

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

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

**BARNES & THORNBURG LLP’S RESPONSE TO LEHOTSKY KELLER COHN LLP’S  
MOTION FOR SANCTIONS  
[Relates to ECF No. 2303]**

Barnes & Thornburg LLP (“B&T”) files this response (“Response”) to Lehotsky Keller Cohn LLP’s (“LKC”) Motion for Sanctions against Barnes & Thornburg LLP, or, in the Alternative, for Payment of Fees and Expenses under Section 328 (ECF No. 2303). In support, B&T respectfully states as follows:

**INTRODUCTION**

1. LKC signed an engagement letter with Debtors that contemplated that the parties might not agree on LKC’s success fee. In that event, the parties agreed that “**such dispute shall be resolved by the Bankruptcy Court.**” ECF No. 835 at 15 (emphasis added). There was such a dispute, and this Court resolved it. But despite agreeing to submit fee disputes to this Court, LKC now cries foul, seeking sanctions against the Special Committee, and its counsel B&T, for

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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.



their reasonable, good-faith dispute of LKC's success fee.<sup>2</sup> If LKC wanted an engagement letter that required Debtors and the Special Committee to accept whatever success fee LKC desired, with no chance to dispute it or seek this Court's intervention, LKC could have bargained for one. It did not. Instead, LKC agreed to resolve fee disputes with this Court but would now sanction a party and its counsel for doing exactly that—resolving a reasonable fee dispute with this Court.

2. And this fee dispute *was* reasonable. The Special Committee and LKC disagreed on the initial value to use to calculate the success fee. LKC argued for \$100 million as the starting point, whereas the Special Committee believed \$75 million was appropriate. B&T advanced the Special Committee's position in good faith and with evidence in support. *See, e.g.*, Ex. 1, Hearing Ex. 245.002 (showing midpoint of damages valuation at \$75 million); *see also* ECF No. 1881 at 3 (Debtors valuing settlement of their claims at \$75 million). B&T did not file a frivolous claim against LKC, it did not make knowing misrepresentations to the Court, and it did not vexatiously multiply proceedings. LKC's allegations are demonstrably false, and this Response shows as much.

3. LKC's Motion is a clear attempt to circumvent the rule that costs incurred defending a fee application are not recoverable under 11 U.S.C. § 330(a)(1). The U.S. Supreme Court established this rule in *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 124 (2015). Rather than accept the rule from *ASARCO*, LKC seeks sanctions instead. But sanctions are not warranted because B&T did not engage in bad faith or abuse the judicial process. LKC's Motion should be denied.

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<sup>2</sup> LKC has effectively conceded that the Debtors and the Special Committee are not different for purposes of the engagement letter because LKC argues that the Special Committee refused to negotiate the success fee in good faith, as the engagement letter requires. *See* ECF No. 2303 at 5 ("The Special Committee Refuses to Negotiate LKC's Success Fee in Good Faith.").

## **BACKGROUND**

4. For LKC to be entitled to sanctions, it must show that B&T engaged in “bad faith or willful abuse of the judicial process.” *In re Moore*, 739 F.3d 724, 729 (5th Cir. 2014). Additionally, “the finding of bad faith must be supported by clear and convincing proof.” *Id.* at 730 (cleaned up) (quoting *Crowe v. Smith*, 261 F.3d 558, 563 (5th Cir. 2001)). This is a “high threshold,” *id.*, and the U.S. Supreme Court has advised that a district court’s inherent power to sanction “must be exercised with restraint and discretion.” *Roadway Exp., Inc. v. Piper*, 447 U.S. 752, 764 (1980). The Fifth Circuit has explained that this inherent authority “is not a broad reservoir of power, ready at an imperial hand, but a limited source; an implied power squeezed from the need to make the court function.” *NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 894 F.2d 696, 702 (5th Cir. 1990).

5. LKC’s Motion does not clear the high threshold required for sanctions. Far from presenting clear and convincing proof of B&T’s bad faith or abuse of the judicial process, LKC simply disagrees with B&T’s zealous advocacy on behalf of its client. The evidence reveals that with the client’s full approval and backing, B&T advanced reasonable, good-faith arguments that LKC’s fee application was premature and that LKC breached its fiduciary duty to the Debtors. LKC’s Motion should be denied.

### **A. The Debtors Retain LKC**

6. In May 2023, the Debtors and LKC executed an engagement letter so that LKC could represent Debtors in litigation against Whinstone US, Inc. (“Whinstone”). ECF No. 835 at 9–12. Debtors are a bitcoin mining company that operated at Whinstone’s facility in Rockdale, Texas. ECF No. 770 at ¶ 3. Whinstone contracted with Debtors to provide them power at a fixed, below-market price, but Riot, a competitor to the Debtors, purchased Whinstone shortly

afterwards. *Id.* at ¶ 4. When Debtors refused to renegotiate the power contracts, Riot and Whinstone withheld millions of dollars in energy credits. *Id.* at ¶ 7.

7. The engagement letter between Debtors and LKC provided for a variety of fees, including fixed, hourly, and a “potential success fee.” ECF No. 835 at 9–10. In September 2024, as part of this bankruptcy proceeding, Debtors applied to retain LKC as special litigation counsel in connection with the ongoing Whinstone litigation. *See* ECF No. 173. The Court granted this application, but its order did not address the success fee. *See* ECF Nos. 263, 264.

**B. The Debtors Sue Whinstone and Revise LKC’s Engagement Letter**

8. In February 2025, the Debtors filed an adversary complaint against Whinstone and its parent company Riot Platforms, Inc. (“Riot”), seeking more than \$300 million in damages. *See* ECF No. 770.

9. In February and March of 2025, the Debtors and Whinstone mediated their dispute before Judge Mark X. Mullin, United States Bankruptcy Judge for the Northern District of Texas. *See* ECF No. 1732 at ¶ 13. During this mediation, it became clear that Debtors and Whinstone were likely to reach a settlement *both* resolving Debtors’ claims against Whinstone *and* consummating the sale to Whinstone of Debtors’ assets in Rockdale (as well as its intangible assets like the power contracts). ECF No. 1111-1 at ¶ 11. However, the terms of the success fee outlined in the engagement letter between Debtors and LKC did not address this scenario. *Id.* The terms of the success fee outlined in the initial engagement letter contemplated a judgment on or settlement of Debtors’ claims alone, not an additional amount for the sale of the Rockdale assets and power contracts. *See* ECF No. 835 at 10. Nevertheless, the parties believed LKC should still receive a success fee in the event of a global settlement. ECF No. 1111-1 at ¶ 11.

10. Accordingly, in March 2025, Debtors and LKC signed a revised engagement letter (“Revised Engagement Letter”) that superseded the one from May 2023. ECF No. 835 at 13–16.

The Revised Engagement Letter outlined the terms of the success fee as follows:

The potential success fee is calculated as follows:

(a) \$600,000 if (i) the Bankruptcy Court’s order on Debtor’s Motion to Assume is upheld in a non-appealable final judgment (or the appeal is dismissed), to be paid 30 days after such non-appealable final judgment (or dismissal) or (ii) you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, to be paid 30 days after the closing of such acquisition;

(b) 5% of any recovered energy credits up to \$5 million, and 1% of any additional recovered energy credits, payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and

(c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys’ fees, payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates;

(d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client 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). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

*Id.* at 14–15. Compared to the initial engagement letter, the Revised Engagement Letter made any payments under subsections (b) and (c) “subject to Bankruptcy Court approval.” And the revised letter added subsection (d) entirely.

11. In the event Whinstone acquired “all or substantially all of the Rockdale assets” (as appeared likely during the mediation), subsection (d) required Debtors and LKC to determine in good faith the portion of any settlement with Whinstone that was allocable to energy credits and damages under subsections (b) and (c), respectively. This allocation necessarily required Debtors and LKC to determine the portion of the \$185 million global settlement that corresponded to the Debtors’ claims against Whinstone. This is because the amounts allocable to the energy credits and damages under subsections (b) and (c) had to stem from the amount for Debtors’ claims, not

the amounts for the Rockdale assets or power contracts. In other words, the Debtors and LKC had to agree on (1) how much of the settlement value was attributable to Debtors' claims as opposed to the tangible assets and (2) how much of the claims-value was allocable to energy credits versus other damages.

12. Testimony from Charles Topping, the secretary and general counsel for Rhodium Enterprises, Inc. ("REI"), supported this two-step process. He testified that in the event of a global settlement, "[i]t would be necessary to come up with an allocation as to what portion of that number is attributable to the assets and then what portion of that number would be attributable to the settlement of the -- the -- the claims." ECF No. 1258 at 47. "And with regard to the -- the number attributable to the settlement of the claims, it would then be necessary to come up with an allocation between Subparagraph (b), which deals with energy credits, and then Subparagraph (c), which deals with damages and other amounts." *Id.*

13. Per the last sentence of subsection (d), LKC also agreed that "[i]f [Debtors] and [LKC] are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court." ECF No. 835 at 14–15. Crucially, then, LKC agreed that it may not be able to agree with Debtors on the allocation of the global settlement and *would have to resolve the dispute with this Court.*

14. Around the same time that the parties executed the Revised Engagement Letter, Debtors applied for an updated order authorizing them to continue to retain LKC as special litigation counsel under the terms of the Revised Engagement Letter. *See* ECF No. 835 at ¶ 13. The Court later approved this application, though it made no determination as to the calculation of

LKC's success fee. *See* ECF No. 1418. In fact, the Court stated that “[t]he Ad Hoc Group and any other parties are always free to object to any future fee applications.” *Id.* at 18.

### **C. The Settlement**

15. The mediation between Debtors and Whinstone was ultimately successful. Debtors and Whinstone entered into a Compromise, Settlement and Release Agreement (“Settlement”) and a Purchase and Sale Agreement (“PSA”), the material terms of which the Court approved on April 8, 2025. ECF Nos. 921, 1530-2, 1530-3. The PSA provided that Whinstone would pay Debtors \$185 million in total. ECF No. 1530-3 at 7.

16. However, the parties did not determine which portion of the \$185 million covered the claims versus the Rockdale assets or power contracts. Under the PSA, the “Purchase Price” of \$185 million was for “the Property,” defined as “all tangible and certain intangible property” of Debtors. *Id.* at 6–7. The parties did not specify an amount corresponding to the Rockdale assets (tangible property) versus Debtors’ claims (part of intangible property).

17. Rather, the PSA provided that Debtors would prepare and deliver to Whinstone a copy of IRS Form 8594 allocating the \$185 million among the tangible and intangible assets in accordance with § 1060 of the Internal Revenue Code. *Id.* at 7–8. This Form was deemed the “Allocation Statement.” *Id.* at 7. The Allocation Statement required Debtors to distribute the \$185 million among seven classes of assets.<sup>3</sup> In the case of an asset acquisition, the Internal Revenue Code requires an allocation in order to properly reflect the fair market value of the assets and to properly calculate the seller’s gain or loss and the buyer’s basis in the purchased assets. *See* 26 U.S.C. § 1060(a). Courts will make a similar allocation for settlement agreements if the parties to the agreement do not do so, in order to calculate the federal income tax liability on the settlement.

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<sup>3</sup> Form 8594, [Form 8594 \(Rev. November 2021\)](#).

*See Bagley v. Commissioner of Internal Revenue*, 105 T.C. 396, 410 (1995) (U.S. Tax Court allocating \$500,000 out of \$1.5 million settlement to punitive damages for tax purposes), *aff'd*, 121 F.3d 393 (8th Cir. 1997).

18. Notably, § III(2) of the Settlement specified that “[a]s a *condition* to entering into this Agreement, Debtors and Whinstone shall close the transactions contemplated by that [PSA] between Debtors (or their designees), as sellers, and Whinstone (or its designee), as purchaser, and approved by the Bankruptcy Court.” ECF No. 1530-2 at 8 (emphasis added). One such transaction was the Allocation Statement.<sup>4</sup>

19. Under the PSA, Whinstone had 15 days upon receipt of the Allocation Statement to inform Debtors of any objections. ECF No. 1530-3 at 7. In the event Whinstone objected, the parties were obligated to “attempt in good faith to resolve any dispute.” ECF No. 1530-3 at 7. If the parties couldn’t, this Court would do so. *Id.* at 7–8. The parties agreed that “[t]he allocation as determined by such Allocation Statement . . . shall be binding on [Whinstone] and [the Debtors].” *Id.* at 8.<sup>5</sup> Additionally, the PSA commanded that the Debtors and Whinstone “shall take no reporting position inconsistent with such Allocation Statement on any tax return or in the course of any tax audit, tax review or tax litigation relating thereto or otherwise.” *Id.*

20. B&T reasonably argued that the Allocation Statement had ramifications for the calculation of LKC’s success fee. The Revised Engagement Letter required the Debtors and LKC to allocate the portion of the \$185 million attributable to the claims against Whinstone, and then again among energy credits and other damages. Additionally, B&T reasonably believed that the

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<sup>4</sup> Additionally, the Settlement clarified that its provisions encompassed “the documents required by the PSA,” including the Allocation Statement. ECF No. 1530-2 at 10.

<sup>5</sup> Under the applicable provision of the Internal Revenue Code, “[i]f in connection with an applicable asset acquisition, the transferee and transferor agree in writing as to the allocation of any consideration, or as to the fair market value of any of the assets, such agreement shall be binding on both the transferee and transferor.” 26 U.S.C. § 1060(a).

Debtors could have subjected themselves to audit risk by taking one position in the tax allocation and a different one as to LKC's success fee. *See id.* at 8; Ex. 2, Dec. 11, 2025 Hearing Tr. at 8:4–7 (“I’m also satisfied that using \$75 million gives us one set of operative facts for tax purposes, which I understand to be important in the face if there’s ever an IRS audit.”).

21. Additionally, the Debtors and the Special Committee were concerned about paying overlapping success fees. The Debtors received assistance from the investment bank B. Riley Financial in connection with the sale of the Debtors’ business. ECF No. 1530 at 7. B. Riley was also entitled to a success fee from the Debtors, but B. Riley agreed to wait to negotiate its success fee until the parties finalized the Allocation Statement. *Id.* at 8.

**D. B&T Negotiates With LKC Over Its Success Fee, But LKC Does Not Entertain B&T’s Range of Offers**

22. After this Court approved the Settlement and PSA at the end of April, the parties began negotiating LKC’s success fee. LKC alleges that B&T, on behalf of the Special Committee, did not negotiate in good faith. ECF No. 2303 at 5–6. In reality, the evidence shows that B&T engaged in good faith, but LKC would not entertain the settlement offers presented by B&T.

23. For example, at the end of May 2025, counsel for LKC reached out to Mr. Trace Schmeltz, counsel for the Special Committee and a partner at B&T, with an offer to settle LKC’s success fee for \$8.1 million. Ex. 3, Hearing Ex. 201.007–08. This offer used \$100 million as its calculation starting point. *Id.* at 201.008. In response, Mr. Schmeltz countered with an offer of \$3.8 million. *Id.* at 201.007. Mr. Schmeltz explained that “based on the current tax plan,” meaning the Allocation Statement required under the PSA, the Debtors had allocated \$75 million, not \$100 million, to the value of their claims against Whinstone. *Id.* Of the \$75 million, the Debtors and the Special Committee calculated \$50 million in energy credits and the rest to other damages (as the Revised Engagement Letter required). Adding the sums from subsections (a), (b), and (c), Mr.

Schmeltz arrived at \$3.8 million as a counter. *Id.* Mr. Schmeltz even added, “**I think there is a number between our \$3.8 million and your \$8.1 million at which we can settle.**” *Id.* (emphasis added).

