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

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

LEHOTSKY KELLER COHN LLP'S RESPONSE TO
SPECIAL COMMITTEE'S EMERGENCY MOTION TO STRIKE
[Relates to ECF Nos. 1560, 1561, 1733]

Lehotsky Keller Cohn LLP ("***LKC***") files this response (the "***Response***") to the *Emergency Motion of the Special Committee to Strike Privileged Information from Lehotsky Keller Cohn LLP's Second and Final Application for Payment of Compensation and Reimbursement of Expenses for the Period of August 28, 2024 through June 30, 2025* (ECF No. 1733) and respectfully states as follows:

RESPONSE

1. Forty days after LKC submitted its final fee application (ECF Nos. 1560 and 1561), the Special Committee of the Board of Directors of Rhodium Enterprises, Inc. ("***Special Committee***") filed an "Emergency Motion" to strike LKC's evidence. ECF No. 1733. What the emergency is, nobody knows. The Special Committee never says. It took 40 days for the Special Committee to discovery its current emergency, and the Special Committee's other briefs

[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), 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.

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responding to LKC's fee application (ECF Nos. 1626, 1665) never asserted any need to strike evidence, much less on an emergency basis.

2. The Special Committee's motion is now effectively moot. The Special Committee made only fleeting reference to its newfound desire to strike LKC's evidence at the status conference, *see* Oct. 2, 2025, Hg. Tr. 18:6-8, and at the Court's suggestion, the Special Committee agreed to discuss sharing that evidence with the Ad Hoc Group of SAFEs ("***SAFEs***"). *Id.* 23:15-19 ("THE COURT: I'll let Mr. Schmeltz deal with that and deal with Mr. Hurley on that because I do think that [the SAFEs are] under a[n] NDA, so . . . I'm just going to let the professionals deal with that"); *id.* 23:23-24 ("MR SCHMELTZ: Yeah. . . . Mr. Hurley and I will work it out."). In other words, instead of presenting an argument to strike the evidence, the Special Committee indicated a willingness to share it—confirming that the Special Committee's concern has nothing to do with audit trails and the IRS, and everything to do with maligning LKC and reducing its success fee.[2]

3. But even if the Special Committee's motion were not moot, it still fails.

4. First, under Fifth Circuit precedent, lawyers in a fee dispute can cite and rely on privileged documents. Here, LKC tried to avoid a fee dispute for months, but the Special Committee refused to negotiate, taking the untenable position that LKC should wait for and be bound by the tax allocation that the Special Committee will someday make with Whinstone, LKC's

[2] If the Special Committee were truly concerned about audit risk, it would presumably work together with LKC in good faith (as it is required to do, *see* ECF No. 1418 at 6), and reach an allocation based on the *actual evidence, including the Debtors' own numbers*, and similarly follow the evidence in simultaneous discussions with Whinstone. Instead, the Special Committee has refused to have any discussions with LKC, refused to use the Debtors' own numbers, refused to produce any documents, insisted that no evidence currently exists, and attempted to broker a deal with LKC's former adversary without regard to any existing evidence and the Debtors' own prior numbers. The Special Committee has also publicly and repeatedly flagged the issue and its inconsistency for the IRS and everyone else to see. It is the Special Committee that is creating audit risk, all but ensuring more litigation and more expenses for the estate.

adversary. Only after that did LKC file highly relevant—if not dispositive—portions of a document *under seal*, so the Court could review the evidence and make an informed decision, just as the engagement letter contemplates.

5. Second, the evidence is not irrelevant. Far from it. The PowerPoint presentation was prepared by the Debtors' Chief Financial Officer for the Debtor's Board of Directors to help determine settlement strategy, a settlement range, and a bottom line. The entire team of Debtors' professionals participated in analyzing the presentation, which was discussed at the pre-mediation Board meeting. There was no other document, and the Special Committee has admitted there is no other evidence. *See* ECF No. 1614 at 10 ¶ 32. None of its many lawyers or other professionals has developed any other allocation. Thus, not only is LKC's evidence relevant, it is the only evidence that exists.

