

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

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

**LEHOTSKY KELLER COHN LLP’S APPLICATION FOR ALLOWANCE OF
CHAPTER 11 ADMINISTRATIVE EXPENSE CLAIMS**

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/> 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 this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

**To the Honorable Alfredo R. Perez
United States Bankruptcy Judge:**

Lehotsky Keller Cohn LLP (“*LKC*”), files this Application for Allowance of Chapter 11 Administrative Expense Claims (the “*Application*”) pursuant to 11 U.S.C. § 503(b)(1)(A) and to preserve claims and causes of action against the Debtors and other parties arising from post-petition conduct in these chapter 11 cases.

PRELIMINARY STATEMENT

1. LKC files this Application to preserve and seek allowance of administrative

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), 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.



expense claims arising from: (a) damages suffered as a result of tortious interference, abuse of process, and civil conspiracy by the Special Committee of the Board of Directors of Rhodium Enterprises, Inc. (the “*Special Committee*”), acting on behalf of the Debtors and in concert with the Ad Hoc Group of SAFE Parties (the “*SAFE AHG*”); and (b) attorney’s fees and expenses incurred in defending the Court’s final orders on appeal, including the December 24, 2025 *Final Order Allowing Compensation and Reimbursement of Expenses* (ECF No. 2198) (the “*Fee Application Order*”) and the July 8, 2025 *Order Granting Debtors’ Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* (ECF No. 1418) (the “*Updated Retention Order*”).

2. These claims constitute administrative expenses under 11 U.S.C. § 503(b)(1)(A) because they arise from post-petition conduct during the administration of these bankruptcy cases and constitute actual, necessary costs and expenses of preserving the estate.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B). Venue for this case and the Application are proper pursuant to 28 U.S.C. §§ 1408 and 1409. The basis for the relief requested herein is 11 U.S.C. § 503(b).

FACTUAL BACKGROUND

I. LKC’s Updated Retention and Fee Application

4. On July 8, 2025, the Court entered the Updated Retention Order approving the March 4, 2025 LKC engagement letter (the “*March 2025 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 success fee (the “*Success Fee*”).

The March 2025 Engagement Letter also provides for reimbursement of LKC’s “reasonable expenses . . . including but not limited to . . . legal advice on retention and compensation matters.” ECF No. 835 at 14-15; ECF No. 1418 at 5-6.

II. The Special Committee Refuses to Negotiate With LKC

5. Despite this Court-approved framework requiring good-faith determination of the allocation, the Special Committee (after claiming that the Debtors were conflicted) refused to engage in any meaningful negotiation.

6. Instead, the Special Committee stonewalled LKC’s requests for information and refused to share even documents the Debtors had provided to other parties to the bankruptcy, including the SAFE AHG.

7. The Special Committee’s refusal to negotiate in good faith left LKC no choice but to pursue discovery relevant to the allocation of settlement proceeds. On August 7, 2025, LKC issued Rule 2004 discovery requests to the Debtors seeking targeted information related to the Whinstone settlement allocation and LKC success fee calculation. ECF No. 1515.

8. The Special Committee moved to quash LKC’s discovery requests, leveling serious accusations against LKC. ECF No. 1530. The Special Committee alleged that by seeking discovery, LKC was acting in “utter disregard to [LKC’s] clients’ need to comply with the Whinstone settlement agreement and the Internal Revenue Code,” *id.* at 2; “violat[ing] its professional responsibilities and its fiduciary duties,” *id.* at 3; making “unethical,” and “sanctionable” discovery requests, *id.* at 14; and creating “an artificial emergency,” *id.*

9. On August 22, 2025, LKC filed its *Second and Final Application for Payment of Compensation and Reimbursement of Expenses for the Period August 28 through June 30, 2025*

(ECF No. 1560–61) (the “*Fee Application*”), seeking payment of hourly compensation, reimbursement of reasonable expenses, and the payment of the Success Fee.