24. In response, counsel for LKC called the number “another low-ball offer” and indicated that LKC “[was] not countering at this time.” *Id.* at 201.006–07. Mr. Schmeltz replied that LKC was at one point willing to accept \$5.2 million, a figure that is closer to \$3.8 than \$8.1. *Id.* at 201.006. Counsel for LKC responded with an ultimatum: “If the Debtors want the negotiations to continue, they need to make an offer above \$5.2 million.” *Id.*

25. Mr. Schmeltz responded that the \$75 and \$50 million figures came straight from the Debtors and their CFO, Kevin Hays. *Id.* at 201.005. By rejecting these figures, LKC was doubting its own client’s valuations. *Id.* Mr. Schmeltz proposed making one more settlement offer over the phone, but negotiations broke down.

26. This evidence shows that LKC’s allegations about B&T failing to negotiate in good faith are simply untrue.

27. Between May and July 2025, B&T continued to communicate with counsel for LKC regarding negotiations over the success fee. ECF No. 1530 at ¶ 20. Mr. Schmeltz explained that the Debtors were preparing an Allocation Statement that valued the settlement of Debtors’ claim lower than LKC did. *Id.* LKC insisted that its allocation was proper, at which point B&T decided that fee discussions were no longer productive and should wait until the Allocation Statement was completed. *Id.* at ¶ 21. Additionally, when Debtors’ counsel Patricia Tomasco reached out to counsel for LKC, the latter declined to negotiate the success fee without a draft of the Allocation Statement. *Id.* at ¶ 22; ECF No. 1530-1 at ¶ 13. In other words, counsel for LKC

admitted that the Allocation Statement was crucial to move forward with negotiations. ECF No. 1530 at ¶ 34.

**E. LKC Propounds Discovery on Its Own Client, and LKC Publicly Files B&T's Private Response**

28. On August 7, 2025, LKC served its First Set of Requests for Production and Interrogatories to Debtors pursuant to Bankruptcy Rule 2004. ECF No. 1515. Despite its continued representation of the Debtors, LKC signed these discovery requests itself, rather than have its own counsel sign the requests. *Id.* at 2.

29. Tellingly, LKC's discovery requests were broad, seeking a wide array of information related to the tax allocation. *Id.* at 7. LKC now calls the connection between the tax allocation and the success fee "a fiction" that was "invented by the Special Committee," yet LKC sought discovery on this very issue. ECF No. 2303 at ¶ 6. If the tax allocation was truly irrelevant and unconnected to the success fee, then there was no need to obtain discovery on the issue. LKC's actions in this case belie its arguments for sanctions.

30. On August 13, 2025, B&T, on behalf of the Special Committee, emailed a *private* letter to LKC and its counsel outlining the Special Committee's position that LKC's discovery requests were adverse to the interests of LKC's own clients, the Debtors, and that the requests constituted a breach of LKC's fiduciary duties to the Debtors. *See* ECF No. 1529-2. The letter demanded that LKC withdraw its discovery requests before 1:30 pm CT on August 14 or the Special Committee would move to quash the requests. *Id.* at 4.

31. The next day, LKC moved for a status conference on the discovery requests. ECF No. 1529. But as an exhibit to its motion, LKC attached and *publicly filed* LKC's letter from the previous day. *See* ECF No. 1529-2. LKC did not move to seal this filing. LKC complains of the public filing of allegations of misconduct, but it only has itself to blame.

32. Following LKC's lead of not sealing its filings, B&T, on behalf of the Special Committee, filed a motion to quash the discovery requests. *See* ECF No. 1530. B&T argued that the discovery requests were premature because the Debtors and Whinstone had not completed the Allocation Statement. *Id.* at ¶ 31. The Debtors and Whinstone had not agreed on the portion of the global settlement allocable to the claims. Without this number, the Debtors and LKC could not determine how much of the claims were for energy credits versus other damages, per subsection (d) of the Revised Engagement Letter. ECF No. 835 at 14–15; *see also* ECF No. 1258 at 47; ECF No. 1530 at ¶ 33.

**F. LKC Files Its Final Fee Application, and the Special Committee Objects**

33. On August 22, 2025, LKC filed its final fee application. *See* ECF No. 1560.

34. On September 10, 2025, the Special Committee moved to extend its time to file a response to LKC's fee application. *See* ECF No. 1626. B&T sought additional time for the Special Committee because under Fifth Circuit precedent, all claims that the estate held against LKC had to be included in the objection to the fee application or else they were waived. *See In re Intelogic Trace, Inc.*, 200 F.3d 382, 391 (5th Cir. 2000). Additionally, B&T re-urged the argument that the fee application was premature.

35. The Ad Hoc Group of SAFE Parties (set forth in ECF No. 1346) joined in on the Special Committee's request for an extension of time to file a response to LKC's fee application. *See* ECF No. 1638. The Ad Hoc Group of SAFE Parties represented that it intended to “carefully assess LKC's fee request, including its request for an extraordinarily large success fee.”<sup>6</sup> ECF No. 1638 at 3.

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<sup>6</sup> This Court later overruled Debtors' omnibus objection to the SAFE Proofs of Claim, effectively making the SAFE Claimants the largest creditor of the bankruptcy estate. *See* ECF No. 1592.

36. On September 24, 2025, the Court instructed the Special Committee to file its objection to LKC's fee application before the status conference on October 2. On October 1, the Special Committee did so, again raising the prematurity argument because the tax allocation was not yet complete. ECF No. 1732 at ¶ 1. LKC alleges that this argument was "meritless," ECF No. 2303 at ¶ 7, but B&T presented the declaration of Mark "Christopher" Wheeler in support of it, *see* ECF No. 1732-1. Mr. Wheeler is a certified public accountant and managing director of a consulting firm that *counsel for Debtors* retained (not the Special Committee or B&T) to "assist[] with an analysis of the tax impact on the Debtors as a result of the [Whinstone] asset sale and other tax matters associated with the disposition of the Debtors assets." ECF No. 1732-1 at ¶ 2.

37. Mr. Wheeler stated that the PSA between Debtors and Whinstone "requires attribution of revenue to each [Rhodium] 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." *Id.* at ¶ 7. Mr. Wheeler then analyzed the Allocation Statement provision of the PSA and its consequences for the Debtors and Whinstone. *See id.* at ¶¶ 8–19.

38. Mr. Wheeler stated that in his professional opinion, "there should be one set of operative facts governing the value allocated, and the facts must be accurate." *Id.* at ¶ 25. "Under the PSA, if the parties cannot reach agreement as to the allocation of purchase price, the ultimate provision for relief is for the parties to litigate the matter." *Id.* at ¶ 26. Ultimately, then, "in order to ensure a single set of operative facts regarding the allocation of purchase price, **that agreement or conclusion from any litigation must occur first before Debtors negotiate with LKC.**" *Id.* (emphasis added). Mr. Wheeler stated that, as a tax professional, he would be concerned "if there

were multiple sets of operative facts that such a circumstance could trigger an IRS or State income tax audit for the Debtors.” *Id.* at ¶ 27.

39. Mr. Wheeler’s informed, expert opinion on this topic squarely placed in issue LKC’s argument that B&T “invented a fiction” on behalf of the Special Committee. While the Court ultimately granted LKC’s fee application, ECF No. 2198, B&T presented a meritorious argument, in good faith, that was supported by expert testimony.

40. As another part of its objection to LKC’s fee application, the Special Committee argued that LKC based its success fee calculation on internal, privileged, and outdated information. ECF No. 1732 at ¶ 3. Again, B&T advanced this argument on behalf of the Special Committee with a declaration of Mr. Topping, general counsel and secretary of REI, in support. ECF No. 1732-2.

41. Mr. Topping explained that LKC calculated its success fee using numbers from a spreadsheet that was originally prepared by LKC to facilitate discussions by the Board of Directors of REI at the mediation with Whinstone. *Id.* at ¶ 6. In other words, the numbers were outdated, and the Debtors had changed their position on many of the valuations that LKC relied on in its fee application. Again, while the Court granted LKC’s success fee, B&T took a reasonable, good-faith position at the instruction of its client. That is not sanctionable conduct.

42. Finally, B&T, on behalf of the Special Committee, asserted a claim for breach of fiduciary duty against LKC. ECF No. 1732 at ¶¶ 50–59. B&T argued that LKC’s premature fee application could cause the Debtors “to breach the PSA and possibly violate the Internal Revenue Code and the Treasury Regulations thereunder.” *Id.* at ¶ 55. Once LKC filed its fee application, the Debtors and the Special Committee were faced with a difficult choice. They reasonably believed that the fee was premature and could subject the Debtors to tax liability in the future. And

they also understood that *res judicata* bars a debtor's claims against a third party when those claims are not asserted in objection to the third party's fee application. *See In re Intelogic Trace, Inc. (Osherow v. Ernst & Young, LLP)*, 200 F.3d 382, 386–91 (5th Cir. 2000). In fact, once it became clear that LKC intended to file its fee application, counsel for Debtors emailed B&T that **“We have to bring all counterclaims to preserve them.”** Ex. 4, 8/22/25 Emails from Counsel for Debtors (citing *Osherow v. Ernst & Young*) (emphasis added). B&T wanted to avoid the risk of waiving a claim that the Special Committee, Debtors, and counsel for Debtors endorsed and had evidence to support in the form of Mr. Wheeler's expert opinions.

43. What's more, on September 4, 2025, weeks before B&T filed the Special Committee's claim against LKC, B&T communicated to counsel for LKC that they had to assert any claims in connection with the fee application. *See Intelogic*, 200 F.3d at 386–91. B&T and counsel for LKC spoke again on September 9, this time to try and extend the Special Committee's deadline to respond to the fee application, which may have avoided the need to file a counterclaim altogether. If the Debtors and Whinstone had reached an agreement on the tax allocation, or if the Court resolved any dispute between them, then LKC's fee application would no longer be premature. But counsel for LKC did not agree to this extension. Lastly, the day before filing the counterclaim, B&T again reached out to counsel for LKC to inform them of the claim. Ex. 5, Sept. 2025 Emails from Trace Schmeltz. At no point during any of these communications did counsel for LKC convey that B&T was engaging in sanctionable behavior.

44. Not long after the Special Committee filed its objection, counsel for Debtors filed a Motion to Enforce the Purchase and Sale Agreement with Whinstone US, Inc. ECF No. 1881. The motion explained that under § 2.3 of the PSA, if the parties could not resolve their dispute over the Allocation Statement, this Court had to step in. *Id.* at ¶¶ 6–7. The Debtors and Whinstone

had been negotiating in good faith but had been unable to reach an agreement. *Id.* at ¶¶ 8–9. The Debtors therefore submitted their proposed allocations under the Allocation Statement to the Court. *Id.* at ¶ 11.

45. The Debtors’ proposed allocation aligned with the Special Committee’s position that LKC was using outdated, inflated numbers for its success fee. More specifically, the Debtors allocated \$75 million of the \$185 million Purchase Price to the settlement of claims. *Id.* This was consistent with the Special Committee’s argument, advanced by B&T, that LKC’s \$100 million figure was too high of a starting point. *See* Ex. 3, Hearing Ex. 201.007. In short, LKC seeks to sanction B&T for taking a position that counsel for other parties also endorsed and presented to this Court.

**G. The Special Committee, By Agreement, Withdraws Its Breach-of-Fiduciary-Duty Claim, and the Court Hears Evidence on the Fee Dispute Over Four Days**

46. On October 29, 2025, during the deposition of Mr. Topping, Mr. Schmeltz and counsel for LKC reached an agreement to withdraw the Special Committee’s breach-of-fiduciary-duty claim. Ex. 6, 10/29/25 Topping Dep. Tr. at 52–53. This agreement addressed the dispute at LKC’s first and only attempt to elicit deposition testimony on this topic. B&T filed a formal withdrawal with the Court a couple of days later. *See* ECF No. 1930. The Special Committee decided to withdraw its claim for trial purposes. LKC agreed to forgo discovery in exchange for the withdrawal, so the parties essentially narrowed the issues for trial. Ex. 7, Withdrawal Email (“As a result, I will forgo discovery into these issues, including deposing Mr. Topping.”).

47. The Court then held hearings on the fee dispute over four days: November 3, December 3, December 11, and December 17, 2025.

48. At these hearings, B&T presented evidence that the Debtors’ and the Special Committee’s valuation of the claims settlement at \$75 million was appropriate, as opposed to

LKC's \$100 million figure. Ex. 1, Hearing Ex. 245.001–08; Ex. 8, Nov. 3, 2025 Hearing Tr. at 122:3–124:22, 201:20–202:14; Ex. 9, Dec. 3, 2025 Hearing Tr. at 175:17–177:8, 178:2–180:4, 202:1–206:25; Ex. 2, Dec. 11, 2025 Hearing Tr. at 14:11–15:3.

49. For example, Kevin Hays, the Debtors' Chief Financial Officer, testified that the starting point of \$75 million for calculating LKC's success fee was in line with the presentation made to the Debtors' Board in March 2025, which occurred before any dispute arose over the success fee. Ex. 9, Dec. 3, 2025 Hearing Tr. at 202:1–206:25. And one of the Special Committee members, David Eaton, testified that \$75 million was at the high end of a reasonable range to calculate the success fee but that the Special Committee nevertheless accepted it. Ex. 2, Dec. 11, 2025 Hearing Tr. at 14:14–15:3.

50. As to the prematurity argument, B&T elicited testimony from David Eaton, one of the members of the Special Committee, that for tax purposes, it was appropriate to use the same allocation in the Allocation Statement between the Debtors and Whinstone as in the calculation of the success fee. *Id.* at 7:9–24. Mr. Eaton stated, "I'm also satisfied that using \$75 million gives us one set of operative facts for tax purposes, which I understand to be important in the face if there's ever an IRS audit." *Id.* at 8:4–7.

51. Additionally, Mr. Wheeler's testimony was consistent with his declaration that the tax allocation should happen before any calculation of LKC's success fee in order to avoid any audit risk to the Debtors. *See* 1732-1 at 7. Mr. Wheeler testified that it would not violate *the PSA* if the Debtors and Whinstone reached a different allocation in the Allocation Statement than the Debtors and LKC did for purposes of the success fee calculation. Ex. 9, Dec. 3, 2025 Hearing Tr. at 119:24–120:2. But Mr. Wheeler clarified that he was asked to advise only on "matters related to the *tax filings*," not on what constitutes a breach of the PSA. *Id.* (emphasis added). Moreover,

Mr. Wheeler never denied, retracted, or contradicted his earlier declaration that for tax purposes, the Allocation Statement should accord with the allocation made for LKC's success fee.

52. After the four-day fee dispute hearing, the Court granted LKC's fee application. *See* ECF No. 2198. The Special Committee, the Ad Hoc Group of SAFE Parties, and GXD Labs, as Plan Administrator for the Wind-Down Debtor, appealed the Court's order. ECF Nos. 2213, 2214, 2275, 2276.

### **LEGAL STANDARD**

53. The Fifth Circuit has "confined sanctions under the district court's inherent power to instances of bad faith or willful abuse of the judicial process." *Pressey v. Patterson*, 898 F.2d 1018, 1021 (5th Cir. 1990); *see also In re Moore*, 739 F.3d 724, 729 (5th Cir. 2014). "Because of the potency of inherent powers and the limited control of their exercise, . . . they must be used with great restraint and caution." *Nat. Gas Pipeline Co. of Am. v. Energy Gathering, Inc.*, 86 F.3d 464, 467 (5th Cir. 1996).

54. "[B]efore imposing sanctions under its inherent power, a court must make a *specific* finding that the sanctioned party acted in 'bad faith.'" *Maguire Oil Co. v. City of Houston*, 143 F.3d 205, 209 (5th Cir. 1998). "Bad faith is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; . . . it contemplates a state of mind affirmatively operating with furtive design or ill will." *Miller v. Dunn*, 774 F. Supp. 3d 806, 818 (N.D. Tex. 2024) (quotations omitted). "And bad faith requires more than just meritless claims." *Id.* at 819. "[T]he finding of bad faith must be supported by clear and convincing proof." *Crowe v. Smith*, 261 F.3d 558, 563 (5th Cir. 2001).