6. Third, the Special Committee's position that LKC should wait for and acquiesce to the forthcoming Whinstone tax allocation is unavailing. LKC has addressed that issue many times and explained why the Special Committee is incorrect. *See, e.g.*, ECF No. 1588 at 5-7 ¶¶ 12-14; ECF No. 1633 at 8-11, ¶¶ 21-31. The Debtors' General Counsel likewise [redacted] *See* ECF No. 1588 at 6-7 ¶ 14. The General Counsel also agreed that [redacted] success fee (or more) is perfectly fair in light of the phenomenal results LKC achieved, helping enrich the estate by $185 million. *See id.* at 3 ¶ 5.

7. For all of these reasons, and as discussed below, the Court should deny the Special Committee's belated "Emergency Motion" to strike LKC's evidence.

ARGUMENT

8. The Special Committee's agreement to discuss sharing with the SAFEs the very evidence it sought to strike through its "Emergency Motion" renders that motion moot. *See Gonzalez v. Bank of Am. Ins. Servs., Inc.*, 454 Fed. App'x 295, 301 (5th Cir. 2011) ("[A] motion should be deemed abandoned where the movant 'acts in a manner which is not consistent with the object of the motion.'" (citation omitted)). But even setting aside the Special Committee's apparent abandonment of its motion, the motion should be denied.

9. ***First,*** LKC is entitled to present privileged information to the Court to the extent necessary to resolve a fee dispute. It is a bedrock exception to the attorney-client privilege that lawyers may disclose otherwise privileged information to the extent necessary to establish or collect their fees.

10. The Fifth Circuit has long recognized this principle. In *United States v. Ballard*, the court held that "[a] lawyer may reveal otherwise privileged communications from his clients in order to recover a fee due him, or to defend himself against charges of improper conduct, without violating the ethical rules of confidentiality or the attorney-client privilege." 779 F.2d 287, 292 (5th Cir. 1986) (citations omitted); *see Carty v. Quarterman*, 2008 WL 8104283, at *40 (S.D. Tex. Sept. 30, 2008) (same). Bankruptcy courts in this District agree. In *In re Burton Securities, S.A.*, the court explained that both the ABA Model Rules and the Texas Disciplinary Rules of Professional Conduct "clearly contemplate the need for an attorney to disclose confidential information in order to collect a fee." 148 B.R. 478, 480 (Bankr. S.D. Tex. 1992). And in *Sealed Party v. Sealed Party*, the Southern District acknowledged that while the Texas Rules are not binding, they "significantly inform the analysis," and under Texas Rule 1.05, client information

may be revealed "to the extent necessary to enforce a claim or defense in a controversy between the lawyer and the client." 2006 WL 1207732, at *8-9 (S.D. Tex. May 4, 2006).

11. Texas Rule 1.05 expressly authorizes disclosure in fee disputes. Subsection (c)(5) permits disclosure of confidential information "[t]o the extent reasonably necessary to enforce a claim or establish a defense on behalf of the lawyer in a controversy between the lawyer and the client." Tex. R. Disciplinary P. 1.05(c)(5). Comment 15 to the Rule further explains: "A lawyer entitled to a fee necessarily must be permitted to prove the services rendered in an action to collect it. . . . This aspect of the rule, in regard to privileged information, expresses the principle that the beneficiary of a fiduciary relationship may not exploit the relationship to the detriment of the fiduciary." Tex. R. Disciplinary P. 1.05 cmt. 15.

12. Accordingly, when the Special Committee refused to negotiate LKC's success fee in good faith, LKC filed its final fee application, relying on the only evidence that exists—the very same materials that the Board of Directors relied on in developing a settlement strategy, a settlement range, and a bottom line. ECF Nos. 1560 and 1561.

13. In its application, LKC was as protective of the Debtors' interests as possible. At the Special Committee's request, LKC did not attach the PowerPoint presentation. Instead, LKC provided only a summary and quotations of the relevant portions, and LKC *redacted all of that in the public filing*. Only the Court and the Special Committee received the *sealed* version.[3] That limited disclosure, filed under seal, was necessary to equip the Court to determine LKC's success fee. *See* ECF No. 1418 at 6.

[3] As LKC stated in its fee application: "LKC has not attached the presentation to this Application in the interest of including only the minimal amount of confidential information necessary to establish the Success Fee. Should the Court order, or the Debtors agree, the presentation should be filed under seal, LKC will do so at the appropriate time." ECF No. 1561 at 15 n.6.

