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)

THE SPECIAL COMMITTEE'S RESPONSE IN OPPOSITION TO LEHOTSKY KELLER COHN LLP'S RESPONSE TO AMENDED DECLARATION OF MARK CHRISTOPHER WHEELER AND BRIEF IN SUPPORT OF ITS OBJECTION TO DEBTORS' PROPOSED PLAN
[Relates to ECF Nos. 1821, 2001, 2010, 2140, 2151]

The Special Committee of the Board of Directors of Debtor Rhodium Enterprises, Inc. (the "Special Committee") hereby files, by and through undersigned counsel, this response in opposition ("Opposition") to *Lehotsky Keller Cohn LLP's* ("LKC") *Response to Amended Declaration of Mark Christopher Wheeler and Brief in Support of its Objection to Debtors' Proposed Plan* (the "LKC Brief," ECF No. 2151). In support of this Opposition, the Special Committee states 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.

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1. The Special Committee has done nothing to deceive the Court or delay payment to LKC without justification. The Special Committee's goal has always been to take the $179 million[2] in sale proceeds from the Whinstone transaction (the "Purchase Price") and allocate it among hard/tangible assets (e.g. miners), intangible assets (e.g. power contracts), and other assets (including any amount allocated to settlement of the Debtors' claims against Whinstone) in a legally and financially sound manner that best serves the interests of the estates. This was not inconsistent with the Debtors' agreement to pay LKC a success fee but rather in service of it—without this determination there would be no basis to allocate *any* of the Purchase Price to settlement and no ability to pay LKC.

2. LKC fails to understand that the allocation process is, in essence, a zero sum game. The Purchase Price subject to allocation was a finite amount—$179 million—and assigning a value to one type of assets included in the purchase necessarily impacts the amount capable of being assigned to another type of assets. Assigning a value of "X" to the hard assets meant, for example, that the amount left over for allocation to intangible or other assets was $179 million *minus* X. Thus, the allocation of proceeds to hard assets and intangible assets *had* to be decided first, because that allocation would cause the amount available to allocate to settlement of the claims against Whinstone to fluctuate.

3. Regardless of LKC's desire to be paid immediately, it was more important to allocate the Purchase Price correctly and in a manner that could not

[2] $179 million constitutes the $185 million purchase price minus the $6 million security deposit returned to the Debtors by Whinstone.

later be challenged by the IRS or as part of plan confirmation. While it may have taken longer than the Special Committee and the Debtors would have preferred, this is the process that was required and followed, as outlined in the declarations filed by Chris Wheeler.

4. The LKC Brief is hyperbolic, convoluted and inflammatory but does nothing to challenge Mr. Wheeler's recitation of the facts, assist the Court in determining the appropriate success fee due to LKC, or provide any basis for the Court to grant its Limited Objection. The LKC Brief should be disregarded and the Limited Objection denied.

RELEVANT BACKGROUND

5. Contrary to LKC's false narrative, and as the Special Committee has always maintained, there was no way that the Special Committee and the Debtors could have paid LKC its success fee without first allocating the Purchase Amount. The parties to the Whinstone transaction agreed as part of that transaction that the Purchase Amount was given in exchange for hard assets, intangible assets, and other assets (potentially settlement of legal claims). ECF No. 1732-1, at ¶20. The parties did not agree (nor was it necessary to agree at the time) on how much value would be apportioned to each type of assets at the time the Purchase and Sale Agreement ("PSA") governing the transaction was executed. Nevertheless, because that apportionment was critically important to the Debtors and Whinstone, each of which had an obligation to evaluate the Purchase Price and allocate it to the various categories of assets for tax and accounting purposes, *as well as* for the purpose of

paying LKC, the parties included a provision in the PSA requiring the parties to reach an agreed allocation.

6. Subsequent to the signing of the PSA, the Debtors undertook to determine what that allocation would be, considering the various Debtors and the categories of assets at issue. Indeed, as Mr. Wheeler states in his October 1, 2025 declaration (ECF No. 1732-1, at ¶7), "[t]he transaction between Debtors and Whinstone implicates all six taxpayers and requires attribution of revenue to each entity based on (i) the specific assets sold by each entity, (ii) the specific Hosting Agreements held by each entity, providing for each entity to receive quantities of electricity from Whinstone at a fixed price of at least ten years, and (iii) the settlement of certain claims as asserted by each entity in the Debtors litigation with Whinstone." Whinstone had the same need to reach an allocation for their purposes, and the allocation had to be agreed upon in order to avoid contradictory valuations. *Id.* at ¶25-27.

7. In recognition of this requirement, Whinstone and the Debtors included a provision in the PSA, Section 2.3, governing the transaction that stated that the parties "for tax purposes" had to reach consensus on the allocation. ECF No. 2140, at ¶7. In Section 2.3, the parties agreed not to take inconsistent positions that could impact them in a subsequent tax audit. Ex. B, PSA § 2.3. If the parties could not agree on an allocation, Section 2.3 provided that it would have to be decided by the Court. ECF No. 1732-1, at ¶26.

8. Over the course of several months, the parties negotiated the allocation. ECF No. 2140, at ¶8. The Debtors, through Mr. Wheeler, provided Whinstone with a calculation that allocated $46.99 million to the tangible or hard assets and $56.89 million to intangible assets (primarily the power contracts). *Id.* From the Debtors' perspective, this would have left approximately $75 million to be allocated to resolution of the Debtors' claims against Whinstone. ECF No. 1943-2, at ¶7.

9. Whinstone's position, however, was drastically different. Whinstone maintained that only $7.2 million should be assigned to the tangible assets and no money should be assigned to IP or other intangible assets. ECF No. 2140, at ¶8. Rather, Whinstone's position was that the remainder of the $179 million should be assigned to power contract termination payments. *Id.* Whinstone's allocation would have meant that *zero* value would have been allocated to settlement of legal claims.

10. Mr. Wheeler participated in negotiations with Whinstone pursuant to section 2.3 of the PSA over the course of several months, including five different calls on July 21, July 23, August 28, September 5, and September 11, 2025. *Id.* at ¶9. Ultimately, the Debtors and Whinstone could not reach agreement on the value of the tangible assets. *Id.* at ¶10. With respect to intangible assets, Whinstone took the position that the parties should not allocate any money to intangible assets but should instead consider the power contracts (the bulk of the intangible assets) cancelled and the allocation for intangible assets to instead reflect payment to terminate the existing contracts. *Id.* Mr. Wheeler and the Debtors ultimately agreed that this was the proper treatment, and that as a result, the IRS Form 8594 need

only enumerate the parties' allocation to tangible assets. *Id.* But because the parties could not agree on the tangible assets allocation, the parties were at an impasse. *Id.*

11. The fact that Whinstone and the Debtors ultimately agreed that the allocation of intangible assets need not be reported to the IRS *did not* mean that no further allocation was necessary. Indeed, if the Debtors had adopted Whinstone's position, almost the entire Purchase Price would have been allocated to cancellation payments on the power contracts and there would have been no value attributed to settlement of the legal claims. The Debtors did not do that. Instead, in asking the Court to determine the allocation of tangible assets, the Debtors relied on their original determination that the appropriate amount to allocate to settlement was $75 million. ECF No. 1943-2, at ¶7, 10.

12. During this same time, LKC pushed the Debtors and the Special Committee to immediately pay its success fee. On July 11, 2025, LKC sent the Special Committee a formal demand for immediate payment of $8.4 million, based on an allocation of $100 million. ECF No. 1529-1. On August 7, 2025, LKC filed document requests and interrogatories against the Debtors, its own clients, without their consent, forcing the Special Committee to file a motion to quash on August 14, 2025. ECF Nos. 1515, 1530. On August 13, 2025, the Special Committee sent LKC a letter informing LKC that its actions, including seeking discovery against its own clients, were inappropriate, improper under procedural rules, and violated rules of professional conduct, among other things. ECF No. 1529-2. Notably, the Special Committee did not file this letter publicly—it was *LKC* that chose to file the letter as

an exhibit to its filing seeking a status conference on August 14, 2025. ECF No. 1529. Thus, despite LKC's repeated contentions that the Special Committee "maligned" LKC in public, it was in fact *LKC* that caused these allegations to become public.

13. The Special Committee repeatedly responded to LKC that resolution of the success fee was dependent upon the allocation that was being negotiated with Whinstone at this time. *See, e.g.* ECF No. 1529-2 ("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."); ECF No. 1530-1 at ¶12 (noting that, on July 28, 2025, counsel for the Special Committee informed LKC that tax allocations had not yet been resolved and no fee discussions could proceed until the Allocation Statement was completed).

14. Despite the fact that the settlement allocation had not yet been decided, the Special Committee sought to engage in good faith settlement discussions with LKC in the summer of 2025. To that end, between May 29, 2025, and July 31, 2025, counsel for the Special Committee communicated with counsel for LKC regarding LKC's legal fees, attempting to negotiate LKC's contingency fee. ECF No. 1520-1, at ¶11. During those conversations, counsel for the Special Committee indicated that preliminary work on the Allocation Statement suggested that the allocation to the settlement was lower than that advocated by LKC. *Id.* LKC continued to press the Special Committee to agree to pay its success fee based on its own $100 million calculation and despite knowing that the Debtors would likely determine that the

settlement allocation was around $75 million. On August 22, 2025, without waiting until the Allocation Statement was completed, LKC filed its fee application. ECF No. 1560.

15. On August 24, 2025, counsel for the Special Committee sent LKC's counsel an email stating that "if LKC continues down its insisted path of filing what you have described, the Special Committee will be forced to bring a motion allowing it (on behalf of the Debtors) to seek discovery and explore potential counterclaims against LKC." Counsel for the Special Committee explained in the email that this was due to the effect of *In re Intelogic Trace, Inc.*, 200 F.3d 382 (5th Cir. 2000), which requires that a debtor assert all potential claims against a professional as part of its response to the professional's fee objection, or risk losing those claims due to the effect of *res judicata*. *Id.* LKC did not withdraw its application or cease its efforts to obtain its success fee despite this admonition.

16. On September 10, 2025, the Special Committee filed a request for an extension of time in which to respond to LKC's fee application to permit the Special Committee to evaluate its potential claims against LKC. ECF No. 1628. Notably, the Special Committee acquiesced to LKC's request to file the motion under seal and filed a redacted version publicly. *See* ECF No. 1627 ("While the Special Committee does not agree that the Motion for Extension must be filed under seal, it does so to further good faith cooperation with LKC and allow LKC the opportunity to supplement this Motion to explain the reasoning for it being filed under seal."). The

Special Committee also filed its reply brief in further support of the motion on September 19, 2025, under seal. ECF No. 1665.

17. On October 1, 2025, following LKC's opposition to the Special Committee's request for an extension of time to respond to the fee application, the Special Committee filed its objection to the fee application and asserted, as it was required to do, its claim for breach of fiduciary duty against LKC. ECF No. 1732. Subsequently, on October 28, 2025, the Debtors' counsel filed a motion to enforce the PSA, seeking the Court's approval of the Debtors' allocation of $43.5 million to tangible assets since the Debtors and Whinstone were unable to come to an agreement. ECF No. 1881. Whinstone did not oppose the motion, nor did LKC.

18. The Court conducted a hearing on LKC's fee application on November 3, 2025, December 3, and December 11. ECF Nos. 1955, 2115, and 2142. The hearing is set to continue on December 17, 2025. ECF No. 2142.