55. Additionally, under § 105(a) of the Bankruptcy Code, "a bankruptcy court can issue any order, including a civil contempt order, necessary or appropriate to carry out the provisions of

the bankruptcy code.” *Matter of Terrebonne Fuel & Lube, Inc.*, 108 F.3d 609, 613 (5th Cir. 1997). Under § 105(a), however, the court “still must make a specific finding of bad faith.” *In re Pastran*, 462 B.R. 201, 210 (Bankr. N.D. Tex. 2011) (quotations omitted).

56. Lastly, LKC invokes 28 U.S.C. § 1927. The Fifth Circuit has held that the terms “unreasonably” and “vexatiously” from § 1927 “require[] that there be evidence of bad faith, improper motive, or reckless disregard of the duty owed to the court” to satisfy § 1927. *Edwards v. Gen. Motors Corp.*, 153 F.3d 242, 246 (5th Cir. 1998).

### **ARGUMENT**

#### **A. B&T did not file baseless claims or allegations against LKC**

57. The breach-of-fiduciary-duty claim that B&T brought on behalf of the Special Committee against LKC was neither baseless nor brought in bad faith. Rather, as explained above, it was supported by expert testimony from Mr. Wheeler, who stated that an inconsistency between the Allocation Statement and the calculation of LKC’s success fee could subject the Debtors to audit risk or tax liability. ECF No. 1732-1 at 7. And under binding Fifth Circuit precedent, B&T had to assert this claim in connection with the Special Committee’s objection to LKC’s fee dispute or waive it. *See In re Intelogic Trace, Inc.*, 200 F.3d 382, 386–91 (5th Cir. 2000). The Debtors, the Special Committee, and counsel for the Debtors all endorsed the claim and provided B&T with legal and factual evidence in support.

58. LKC’s allegation that B&T could not articulate any factual basis for this claim is simply inaccurate. ECF No. 2303 at ¶ 65. The claim itself outlines its factual basis: “LKC breached its fiduciary duty by demanding fees . . . in such a manner that, if Rhodium acquiesced, would create substantial liability.” ECF No. 1732 at ¶ 55. During telephone conversations before the claim was filed, Mr. Schmeltz explained to counsel for LKC that he was *investigating* claims

against LKC based on its fee application. Even the declaration from LKC’s counsel bears this out: “During several previous meet-and-confer phone calls and correspondence, the Special Committee’s counsel has not articulated any claim the Debtors may have against LKC **but indicated that the potential claims have to do with the filing of LKC’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. 1560).” ECF No. 1633-1 at 4, ¶ 8 (emphasis added).

59. LKC’s allegation that B&T filed the breach claim “publicly to defame LKC” is, again, inaccurate. ECF No. 2303 at ¶ 65. In fact, *LKC* was the first to file any allegation of misconduct into the public record. As explained above, B&T sent LKC a *private* letter outlining the Special Committee’s concerns of misconduct, and LKC turned around and filed that letter into the record. *See* ECF No. 1529-2. LKC complains of a problem of its own making.

60. The cases that LKC cites to support its argument are easily distinguishable. First, in *Deutsch v. Henry*, No. A-15-CV-1238-LY-ML, 2016 WL 7165993 (W.D. Tex. Dec. 7, 2016), *aff’d*, No. 1:15-CV-490-LY, 2017 WL 5652384 (W.D. Tex. Mar. 28, 2017), the plaintiff’s lawyer called defense counsel racist, anti-Semitic, or schizophrenic in over 113 court filings, and that same lawyer filed fabricated evidence with the court. *Id.* at \*17–18. B&T has done nothing of the sort.

61. Second, in *Redd v. Fisher Controls*, 147 F.R.D. 128 (W.D. Tex. 1993), the court applied Rule 11, not its inherent authority, and the plaintiff’s lawyer accused defense counsel of “hav[ing] resorted to Hitlerian rhetorical ploy called the ‘Big Lie’” and of running up large fees and refusing to settle when it was in the client’s best interest to do so. *Id.* at 131–32. The court found that “there is no question [the lawyer] performed no reasonable inquiry to ascertain the truth before signing his name to the document,” *id.* at 132, but the same cannot be said of B&T. B&T

supported its allegations with an expert declaration, *see* ECF No. 1732-1, and it did not act in bad faith.

62. Third, the case of *Olmstead v. Hoppe*, No. 5:19-CV-203, 2020 WL 1482324 (N.D. Tex. 2020) involved a pro se litigant who accused various attorneys and judges of criminal conspiracy. *Id.* at \*1, \*4–5. The litigant had done so in multiple cases, and the court issued a pre-filing injunction. The facts of *Olmstead* are nothing like this case.

63. Lastly, the case of *Matter of Carroll*, 850 F.3d 811 (5th Cir. 2017) involved repeated violations of court orders and does not apply here. The vexatious litigants in that case “spent nearly fifteen years scheming to retain assets and rebuff creditors through several bankruptcy cases they filed for themselves and entities they controlled.” *In re Carroll*, No. 08-10756, 2016 WL 1084287, at \*1 (Bankr. M.D. La. Mar. 17, 2016) (emphasis added), *aff’d sub nom. Carroll v. Abide*, No. 316CV00218JWDRLB, 2016 WL 4127768 (M.D. La. Aug. 2, 2016), *aff’d sub nom. Matter of Carroll*, 850 F.3d 811 (5th Cir. 2017). The litigants had been held in contempt on multiple occasions for failing to abide by the bankruptcy court’s orders. *Id.* at \*3–4. Ultimately, the court enjoined the litigants from filing further pleadings absent court approval, and it sanctioned them \$49,432. *Id.* at \*10.

64. As for LKC’s allegations of “verbal abuse” during a deposition, the record reflects that LKC attorney Jonathan Cohn was not without blame. When asked about his history with multiple lawyers and witnesses in this case, Mr. Cohn launched into an *ad hominem* attack on Mr. Schmeltz. Ex. 10, Cohn Dep. Tr. at 406:13–408:10. The exchange between Mr. Schmeltz and Mr. Cohn serves as an example of two lawyers getting caught up in the heat of litigation, but it is not a proper basis for sanctions here. *See Tajonera v. Black Elk Energy Offshore Operations, LLC*,

No. CV 13-0366, 2015 WL 13533520, at \*7 (E.D. La. Sept. 30, 2015) (“The question was improper, but not so much as to be sanctionable standing alone.”).

65. LKC has no evidence of B&T’s bad faith, much less “clear and convincing proof” of the same. *Crowe*, 261 F.3d at 563. The “dishonest purpose or moral obliquity” that LKC attributes to B&T is unfounded. B&T had no reason to harass LKC or delay its success fee. LKC’s complaint of “eight months of delay” is also off-base, as the Court did not even grant the updated retention order until July 8, 2025. ECF No. 1418. B&T owed a fiduciary duty to its own client to ensure it was not paying an unreasonably high fee, and B&T discharged that duty by presenting reasonable, good-faith arguments to the Court.

**B. B&T Did Not Make Knowing Misrepresentations to the Court**

66. LKC contends that B&T somehow knew that the tax allocation between the Debtors and Whinstone was unrelated to the success fee calculation yet represented otherwise to the Court. This is incorrect for a number of reasons. First, LKC argues that Mr. Topping undercut B&T’s position on this issue, but LKC mischaracterizes Mr. Topping’s deposition testimony on this point. Mr. Topping testified that it was *possible* that Debtors and Whinstone reach one allocation and Debtors and LKC reach another, but that it was unlikely given the connection between the two. Ex. 11, 6/2/25 Topping Dep. Tr. at 80:14–20. This is consistent with the Special Committee’s position and the arguments advanced by B&T. B&T contended that the calculation of LKC’s success fee should happen after the completion of the Allocation Statement because of the tax implications of the latter. *See* ECF No. 1732-1 at 7. It was of course possible that the two allocations might diverge, but that divergence would open the Debtors up to audit risk. *See id.*; Ex. 2, Dec. 11, 2025 Hearing Tr. at 8:4–7.

67. Second, LKC cites to a statement from *Debtors' counsel* in support of the argument that *B&T* made knowing misrepresentations to the Court. ECF No. 2303 at ¶ 74. B&T cannot be responsible for the statements of counsel for other parties. No lawyer from B&T represented to the Court that the tax allocation was unconnected to LKC's success fee. Counsel for the Debtors did not speak for B&T or the Special Committee on this issue, and in any event counsel for Debtors had already aligned with the Special Committee's position that the value of Debtors' claims was \$75 million. *See* ECF No. 1881 at ¶ 11.

68. Lastly, LKC cites an amended declaration from Mr. Wheeler in which he explains that after discussions with Whinstone's tax advisors, the parties "agreed that the only item to be reported on Form 8594, Asset Acquisition Statement Under Section 1060, was the tangible assets." ECF No. 2303 at ¶ 74 (citing ECF No. 2140 at ¶ 10). But, again, this is not inconsistent with B&T's representations. As explained above, B&T reasonably believed that the valuation of the tangible assets had downstream effects on LKC's success fee. *See supra* ¶¶ 11–12. If, for example, the tangible assets were valued at \$100 million, then LKC's \$100 million valuation of the claims would be a non-starter (because only \$85 million of the global settlement would remain). B&T reasonably argued that the calculation of LKC's success fee was connected to the valuation of the tangible assets—as Mr. Wheeler's uncontradicted, unwithdrawn declaration made plain. *See* ECF No. 1732-1 at ¶ 27; ECF No. 1258 at 47.

**C. B&T Did Not Unreasonably and Vexatiously Multiply the Proceedings**

69. LKC charges B&T with refusing to negotiate LKC's success fee in good faith. But as explained above, the evidence presented at trial shows otherwise.

70. Between May 29, 2025 and July 31, 2025, B&T communicated with counsel for LKC, attempting to negotiate the success fee. ECF 1530 at ¶ 20. On May 31, 2025, in response

to a settlement offer from LKC, Mr. Schmeltz made a counteroffer. Ex. 3, Hearing Ex. 201.007. Mr. Schmeltz explained the logic behind this counteroffer and even represented, “**I think there is a number between our \$3.8 million and your \$8.1 million at which we can settle.**” *Id.* (emphasis added). After some back and forth, counsel for LKC conveyed an ultimatum that “[i]f the Debtors want the negotiations to continue, they need to make an offer above \$5.2 million.” *Id.* at 201.006. Mr. Schmeltz responded that he was prepared to make one additional offer, but negotiations broke down thereafter. LKC’s accusation that through these negotiations B&T “abdicated its fiduciary duties to the Debtors and the estate” is false. Negotiating in good faith to reach a reasonable settlement value with the client’s approval is entirely appropriate.

71. LKC makes much of an alleged comment from Mr. Schmeltz as to a “new master,” referring to the SAFE Ad Hoc Group. ECF No. 2303 at ¶ 26. But in reality, Mr. Schmeltz was simply acknowledging the fact that the Debtors had to discharge their duties to all their stakeholders, including to the estate’s largest creditor. Indeed, as the subsequent Plan Support Agreement would reflect, the Debtors agreed to “not settle the dispute regarding Lehotsky Keller Cohn’s accrued and unpaid fees and expenses without the consent of the SAFE AHG.” ECF No. 1747 at 6.

72. Further, LKC’s accusation of “scorched-earth litigation strategy” rings hollow when it is the one moving for sanctions. And when LKC demanded over seven depositions and argued that the production of over 5,000 documents was not enough. The evidence shows that B&T communicated regularly with counsel for LKC regarding the Special Committee’s objection to the fee application. Ex. 5, Sept. 2025 Emails from Trace Schmeltz (sending counsel for LKC draft of motion for extension of time to file objection); *see* also ECF No. 1529-2. B&T told counsel for LKC of the risk of waiving counterclaims if they were not asserted in objection to the fee

application. And B&T tried to extend the deadline to respond to the fee application and potentially obviate any claim of misconduct, but LKC refused. B&T informed LKC of the Special Committee's incoming claim for breach of fiduciary duty before filing it. Ex. 5, Sept. 2025 Emails from Trace Schmeltz. This behavior does not constitute unreasonable and vexatious multiplication of proceedings.

**D. The Court Should Not Award LKC Attorneys' Fees**

73. LKC has not shown that it is entitled to sanctions against B&T. LKC has failed to offer "clear and convincing proof" of bad faith or willful abuse of the judicial process on B&T's part. *See Crowe v. Smith*, 261 F.3d 558, 563 (5th Cir. 2001). "The standards for bad faith are necessarily stringent." *Batson v. Neal Spelce Assocs., Inc.*, 805 F.2d 546, 550 (5th Cir. 1986). "A party should not be penalized for maintaining an aggressive litigation posture." *Id.* That is precisely what LKC seeks to do here.

**E. Section 328 Does Not Apply and Even If It Did, LKC Does Not Satisfy It**

74. In the alternative, LKC asks for additional compensation under 11 U.S.C. § 328(a). LKC argues that the terms and conditions of its retention were "prove[n] to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions." 11 U.S.C. § 328(a).

75. First, § 328(a) does not even apply in this setting. The plain language of the statute contemplates that the trustee or committee would engage a professional to render services *to the trustee or committee*, and not for themselves. *See In re Boomerang Tube, Inc.*, 548 B.R. 69, 78 (Bankr. D. Del. 2016) ("[S]ection 328(a) permits only approval of fees or expenses for performing services for the Committee."). LKC seeks fees solely for itself, not for any services performed for the Debtors.

76. But even if § 328(a) applied, LKC could not satisfy its requirements. The Fifth Circuit has explained that § 328(a) “creates a ‘high hurdle’ for a movant seeking to revise the terms governing a professional’s compensation *ex post facto*.” *In re ASARCO, L.L.C.*, 702 F.3d 250, 258 (5th Cir. 2012). “[T]he movant is tasked with the weightier burden of proving that the subsequent developments were *incapable* of being anticipated at the time the engagement was approved.” *Id.* (emphasis added). “Likewise, before a court may revise a compensation agreement, it must explain with specificity why the subsequent developments were ‘incapable of being foreseen.’” *Id.* (quoting *In re Barron*, 325 F.3d 690, 693 (5th Cir. 2003)).

77. LKC’s Motion does not explain why it was *incapable* of foreseeing a fee dispute from the Special Committee. LKC’s position is ironic given that it signed an engagement letter that *explicitly stated* that fee disputes would be submitted to this Court for resolution. *See* ECF No. 835 at 14–15. LKC cannot claim to be surprised when such a dispute arises and is submitted to the Court, and the dispute certainly was not incapable of being foreseen. LKC argues that the Special Committee “disregard[ed] . . . the terms approved in the Court’s updated retention order,” ECF No. 2303 at ¶ 83, but that is untrue. As explained above, the Court’s updated retention order expressly contemplated that fee disputes may arise in the future. *See* ECF No. 1418 at 18.

### CONCLUSION

78. For these reasons, B&T respectfully requests that the Court deny Lehotsky Keller Cohn LLP’s Motion for Sanctions against Barnes & Thornburg LLP, or, in the Alternative, for Payment of Fees and Expenses under Section 328 (ECF No. 2303).

**BECK REDDEN LLP**

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing instrument was served upon counsel of record on March 6, 2026, in accordance with the Federal Rules of Civil Procedure.