14. Oddly, in its "Emergency Motion" and fee opposition, while castigating LKC for disclosing materials under seal, the Special Committee discloses publicly for the whole world to see most of the materials that LKC redacted and that the Special Committee now seeks to strike. For instance, the Special Committee discusses "the PowerPoint presentation that the Debtors prepared for the Debtor's Board of Directors in advance of the mediation with Whinstone"; discloses that the PowerPoint "includes detailed assessments" of "possible 'Settlement Value,' 'Ongoing Business Value,' 'Risked Damages' and other components of a possible settlement with Whinstone"; and reveals that "[t]hose assessments were communicated to the Rhodium Board" in advance of the mediation.[4] ECF No. 1733 at 8 ¶ 29 (quoting and citing ECF No. 1561 ¶ 29); *see also* ECF No. 1732 ¶ 14.

15. The only things the Special Committee does not publicly disclose are the actual numbers and arithmetic. But the Special Committee does not and cannot contest that LKC used the actual numbers from the PowerPoint presentation or did its math correctly. None of that is in dispute.

16. The Special Committee asserts that "[f]iling under seal . . . does not necessarily protect the privilege."[5] ECF No. 1733 at 5 ¶ 17. But: (a) any further disclosure is up to the Court and the Special Committee; (b) the Special Committee has already disclosed the most salient facts

[4] In an incredible misrepresentation, the Special Committee states that the "detailed assessments," including "Settlement Value" and "Ongoing Business Value," were "*by LKC*," and that the "assessments were communicated to the Rhodium Board *by LKC*." *Id.* (emphases added). That is untrue, and the Special Committee knows it. The PowerPoint presentation and related emails make clear LKC's limited role. Once the Special Committee permits LKC to share these documents with the Court, LKC will do so. In the meantime, LKC respectfully asks the Court to remind the Special Committee not to misrepresent basic facts (or any facts) to the Court.

[5] The Special Committee cites only one case, and it supports LKC. In *First. Am. CoreLogic*, the plaintiff waived privilege by serving the privileged documents "on all the defendants." *First. Am. CoreLogic, Inc. v. Fiserv, Inc.*, 2010 WL 4975566, at *3 (E.D. Tex. Dec. 2, 2010). The Court explained that "filing the documents under seal *and serving them on the defendants* has the same effect as disclosing documents to a third party and thus waiving the privilege." *Id.* (emphasis added). Here, however, LKC has not disclosed privileged documents "to any third parties except the Court." *Id.*

from the PowerPoint presentation; and (c) the Special Committee has indicated it is willing to share the unredacted copy of LKC's filing with the SAFEs. LKC, by contrast, has taken great pains to ensure that its disclosure of privileged information—*to the Court alone*—was limited to "the extent reasonably necessary," Tex. R. Disciplinary P. 1.05(c)(5), consistent with the Special Committee's directives on redactions. LKC's cautious steps are fully supported by Fifth Circuit precedent; the Special Committee's attack on LKC is misguided.

17. ***Second,*** the evidence LKC presented is highly relevant, if not dispositive. "Courts broadly construe the definition of relevance," and evidence "only fails the relevance test if it is clear that it could have 'no possible bearing on the claim.'" *In re Reagor-Dykes Motors, LP*, 2021 WL 5094783, at *1 (Bankr. N.D. Tex. Oct. 29, 2021) (citation omitted). The PowerPoint cited in LKC's final fee application easily satisfies that standard. It contained the numbers and analysis Debtors prepared for Debtors' Board of Directors in advance of mediation with Whinstone, and reflects the input of Debtors' Board, executives, and outside professionals. The Special Committee, its attorneys, and its financial advisors all saw these numbers, and the full Board relied on them in developing a settlement strategy, a settlement range, and a bottom line.

18. If the "amounts from the pre-mediation estimate are wrong," ECF No. 1733 at 6 ¶ 22, it is only because Debtors and Whinstone [redacted] ECF No. 1561 at 15-16, ¶¶ 32-34. And the Special Committee concedes no other evidence bearing on LKC's fee "yet exist[s]." ECF No. 1614 at 10 ¶ 32. LKC is being conservative with its fee request. LKC recognizes that [redacted].