III. The Special Committee’s Bad Faith Campaign Against LKC

10. In response to LKC’s Fee Application, the Special Committee embarked on a scorched-earth litigation campaign against LKC designed to bully the firm into accepting a lower fee.

11. On October 1, 2025, the Special Committee filed *Special Committee’s Objection to Lehotsky Keller Cohn LLP’s Second and Final Application for Payment of Compensation and Reimbursement of Expenses for the Period August 28, 2024 through June 30, 2025* (ECF No. 1732), publicly declaring: “The Debtors hold and assert a claim against LKC for breach of fiduciary duty in connection with the Fee Application.” *Id.* at 20.

12. The Special Committee baselessly contended that:

- a. “LKC breached its fiduciary duty by demanding fees before they are due—and by making that demand in such a manner that, if Rhodium acquiesced, would create substantial liability,” *id.* at 21;
- b. “Making the payment that LKC demands would cause Rhodium to breach the PSA and possibly violate the Internal Revenue Code and the Treasury Regulations thereunder,” *id.*;
- c. “LKC is putting the Debtors—its own clients—in a terrible position as part of what looks like an effort to leverage a favorable result,” *id.*; and
- d. “Further demonstrating its breach of fiduciary duty, LKC bases the amount of its current fee demand on preliminary, projected numbers, rather than waiting for the actual figures that would accurately shape its entitlement,” *id.* at 21-22.

13. These accusations were false, and the Special Committee knew it. The Special Committee's entire objection was based on a fictitious premise: that LKC's success fee calculation depended on a tax allocation agreement between the Debtors and Whinstone. Months later, the Special Committee's own witness and the Debtors' bankruptcy counsel admitted that the tax allocation "is not connected to LKC at all," Hearing Tr. Dec. 3, 2025 at 94:15-16, and pertained only to "the tangible assets." ECF No. 2140 ¶ 10.

14. The Special Committee eventually abandoned its breach-of-fiduciary-duty allegations against LKC. On November 1, 2025, just two days before trial, the Special Committee filed a notice withdrawing its "arguments and/or claims related to any breach of privilege, ethical obligations, fiduciary duty or other misconduct by Lehotsky Keller Cohn." ECF No. 1930 at 1.

15. The Special Committee's filing provided no explanation for this abrupt reversal after months of public accusations. The Special Committee never apologized for its baseless accusations or acknowledged their falsity.

IV. The Court Vindicates LKC

16. The fee dispute proceeded to trial, requiring the Court to conduct hearings on four separate days: November 3, December 3, December 11, and December 17, 2025.

17. At the conclusion of the December 17, 2025 hearing, the Court rejected the Special Committee's objection to LKC's fee application, stating, "based on the record in front of me, and the state of the facts, I am going to award the fee as filed." Hearing Tr. Dec. 17, 2025 at 81:19-21.

18. On December 24, 2025, the Court entered its Fee Application Order, awarding LKC the full amount sought in its final fee application. ECF No. 2198.

V. The Court Confirms the Plan

19. In connection with the Plan Support Agreement filed on October 7, 2025 (ECF No. 1747), the Debtors and the SAFE AHG filed the Plan on October 19, 2025.

20. On October 28, 2025, the Debtors and the Special Committee filed the *Motion to Enforce Purchase and Sale Agreement with Whinstone U.S. Inc. Filed by the Debtors and the Special Committee* (ECF No. 1881) in which the Debtors and the Special Committee admitted that “[the] parties have determined they are unable to reach an agreement and require this Court to enforce the PSA and determine the appropriate allocation.” *Id.* at 3 ¶ 9.

21. During the confirmation hearing on December 3, 2025, the Court and parties acknowledged that claims arising from post-petition conduct of the Special Committee would constitute administrative claims subject to the requirements of 11 U.S.C. § 503. *See* Hearing Tr. Dec. 3, 2025 at 83:6-25.