/s/ David J. Beck

# Exhibit

1

Internal Distribution Only



**RHODIUM**

March 2025 -

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EXHIBIT 21  
Deponent Blackman  
Date 10.22.25

HEARING EX 245.001

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**Update – Since pre Mediation (2/16/25)**

## Key recent developments:

- Operational performance – Rockdale hashrate of ~2.7-2.8 EHs/ day (*in line with expectations*)
- Hashprice volatility – hashprice trading near ~ \$.05 \$per TH/s currently (*vs ~\$.06 in late January*)
- Exit Financing less certain due to:
  - Galaxy - Less robust view on damages potential, longer timeline to recover (from partner Fortress); Hashprice volatility
  - Invesco – cost prohibitive

## Impact on Valuation:

- Hashprice – +/- \$.01 TH/s = ~ \$30 million in DCF; recent volatility impacts exit financing more than long term valuation
- Damages – view from financing partners suggests risked value < \$100 million
- Higher risk of exit financing → increased discount rate (+/- 5% rate → +/- \$15 million in DCF)

As a result, revised Settlement Valuation range of ~\$110 - \$250 million (previously \$150 - \$300 million), from a combination of reduced potential damages, risk to exit financing and (to a lesser extent) hashprice volatility

3/5/2025

	Low	High	Commentary
Ongoing Business Value (DCF)	\$ 58,630,352	\$ 148,683,982	DCF (at 30%), sensitizing hashprice and Energy Sales
Risked Damages	\$ 50,000,000	\$ 100,000,000	Reduced Estimates by \$25 million
<b>Total Asset Value</b>	<b>\$ 108,630,352</b>	<b>\$ 248,683,982</b>	Equivalent to Settlement Value

2

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## Comparing Riot's Offer to our pre-Mediation Valuation

<b>Riot Offer</b>	<b>\$ 171.0</b>						
SAFE Discount	\$ 12.2	14% Discount offered by SAFE					
Returned Deposits	\$ 7.1	TXU Deposits (\$6.1 million) and Milam County (\$1 million)					
IP/Other	\$ 5.0						
Value to Rhodium	\$ 195.3	Apples to apples with authorized \$225 million premediation					
Incremental from Riot	\$ 5.0	\$ 10.0	\$ 15.0	\$ 20.0	\$ 25.0	\$ 30.0	\$ 35.0
<b>Revised Riot Offer</b>	<b>\$ 176.0</b>	<b>\$ 181.0</b>	<b>\$ 186.0</b>	<b>\$ 191.0</b>	<b>\$ 196.0</b>	<b>\$ 201.0</b>	<b>\$ 206.0</b>
<b>Value to Rhodium</b>	<b>\$ 200.3</b>	<b>\$ 205.3</b>	<b>\$ 210.3</b>	<b>\$ 215.3</b>	<b>\$ 220.3</b>	<b>\$ 225.3</b>	<b>\$ 230.3</b>

### Value Drivers:

- Riot – incremental cash/stock consideration
- SAFE – negotiate additional discounts
- Retained assets – derive incremental value from monetizing remaining assets

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## Impact on Equity Value

Cash Balance	\$	33.5	as of 2/19/2025
DIP Loan		-	
Secured + Unsecured Debt		(64.9)	Adjusted to include potentially accrued interest
General Unsecured Claims		(5.3)	Detail on next tab
Accrued Expenses		(16.2)	Detail on next tab
Unwind Costs (People, etc)		(3.0)	Depending on closing date (further out, more time to plan for) - Increase by \$1MM for conservatism
Severance Costs and Mi sc.		(3.0)	
Cushion for Time to Confirm a Plan		(2.0)	
<b>Claims (Net of Cash)</b>	<b>\$</b>	<b>(60.9)</b>	
Additional Fees		3.50%	Reserved for LKC and B Riley fees
Residual Remaining Asset Value		-	What Value can we extract from sales, etc?
IP		-	TBD
Returned Deposits		7.1	TXU and Milam County Deposits
<b>Total Remaining Asset Value</b>	<b>\$</b>	<b>7.1</b>	
SAFE Outstanding Principle		87.0	
SAFE Discount		14%	Negotiable, could vary depending on total value
<b>Amount Owed to SAFE After Discount</b>	<b>\$</b>	<b>74.8</b>	
Pre Money S/O			
Class A Shares	117,984,464		Includes the Proof Capital Shares
Imperium Shares	177,357,448		
Exercisable LTIP	35,116,315		To be slightly revised
Debt Penny Warrants	7,115,649		
<b>Shares Outstanding</b>	<b>337,573,876</b>		
Fairbairn Warrants	7,500,011		Appear to be out of money, uneconomic to exercise
<b>Imperium %</b>		<b>52.5%</b>	
<b>Intercompany From Technologies to Enterprises</b>	<b>\$</b>	<b>45,125,379</b>	

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## Impact on Equity Value



Total Asset Value	\$ 171	\$ 176	\$ 181	\$ 186	\$ 191	\$ 196	\$ 201	\$ 206	\$ 211	\$ 216	\$ 221	\$ 226
Claims	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)	(60.9)
Other Fees	(6.0)	(6.2)	(6.3)	(6.5)	(6.7)	(6.9)	(7.0)	(7.2)	(7.4)	(7.6)	(7.7)	(7.9)
Total Remaining Asset Value	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1	7.1
<b>Cash Value at Rhodium Technologies</b>	<b>\$ 111.2</b>	<b>\$ 116.0</b>	<b>\$ 120.9</b>	<b>\$ 125.7</b>	<b>\$ 130.5</b>	<b>\$ 135.3</b>	<b>\$ 140.2</b>	<b>\$ 145.0</b>	<b>\$ 149.8</b>	<b>\$ 154.6</b>	<b>\$ 159.5</b>	<b>\$ 164.3</b>
Interco - Technologies to Enterprises	45.1	45.1	45.1	45.1	45.1	45.1	45.1	45.1	45.1	45.1	45.1	45.1
Value to Imperium After Interco	34.7	37.3	39.8	42.3	44.9	47.4	49.9	52.5	55.0	57.5	60.1	62.6
Value to Enterprises NOT Including Interco	31.4	33.7	35.9	38.2	40.5	42.8	45.1	47.4	49.7	52.0	54.3	56.6
<b>Cash Value at Rhodium Enterprises</b>	<b>\$ 76.5</b>	<b>\$ 78.8</b>	<b>\$ 81.1</b>	<b>\$ 83.4</b>	<b>\$ 85.7</b>	<b>\$ 87.9</b>	<b>\$ 90.2</b>	<b>\$ 92.5</b>	<b>\$ 94.8</b>	<b>\$ 97.1</b>	<b>\$ 99.4</b>	<b>\$ 101.7</b>
Outstanding SAFE Amount After Discount	74.8	74.8	74.8	74.8	74.8	74.8	74.8	74.8	74.8	74.8	74.8	74.8
<b>Value to Remaining Equity NOT Including Imperium</b>	<b>\$ 1.7</b>	<b>\$ 4.0</b>	<b>\$ 6.3</b>	<b>\$ 8.5</b>	<b>\$ 10.8</b>	<b>\$ 13.1</b>	<b>\$ 15.4</b>	<b>\$ 17.7</b>	<b>\$ 20.0</b>	<b>\$ 22.3</b>	<b>\$ 24.6</b>	<b>\$ 26.9</b>

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## Appendix



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PROPRIETARY AND CONFIDENTIAL



## Value Considerations – 2/16/25

Valuation considerations ahead of next week's mediation:

- Rhodium's standalone valuation = Discounted Cash flow of business + Risked Damages
- Additional upside Riot derives from a settlement:
  - Value of contracts – removal of these contracts creates value to Riot at a lower discount rate (no execution risk)
  - Optics – Riot's public trading metrics allow enable it to pay more for Rhodium, accretive acquisition vs continuing a costly distraction
- Implications for Rhodium Equity holders in a Settlement offer
  - Equity Value comes after Secured & Unsecured Debt, General Unsecured Claims, and Accrued Expenses (collectively, net of cash, "Net Claims" in table below), and the SAFE (generally \$87 million in most scenarios)
  - ~\$140 million of Settlement Value until equity gets paid (net of SAFE)

	Low	High	Commentary
Ongoing Business Value (DCF)	\$ 74,450,843	\$ 176,306,256	DCF, sensitizing hashprice and Energy Sales
Risked Damages	\$ 75,000,000	\$ 125,000,000	Risked estimates from LCK/Stris +/- \$25 MM
<b>Total Asset Value</b>	<b>\$ 149,450,843</b>	<b>\$ 301,306,256</b>	Equivalent to Settlement Value
Net Claims	\$ 51,100,000	\$ 51,100,000	Cash less Debt and Claims
<b>Value Net of Claims</b>	<b>\$ 98,350,843</b>	<b>\$ 250,206,256</b>	
SAFE Claim	\$ 87,000,000	\$ 87,000,000	
<b>Equity</b>	<b>\$ 11,350,843</b>	<b>\$ 163,206,256</b>	

PRIVILEGED AND CONFIDENTIAL  
SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

PROPRIETARY AND CONFIDENTIAL



**Litigation Value – 2/16/25**

Issue	Base Amount	Base Success %	Exemplary Damages	Exemp Success %	Expected Value	Comments
Shutdowns	\$ 8	80%	\$ -		\$ 6.4	
Water	\$ 18	30%	\$ -		\$ 5.4	
ERCOT Curtailment (no URI)	\$ 36	70%	\$ -		\$ 25.2	
ERCOT Curtailment (URI)	\$ 29	60%	\$ 29	40%	\$ 29.0	This assumes we are allowed to plead and prove fraud
ERCOT 4CP	\$ 10	10%	\$ -		\$ 1.0	
Block of Temple Sale	\$ 50	5%	\$ -		\$ 2.5	
Non-Litigation Professional Fees in Bankruptcy	\$ 29	30%			\$ 8.7	This is \$15.2 +\$13.9 from Andrew's email, which includes his estimate through EOM April 2025.
Attorneys Fees Bankruptcy Case (Assumption)	\$ 7	60%	\$ -		\$ 4.2	
Attorneys Fees Pre-Bankruptcy Case (Breach of Contract/State Court/Arbitration/Damages Phase)	\$ 12	80%	\$ -		\$ 9.6	
Building D	\$ 165	20%	\$ -		\$ 33.0	This is a claim that was not previously at issue. We have not yet had discovery on it and do not have all the facts.
RIOT's Tortious Interference with RHDM contracts	\$ -		\$ -		\$ -	Pending discovery, we do not think this necessarily gets us more damages but just increases the odds of collection.
<b>Total</b>	<b>\$ 364.0</b>				<b>\$ 125.0</b>	
Discount Rate					25%	
<b>EOY 2025 Expected Collection</b>					<b>\$ 100.0</b>	

# Exhibit

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

RHODIUM ENCORE LLC and ) CASE NO: 24-90448  
AIR HPC LLC, )  
 ) Houston, Texas  
 )  
Debtor. ) Thursday, December 11, 2025  
 )  
 ) 1:00 to 1:54 p.m.  
-----)

HEARING

BEFORE THE HONORABLE ALFREDO R. PEREZ  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For Debtors: CAMERON KELLY  
PATRICIA B. TOMASCO  
Quinn Emanuel Urquhart & Sullivan  
700 Louisiana Street, Suite 3900  
Houston, TX 77002

For Special Committee: TRACE SCHMELTZ  
CATHERINE PAIGE LOHSE  
Barnes & Thornburg LLP  
One N. Wacker Drive, Suite 4400  
Chicago, IL 60606

For Lehotsky Keller Cohn: WILLIAM THOMAS THOMPSON  
Lehotsky Keller Cohn  
7500 Rialto Boulevard, Suite 1-250  
Austin, TX 78735

For Official Committee: NATHANIEL ALLARD  
McDermott Will & Schulte  
One Vanderbilt Avenue  
New York, NY 10017

Court Reporter: AKEITA HOUSE

Courtroom Deputy: AKEITA HOUSE

1 Transcribed by: Veritext Legal Solutions  
2 330 Old Country Road, Suite 300  
3 Mineola, NY 11501  
4 Tel: 800-727-6396

5 Proceedings recorded by electronic sound recording;  
6 Transcript produced by transcription service.

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1 was arguable that others may have had some sort of potential  
2 conflict. We hoped to be able to resolve this in an  
3 agreement, but we've been unable to do so, and that's why  
4 we're here.

5 Q I want to start your testimony by talking about the  
6 allocation of proceeds from the Riot-Whinstone sale to the  
7 settlement of claims as opposed to value for the sale of  
8 assets or the termination of contracts.

9 Are you aware that the company has allocated \$75  
10 million from the Riot-Whinstone transaction to the  
11 settlement of claims for tax purposes and for purposes of  
12 this LKC fee?

13 A Yes, I'm aware of that.

14 Q Do you know who at the company made that allocation?

15 A Yes. Kevin Hayes, our CFO, did that in conjunction  
16 with Chris Wheeler, who was a tax expert that had been  
17 retained by counsel.

18 Q Did you review that allocation in your role as a member  
19 of the Special Committee?

20 A I did.

21 Q From your perspective, is it appropriate to use the  
22 same amount for purposes of the tax allocation and the LKC  
23 fee?

24 A I would give that a qualified yes.

25 Q Would you explain your qualification, sir?

1 A Yes. I'm satisfied that the source of that number had  
2 been prepared by Kevin and others and that the numbers were  
3 accurate and sound, and I've seen it presented to the full  
4 board of directors. I'm also satisfied that using \$75  
5 million gives us one set of operative facts for tax  
6 purposes, which I understand to be important in the face if  
7 there's ever an IRS audit.

8 But the data that was used -- my qualification is that  
9 the data that was used was created for much different  
10 purposes before it was transferred over to apply to the  
11 settlement of success fees, and I think it substantially  
12 overweights the value of litigation claims; and so I would  
13 say it is at the absolute top of any number that should be  
14 used for a gross settlement recovery for a couple of  
15 reasons.

16 Q Why don't we get into those couple of reasons? What  
17 are they, sir?

18 A The first one is that in the final settlement  
19 discussions with Rhodium, all we ever talked about was the  
20 value of the assets in their hands and that the enterprise  
21 value was much more valuable to them and accretive to them  
22 immediately than where we were at and the -- than the  
23 numbers that were being bounced around in that negotiation.

24 And in fact, in that negotiation, we never even  
25 discussed the litigation claims because they had told us in

1 looking at with our risk factors and discount.

2 And then we -- for tax purposes, we also had an  
3 independent third-party valuation of the business that we  
4 had sold. And that came out with a minimum of \$173 million,  
5 and the high range of that was \$207 million, the midpoint of  
6 that being \$190 million, which was in fact very close to  
7 what we had achieved in the final settlement. So those  
8 were checks on a market value and a DCF value.

9 Q In a context in which --

10 A I -- go ahead, I'm sorry.

11 Q In the context in which you have enterprise values as  
12 high as almost \$500 million, an independent valuation with a  
13 midpoint of \$190 million, is there any reason that the  
14 Special Committee hasn't pushed for a lower allocation to  
15 settlement than the \$75 million that's been allocated?

16 A I -- personally, I felt that the 75 was, for lack of a  
17 better word, over generous. It was at the very end, very  
18 top end of a range of numbers. But it would comply with the  
19 contract, surely; was consistent with the allocation, which  
20 was a benefit for the reason I mentioned; and it recognized  
21 the good work that LKC had done.

22 So we stuck with the number that Kevin had proposed and  
23 testified was the midpoint of the last numbers he presented  
24 to the board even before the Riot deal was struck. And I'll  
25 say, I think it's at the top end of what should have been

1 done, but it creates a windfall for LKC. That is my view.

2 Q But you're not walking away from that number, right?

3 A No, no.

4 Q Let's shift gears a little bit and talk a little bit  
5 about the calculation of the success fee. I want to start  
6 by talking about the LKC success fee for energy credits. Do  
7 you understand how the energy credits work under the March  
8 -- sorry. Do you understand how success fee for energy  
9 credit claims works under the March 2025 engagement letter?

10 A Yes. The success fee for energy credit claims is 5  
11 percent on the first \$5 million and 1 percent for everything  
12 after \$5 million.

13 Q How would that compare to the success fee for non-  
14 energy credit claims?

15 A For non-energy credit claims, the success fee is 10  
16 percent of those claims.

17 Q From your perspective, is it appropriate for LKC to  
18 eliminate the energy credit claim related to Winter Storm  
19 Uri from the calculation of the success fee?

20 MR. THOMPSON: Objection, Your Honor. I have to  
21 object to asking this witness about what percentage of total  
22 damages ought to be allocated to energy credit. The debtors  
23 put up a 30(b)(6) witness on the topic of the LKC success  
24 fee. As Your Honor may recall from a hearing in October,  
25 that witness was unable to share any position of the debtors

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Sonya Ledanski Hyde

Veritext Legal Solutions  
330 Old Country Road  
Suite 300  
Mineola, NY 11501

Date: December 15, 2025

# Exhibit

3

**From:** "Schmeltz, Trace" <TSchmeltz@btlaw.com>  
**To:** "Lohse, Paige" <Paige.Lohse@btlaw.com>  
**Subject:** FW: LKC Contingency Fee Calculation  
**Date:** Thu, 14 Aug 2025 21:40:42 +0000  
**Inline-Images:** image001.png; image002.png



**Trace Schmeltz**  
Partner  
Direct: [\(312\) 214-4830](tel:3122144830) | Mobile: [\(312\) 731-1980](tel:3127311980)  
Chicago, IL



---

**From:** Schmeltz, Trace <TSchmeltz@btlaw.com>  
**Sent:** Monday, June 2, 2025 9:59 PM  
**To:** Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>  
**Cc:** Dearman, Michael B. <MDearman@porterhedges.com>  
**Subject:** Re: LKC Contingency Fee Calculation

Yes. Am on a 5 a.m. flight. Should be in the office by 7:00 a.m.

**Trace Schmeltz**  
Partner  
Direct: [\(312\) 214-4830](tel:3122144830) | Mobile: [\(312\) 731-1980](tel:3127311980)  
Chicago, IL



---

**From:** Wolfshohl, Joshua W. <JWolfshohl@porterhedges.com>  
**Sent:** Monday, June 2, 2025 8:37:30 PM  
**To:** Schmeltz, Trace <TSchmeltz@btlaw.com>  
**Cc:** Dearman, Michael B. <MDearman@porterhedges.com>  
**Subject:** [EXTERNAL] RE: LKC Contingency Fee Calculation

**Caution: This email originated from outside the Firm.**

---

Trace, I know you were tied up today. Are you available to talk in the morning?

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

---

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t 713.226.6695 e [JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)  
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---

**From:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Sent:** Monday, June 2, 2025 8:14 AM  
**To:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** Re: LKC Contingency Fee Calculation

I am helping with a last minute witness prep. I won't be on the Chuck dep today. If anything comes up and you think I could be helpful, text me. We can talk later this afternoon.

Regards,

**Trace Schmeltz**  
Partner  
Direct: [\(312\) 214-4830](tel:(312)214-4830) | Mobile: [\(312\) 731-1980](tel:(312)731-1980)  
Chicago, IL

**Barnes &  
Thornburg**

---

**From:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Sent:** Monday, June 2, 2025 8:11:10 AM  
**To:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** [EXTERNAL] RE: LKC Contingency Fee Calculation

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I'm in the Topping depo then. I don't think that will take more than 2 hours.

I'm also free now if you can talk.

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

---

1000 Main St, 36th Floor | Houston, TX 77002  
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---

**From:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Sent:** Monday, June 2, 2025 8:10 AM  
**To:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** Re: LKC Contingency Fee Calculation

My apologies. Between 2:30 a.m. and now, I have been asked to convene a call of folks for the larger bankruptcy resolution. Let's talk at the lunch hour. Can we say 12:30?

**Trace Schmeltz**  
Partner  
Direct: [\(312\) 214-4830](tel:(312)214-4830) | Mobile: [\(312\) 731-1980](tel:(312)731-1980)  
Chicago, IL



---

**From:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Sent:** Monday, June 2, 2025 7:57:34 AM  
**To:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** [EXTERNAL] RE: LKC Contingency Fee Calculation

**Caution: This email originated from outside the Firm.**

---

Trace, I'll call you then. I cell the best number?

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

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---

**From:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Sent:** Monday, June 2, 2025 2:55 AM  
**To:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** Re: LKC Contingency Fee Calculation

Actually, I can make 10 minutes at 8:30.

**Trace Schmeltz**  
Partner  
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Chicago, IL



---

**From:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Sent:** Sunday, June 1, 2025 5:23:37 PM  
**To:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** Re: LKC Contingency Fee Calculation

I am in trial tomorrow. I will reach out on a break.

**Trace Schmeltz**  
Partner  
Direct: [\(312\) 214-4830](tel:(312)214-4830) | Mobile: [\(312\) 731-1980](tel:(312)731-1980)  
Chicago, IL



---

**From:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Sent:** Sunday, June 1, 2025 5:10:13 PM  
**To:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** [EXTERNAL] Re: LKC Contingency Fee Calculation

**Caution: This email originated from outside the Firm.**

---

Trace, can you speak in the morning? I am free starting at 8:30.  
Joshua W. Wolfshohl  
Porter Hedges LLP  
1000 Main St., 36th Floor  
Houston, Texas 77002

On Jun 1, 2025, at 3:26 PM, Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)> wrote:

Josh —

Thanks for this. Obviously, your client does not get to make the allocation for Rhodium. Our numbers reflect our work with Kevin and the Debtors. I am not sure how LKC can question their work. Likewise, our assessment of the degree to which energy credits make up any portion of the settlement amount is based on data we obtained from the Debtors—and the Debtors' views of the strength of its claims. We actually believe a fair assessment would lead to a success fee much closer to \$2 million. It is unclear to us how your client intends to question its client's analysis on these issues.

In any event, we are prepared to make one more offer. Please call me to discuss, as we do not think the email dialogue is as productive as one might hope.

Kind regards,

**Trace Schmeltz**  
Partner  
Direct: [\(312\) 214-4830](tel:(312)214-4830) | Mobile: [\(312\) 731-1980](tel:(312)731-1980)  
Chicago, IL

---

**From:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Sent:** Sunday, June 1, 2025 9:02:39 AM  
**To:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** [EXTERNAL] RE: LKC Contingency Fee Calculation

**Caution: This email originated from outside the Firm.**

---

Trace, I appreciate the explanation. It is my understanding that these discussions predated my retention. While I now understand that back in February LKC was willing to compromise its fee to obtain certainty and to avoid litigation, expense, and distractions of the past 3.5 months, the Debtors did not honor that deal and should not now claim the benefit of a bargain they rejected. For a further explanation of its position, LKC asked me to send you the following:

Josh, please share this analysis with Trace:

- As an initial matter, no, we are not going to return to the deal the Debtors breached. Clarity and certainty would have been great back in February, and for that reason, we left a lot on the table. But, after the Debtors reneged, we endured months of threats, litigation, and a multi-headed effort to pressure us to compromise our fee. We needed to retain top legal counsel—at great expense—and I personally had to spend an enormous amount of time on this distraction while running a law firm. Trace must understand that under no circumstance will we accept \$5.2 million.
- We have also looked at Trace’s calculation. The \$75 million allocation is a non-starter and inconsistent with Rhodium’s own internal documents. During the mediation, Rhodium had a range of potential settlement values, and the lowest end of that range was approximately \$174 million—with \$100 million attributable to the affirmative case against Whinstone and roughly \$74 million for the going concern value of the business. As it turns out, Rhodium ended up better than the low-end scenario, as the Debtors settled for \$185 million, \$11 million north of \$174 million. Nonetheless, we are willing to use the \$100 million allocation to be conservative. (Contrary to Trace’s suggestion, \$100 million was not *our* number; we expressed an expected value range to \$150-215 million.) But we will not accept a lower number that Trace now claims might be relevant for tax purposes, which presents a completely different analysis. We are not doing tax accounting here.
- We appreciate Trace’s attempt to further allocate between damages and energy credits, and his percentages (10%, 5%, 1%) are correct. Where he errs is allocating \$50 million to energy credits. To be blunt, his allocation is utterly inconsistent with the Special Committee’s approach to the affirmative case against Whinstone. Trace should remember that the Special Committee forbade us from making a fraud claim to recover the *Uri-related* energy credits. Against my strong recommendation, the Special Committee wanted to maintain the position that the founders signed away any rights to the Uri-related energy credits, that the sign-away was not procured by fraud, and that the founders might be liable for breach of their duty of care.
  - Therefore, Trace can claim only the value of the *non-Uri-related* credits, which is \$36 million, according to the Debtors’ expert. But, of course, there was no guarantee we would recover even that amount. Thus, the expected value of the *non-Uri-related* credits is roughly \$25 million, as shown on the spreadsheet that Rhodium’s own CFO put together.
  - In the attached spreadsheet, I modeled our contingency fee in two scenarios: first, using the \$25 million expected value; second, using the full \$36 million maximum value. The numbers are \$8.532 million and \$7.560 million, respectively.
  - Note the midpoint of those numbers is roughly \$8.1 million, the number we previously proposed. But, for the sake of closure, I’m willing to use \$7.560 million, provided that the Debtors pay our fees and expenses (including attorneys’ fees) for having to deal with this dispute since mid-February.
  - If there is litigation over our LKC fees, I do not see how the Special Committee can argue for more than \$36 million being allocated to energy credits. I have no idea whether the Special Committee still plans on pursuing a D&O. claim, but either way, an argument from the Debtors for an allocation to Uri-related energy credits would lack credibility and be inconsistent with the prior position they took. Discovery could be interesting. And if they are planning on maintaining their argument about the founders’ duty of care, then I do not think they will want to argue a contrary position in the context of our fees—especially when they would not let us make the fraud argument in the first place.

- In terms of a counter, we will make one *contingent* on the Debtors understanding that the “brackets” are \$8.1 million and \$5.2 million, not \$3.8 million. With that, we can offer \$7.56 million, which is the lower number on the attached spreadsheet (plus our fees and expenses as noted above). If the Debtors want the negotiations to continue, they need to make an offer above \$5.2 million.

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

---

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---

**From:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Sent:** Saturday, May 31, 2025 4:28 PM  
**To:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** Re: LKC Contingency Fee Calculation

Josh —

I have it on good authority that your client was willing to cap his fee at 2.5% of a sale up to \$200 million back in February. On a \$185 million sale, that would be \$4.6 million plus \$600,000, or \$5.2 million. I don't think \$3.8 is low-ball relative to that number, but I do think \$8.1 million is a good deal above \$5.2 million. Given those brackets, we should be able to reach an agreement.

Regards,

**Trace Schmeltz**  
Partner  
Direct: [\(312\) 214-4830](tel:(312)214-4830) | Mobile: [\(312\) 731-1980](tel:(312)731-1980)  
Chicago, IL

---

**From:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Sent:** Saturday, May 31, 2025 3:46:19 PM  
**To:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** [EXTERNAL] RE: LKC Contingency Fee Calculation

**Caution: This email originated from outside the Firm.**

Trace, thank you for your email. I have forwarded it to my client and hope to speak with him again later today. I'll tell you that he is extremely unhappy and not currently interested in countering what he views as another low-ball offer.

As I've mentioned to you before, LKC's position is that it should get more than the \$6.25M you shared with other stakeholders. I realize you've characterized \$6.25M as a “top line” number, but my client strongly disagrees and sees it as *below* the lowest possible calculation. Your \$3.8mm number is well below even that.

In summary, my client is not countering at this time, but I will work on him, as I do see benefit in getting this resolved.

I will get back to you later if I can get LKC to make a counter.

Josh

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

---

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---

**From:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Sent:** Saturday, May 31, 2025 9:51 AM  
**To:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** Re: LKC Contingency Fee Calculation

Rule 408 Discussion

Dear Joshua,

I hope this message finds you well. Let's collaborate to find a solution regarding the LKC contingency fee calculation. Based on the current tax plan, we see \$75 million attributed to the settlement. It is my understanding that the hundred million dollar number came from advice given by LKC. We are not likely to use that number. That is the present plan for our taxes.

We see \$50 million of that to energy credits. So, baseline is \$600,000. Then,  $.05 * 5,000,000$  is another \$250,000. Plus  $.01 * 45,000,000$  is another \$450,000. And  $.1 * 25,000,000$  is \$2.5 million. For a total of \$3.8 million.

I think there is a number between our \$3.8 million and your \$8.1 million at which we can settle. I appreciate your patience and understanding as we work through these details. Your insights have been very valuable to us. I am eager to discuss this further.

Thank you for your cooperation.

Best regards,  
Trace

**Trace Schmeltz**  
Partner  
Direct: [\(312\) 214-4830](tel:(312)214-4830) | Mobile: [\(312\) 731-1980](tel:(312)731-1980)  
Chicago, IL

---

**From:** Wolfshohl, Joshua W. <[JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)>  
**Sent:** Thursday, May 29, 2025 4:33 PM  
**To:** Schmeltz, Trace <[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)>  
**Cc:** Dearman, Michael B. <[MDearman@porterhedges.com](mailto:MDearman@porterhedges.com)>  
**Subject:** [EXTERNAL] LKC Contingency Fee Calculation

**Caution: This email originated from outside the Firm.**

---

Trace, thank you for the productive call this morning. I agree it is better for the Debtors and LKC to reach an agreement, if possible, because that would spare the estate litigation expenses and potentially avoid a deposition of Mr. Topping.

Along those lines, I wanted to respond to your question of how we calculate the \$8.1 million contingency fee. In short, we used Rhodium's own projections of (a) the value of the damages cases and (b) the contingency fee percentage.

- Value of the damages case: In the attached documents, Kevin Hayes provided a range of estimates of the value of the damages case: \$100 million is his low point, and \$150,000,000 is the high point. To be Debtor-friendly, we took **his low point, \$100,000,000**.
  - Please note that, in our view, Kevin's range was conservative. We were more optimistic about the damages case.
  - Kevin's estimate also did not reflect the fraud claim that LKC wanted to bring.
  - Even using Kevin's conservative range, the damages allocation should be higher than \$100,000,000. Kevin estimated the range for the ongoing business value as \$74,450,842 to \$176,306,256 million. Rhodium's settlement of \$185,000,000 exceeds the combined low points of the damages case (\$100 million) plus ongoing business value \$74,450,842) by over \$10 million. Thus, we should not be using the low point of \$100 million.
- Contingency fee percentage: We used **7.5%**, which appears to be the contingency percentage the Debtors themselves used in calculating the contingency fee. We understand that Debtors used an allocation of \$75 million and calculated a contingency fee of \$5.625 million (excluding the \$600,000).  $5.625/75 = 7.5\%$

We then multiplied the \$100,000,000 allocation by the 7.5%, and that gets you \$7.5 million. Adding the \$600,000, you get \$8.1 million.

I hope this helps. Just let me know if you have any questions.

Best,  
Josh

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

---

1000 Main St, 36th Floor | Houston, TX 77002  
t 713.226.6695 e [JWolfshohl@porterhedges.com](mailto:JWolfshohl@porterhedges.com)  
[Bio](#) • [Web](#) • [V-Card](#)

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# Exhibit

4

**From:** [Schmeltz, Trace](#)  
**To:** [Patty Tomasco](#)  
**Cc:** [Charles Topping](#); [David Eaton](#); [Spencer Wells](#); [David Dunn](#); [Michael Robinson](#); [Rhodium Bankruptcy Investigation](#)  
**Subject:** Re: Message from WOLFSHOHL,JOSHU (8329695660)  
**Date:** Sunday, August 24, 2025 5:04:20 AM  
**Attachments:** [Image.png](#)

---

Will do.

**Trace Schmeltz**

Partner

Direct: (312) 214-4830 | Mobile: (312) 731-1980

Chicago, IL



---

**From:** Patty Tomasco <pattytomasco@quinnemanuel.com>  
**Sent:** Friday, August 22, 2025 6:22:59 PM  
**To:** Schmeltz, Trace <TSchmeltz@btlaw.com>  
**Cc:** Charles Topping <chucktopping@rhdm.com>; David Eaton <deatondirector@gmail.com>; Spencer Wells <swells4802@me.com>; David Dunn <ddunn@provincefirm.com>; Michael Robinson <mrobinson@provincefirm.com>; Rhodium Bankruptcy Investigation <RhodiumBankruptcyInvestigation@btlaw.com>  
**Subject:** [EXTERNAL] Re: Message from WOLFSHOHL,JOSHU (8329695660)



We should bring a motion to invoke the adversary rules and allow for discovery. Unfortunately if we don't we will lose the ability to assert counterclaims for damages.

Trace please ask Josh what he wants to do in light of Osherow.

**Patty Tomasco**

Partner

**Quinn Emanuel Urquhart & Sullivan, LLP**

700 Louisiana Street, Suite 3900 | Houston, TX 77002  
T +1 713 221 7227 | F +1 713 221 7100 | M +1 512 695 2684

51 Madison Avenue, 22nd Floor | New York, NY 10010  
T +1 212 849 7000 | F +1 212 849 7100

On Aug 22, 2025, at 6:19 PM, Patty Tomasco  
<pattytomasco@quinnemanuel.com> wrote:

Osherow v Ernst & Young. We have to bring all counterclaims to preserve them.

**Patty Tomasco**

Partner

**Quinn Emanuel Urquhart & Sullivan, LLP**

700 Louisiana Street, Suite 3900 | Houston, TX 77002

T +1 713 221 7227 | F +1 713 221 7100 | M +1 512 695 2684

51 Madison Avenue, 22nd Floor | New York, NY 10010

T +1 212 849 7000 | F +1 212 849 7100

On Aug 22, 2025, at 3:35 PM, Schmeltz, Trace  
<TSchmeltz@btlaw.com> wrote:

[EXTERNAL EMAIL from [tschmeltz@btlaw.com](mailto:tschmeltz@btlaw.com)]

As you will see from the transcript below, I underestimated Jon Cohn sheer paranoia. They are going to file.

**Trace Schmeltz**

Partner

Direct: (312) 214-4830 | Mobile: (312) 731-1980

Chicago, IL

**From:** Cisco Unity Connection Messaging System

<unityconnection@cucn1.btlaw.com>

**Sent:** Friday, August 22, 2025 3:21:16 PM

**To:** Vincent Schmeltz <vschmeltz@cucn1.btlaw.com>

**Subject:** Message from WOLFSHOHL,JOSHU (8329695660)

Hey Trace it's Josh Wilshaw. I spoke to my client and they're basically looked they don't trust that this that this isn't gonna get used against them in terms of the, of the, whatever the allocation that you guys are, are going through. They also don't really think that this is hurting anything because they're just gonna, you know, it's just a fee application and we're not, you know, we're redacting things, we're not gonna, we're not gonna disclose things that are confidential. So, we're we're gonna file the the fee application. I think we're four months past the, you know, basically the end of their representation. Doesn't mean we can't continue to talk, but that's, that's kind of where they're at. If you want to talk about it, let me know. I'm on my cell phone 832-969-5660.

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exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

<VoiceMessage.wav>

<Image.png>

# Exhibit

5

**From:** [Wolfshohl, Joshua W.](#)  
**To:** [Schmeltz, Trace](#)  
**Cc:** [Lohse, Paige](#); [Matsoukas, Katie](#)  
**Subject:** [EXTERNAL] Re: 2025-09-09 DRAFT Special Committee's Motion for Extension(48910439.2).docx  
**Date:** Tuesday, September 30, 2025 3:12:57 PM  
**Attachments:** [image001.png](#)  
[Image.png](#)

---

**Caution: This email originated from outside the Firm.**

---



Trace, are you available to discuss in the morning?

Joshua W. Wolfshohl  
Porter Hedges LLP  
1000 Main St., 36th Floor  
Houston, Texas 77002

On Sep 30, 2025, at 2:00 PM, Schmeltz, Trace <TSchmeltz@btlaw.com> wrote:

Tomorrow, we will be filing our objection to your client's application and our affirmative claim for breach of fiduciary duty. We do not intend to file this document under seal. We are asking to strike paragraphs 29 through 32 of your fee application, as well, as filing under seal does not protect the privilege.

**Trace Schmeltz**

Partner  
Direct: (312) 214-4830 | Mobile: (312) 731-1980  
Chicago, IL

---

**From:** Schmeltz, Trace  
**Sent:** Tuesday, September 9, 2025 4:20:55 PM  
**To:** Wolfshohl, Joshua W. <jwolfshohl@porterhedges.com>  
**Subject:** 2025-09-09 DRAFT Special Committee's Motion for Extension(48910439.2).docx

**Trace Schmeltz**

Partner  
Direct: (312) 214-4830 | Mobile: (312) 731-1980  
[TSchmeltz@btlaw.com](mailto:TSchmeltz@btlaw.com)  
[Bio](#) [LinkedIn](#) [vCard](#)

<image001.png>

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Minneapolis | Nashville | New Jersey | New York | North Carolina | Ohio | Philadelphia  
Salt Lake City | San Diego | Washington, D.C.

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# Exhibit

6

**CHARLES TOPPING - October 29, 2025**

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

IN RE: )  
 )  
RHODIUM ENCORE LLC, ET AL, ) CASE NO.: 24-90448(ARP)  
 )  
Debtors. )

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
CHARLES TOPPING  
OCTOBER 29, 2025

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF CHARLES TOPPING, produced as a witness at the instance of LEHOTSKY KELLER COHN LLP, and duly sworn, was taken in the above-styled and numbered cause on OCTOBER 29, 2025, from 3:20 p.m. to 5:25 p.m., before SHERRI SANTMAN FISHER, Certified Shorthand Reporter in and for the State of Texas, reported by machine shorthand, at 901 South Mopac Expressway, Suite 300, Austin, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

**CHARLES TOPPING - October 29, 2025**

Page 2	Page 4
<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR LEHOTSKY KELLER COHN, LLP:</p> <p>4 MR. WILL THOMPSON</p> <p>5 LEHOTSKY KELLER COHN LLP</p> <p>6 7500 Rialto Boulevard</p> <p>7 Building 1, Suite 250</p> <p>8 Austin, Texas 78735</p> <p>9 210-286-0806</p> <p>10 will@lkcfirm.com</p> <p>11</p> <p>12 FOR THE SPECIAL COMMITTEE OF THE BOARD OF DIRECTORS OF</p> <p>13 RHODIUM ENTERPRISES, INC.:</p> <p>14 MR. VINCENT P. (TRACE) SCHMELTZ III</p> <p>15 MS. HALEY CASPER (VIA ZOOM)</p> <p>16 BARNES &amp; THORNBURG LLP</p> <p>17 One North Wacker Drive</p> <p>18 Suite 4400</p> <p>19 Chicago, Illinois 60606</p> <p>20 312-357-1313</p> <p>21 tschmeltz@btlaw.com</p> <p>22 haley.casper@btlaw.com</p> <p>23</p> <p>24 FOR IMPERIUM INVESTMENT HOLDINGS, LLC, AND CHASE</p> <p>25 BLACKMON, CAMERON BLACKMON, AND NATHAN NICHOLS:</p> <p>MS. RHONDA MATES</p> <p>STREUSAND LANDON OZBURN LEMMON</p> <p>1801 South Mopac Expressway</p> <p>Suite 320</p> <p>Austin, Texas 78746</p> <p>512-220-2689</p> <p>mates@slollp.com</p> <p>(Not Present)</p>	<p>1 APPEARANCES (Continued)</p> <p>2</p> <p>3 FOR THE DEBTORS:</p> <p>4 MR. ALAIN JAQUET (VIA ZOOM)</p> <p>5 MS. LINDSAY WEBER (VIA ZOOM)</p> <p>6 1300 I Street NW</p> <p>7 Suite 900</p> <p>8 Washington, D.C. 20005</p> <p>9 202-538-8000</p> <p>10 alainjaquet@quinnemanuel.com</p> <p>11 lindsayweber@quinnemanuel.com</p> <p>12</p> <p>13 ALSO PRESENT:</p> <p>14 Morgan Soule (Via Zoom)</p> <p>15 Scott Kintz (Via Zoom)</p> <p>16 Nina Fairbairn (Via Zoom)</p> <p>17 Tim Bishop, Videographer</p>
Page 3	Page 5
<p>1 APPEARANCES (Continued)</p> <p>2</p> <p>3 FOR THE AD HOC GROUP OF SAFE PARTIES:</p> <p>4 MS. ELIZABETH D. SCOTT (VIA ZOOM)</p> <p>5 MS. SARAH LINK SCHULTZ (VIA ZOOM)</p> <p>6 MS. SAMANTHA BAHAM (VIA ZOOM)</p> <p>7 AKIN GUMP STRAUSS HAUER &amp; FELD, LLP</p> <p>8 2300 North Field Street</p> <p>9 Suite 1800</p> <p>10 Dallas, Texas 75201-2481</p> <p>11 214-969-2800</p> <p>12 edscott@akingump.com</p> <p>13 sschultz@akingump.com</p> <p>14 sbaham@akingump.com</p> <p>15 FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS:</p> <p>16 MR. NATHANIEL ALLARD (VIA ZOOM)</p> <p>17 MR. DANIEL H. KALTMAN (VIA ZOOM)</p> <p>18 MCDERMOTT WILL &amp; SCHULTE</p> <p>19 One Vanderbilt Avenue</p> <p>20 New York, New York 10017-3852</p> <p>21 212-547-5366</p> <p>22 nallard@mwe.com</p> <p>23 dkaltman@mwe.com</p> <p>24</p> <p>25 FOR THE TRANSCEND GROUP, TRANSCEND PARTNERS LEGEND FUND</p> <p>LLC, VALLEY HIGH LP, GR FAIRBAIRN FAMILY TRUST, GRANT</p> <p>FAIRBAIRN REVOCABLE TRUST, NINA CLAIRE FAIRBAIRN</p> <p>REVOCABLE TRUST, NCF EAGLE TRUST, GRF TIGER TRUST, AND</p> <p>NC FAIRBAIRN FAMILY TRUST:</p> <p>MS. ANNA OLIN RICHARDSON (VIA ZOOM)</p> <p>IACUONE MCALLISTER POTTER PLLC</p> <p>4925 Greenville Avenue</p> <p>Suite 1112</p> <p>Dallas, Texas 75206</p> <p>214-432-1536</p> <p>anna@imcplaw.com</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances 2</p> <p>4 Examination by Mr. Thompson 6</p> <p>5 3:20 p.m. - 4:42 p.m.</p> <p>6 5:11 p.m. - 5:21 p.m.</p> <p>7 Changes and Corrections 62</p> <p>8 Signature 63</p> <p>9 Reporter's Certification 64</p> <p>10 EXHIBIT INDEX</p> <p>11 NO. DESCRIPTION PAGE</p> <p>12 10 Debtors' Reply in Support of Application 9</p> <p>13 for an Updated Order Authorizing the</p> <p>14 Retention and Employment of Lehotsky</p> <p>15 Keller Cohn LLP as Special Litigation</p> <p>16 Counsel</p> <p>17 11 Emergency Motion for Authority to Pay 11</p> <p>18 Fees to Lehotsky Keller &amp; Cohn LLP</p> <p>19</p> <p>20 12 Application for an Updated Order 15</p> <p>21 Authorizing the Retention and</p> <p>22 Employment of Lehotsky Keller Cohn LLP</p> <p>23 as Special Litigation Counsel</p> <p>24 13 Email Dated February 11, 2025 53</p> <p>25</p>

1 Q. It's unlikely because Rhodium should try to  
2 find the right answer in both contexts, right?

3 A. We would not want to have a situation where  
4 there were two sets of operative facts that could result  
5 in liability exposure and could result in tax exposure,  
6 tax liability exposure. So, yes, the right answer being  
7 one set of operative facts that governs what we file  
8 with the IRS that also governs everything else.

9 Q. But it's a possibility because the law doesn't  
10 actually prohibit having different allocations, correct?

11 A. I'm not able to provide an opinion on that.

12 Q. You don't know one way or the other?

13 A. I don't.

14 Q. I apologize, Mr. Topping. I think we've been  
15 talking for a bit over an hour and I have not offered  
16 you a break. Would you care for a break?

17 A. That would be great.

18 MR. THOMPSON: Let's go off the record.

19 VIDEOGRAPHER: 4:41, off.

20 (Recess from 4:42 p.m. to 5:11 p.m.)

21 VIDEOGRAPHER: Okay. The time is 5:10.

22 On the record.

23 Q. (BY MR. THOMPSON) Welcome back from the break,  
24 Mr. Topping.

25 Mr. Schmeltz and I have just conferred off

1 the record and reached an agreement about -- that should  
2 save us some time or not require me to depose you on  
3 various topics.

4 MR. THOMPSON: I say that because I don't  
5 actually think I've gotten your response yet if you just  
6 sent it. Maybe it's just my wi-fi.

7 MR. SCHMELTZ: Well, let's make sure you  
8 have it. My response was agreed -- just so the record  
9 is clear, I said "Agreed. We will file something with  
10 the Court by Monday morning."

11 That went out at 5:11 p.m. to you and our  
12 team. I'll show it to you on my phone.

13 MR. THOMPSON: I just got it. Thank you.

14 MR. SCHMELTZ: All right. All right.

15 MR. THOMPSON: Okay. That resolves that.

16 Q. (BY MR. THOMPSON) Mr. Topping, I'm going to  
17 hand you what will be marked as Exhibit 13.

18 (Exhibit No. 13 marked)

19 Q. (BY MR. THOMPSON) Do you recognize Exhibit 13  
20 in front of you?

21 A. I do.

22 Q. Is it an email that you sent to Mr. Cohn?

23 A. Yes.

24 Q. And in that email, you said "Jon, We would like  
25 to get the version of the complaint against Whinstone

CHARLES TOPPING - October 29, 2025

Page 62

1 CHANGES AND CORRECTIONS

2 WITNESS NAME: DATE OF DEPOSITION:

3 CHARLES TOPPING OCTOBER 29, 2025

4 PAGE LINE CHANGE REASON

5 \_\_\_\_\_

6 \_\_\_\_\_

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12 \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 \_\_\_\_\_

16 \_\_\_\_\_

17 \_\_\_\_\_

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20 \_\_\_\_\_

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22 \_\_\_\_\_

23 \_\_\_\_\_

24 \_\_\_\_\_

25 \_\_\_\_\_

Page 63

1 I, CHARLES TOPPING, have read the foregoing

2 deposition and hereby affix my signature that same is

3 true and correct, except as noted above.

4

5 \_\_\_\_\_

6 CHARLES TOPPING

7

8

9 THE STATE OF \_\_\_\_\_)

10 COUNTY OF \_\_\_\_\_)

11

12 Before me, \_\_\_\_\_, on this

13 day personally appeared CHARLES TOPPING, known to me (or

14 proved to me under oath or through

15 \_\_\_\_\_) (description of identity

16 card or other document)) to be the person whose name is

17 subscribed to the foregoing instrument and acknowledged

18 to me that they executed the same for the purposes and

19 consideration therein expressed.

20 Given under my hand and seal of office this

21 \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

22

23

24 \_\_\_\_\_

25 NOTARY PUBLIC IN AND FOR  
THE STATE OF \_\_\_\_\_  
COMMISSION EXPIRES: \_\_\_\_\_

Page 64

1 IN THE UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 IN RE: )

5 RHODIUM ENCORE LLC, ET AL, )CASE NO.: 24-90448(ARP)

6 Debtors. )

7 \*\*\*\*\*

8 REPORTER'S CERTIFICATION

9 ORAL AND VIDEOTAPED DEPOSITION OF CHARLES TOPPING

10 OCTOBER 29, 2025

11 \*\*\*\*\*

12 I, SHERRI SANTMAN FISHER, Certified Shorthand

13 Reporter in and for the State of Texas, hereby certify

14 to the following:

15 That the witness, CHARLES TOPPING, was duly sworn by

16 the officer and that the transcript of the oral

17 deposition is a true record of the testimony given by

18 the witness;

19 I further certify that pursuant to FRCP Rule

20 30(f)(1) that the signature of the deponent:

21 \_\_\_x\_\_\_ was requested by the deponent or a party

22 before the completion of the deposition and returned

23 within 30 days from date of receipt of the transcript.