19. On December 11, 2025, the Debtors filed an amended declaration of Mr. Wheeler in further support of the motion to enforce the PSA and in opposition to the LKC fee application. ECF No. 2140.

ARGUMENT

A. LKC's "Response" to the Amended Wheeler Declaration Does Nothing But Repeat Baseless Arguments and Mischaracterizations.

20. LKC continues to mischaracterize the process of allocating the Whinstone settlement proceeds. The Special Committee has at all times been forthcoming about the need to allocate the Whinstone funds before determining the success fee due to LKC.

21. Nevertheless, LKC ignores this fact and asserts as a "response" to the Amended Wheeler Declaration that it shows that the "Whinstone allocation had nothing to do with allocating settlement proceeds to litigation value." ECF No. 2151, at ¶3. This is patently false and belied by the contents of the Amended Declaration.

22. Mr. Wheeler's Amended Declaration provides, as the Court requested, a detailed outline of the negotiations between Whinstone and the Debtors over the allocation of hard assets and intangible assets, which was required before the remainder of the Purchase Price could be assigned to settlement value and used to determine the LKC fee. As discussed above, the value of the tangible assets *had to be determined first*, such that this amount could be subtracted from the overall Purchase Price with the remainder allocated to intangible assets (here, agreed by Mr. Wheeler to be the price to cancel the power contracts) and the settlement proceeds. Again, this is a zero-sum game: the amount available to be designated as settlement proceeds was wholly dependent on the amount allocated to other categories. Ultimately, as reflected in the Amended Declaration, the Debtors and Whinstone could not agree on a calculation and the Debtors were forced to petition the Court for a resolution of the issue, which has yet to be decided.

23. LKC claims that the statement by Ms. Tomasco, counsel for the Debtors, that the "tax allocation is not connected to LKC at all" is somehow the smoking gun that proves that the Debtors and the Special Committee have misled the Court. Hearing Tr. Dec. 3, 2025, at 94:15-16. LKC's citation of that short statement without any context is misleading. Reviewing the statement in context, it is clear that Ms.

Tomasco was not stating that the question of the tax allocation is not relevant to the calculation of the settlement proceeds. Rather, she is clarifying that the instant question before the Court was on the motion to enforce the PSA, and specifically whether the Court will approve the Debtors' valuation of the tangible assets for purposes of Section 2.3 of the PSA, which concerns, *as between the Debtors and Whinstone*, the appropriate amount to report to the IRS for the sale of tangible assets. *Id.* at 93:22-95:1. Ms. Tomasco's statement is wholly consistent with the notion that the question of the valuation of the tangible assets must be decided before the parties can move on to the allocation of intangible assets and settlement value. As the transcript reflects, Mr. Schmeltz points out just before Ms. Tomasco's statement that "that piece of the hard assets is a cornerstone allowing us then to allocate the rest between settlement and contract value, the contract buydown value." *Id.* at 90:20-23.

24. LKC also completely misunderstands and mischaracterizes Mr. Wheeler's Amended Declaration and the negotiations between Whinstone and the Debtors—*which did not involve LKC*—in saying that the Debtors "drastically overvalued the assets of the business that were sold." ECF No. 2151, at ¶15. LKC first points to the "significant gulf" between the Debtors' and Whinstone's valuations of the Debtors' tangible assets. *Id.* But the fact that Debtors' calculation is supported by the Debtors' asset list while Whinstone's is not is explained in detail in the Amended Wheeler Declaration. Moreover, Whinstone did not oppose the motion to enforce the PSA nor the Debtors' contention on the value of the tangible assets.

Perhaps most critically, the accuracy of Mr. Wheeler's calculation of the value of the tangible assets can be corroborated by LKC's own arguments in connection with the motion for TRO and Preliminary Injunction filed in the Milam County action in November 2023. The declaration of Chase Blackmon filed in connection with that motion asserts that Rhodium invested $159 million into the Rockdale site. *See* Declaration of Chase Blackmon, *Whinstone US, Inc. v. Rhodium 30MW LLC* et al., Cause No. CV41873 (Nov. 28, 2023), at ¶4. LKC cannot seriously now assert that it believes that the value of that investment is worth only $7.2 million based solely on the unsupported word of the Debtors' adversary.

25. Likewise, LKC's incredible assertion that Whinstone, its former litigation opponent, must be correct that the intangible assets had zero value contradicts LKC's own prior assertions in the Whinstone contract assumption litigation that the value of the contracts "cannot not be overstated" (ECF No. 456, at ¶24) and that the contracts were "indispensable" (ECF No. 7, at ¶38), "essential" (ECF No. 456, at ¶15), "Rhodium's lifeblood" (ECF No. 770, at ¶132), "vital to Rhodium" (ECF No. 770, at ¶3), and "the company could not exist without them." *Id.* Surely, LKC does not seriously contend that those "essential" contracts had zero value when the PSA was executed.

26. LKC also falsely concludes that Whinstone's statement that the intangible assets had zero value means that the Purchase Price did not include any payment for those contracts. As the Amended Wheeler Declaration points out, Whinstone merely asserted (and Mr. Wheeler ultimately agreed) that the correct way

to view the contracts post-PSA was not as acquired intangible assets but cancelled contracts for which Whinstone would make "contract termination payments." ECF No. 2140, at ¶8. Indeed, Whinstone's position that all remaining value should be ascribed to contract termination payments reflects that Whinstone did not believe that *any* of the $179 million Purchase Price should be allocated to settlement proceeds.

27. The Amended Wheeler Declaration does not support LKC's contentions in any way. It is intended to provide, as the Court requested, a detailed recitation of the back-and-forth negotiations with Whinstone required under Section 2.3 of the PSA. It provides the basis for the Debtors' motion to enforce the PSA, which in turn is intended to allow the Court to determine the allocation of the value of the tangible assets as part of the Purchase Price so that the parties can then determine how to allocate the remainder of the Purchase Price for purposes of determining LKC's success fee. It is consistent with all of the Special Committee's prior filings that have explained to LKC, repeatedly, the process by which the success fee can be determined.

B. LKC Again Fails to Identify Any Claims Against the Special Committee or Debtors and Fails to Demonstrate It Will Be Harmed by Confirmation of the Plan.

28. LKC's Brief raises no new arguments, facts, or claims in support of its Limited Objection. LKC again makes vague references to potential "claims" against the Special Committee and Debtors but those references amount to nothing more than bare assertions that the Special Committee has "deceived" the Court and "maligned" LKC. ECF No. 2151, at ¶1, 28.

29. As the Special Committee has previously argued to the Court, the Limited Objection is baseless and there is no reason or basis to carve LKC out of the release and exculpation clauses in the Plan. ***First***, LKC will get paid in full after the Fee Objection is resolved and the Court has determined the amount to which LKC is entitled; LKC is therefore is unimpaired under the Plan, particularly where the funds are escrowed. ***Second***, LKC has not laid out any specific causes of actions or claims it believes will be barred by the Plan. ***Third***, the scope of the release and exculpation clauses have already been addressed by the Court and are within the permissible scope regularly approved as part of chapter 11 plans within this circuit.

WHEREFORE, the Special Committee requests that the Court enter an order (i) overruling the Limited Objection; (ii) confirming the Plan; and (iii) granting all other and further relief as the Court deems just and proper.

Dated this 17th day of December, 2025.

BARNES & THORNBURG LLP

/s/ Trace Schmeltz

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Counsel for the Special Committee of the Board of Directors of Rhodium Enterprises, Inc.

Certificate of Service

I, Vincent P. (Trace) Schmeltz III, hereby certify that on the 17th day of December, 2025, a copy of the foregoing was served via the Clerk of the Court through the ECF system to the parties registered to receive such service.

/s/ Trace Schmeltz
Vincent P. (Trace) Schmeltz III