22. On December 19, 2025, the Court entered its *Order Approving the Disclosure Statement for, and Confirming, Second Amended Joint Chapter 11 Plan of Liquidation for Rhodium Encore LLC and Its Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code* (ECF No. 2170) (the “**Confirmation Order**”), which confirmed, subject to certain modifications, the *Second Amended Joint Chapter 11 Plan of Liquidation for Rhodium Encore LLC and Its Affiliated Debtors Proposed by Debtors and Ad Hoc Group of SAFE Parties* (ECF No. 2062) (the “**Plan**”).

23. The Effective Date (as defined in the Plan) occurred on January 14, 2026. ECF No. 2247.

VI. The Special Committee and the SAFE AHG File Frivolous Appeals

24. On January 7, 2026, the Special Committee and the SAFE AHG filed notices of appeal of the Fee Application Order and Updated Retention order. ECF Nos. 2213, 2214; *see also* ECF No. 2275 at 34 (SAFE AHG’s statement of issues on appeal) (“Whether the Bankruptcy Court erred in granting Debtors’ Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Dkt. No. 835]?”). These appeals are patently frivolous, repeat the same meritless arguments that this Court rejected at trial, and are designed to further harass LKC and prolong litigation over LKC’s court-approved fees.

25. The SAFE AHG’s appeal of the Court’s Updated Retention Order, ECF No. 1418, leaves LKC in the position of defending an order the Debtors themselves sought.

VII. LKC’s Damages

26. As a result of the Special Committee’s and the SAFE AHG’s bad-faith conduct, LKC has suffered substantial damages, including more than \$1.5 million in attorney’s fees and expenses incurred in defending against the Special Committee’s attacks and objections, eight months of delay in payment of LKC’s success fee, and harm to LKC’s professional reputation.

27. LKC intends to file an adversary proceeding against the Special Committee and the SAFE AHG, asserting claims for tortious interference with contract, abuse of process, and civil conspiracy.

28. Damage to LKC is ongoing. LKC must defend the Court’s orders against frivolous appeals brought by the Wind-Down Debtors and SAFE AHG, including the defending the Court’s Updated Retention Order approving the Debtors’ motion to update its retention with LKC.

RELIEF REQUESTED

29. LKC requests allowance and immediate payment of its chapter 11 administrative claim in an amount to be determined, and reimbursement of attorneys' fees and expenses in litigating the frivolous appeals of the Updated Retention Order and the approval of LKC's Fee Application. These costs were incident to the preservation of the Debtors' estates. Therefore, LKC is entitled to the amount of post-petition costs as an administrative claim.

LEGAL STANDARD

30. Under 11 U.S.C. § 503(b)(1)(A):

(b) After notice and a hearing, there shall be allowed administrative expenses . . . ,

including -

(1)(A) the actual, necessary costs and expenses of preserving the estate

11 U.S.C. § 503(b)(1)(A).

31. In *Reading v. Brown*, the Supreme Court provided an expansive interpretation of "actual, necessary cost," stating that "actual and necessary costs should include costs ordinarily incident to operation of a business, and not be limited to costs without which rehabilitation would be impossible." *Reading v. Brown*, 291 U.S. 471, 483 (1968); see *In re Al Copeland Enters., Inc.*, 991 F.2d 233, 239 (5th Cir. 1993) (stating that the Supreme Court's opinion in *Reading*, though decided under the former Bankruptcy Act, survived Congress's revisions of the Bankruptcy Code).

32. Bankruptcy Code section 503(b) allows a creditor to request allowance of administrative expenses it incurred: (i) arising "from a transaction with the debtor in possession" and (ii) where "the goods or services supplied enhanced the ability of the debtor-in-possession's business to function as a going concern." *Toma Steel Supply, Inc. v. Transamerican Nat. Gas Corp.* (*In re Transamerican Nat. Gas Corp.*), 978 F.2d 1409, 1415-16 (5th Cir. 1992); *In re ATP Oil &*

Gas Corp., 2014 Bankr. LEXIS 1050 (Bankr. S.D. Tex. Mar. 18, 2014); *see also Trustees of Amalgamated Ins. Fund v. McFarlin's Inc.*, 789 F.2d 98, 101 (2d Cir. 1986) (holding that an administrative claim is allowed if it arises from a transaction with the debtor in possession and “the consideration supporting the claimant’s right to payment was both supplied to and beneficial to the debtor in possession in the operation of its business.”).

33. Courts also treat tort claims “arising during an arrangement as actual and necessary expenses of the arrangement rather than debts of the bankrupt.” *Reading*, 391 U.S. at 482. Courts have found that “a post-petition tort committed by a debtor-in-possession within the course and scope of its continued operation of the estate’s business may, itself, be considered a cost of doing business and is, therefore, entitled to administrative expense priority under section 503(b)(1)(A).” *In re Mallinckrodt PLC*, No. 20-12522, 2021 WL 4876908, at *3 (Bankr. D. Del. Oct. 19, 2021) (citing *In re Blanchard*, 547 B.R. 347, 353 (Bankr. C.D. Cal. 2016)). Courts have likewise applied the *Reading* doctrine to allow for “post-petition tort claims as administrative expenses if those claims arise from actions related to the preservation of a debtor’s estate despite having no discernable benefit to the estate.” *Id.* (citing *In re Philadelphia Newspapers, LLC*, 690 F.3d 161, 173 (3d Cir. 2012), as corrected (Oct. 25, 2012) (collecting cases)).

34. Courts have applied *Reading* to a variety of post-petition torts and claims like LKC’s administrative expense claims. *See, e.g., In re Eagle-Picher Industries, Inc.*, 447 F.3d 461, 464 (6th Cir. 2006) (holding that claims against debtor for contributory patent infringement arising post-petition are entitled to administrative expense priority); *In re Krisu Hosp., LLC*, No. 19-20347-RLJ11, 2021 WL 1186483, at *4 (Bankr. N.D. Tex. Mar. 26, 2021) (recognizing the *Reading* exception, which allows post-petition torts to qualify as administrative expenses when they occur during the operation of the debtor's business); *In re Cambridge Biotech Corp.*, 186 B.R.

9, 14 (Bankr. D. Mass. 1995) (citing *Reading* and stating that “[i]f they hold valid patent rights, they have infringement claims to the extent the Debtor’s postpetition conduct constitutes infringement. Such conduct occurring after the petition filing date and prior to confirmation of the Debtor’s plan would create an administrative expense claim entitled to first priority.”).

35. In addition, attorneys’ fees and expenses incurred in postpetition litigation and that arise from the Debtors’ breach of postpetition agreements have been approved as administrative expense claims. *In re GGI Holdings, LLC*, 665 B.R. 727 (Bankr. N.D. Tex. 2024); *see also* TEX. CIV. PRAC. & REM. CODE ANN. 38.001(b) (allowing recovery of reasonable attorneys’ fees).

I. Damages from Adversary Proceeding

36. LKC’s claims against the Special Committee and the SAFE AHG in its forthcoming adversary proceeding arise entirely from post-petition conduct that occurred during the administration of these bankruptcy cases.

37. The Special Committee’s tortious interference with LKC’s contract, abuse of process, and civil conspiracy all occurred after the petition date and were directly related to the administration of the estate—specifically, the determination and payment of professional fees for services rendered to the estate.

38. Under *Reading* and its progeny, these post-petition torts give rise to administrative expense claims because they arose during the operation and administration of the estate.

39. Moreover, LKC’s defense of its contractual rights and the integrity of the fee application process conferred substantial benefits on the estate by establishing precedent regarding court-approved fee arrangements, deterring future frivolous challenges to professional fee applications, and protecting the estate’s ability to retain exceptional counsel.

40. Accordingly, any damages awarded to LKC in the Adversary Proceeding constitute administrative expenses entitled to priority under 11 U.S.C. §§ 503(b)(1)(A) and 507(a)(2).

II. Attorney's Fees and Expenses for Defending Appeals

41. LKC's attorney's fees and expenses incurred in defending the appeals of the Fee Application Order likewise constitute administrative expenses under § 503(b)(1)(A).

42. These costs are "actual, necessary costs and expenses of preserving the estate" for two independent reasons.

43. *First*, LKC has a contractual right to the reimbursement of these expenses. The March 2025 Engagement Letter expressly provides for reimbursement of LKC's "reasonable expenses . . . including but not limited to . . . legal advice on retention and compensation matters." ECF No. 835 at 14-15; ECF No. 1418. Defending this Court's orders approving LKC's retention and compensation falls squarely within this provision. And the Debtors' contractual obligation, approved by the Court in the Updated Retention Order, creates an administrative expense. *See Transamerican Nat. Gas*, 978 F.2d at 1415-16. The Debtors' retention of LKC directly benefitted the estate; yet, once again, LKC is forced to defend the estate's retention of LKC against the SAFE AHG's baseless attacks.

44. *Second*, the appeals arise from post-petition conduct by the Special Committee and the SAFE AHG. Under *Reading*, the costs of responding to and defending against post-petition misconduct by parties to the bankruptcy constitute administrative expenses, even if the defense provides no discernible benefit to the estate. *See Mallinckrodt*, 2021 WL 4876908, at *3.

45. LKC seeks allowance of an administrative expense claim for all reasonable attorney's fees and expenses incurred in defending the appeals of the Updated Retention Order

and Fee Application Order. LKC reserves the right to supplement this claim with the specific amount sought once the appeals are resolved.

RESERVATION OF RIGHTS

46. The Plan provides for the full payment of all allowed administrative claims unless the affected claimant consents to different treatment. *See* Plan, § 2.1; *see also* 11 U.S.C. § 1129(a)(9). LKC does not consent to treatment other than payment in full. Therefore, upon allowance of its administrative claim, LKC seeks payment in full in accordance with the Plan and Confirmation Order.

47. LKC reserves all rights, claims, defenses, and remedies, including, without limitation, the right to amend, modify or supplement this Application, including without limitation to update amounts owed related to adversary proceeding and appeals, and to introduce evidence at any hearing to consider this Application.

WHEREFORE, LKC requests that the Court enter the attached order allowing it a chapter 11 administrative claim in an amount to be determined and grant LKC other and further relief as just.

Dated: February 12, 2026
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

Telephone: (713) 226-6000

Facsimile: (713) 226-6248

jwolfshohl@porterhedges.com

mdearman@porterhedges.com

Counsel to Lehotsky Keller Cohn LLP

CERTIFICATE OF SERVICE

I hereby certify that, on February 12, 2026, 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, <i>et al.</i> , ¹ | § | Case No. 24-90448 (ARP) |
| | § | |
| Debtors. | § | |
| | § | (Jointly Administered) |
| | § | |

**ORDER GRANTING LEHOTSKY KELLER COHN LLP’S APPLICATION FOR
ALLOWANCE OF CHAPTER 11 ADMINISTRATIVE CLAIM
(Relates to ECF No. _____)**

The Court has considered LKC’s Application for Allowance of Chapter 11 Administrative Claim (the “*Application*”)² and finds that cause exists to grant the relief requested. Adequate notice of the Application has been given and no other or further notice is necessary. Accordingly, it is therefore

ORDERED, ADJUDGED, AND DECREED that: the Application is GRANTED; and it is further

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), 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.

² Capitalized terms used but not otherwise defined in this Order shall have the meaning ascribed to such terms in the Application.

ORDERED, ADJUDGED, AND DECREED that: LKC is hereby granted an allowed Chapter 11 administrative claim in the amount of \$_____.

SIGNED _____, 2026.

HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE