

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

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

**MOTION FOR STATUS CONFERENCE ON RULE 2004 DISCOVERY**  
**(Relates to Docket No. 1515)**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT [HTTPS://ECF.TXSB.USCOURTS.GOV/](https://ecf.txsb.uscourts.gov) WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

Lehotsky Keller Cohn LLP (“LKC”) files this motion for status conference regarding its Rule 2004 discovery requests and related communication from Barnes & Thornburg and in support thereof respectfully states as follows:

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



### **BACKGROUND**

1. On July 8, 2025, the Court entered its Order Granting Debtors’ Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Docket No. 1418] (the “LKC Updated Order”).

2. The Court’s order approved the March 4, 2025 LKC engagement letter, which requires the Debtors and LKC to “determine in good faith the portion of transaction value ... allocable to energy credits and damages” for purposes of calculating LKC’s contingency fee.

3. As the Court is aware, the Debtors have finally resolved their disputes with Whinstone US Inc., and LKC’s engagement as special litigation counsel has effectively concluded. As such, and in light of the Court’s issuance of the LKC Updated Order, LKC has attempted to engage with the Debtors *in good faith* regarding the allocation of the Whinstone settlement payment for purposes of calculating LKC’s contingency fee.

4. To that end, shortly after entry of the LKC Updated Order on July 11, 2025, LKC’s counsel sent email correspondence to Barnes & Thornburg setting forth LKC’s proposed allocation and contingency fee calculation and inviting further discussion. *See **Exhibit 1***. Barnes & Thornburg never responded to the July 11 email correspondence.

5. Thereafter, in late July, LKC’s counsel reached out to Ms. Tomasco at Quinn Emanuel inquiring as to whether Barnes & Thornburg was the right Debtor “representative” to engage with on the allocation/contingency fee calculation, given the lack of response.

6. In late July and early August, LKC’s counsel had limited discussions with Ms. Tomasco about the Whinstone settlement allocation and LKC fee calculation but, other than stating that the Debtors “disagreed” with LKC’s calculation, Ms. Tomasco was unwilling to share the Debtors’ proposed allocation/calculation of LKC’s contingency fee or otherwise respond to LKC’s

July 11 proposal. Ms. Tomasco did not provide a counter-offer or explain *why* Debtors disagreed with LKC's calculation—which used the Debtors' own numbers from the Debtors' own PowerPoint presentations to the Debtors' Board of Directors.

7. It has now been over a month since the Court entered the LKC Updated Order and almost 5 months since the Whinstone litigation was settled. The Debtors appear completely unwilling to engage “in good faith” as required by the LKC Updated Order. Indeed, Debtors are not engaging or negotiating at all.

8. As a consequence, on August 7, 2025, LKC issued Rule 2004 requests to the Debtors seeking specific information related to the Whinstone settlement allocation and LKC fee calculation. The purpose of the Rule 2004 discovery is obvious. LKC is trying to understand the Debtors' “disagreement” and their position on the settlement allocation to inform LKC's calculation of the contingency fee and the firm's final fee application.

#### **REQUEST FOR STATUS CONFERENCE**

9. Rather than respond to LKC's Rule 2004 requests or other correspondence from the past month, Barnes & Thornburg sent LKC the attached correspondence (*see* **Exhibit 2**) at 10:05 PM last night: (i) making baseless allegations of violations of professional conduct; (ii) asserting that the discovery violates a “stay” on discovery in matters unrelated to LKC; and (iii) demanding a response by 1:30 p.m. today.

10. LKC requests a status conference on this matter to address the Debtors' lack of good faith engagement and the inappropriate positions now being taken by Barnes & Thornburg. LKC is prepared to move forward with its final fee application based on its proposed allocation and contingency fee calculation but seeks the Court's guidance given the requirements of the LKC Updated Order and the Debtors' failure to engage in good faith.

WHEREFORE, LKC respectfully requests that the Court set a status conference on this matter and grant LKC such other relief as it is justly entitled.

Dated: August 14, 2025  
Houston, Texas

Respectfully submitted,

/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl (TX Bar No. 24038592)

Michael B. Dearman (TX Bar No. 24116270)

**PORTER HEDGES LLP**

1000 Main Street, 36th Floor

Houston, Texas 77002

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jwolfshohl@porterhedges.com

mdearman@porterhedges.com

*Counsel to Lehotsky Keller Cohn LLP*

**Certificate of Service**

I, the undersigned, certify that on August 14, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on all parties entitled to notice of the foregoing document appearing in the case on that date.

/s/ Joshua W. Wolfshohl

Joshua W. Wolfshohl

## **EXHIBIT 1**

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**From:** Wolfshohl, Joshua W.  
**Sent:** Thursday, August 14, 2025 11:51 AM  
**To:** Dearman, Michael B.  
**Subject:** FW: Rhodium/LKC  
**Attachments:** Opinion on LKC Application.pdf

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**From:** Wolfshohl, Joshua W.  
**Sent:** Friday, July 11, 2025 3:25 PM  
**To:** Schmeltz, Trace <tschmeltz@btlaw.com>  
**Subject:** Rhodium/LKC

**FRE 408 – For Settlement Purposes**

Trace,

As I'm sure you saw, Judge Perez approved the Debtor's amended LKC employment application and the March 2025 LKC engagement letter as reflected in the attached opinion. Pursuant to the amended LKC engagement letter, "the [Debtors] and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the Client allocable to the energy credits and damages specified in Sections (b) and (c)." LKC would like to engage with the Debtors regarding this determination immediately.

In prior discussions, I have told you that for settlement purposes LKC was willing to use the Debtors' own damages number from prior to the Whinstone mediation of \$100M—despite the fact that this is lower than it should be because Rhodium ultimately got \$185M from Whinstone and not the range-bottom of \$175M for the combined "energy credits and damages." Of the \$100 million, we allocate \$26.2 million to energy credits. That is the most that can be allocated to energy credits because both you and the SC told LKC the Debtors could not bring the fraud claim to get the Uri-related energy credits. LKC did as instructed.

With those numbers—which are Rhodium's own numbers and, in my client's view, low—the total contingency fee is \$8.442 million. (See below for the math.) This amount is fair, if not low. Indeed, LKC is using Rhodium's own internal numbers, and Chuck Topping said in his depo in response to Akin's questions that a 9X multiplier of LKC's discounts (over \$1 million) was fair. \$8.442 is less than a 9x multiple.

For purposes of settlement only, LKC willing to reduce the \$8.442M by 5%--i.e., \$8.020M solely for the contingency fee portion of its claim (which does not include fees and expenses incurred by LKC in assisting the Debtors in their efforts amending the LKC retention application and overcoming the Ad Hoc Group's objections).

I appreciate that this is higher than LKC's last formal offer of \$7.5M but that offer was premised on getting a quick resolution that would be presented to the Court as a 9019 prior to last month's contested hearing. Any risk that existed before that hearing is gone and LKC has been forced to endure months of delay, cost and uncertainty in the meantime. The above offer is fair and represents a good faith resolution of the contingency fee. Moreover, if we don't reach a resolution, LKC firmly believes it will establish through extensive discovery regarding the Debtors and its professionals own damages analysis, as well as LKC's own internal calculations that the proper damage allocation yields a substantially higher number than \$8.442M, which it intends to pursue through its final fee application.

Let me know if you would like to discuss.

**The math: \$100M allocation and expected value of non-Uri**

	\$ 100,000,000.00			
	\$ 26,200,000.00			
		5000000	0.05	25,0000
		21200000	0.01	\$ 212,000
	\$ 73,800,000.00		0.1	\$ 7,380,000
Percentage-Based Fee				\$ 7,842,000
\$600K Fee				\$ 600,000.00
Total Fee				\$ 8,442,000.00

**Joshua W. Wolfshohl** | Partner  
**Porter Hedges LLP**

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1000 Main St, 36th Floor | Houston, TX 77002  
 t 713.226.6695 e JWolfshohl@porterhedges.com  
 Bio • Web • V-Card

## **EXHIBIT 2**



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**From:** Lohse, Paige <Paige.Lohse@btlaw.com>  
**Sent:** Wednesday, August 13, 2025 10:04 PM  
**To:** will@lkcfirm.com; todd@lkcfirm.com; alexis@lkcfirm.com; Dearman, Michael B.; Wolfshohl, Joshua W.  
**Cc:** Schmeltz, Trace; Rhodium Bankruptcy Investigation  
**Subject:** In re Rhodium  
**Attachments:** 2025.08.13 - Letter to LKC from VPS re Discovery.pdf

All,

Please review the attached letter and respond before 1:30 p.m. CT tomorrow, Thursday, August 14, 2025.

We look forward to hearing from you.

**Paige Lohse** | Partner  
Barnes & Thornburg LLP  
One North Wacker Drive Suite 4400, Chicago, IL 60606  
Direct: (312) 214-8301

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August 13, 2025

**SENT VIA EMAIL**

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Todd Disher  
Alexis Swartz  
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***Re: In re Rhodium Encore, LLC, et al., No. 24-90448 (Bankr. S.D. Tex.)***

Dear Counsel:

As you know, I represent the Special Committee of Rhodium's Board of Directors. We respond to your discovery requests directed to LKC's **current clients**, the Debtors, which LKC filed with the Court on August 7, 2025, ECF No. 1515. LKC's requests relate to the Whinstone/Riot settlement, while negotiations on the settlement allocation are still **ongoing**. LKC is also still Debtors' **current** legal counsel in that separate and substantially related matter.

In particular, LKC's discovery requests to its clients focus on the following topics, which all aim to evaluate LKC's legal fees: (i) valuation of the settlement allocation amounts, (ii) investigation into the professionals involved in the valuation, (iii) tax consequences associated with the valuation, and (iv) LKC's legal fees. LKC cares about these topics, because its legal fees are based on the settlement allocation amounts. LKC's requests are aimed solely at advancing its personal financial interests. Its discovery requests are adverse to its clients—putting LKC in conflict with its client—and in this adverse position on the public record.

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LKC's discovery requests violate its professional responsibilities and its fiduciary duties to its current clients, the Debtors. We demand that LKC and its counsel withdraw these discovery requests, on the record, before 1:30 p.m. CT on Thursday, August 14, 2025. If the requests are not withdrawn, we will file a motion to quash raising these violations before the Court.

**I. LKC's Discovery Violates its Professional Responsibility Obligations**

**A. *Attorney's Termination of Client Representation***

Under the Model Rules of Professional Conduct ("RPC")<sup>1</sup> 1.16(d) and the Disciplinary Rules of Professional Conduct ("DRPC") 1.15(d), prior to withdrawing as counsel, a lawyer must take all steps "to the extent reasonably practical" to protect a client's interests, including among other requirements, giving reasonable notice to the client. Additionally, in litigation, the court must approve a lawyer's withdrawal subject to the satisfaction of various notice and filing requirements. A lawyer can only withdraw for the reasons provided in RPC 1.16(a)-(b) and DRPC 1.15(a)-(b).

Here, LKC never gave notice to the Debtors of its withdrawal as counsel, let alone asked the Court for leave to withdraw. As a result, LKC is still counsel of record, and Debtors are still LKC's client.

**B. *The Model Rules of Professional Conduct***

RPC 1.7 imposes guardrails on lawyers where the client is still the lawyer's client:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person ***or by a personal interest of the lawyer.***

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

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<sup>1</sup> The RPCs apply in federal court. *In re American Airlines, Inc.*, 972 F.2d 605, 610 (5th Cir. 1992) (applying RPC in the 5<sup>th</sup> Circuit). Accordingly, these obligations apply to you in this action.

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(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent.

RPC 1.7 generally holds a lawyer cannot be adverse to a current client *in any matter, whether the matters for each client are related or not*. Likewise, it holds that the lawyer's personal interests cannot be adverse to a client. This discovery into LKC's legal fees constitutes a classic personal conflict of interest.

RPC 1.9 also holds that a lawyer cannot be adverse to a former client in matters that are the same as the one in which the lawyer represented the client, or substantially related. Therefore, as a general proposition, RPC 1.9 is seen as being as much a statement about "loyalty" to the former client as it is about actual adversity. Therefore, while the Debtors are still currently LKC's clients, LKC would still owe them a duty of loyalty even if they were not.

### ***C. Texas Disciplinary Rules Of Professional Conduct***

In Texas, DRPC 1.06 provides:

(b) In other situations and except to the extent permitted by paragraph (c), a lawyer shall not represent a person if the representation of that person:

(1) involves a *substantially related matter* in which that person's interests are *materially and directly* adverse to the interests of another client of the lawyer or the lawyers firm; or

(2) reasonably appears to be or become adversely limited by the lawyers or law firm's responsibilities to another client or to a third person *or by the lawyers or law firm's own interests*.

This standard is arguably broader than RPC 1.7. DRPC 1.06 also attaches the "substantially related" requirement. DRPC 1.09 follows RPC 1.9, prohibiting a lawyer from being adverse to a former client in the same or substantially related matters. In Texas, both the "current client" and "former client" conflict rules require a substantial relationship. A substantial relationship exists here since LKC, as Debtors' counsel, is seeking discovery on the settlement with which it assisted and into its legal fees.

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***D. No Consent***

Both a DRPC 1.09 and 1.06 conflict may be cured in appropriate circumstances by client consent. While your March 2025 engagement letter includes an advance consent, it is not applicable to the present situation for two reasons. First, the consent enables counsel to represent other clients, not counsel's own interests. Second, the advance consent also not does apply to any "substantially related" matter.

Debtors refuse to grant consent for LKC to conduct this material and directly adverse discovery against them in this substantially related matter. As a result, pursuing LKC's requested discovery violates its professional conduct obligations at both the state and federal level, not to mention fiduciary duties it owes to its clients.

**II. Your Discovery Violates the Stay**

Additionally, the Court entered a ***stay*** on all plan-related activities until it rules on the SAFE AHG's claim objection. [ECF No. 1316.] This stay includes discovery into LKC's legal fees, because they affect the estate funds available for distribution. Consequently, LKC's discovery ignores the Court's order. Moreover, if any discovery is conducted into the settlement allocation amounts in the Whinstone/Riot settlement (once the settlement allocations are decided, which they are not), it should be conducted by another party—not the Debtors very own counsel.

**III. Conclusion**

Should LKC and its counsel decline to file a withdrawal of LKC's discovery from the Court by 1:30 p.m. CT on Thursday, August 14, 2025, we will proceed with filing our motion to quash on these issues, bringing them to the public record.

We are happy to confer further on this matter, without the involvement of the Court. The Special Committee and the Debtors reserve all rights in connection with this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Trace Schmeltz", with a stylized flourish at the end.

Trace Schmeltz

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

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

**ORDER SETTING STATUS CONFERENCE**  
**(Relates to Docket No. 1515)**

The Court has considered Lehotsky Keller Cohn LLP's ("LKC") motion for status conference regarding its Rule 2004 discovery requests and related communication from Barnes & Thornburg and finds that it should be granted. Accordingly, it is therefore:

ORDERED that status conference shall be held on \_\_\_\_\_, 2025 at \_\_\_\_\_, in Courtroom \_\_\_\_\_, 515 Rusk, Houston, Texas 77002

Signed: \_\_\_\_\_

\_\_\_\_\_  
Honorable Alfredo R. Perez  
United States Bankruptcy Judge

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