19. The Special Committee insists that "LKC did not have to include this information in the Fee Application" and "LKC could have simply stated an estimate." ECF No. 1733 at 7 ¶ 27. But the Court should know where the numbers are coming from and how LKC calculated its success fee. It is highly improper for the Special Committee to argue that LKC should have concealed pertinent materials from the Court or omitted the basis for its success fee. LKC did not invent its numbers out of whole cloth; it based its fee on Debtors' own analysis.

20. Moreover, LKC's prior adherence to instructions from Debtors' bankruptcy counsel not to disclose the details of the success fee has already caused needless delay and depletion of the estate's (and the Court's) resources. *See* ECF 1418 at 16 ("LKC relied on the Debtors and Debtors' bankruptcy counsel regarding the amount of information to be included about the contingent fee and it would disrupt any notion of fairness to punish LKC for following the direction and advice of the Debtors' general counsel and Debtors' experienced bankruptcy counsel."); *see also* Oct. 2, 2025 Hg. Tr. 15:18-16:1 ("MR. WOLFSHOHL: . . . [T]he Court has to see it because that's the basis of our calculation. I don't think you can do it any other way. . . . I think it is important to have transparency. Frankly . . . from our standpoint, we kind of got burned on this issue last time. The Court, you know, ultimately ruled in our favor, but we had to spend a lot of time dealing with the issue of what was disclosed in our initial application after taking direction from the debtor, and now we're being told again you can't disclose stuff."). LKC's limited disclosure in a sealed filing was thus an appropriate step to present the Court with information sufficient to evaluate LKC's success fee calculation while balancing privilege concerns.

21. ***Third,*** because LKC's success fee is not controlled by the Whinstone tax allocation, there is no reason to wait for that allocation to be finalized. As LKC has repeatedly explained in

response to the Special Committee's misguided arguments, *see, e.g.*, ECF No. 1588 at 5-7 ¶¶ 12-14; ECF No. 1633 at 8-11, ¶¶ 21-31, LKC's success fee depends solely on good-faith negotiation between LKC and the Debtors. Under LKC's engagement letter, "the Client [Debtors] *and Lehotsky Keller Cohn*"—not Whinstone—are to negotiate the allocation of the success fee "in good faith," and if they are unable to reach an agreement, the "dispute shall be resolved by the Bankruptcy Court." ECF No. 1418 at 6 (emphasis added). Testimony from Debtors' General Counsel confirms this understanding: the success fee is to be determined by [redacted], nothing in the engagement letter [redacted]; and [redacted]. Even if the Whinstone allocation were finalized, it would not be binding on LKC. The Special Committee's efforts to force LKC to acquiesce to an as-yet unfinished tax allocation negotiated by its adversary contradict the terms of LKC's engagement letter approved by the Court and should be rejected.

CONCLUSION

The Court should deny the Special Committee's "Emergency Motion" to strike evidence presented in LKC's final fee application.

Dated: October 8, 2025
Houston, Texas

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on October 8, 2025, a true and correct copy of the foregoing document was served via email through the Bankruptcy Court's Electronic Case Filing System on the parties that have consented to such service.

/s/ Joshua W. Wolfshohl
Joshua W. Wolfshohl

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

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

ORDER DENYING EMERGENCY MOTION OF THE SPECIAL COMMITTEE TO STRIKE PRIVILEGED INFORMATION FROM LEHOTSKY KELLER COHN LLP'S SECOND AND FINAL APPLICATION FOR PAYMENT OF COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THE PERIOD OF AUGUST 28, 2024 THROUGH JUNE 30, 2025
[Relates To ECF Nos. 1560, 1561, 1733]

Upon the emergency motion (the "***Motion***") of the Special Committee of Rhodium Enterprises, Inc.'s Board of Directors to strike privileged information from Lehotsky Keller Cohn LLP's ("***LKC***") *Second and Final Application for Payment of Compensation and Reimbursement of Expenses for the Period of August 28, 2024 through June 30, 2025*; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408; and this Court having reviewed the Motion and responses thereto and having considered any statements at the hearing, if any (the "***Hearing***"); and this Court having determined that the legal and factual bases set forth in the Motion do not establish just cause for the relief

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requested therein; and upon all of the proceedings had before this Court; and after due deliberation, it is HEREBY ORDERED THAT:

1. The Motion is DENIED.

2. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Houston, Texas
Dated: _____, 2025

HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE