waiver with respect to the subject matters set forth in the Special Committee Marked Subset.

5. On or before August 4, 2025, Imperium shall produce to the SAFE AHG copies of all other documents that Imperium previously produced to the Special Committee that were withheld from production to the SAFE AHG based on a claim of privilege by Imperium (the "Additional Withheld Documents"), provided, however, that (i) Imperium is not required to produce Additional Withheld Documents that are purely of a personal nature and/or that have no arguable connection to the matters at issue in these cases, and (ii) Imperium may withhold Additional Withheld Documents that they contend are subject to a non-waived privilege held by the Debtors, but must provide on or before August 4, 2025, a privilege log of all such documents providing the information required by Federal Rule of Civil Procedure 26; for the avoidance of doubt, the SAFE AHG's rights to challenge such withholding shall be preserved.

6. The Imperium Parties shall promptly meet and confer with the SAFE AHG

regarding allowing one or more members of the SAFE AHG to review documents at Bates numbers Cerasuolo00001, Cerasuolo00108, Cerasuolo00176, and the Imperium-produced tax returns for Cameron Blackmon, Chase Blackmon, and Nathan Nichols, or other documents that may be produced concerning allegations of tax-related misconduct (the "Tax Documents"), notwithstanding any Professionals' Eyes Only designation on such documents.

7. Notwithstanding any Professionals' Eyes Only designation, counsel to the SAFE AHG is entitled to provide summaries of the information disclosed in the Tax Documents to its client, and the members of the SAFE AHG who have signed the Protective Order acknowledgment.

8. The Professionals' Eyes Only designations on documents produced by the Debtors at Bates numbers RHOD-BK-00092677 through RHOD-BK-00092681 and the 2021 U.S. Internal Revenue Service Form 1065 and U.S. Return of Partnership Income of Imperium Investments Holdings LLC, including any schedule or attachment thereto, produced by Imperium (the "Subject Documents") shall be deemed immediately ineffective, and parties may treat the Subject Documents as if they had been marked Confidential within the meaning of the Protective Order, subject to such parties' continuing rights pursuant to Section 6 thereof.

9. To the extent not expressly granted herein, the Motion is **DENIED.**

SO ORDERED.

Dated: _____, 2025
Houston, Texas

THE HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE