

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

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

**THE AD HOC GROUP OF SAFE PARTIES’ OBJECTION REGARDING INSIDER’S
MOTION FOR AN ORDER (A) MODIFYING THE AUTOMATIC STAY TO ALLOW
THE ADVANCEMENT OF DEFENSE COSTS UNDER THE DEBTORS’ D&O
INSURANCE AND (B) GRANTING RELATED RELIEF**

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 (collectively, the “**Debtors**”), by and through its undersigned counsel, respectfully submits this objection (the “**Objection**”) with respect to Chase Blackmon, Cameron Blackmon, Nathan Nichols and Nicholas Cerasuolo’s (collectively, the “**Insiders**”) *Motion for an Order (A) Modifying the Automatic Stay to Allow the Advancement of Defense Costs under the Debtors’ D&O Insurance and (B) Granting Related Relief* [Docket No. 1509] (the “**Motion**”).³ In support of this Objection, the SAFE AHG respectfully represents as follows:

¹ Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), 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.

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

³ Capitalized terms used but not defined herein shall have the meanings given to them in the Motion.



OBJECTION

1. By the Motion, the Insiders seek an order modifying the automatic stay to allow the advancement of unspecified Defense Costs under the Debtors' D&O Policies and further for related relief. The Motion should not be granted at this stage for a number of reasons.

2. First, any payments made to the Insiders necessarily reduce the proceeds available to the Debtors' estates and their creditors, while failing to provide sufficient information for creditors and other interested parties to evaluate whether such unspecified Defense Costs are properly payable under the Debtor's D&O Policies. The Debtors' D&O Policies at issue provide insurance coverage both for the Debtors and for "Insured Persons." Specifically, the primary D&O Policy issued by Allied World (the "**Primary D&O Policy**") provides the following D&O insurance grants:

1. INSURING AGREEMENTS

A. INSURED PERSON COVERAGE

The **Insurer** shall pay on behalf of any **Insured Person** the **Loss** arising from:

(i) any **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against such **Insured Person** for any **Wrongful Act**; and

(ii) any **Pre-Claim Inquiry Costs** or **Liberty Protection Costs** arising from a **Pre-Claim Inquiry** first received by any **Insured Person** during the **Policy Period** (or Discovery Period, if applicable),

but only to the extent the **Company** has neither indemnified nor paid such **Loss** on behalf of the **Insured Person**.

B. COMPANY INDEMNIFICATION COVERAGE

The **Insurer** shall pay on behalf of the **Company** the **Loss** arising from:

(i) any **Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against any **Insured Person** for a **Wrongful Act**; and

(ii) any **Pre-Claim Inquiry Costs** or **Liberty Protection Costs** arising from a **Pre-Claim Inquiry** first received by any **Insured Person** during the **Policy Period** (or Discovery Period, if applicable),

but only to the extent the **Company** has indemnified or paid such **Loss** on behalf of the **Insured Person**.

C. COMPANY COVERAGE

The **Insurer** shall pay on behalf of the **Company** the **Loss**:

(i) arising from a **Securities Claim** first made during the **Policy Period** (or Discovery Period, if applicable) against the **Company** for a **Wrongful Act**;

(ii) incurred as **Derivative Investigation Costs** by the **Company** in response to a **Derivative Demand** first made during the **Policy Period** (or Discovery Period, if applicable); and

(iii) incurred as **Defense Costs** by the **Company**, or on its behalf by any **Executive** (including through any special committee), in seeking the dismissal of any **Derivative Suit** first made during the **Policy Period** (or Discovery Period, if applicable).⁴

3. The Debtors' D&O Policies have shared limits as between D&O coverages, meaning that any amounts advanced to the Insured Persons on account of their Defense Costs will directly reduce the amount of coverage and proceeds available to the Debtors' estates under the Policies. As previously described to this Court, the Debtors have valuable claims against the Insiders and other Insured Persons which will inure to the benefit of the Debtors' stakeholders. Recovery from the D&O Policies in connection with these claims represents a potentially highly valuable estate asset.

4. Second, the Motion contains insufficient information to show that "Order of Payments" provisions on which the Insiders rely have been triggered, entitling the Insiders to unspecified Defense Costs at this time. In support of the Motion, the Insiders point the Court to the "Order of Payments" provisions found in the Primary D&O Policy, which clause provides in relevant part:

⁴ See Primary D&O Policy, pgs. 1-2 (Exhibit A-026-27) (emphasis in original).

16. ORDER OF PAYMENTS

A. If the amount of any covered **Loss** which is otherwise due and owing by the **Insurer** under this Policy exceeds the then-remaining Limit of Liability under this Policy, the **Insurer** shall:

(i) first, pay such **Loss** incurred by **Insured Persons** which is not indemnified by the **Company** and for which coverage is provided under Insuring Agreement A. or Coverage Extension A.; and

(ii) second, with respect to whatever remaining amount of the Limit of Liability is available after payment of such **Loss**, at the written request of the Chief Executive Officer of the **Parent Company** either pay, or withhold payment of, any other **Loss** covered under this Policy.⁵

5. However, the Insiders fail to provide the Court with the text of the Order of Payments clause in their Motion and further fail to point out that the clause is *only* triggered if and when there is a Loss that is due and owing in excess of the Limits of Liability under the D&O Policies. To that end, the Insiders have put forth no evidence proving: (i) the amount of Defense Costs they are seeking reimbursement for; (ii) that such unspecified Defense Costs are “reasonable” and further incurred in connection with covered Claims as required under the D&O Policies; and (iii) that reasonable Defense Costs and other Loss presently due and owing are in excess of the Limits of Liability under the D&O Policies.

6. Third, the SAFE AHG also believes it is premature to lift the stay to pay these unspecified Defense Costs until there are adequate provisions in place to ensure the prompt repayment of Defense Costs by the Insured Persons should insurance coverage ultimately be determined not to apply. The D&O Policies provide for repayment of amounts advanced to the Insured Persons if it is later determined that there is no coverage. Specifically, the Primary D&O Policy provides:

⁵ See *id.*, pg. 19 (Exhibit A-044) (emphasis in original).

Advancement of Defense Costs

D. In the event the amount of **Loss** exceeds an applicable Retention, the **Insurer** shall provide payments for: (i) **Defense Costs** prior to the final disposition of a **Claim**; and (ii) **Pre-Claim Inquiry Costs** prior to the conclusion of a **Pre-Claim Inquiry**. Such payments shall be made on a current basis, but no later than sixty (60) days after the **Insurer** has received proper documentation from the **Insured** of such **Defense Costs** and **Pre-Claim Inquiry Costs**. In the event of any such payments by the **Insurer**, the **Insureds** shall repay all such amounts to the **Insurer**, severally according to their respective interests, in the event and to the extent it is finally determined that the **Insureds** are not entitled under the terms and conditions of this Policy to such payments.⁶

7. Amounts recovered by the Insurers (less collection costs) will reinstate or be added to the D&O Policies Limits of Liability. Specifically, the Primary D&O Policy provides:

14. RECOVERY OF LIMITS

In the event the **Insurer** recovers amounts it has paid under this Policy, the **Insurer** will reinstate the Limit of Liability as set forth in Item 3. of the Declarations to the extent of such recovery, less costs incurred by the **Insurer** in administrating and obtaining such recovery. The **Insurer** assumes no duty to seek a recovery of any amounts it has paid under this Policy.⁷

8. Fourth, the SAFE AHG objects to lifting the stay to pay the unspecified Defense Costs because the Insiders have shown no urgency or immediate need demonstrating cause for the Court to lift the stay at this time.⁸ The Insiders received more than \$35 million in connection with a transaction involving the Debtors just a few years ago. In addition, the Insiders are seeking the recovery of unspecified Defense Costs for actions that have settled or for which additional Defense Costs are unlikely or minimal. There is no urgency or immediate need to lift the stay to pay these unspecified Defense Costs. This is not a scenario, for example, where payment of Defense Costs is vital to the continued representation of the Insured Persons.

⁶ See Primary D&O Policy, Pg. 15 (Exhibit A-040) (emphasis in original).

⁷ See *id.*, Pg. 19 (Exhibit A-044) (emphasis in original).

⁸ The movant bears the burden of proving that cause to lift the stay exists. See *In re iHeartMedia, Inc.*, 2019 Bankr LEXIS 1617 *13 (Bankr. S.D. Tex. May 28, 2019).

9. Accordingly, the SAFE AHG files this Objection and objects to the relief requested in the Motion as set forth herein.

RESERVATION OF RIGHTS

10. This Objection 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 Objection to raise additional objections and to introduce evidence at any hearing relating to the Motion, and without in any way limiting any other rights of the SAFE AHG to further respond to the Motion, on any grounds, as may be appropriate.

CONCLUSION

For the foregoing reasons, the SAFE AHG respectfully requests that the Court (i) deny the Motion; and (ii) grant such other relief as may be just and proper.

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Dated: August 21, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ Sarah Link Schultz

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CERTIFICATE OF CONFERENCE

I hereby certify that on August 21, 2025, counsel to the SAFE AHG advised counsel to the Movants of their intent to file an objection to the Motion and that we are prepared to engage in good faith discussions in an attempt to address the SAFE AHG's concerns prior to the hearing on the Motion.

/s/ Sarah Link Schultz
Sarah Link Schultz

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 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