24 If returned, the attached Changes and Signature Page

25 contains any changes and the reasons therefor;

Page 65

1 \_\_\_\_\_ was not requested by the deponent or a party

2 before the completion of the deposition.

3 That the amount of time used by each party at the

4 deposition is as follows:

5 MR. WILL THOMPSON... 1 Hour, 32 Minutes

6 MR. VINCENT P. TRACE SCHMELTZ III... 0 Hours, 0 Minutes

7 MS. ELIZABETH D. SCOTT... 0 Hours, 0 Minutes

8 MR. NATHANIEL ALLARD... 0 Hours, 0 Minutes

9 MS. ANNA OLIN RICHARDSON... 0 Hours, 0 Minutes

10 MR. ALAIN JAQUET... 0 Hours, 0 Minutes

11 I further certify that I am neither counsel for,

12 related to, nor employed by any of the parties or

13 attorneys in the action in which this proceeding was

14 taken, and further that I am not financially or

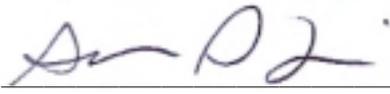
15 otherwise interested in the outcome of the action.

16 Certified to by me this 31st day of October, 2025.

17

18

19

20 

21 SHERRI SANTMAN FISHER, Texas CSR 2336

22 Expiration Date: 5/31/26

23 COURT REPORTERS CLEARINGHOUSE

24 Firm Registration No. 556

25 13809 Research Boulevard, Suite 500  
Austin, Texas 78750  
(512) 732-1805

# Exhibit

7

**From:** [Schmeltz, Trace](#)  
**To:** [Will Thompson](#)  
**Cc:** [Rhodium Bankruptcy Investigation](#)  
**Subject:** Re: Withdraw  
**Date:** Wednesday, October 29, 2025 5:11:31 PM  
**Attachments:** [Image.png](#)

---

Agreed. We will file something with the court by Monday morning.

**Trace Schmeltz**

Partner  
Direct: (312) 214-4830 | Mobile: (312) 731-1980  
Chicago, IL



---

**From:** Will Thompson <will@lkcfirm.com>  
**Sent:** Wednesday, October 29, 2025 5:08:32 PM  
**To:** Schmeltz, Trace <TSchmeltz@btlaw.com>  
**Subject:** [EXTERNAL] RE: Withdraw

**Caution: This email originated from outside the Firm.**

---



Trace,

Thanks for the email. Based on our conversations, I think we're in agreement. You aren't bringing claims against LKC and are not arguing LKC violated any rules of ethics, fiduciary duties, etc. As a result, I will forgo discovery into these issues, including deposing Mr. Topping.

If you could confirm in writing, I'll treat this as resolved.

Thanks,  
Will

**Will Thompson** | [LEHOTSKY KELLER COHN](#) | 210.286.0806

---

**From:** Schmeltz, Trace <TSchmeltz@btlaw.com>  
**Sent:** Wednesday, October 29, 2025 4:57 PM  
**To:** Will Thompson <will@lkcfirm.com>  
**Subject:** Withdraw

We agree to withdraw arguments about misuse of privilege for the hearing on LKC's fee application.

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# Exhibit

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Rhodium Encore LLC ) CASE NO: 24-90448  
and Air HPC LLC ) Houston, Texas  
Debtor. )  
) Monday,  
) November 3, 2025  
-----)

FEE APPLICATION HEARING  
BEFORE THE HONORABLE ALFREDO R. PEREZ  
UNITED STATES BANKRUPTCY JUDGE

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Court Reporter:

Courtroom Deputy:

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1 We can argue it later.

2 BY MR. SCHMELTZ:

3 Q Would you take a look for me please at Exhibit 245?

4 Exhibit 245 is a March PowerPoint. I think you first used  
5 this in Mr. Blackmon's deposition. Do you recognize this  
6 document, sir?

7 A I do.

8 Q And if you take a look at Hearing Exhibit 245.007,  
9 there are value considerations there. Right?

10 A I'm with you.

11 Q And it indicates additional upside Riot derives from a  
12 settlement. Do you see that?

13 A I see that line.

14 Q "Value of contracts, removal of these contracts creates  
15 value to Riot at a lower discount rate, no execution risk."  
16 Do you see that?

17 A I do.

18 Q And you understood that one of the things that was at  
19 issue between Rhodium on the one hand, and Riot-Whinstone on  
20 the other hand were these low-cost power contracts. Right?

21 A Initially in the litigation?

22 Q Yes.

23 A Yeah, yeah, those contracts were at issue in the  
24 litigation.

25 Q And you would understand from this type of statement

1 that the Debtor is indicating that there's value in the  
2 settlement for removing those contracts. Right?

3 A Yeah.

4 Q If you take a look at the ongoing business value, and  
5 the risk to damages low and high case on this page, 245.007,  
6 right -- You see that?

7 A I do.

8 Q It shows 75 million in the low case. Right?

9 A For risk damages? Yeah.

10 Q And the commentary is, "Risk estimates from LCK stress  
11 plus or minus \$25 million." Right?

12 A Yes.

13 Q Do you have any reason to believe, as you sit here  
14 today, that this slide, which was presented to the Board of  
15 Rhodium, was prepared in bad faith?

16 A I don't have a reason to believe it was prepared in bad  
17 faith.

18 Q Take a look at the next page, 245.008. Building D at  
19 \$165 million base amount has a base success of 20% here.  
20 Right?

21 A Yes, sir.

22 Q And this was presented to the Rhodium Board of  
23 Directors. Right?

24 A It was, at least in March, and then this slide says  
25 February 16th, 2025. But it was at least presented in

1 March.

2 Q It May have also been presented in February, on the  
3 16th, possibly?

4 A Correct.

5 Q Do you have any reason to believe that this slide was  
6 prepared and presented to the Board of Directors of Rhodium  
7 in bad faith?

8 A Bad faith? No.

9 Q Any reason to believe that the allocation of 20% as the  
10 likelihood of success for Building D was done in bad faith?

11 A I don't think it was bad faith.

12 Q Do you have any reason to believe that that allocation  
13 was made somehow to skew a success fee claim by LKC months  
14 later?

15 A No, I don't have reason to believe that.

16 Q In fact, that claim wasn't even a gleam in anyone's eye  
17 in February or March 2025, was it?

18 A I'm not sure I follow that.

19 MR. SCHMELTZ: I would move to admit 245 into  
20 evidence, Your Honor.

21 MR. DISHER: No objection.

22 THE COURT: 245 is admitted.

23 BY MR. SCHMELTZ:

24 Q I'd like to draw your attention to 245.002, please. In  
25 the header on 245.002, Impact on Valuation, do you see that?

1 I would say early February, continuing with the February  
2 12th Board meeting, continuing with several Board meetings  
3 thereafter, in which the Board, as well as members of the  
4 management team, and working collaboratively with our  
5 advisors, our professional advisors, our attorneys, took a  
6 very deep dive into the value of the claims, and refined its  
7 analysis during that period.

8 Q And did the value of the claims from Rhodium's  
9 perspective go up or go down based on that refined analysis?

10 A The value of the claims did reduce as part of that  
11 process.

12 Q And do you know what it reduced from and to?

13 A There were refinements made to, I think, management's  
14 understanding of how long it would take to recover. There  
15 were refinements made to management's understanding of  
16 probability of success at least on one claim, which was  
17 building D. And there were -- As a result, the total value  
18 of the claims reduced, and the risk-adjusted value of at  
19 least one of the claims also changed.

20 Q We're going to talk about the risk-adjusted value of  
21 one of the claims in just a minute. Do you -- have you --  
22 Well, why don't you take a look at Exhibit 245 in our  
23 binder?

24 A Okay.

25 Q Do you recognize this document, sir?

1 A Yes. This appears to be a Board -- a presentation that  
2 was given to the Board in March, I believe.

3 Q And on the first page, 245.002, does that reflect the  
4 evolution of the risked damages that you've described?

5 A It does reflect some of the thinking, I think, at the  
6 time. I'm looking at 245.002.

7 Q And you see risked damages, with a low range of \$50  
8 million and a high range of \$100 million. You see that?

9 A Yes.

10 Q Do you have an understanding as to whether that is  
11 reflective of how the company valued its litigation claims  
12 at that time?

13 A That is reflective of how the company valued damages at  
14 that time, it does say reduced estimates by \$25 million.

15 THE COURT: Let me ask you a question. Where it  
16 says exit financing less certain due to -- and it goes on  
17 and says, "Galaxy less robust view on damage potential,  
18 longer timeline to recover from partner Fortress." Was that  
19 Galaxy's view? Is that what this is saying?

20 MR. TOPPING: Yes. Correct.

21 THE COURT: Okay.

22 BY MR. SCHMELTZ:

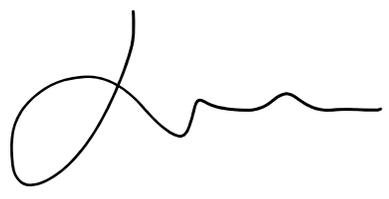
23 Q And Galaxy, was Galaxy brought in to potentially  
24 provide exit financing?

25 A Yes.

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Lindsay Peacock  
  
Veritext Legal Solutions  
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Date: November 6, 2025

# Exhibit

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UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

) CASE NO: 4:24-bk-90448  
)  
RHODIUM ENCORE LLC and )  
AIR HPC LLC, ) Houston, Texas  
)  
Debtors, ) Wednesday, December 3, 2025  
)  
) 9:30 a.m. to 11:52 a.m.  
-----)

HEARING

BEFORE THE HONORABLE ALFREDO R. PEREZ  
UNITED STATES BANKRUPTCY JUDGE

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1 Q We'll try it this way while we see if we can figure out  
2 the technical issues, Mr. Wheeler. Do you remember my  
3 asking you, "LKC is a Rhodium stakeholder, correct?"

4 A I remember you asking the question.

5 Q And do you remember that your answer began, "I think  
6 that you could view them as that, although I don't know that  
7 this is how that was intended"?

8 A It sounds consistent with what I said.

9 Q All right.

10 MR. SCHMELTZ: I would just note, Your Honor, my  
11 objection that it's improper impeachment. It's  
12 (indiscernible).

13 MR. THOMPSON: I'll get to it.

14 BY MR. THOMPSON:

15 Q And as Rhodium's corporate representative, you could  
16 not testify about the intent behind that last sentence in  
17 Section 2.3, right?

18 A That's correct.

19 Q But based on the language in the document, if Rhodium  
20 and Whinstone reach one allocation for the purposes of the  
21 PSA and then Rhodium and LKC reach a different allocation  
22 for purposes of the fee dispute, that wouldn't violate the  
23 PSA in Rhodium's understanding, correct?

24 A My personal view is it wouldn't violate the PSA, but  
25 I've also been advising on matters related to the tax

1 filings. And I think that those would have to be considered  
2 as well.

3 MR. THOMPSON: Objection. Nonresponsive to  
4 everything after, "It wouldn't violate the PSA."

5 THE COURT: Okay.

6 BY MR. THOMPSON:

7 Q Now, your declaration says that \$75 million should be  
8 allocated to Rhodium's claims against Whinstone, right?

9 A Correct.

10 Q You didn't perform your own independent analysis of how  
11 much the damages claims were worth, right?

12 A I did not.

13 Q You used a number from a board presentation, fair?

14 A That's correct.

15 Q In your view, a board presentation was a reliable  
16 source of information for valuing the damages, right?

17 A Yes.

18 Q That the board presentation was based in part on input  
19 from the company's attorneys you thought made it more  
20 reliable, right?

21 A I thought that certainly lent to its credence, yes.

22 Q But you don't know who presented the \$75 million number  
23 to the board, correct?

24 A I do not.

25 Q You don't know whether there was disagreement about the

1 yes.

2 Q Let's take a look at Exhibit 245 again. And 245.002  
3 shows an ongoing business valuation and risked damages at  
4 the bottom of the page. Do you see that?

5 A Hang on a second. Okay. We're on...

6 Q 245.002, bottom of the page where it says 3/5/2025. Do  
7 you see that?

8 A Sure, yeah.

9 Q And this is after the mediation that took place, Riot  
10 Whinstone on February 19th, correct?

11 A Correct. It's a few weeks after that. So this is on  
12 March 5th. So it's a few weeks after that mediation.

13 Q And at this point in time you note on 245.002 some exit  
14 financing less certain -- due to certain things. Do you see  
15 that?

16 A Yes.

17 Q How did that impact if at all your views of damages?

18 A Yeah. So between February 16th and February -- and  
19 March 5th, we -- it became clear to us that a few of the  
20 financing -- potential financing partners that we were  
21 hoping that would be able to provide exit financing, one of  
22 which we had a lot of comfort with, they were not going to  
23 get there. They -- much to all of our efforts, and that  
24 would include LKC and Stris as well, trying to get them  
25 comfortable within the value of the litigation in addition

1 to the business. They couldn't get there.

2 So as of March 5th, we had one term sheet that would  
3 have met our needs, which we needed \$75 million. The other  
4 ones couldn't get anywhere close to that. And that term  
5 sheet, if you looked at the term sheet, you can see the  
6 interest rates and the fees. But I think what kind of tells  
7 it all is there are exit fees that we needed to pay  
8 depending on when we repaid the loan. And if you looked at  
9 that, any one of those scenarios, there was no scenario  
10 where the cost of that capital was going to be less than 30  
11 percent.

12 So as a result, we adjusted our discount rate from 25  
13 percent to 30 percent and we applied that change to our  
14 ongoing business value which affected the DCF. We also  
15 applied that increased discount rate to the claims.

16 The other thing that we changed was it became apparent  
17 to me and others that were looking at this from a valuation  
18 perspective that we were not going to collect these damages  
19 in a year. In fact, we were probably going to be lucky to  
20 collect them in two years. Another year of discounting at a  
21 high discount rate for a company that's in a very tenuous  
22 state, that has an impact on value as well.

23 So from the damages perspective, we had to look at it  
24 and say, well, discount rate can't be 25 percent; it's 30  
25 percent now. Look at the term sheet we have here. That's

1 the only term sheet we have. And we're not going to get  
2 this in one year, we're going to get this in two years. So  
3 instead of taking that \$125 million that's not discounted  
4 and dividing it by 1.25, which is one year at 25 percent,  
5 we've got to divide it by 1.3 squared, which is 1.69. So  
6 125 divided by 1.69, it's about \$74 million. So the updated  
7 middle of the range for the damages discounted back to  
8 present was \$75 million based on that.

9 Q During the course of your efforts to get exit  
10 financing, did financing partners also weigh in on the value  
11 of claims that were potential collateral for financing?

12 MR. THOMPSON: Your Honor, yes or no is fine.  
13 Collaboration hearsay.

14 THE COURT: Go ahead, you can answer.

15 THE WITNESS: Okay. So the feedback we got -- and  
16 there was one group in particular that needed a litigation  
17 partner, and the litigation partner didn't see the value int  
18 eh claims --

19 MR. THOMPSON: Your Honor, I'm going to have to  
20 object to hearsay.

21 THE COURT: I think the question was did people  
22 weigh in.

23 THE WITNESS: Yes, they did.

24 BY MR. SCHMELTZ:

25 Q And did you report that information to the board?

1 A Yes.

2 Q And did you take that information into account in  
3 risking the damages in this presentation to the board?

4 A I used that to increase the discount rate, but I did  
5 not change the \$125 million.

6 Q Do you see where it says impact on valuation on  
7 245.002?

8 A Correct, yes.

9 Q Do you see the second bullet?

10 A Yes.

11 Q Can you please read that to the Court?

12 A "Damages. View from financing partners suggests risked  
13 value less than \$100 million."

14 Q And the next bullet?

15 A "Higher risk of exit financing, increased discount  
16 rate." And then is say -- and this has to do with the  
17 ongoing business. If you toggle the interest rate -- the  
18 discount rate five percent, that has a \$15 million impact on  
19 discounted cashflow. That applies to the business, not the  
20 damages.

21 Q And at the time you prepared this presentation and  
22 presented it to the board, did you have any idea that it  
23 might come up in a later conversation around the success fee  
24 with LKC?

25 A No.

1 Q And is that risked damages number of \$75 million what  
2 you discussed with Chris Wheeler?

3 A Yes.

4 Q And was that based on this presentation to the board?

5 A Yeah, that was based on this presentation.

6 Q Did anyone at the board object to or oppose the idea of  
7 valuing damages at \$75 million at or about this time?

8 A My recollection, you know, the board always has healthy  
9 opinions on the value of the business. And I think at this  
10 point we were -- the board was -- and the management team  
11 were agreeing on these ranges. You know, we had a lot of  
12 robust discussions on the 12th and the 16th.

13 Q The total asset value, business plus risk damages, has  
14 a low of \$108 million, right?

15 A Mm-hmm.

16 Q And a high of just about \$249 million, correct?

17 A Correct.

18 Q Just as a math guy, can you give me a midpoint on that?

19 A About \$180 million. Yeah. 180, \$185 million,  
20 something like that.

21 Q About where you came out in the transaction?

22 A Correct. We of course didn't negotiate that  
23 transaction until I think the end of March.

24 Q So that \$75 million is the midpoint of risked damages,  
25 right?

1 A Correct.

2 Q And 180, 185 is the midpoint of the total asset value,  
3 right?

4 A Correct.

5 MR. SCHMELTZ: I don't have any further questions  
6 for this witness. Thank you, Your Honor.

7 THE COURT: Thank you. So it's 4:00. Why don't  
8 we take a ten-minute break. It's 4:08. Why don't we come  
9 back at 4:20. And then I'll talk to my staff to see how  
10 late they can stay tonight.

11 MR. THOMPSON: Thank you.

12 (Recess)

13 THE COURT: All right. We're back -- okay, we're  
14 back on the record in Case Number 24-90448. And you are  
15 still under oath. Go ahead.

16 MR. DISHER: May I proceed, Your Honor?

17 CROSS-EXAMINATION OF KEVIN HAYES

18 BY MR. DISHER:

19 Q Good afternoon, Mr. Hayes. How are you?

20 A Good to see you again.

21 Q You too. So I want to start just by clearing up one  
22 thing. You were asked questions about Special Committee  
23 Exhibit 244. If you could go ahead and turn to that in your  
24 white binder, please.

25 A Yes.

1 estimates by another \$25 million, the high range of your  
2 risk damages estimate is still \$100 million?

3 A Correct.

4 Q And that, of course, is the amount that we are using in  
5 our fee application pending in front of the Court, correct?

6 A Correct.

7 Q Okay. Just to be clear about one last thing in the  
8 March meeting, on Slide 2 there's the third bullet that  
9 says, "exit financing less certain due to" -- do you see  
10 that?

11 A Yes.

12 Q Galaxy ultimately refused to provide exit financing?  
13 Is that right?

14 A Yeah. I don't know if we can share the name here, but  
15 yes.

16 Q Okay. And Invesco here, it says cost prohibitive?

17 A Correct.

18 Q Okay. Now, I want to shift gears slightly to the tax  
19 allocation. You've been involved in discussions with  
20 Whinstone related to the allocation of taxes for -- excuse  
21 me -- the allocation of the sales price for tax purposes,  
22 right?

23 A I've been involved with Whinstone. I would  
24 characterize that as the purchase price allocation, yes.  
25 Those -- I've been involved in those discussions

1 predominantly with Chris and Wheeler at Whinstone -- or at  
2 Riveron, and then on a few calls with Whinstone as well.

3 Q Okay. Because the \$185 million sales price, that has  
4 to be split between different buckets? Right?

5 A Correct.

6 Q Okay. Rhodium, in its initial proposal for the tax  
7 allocation, proposed to allocate \$75 million of the 185 to  
8 the settlement of damages under the tax allocation?

9 A Correct.

10 Q Meaning the remainder of the 185 would have to go to  
11 the value of the business?

12 A Yeah. And this may be like a detail on the process,  
13 but I think we only had to allocate for the non-damages  
14 portion among the entities. So, what we actually allocated  
15 on the forms did not include the \$75 million, but it left  
16 \$75 million.

17 Q Great. So \$75 million of damages, the rest to the  
18 value of the business?

19 A Right.

20 Q Okay. Whinstone, of course, initially objected to  
21 Rhodium's proposed allocation?

22 A They rejected -- they objected to the -- to a component  
23 of it, the fixed asset component of it, the equipment and  
24 the miners' portion of it.

25 Q Let's turn to Tab 17 in the black binder, please? You

1 with me?

2 A Yeah, I'm with you.

3 Q Okay. So the first email in LKC Exhibit 17 is an email  
4 from you to Mr. Topping and some other folks at Rhodium?

5 A Yes.

6 Q And if we skip down to the next email, it looks like  
7 you were forwarded an email from Mr. Topping, right?

8 A Yes.

9 Q Mr. Topping was forwarding you an email from Mr.  
10 Lockhart?

11 A Yes.

12 Q Mr. Lockhart, of course, is one of the lawyers for  
13 Whinstone?

14 A Yes.

15 Q And here he says, "Patty: Below, please find  
16 Whinstone's objections to Rhodium's purchase price  
17 allocation." And there's a bullet. That's \$33.42 million  
18 in tangible assets, right?

19 A Mm hmm.

20 Q So that was Rhodium's initial proposed allocation to  
21 tangible assets was \$33.42 million?

22 A Yes.

23 Q And if we look at the next page, there's a sub-bullet  
24 that says, "Based on our third-party valuation, the amount  
25 is approximately \$7.2 million." That's Whinstone's

1 objection to the \$33.42 million in tangible assets, right?

2 A Correct.

3 Q So Whinstone is saying, we think the tangible assets  
4 should only be allocated \$7.2 million, right?

5 A For the fixed assets, correct.

6 Q Then, if we look at the next bullet point, \$70.46  
7 million in intangible assets. Do you see that?

8 A I do.

9 Q Whinstone, in responding to that proposed allocation,  
10 says it assigns zero value to any tangible asset, right?

11 A Yeah. I mean, we talked about this email at the  
12 deposition. I think this email was -- I think he was  
13 confused.

14 Q But my question was simply yes or no. The lawyer for  
15 Whinstone is saying, in response to Rhodium's initial  
16 allocation, that Whinstone assigns zero value to any  
17 intangible asset, right?

18 A Yeah, but that doesn't mean he doesn't put value on the  
19 energy contracts.

20 Q What he's saying here is zero value to any intangible  
21 assets. That's all he's saying. I'm just -- it's a yes or  
22 no question.

23 A That's what he's saying, but --

24 Q Right.

25 A -- this is a confusing email.

1 Q Now, after Whinstone objected, you were part of  
2 discussions about how Whinstone's proposed allocation would  
3 affect Rhodium's tax liability?

4 A Yeah, I was. I was on some of those discussions, yes.

5 MR. DISHER: Now, Your Honor, I have to pause  
6 here. We flagged an issue -- I know it was a month ago --  
7 before we started this hearing, that there was one document  
8 that the Special Committee clawed back. Under the  
9 protective order, I was allowed to keep one copy in this  
10 manila envelope for the Court to review, should it so  
11 desire.

12 We are challenging that claw back. We don't  
13 believe that this document is privileged. It is, in fact, a  
14 provision of business advice, not legal advice, and any  
15 privilege that might have attached to it has been waived.

16 I asked Mr. Hayes about this document extensively  
17 during his deposition. No objection was raised at that  
18 point. No attempt to claw it back was raised at that point.  
19 Mr. Thompson then asked their 30(b)(6) witness about this  
20 same document four days later. Still no objection, no  
21 attempt to claw it back. It wasn't until after Mr. Thompson  
22 used it for a second time in the deposition that Whinstone  
23 attempted to claw -- or, excuse me -- that the Special  
24 Committee attempted to claw it back.

25 We don't think it's an appropriate use of the claw

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electRONic sound recording of the proceedings in the above-entitled matter.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: December 10, 2025

# Exhibit

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

----- :  
In re: :  
: Chapter 11  
RHODIUM ENCORE LLC, et al., :  
: Case No.  
Debtors. : 24-90448 (ARP)  
:  
----- :

VIDEO-RECORDED DEPOSITION OF JONATHAN COHN

DATE: Tuesday, October 28, 2025  
TIME: 8:43 a.m.  
LOCATION: Barnes & Thornburg, LLP  
555 12th Street, N.W., Suite 1200  
Washington, D.C. 20004  
REPORTED BY: Erick M. Thacker  
Reporter, Notary

Veritext Legal Solutions  
1250 Eye Street, NW, Suite 901  
Washington, D.C. 20005

Page 2	<p>1 APPEARANCES</p> <p>2 On behalf of Special Committee of the Board of Directors of Rhodium Enterprises:</p> <p>3 VINCENT P. (TRACE) SCHMELTZ III, ESQUIRE</p> <p>4 KEVIN D. WARREN, ESQUIRE</p> <p>5 HALEY HINTON CASPER, ESQUIRE (Via Zoom)</p> <p>6 Barnes &amp; Thornburg LLP</p> <p>7 One North Wacker Drive</p> <p>8 Suite 4400</p> <p>9 Chicago, Illinois 60606</p> <p>10 tschmeltz@btlaw.com</p> <p>11 kevin.warren@btlaw.com</p> <p>12 haley.hinton@btlaw.com</p> <p>13</p> <p>14 On behalf of the Witness:</p> <p>15</p> <p>16 TODD DISHER, ESQUIRE</p> <p>17 WILL THOMPSON, ESQUIRE (Via Zoom)</p> <p>18 Lehotsky Keller Cohn LLP</p> <p>19 919 Congress Avenue</p> <p>20 Suite 1100</p> <p>21 Austin, Texas 78701</p> <p>22 todd@lkcfirm.com</p> <p>will@lkcfirm.com</p> <p>On behalf of Lehotsky Keller Cohn LLP:</p> <p>JOSHUA WOLF SHOHL, ESQUIRE (Via Zoom)</p> <p>Porter Hedges LLP</p> <p>1000 Main Street</p> <p>36th Floor</p> <p>Houston, Texas 77002</p> <p>jwolfshohl@porterhedges.com</p>	Page 4
Page 3	<p>1 APPEARANCES</p> <p>2 On behalf of the Ad Hoc Group of SAFE Parties:</p> <p>3 ELIZABETH SCOTT, ESQUIRE (Via Zoom)</p> <p>4 SARAH LINK SCHULTZ, ESQUIRE (Via Zoom)</p> <p>5 KAILA ZAHARIS, ESQUIRE (Via Zoom)</p> <p>6 Akin Gump Strauss Hauer &amp; Feld LLP</p> <p>7 2300 North Field Street</p> <p>8 Suite 1800</p> <p>9 Dallas, Texas 75201</p> <p>10 edscott@akingump.com</p> <p>11 sschultz@akingump.com</p> <p>12 kzaharis@akingump.com</p> <p>13</p> <p>14 On behalf of the Rhodium Debtors:</p> <p>15</p> <p>16 LINDSAY M. WEBER, ESQUIRE (Via Zoom)</p> <p>17 Quinn Emanuel Urquhart &amp; Sullivan LLP</p> <p>18 295 5th Avenue</p> <p>19 Ninth Floor</p> <p>20 New York, New York 10016</p> <p>21 lindsayweber@quinnemanuel.com</p> <p>22 - and -</p> <p>ALAIN JAQUET, ESQUIRE (Via Zoom)</p> <p>Quinn Emanuel Urquhart &amp; Sullivan LLP</p> <p>1300 I Street, Northwest</p> <p>Suite 900</p> <p>Washington, D.C. 20005</p> <p>alainjaquet@quinnemanuel.com</p> <p>ALSO PRESENT:</p> <p>Orson Braithwaite, Video Technician</p> <p>Andy Bos, Concierge Tech (Via Zoom)</p> <p>Morgan Soule (Via Zoom)</p> <p>Scott Kintz (Via Zoom)</p> <p>Charles Topping (Via Zoom)</p>	<p>1 CONTENTS</p> <p>2 EXAMINATION BY: PAGE</p> <p>3 Mr. Schmeltz 7</p> <p>4 Mr. Disher 410</p> <p>5 Ms. Weber 413</p> <p>6 EXHIBITS</p> <p>7 NUMBER DESCRIPTION PAGE</p> <p>8 Cohn Exhibit 1 E-mail correspondence 14</p> <p>9 SpecialCommittee_LKC_00004845 - 853</p> <p>10 Cohn Exhibit 2 Letter dated 5/16/2023 from Jonathan 75</p> <p>11 Cohn to Cameron Blackmon</p> <p>12 Cohn Exhibit 3 Letter dated 3/4/2025 from Jonathan 82</p> <p>13 Cohn to Cameron Blackmon</p> <p>14 Cohn Exhibit 4 E-mail correspondence 99</p> <p>15 SpecialCommittee_LKC_00004813 - 816</p> <p>16 Cohn Exhibit 5 E-mail correspondence 103</p> <p>17 SpecialCommittee_LKC_00004838 - 844</p> <p>18 Cohn Exhibit 6 E-mail correspondence 130</p> <p>19 SpecialCommittee_LKC_00004819 - 821</p> <p>20 Cohn Exhibit 7 Complaint 137</p> <p>21 Cohn Exhibit 8 E-mail correspondence 149</p> <p>22 SpecialCommittee_LKC_00000037 - 038</p> <p>Cohn Exhibit 9 Redlined Complaint 146</p> <p>Cohn Exhibit 10 E-mail correspondence 191</p> <p>SpecialCommittee_LKC_00003477 - 505</p> <p>Cohn Exhibit 11 E-mail correspondence dated 2/11/2025 211</p> <p>from Will Thompson to Charles Topping</p>
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<p style="text-align: right;">Page 406</p> <p>1 BY MR. SCHMELTZ</p> <p>2 Q It's fair to say that at every step</p> <p>3 along the way, when given a choice between</p> <p>4 fighting or being collaborative, you've chose</p> <p>5 fighting; isn't that right?</p> <p>6 MR. DISHER: Objection. Vague.</p> <p>7 Foundation. Mischaracterizes the record.</p> <p>8 Mischaracterizes prior testimony.</p> <p>9 THE WITNESS: And also really</p> <p>10 incorrect. So, no, it's not correct. That would</p> <p>11 not be fair to say.</p> <p>12 BY MR. SCHMELTZ</p> <p>13 Q In point of fact, you've picked a fight</p> <p>14 with everyone who's disagreed with you; isn't</p> <p>15 that right?</p> <p>16 MR. DISHER: Objection. Vague.</p> <p>17 Foundation. Mischaracterizes.</p> <p>18 THE WITNESS: Yeah, definitely not. I</p> <p>19 would say that pretty much everyone I've dealt</p> <p>20 with in this case has complained to me about your</p> <p>21 behavior, including people who are on this call,</p> <p>22 people who are not on this call, and you've</p>	<p style="text-align: right;">Page 408</p> <p>1 skirted the lines on appropriate behavior. I</p> <p>2 think everyone knows how you were held in</p> <p>3 contempt of court before, and I don't know if</p> <p>4 you're trying to do it again, but I do disagree</p> <p>5 with your statement.</p> <p>6 I think what your statement is, it's</p> <p>7 unfair, it's unprofessional, and I would just</p> <p>8 politely suggest that whatever is going on in</p> <p>9 your life, you leave it aside when it comes to a</p> <p>10 deposition.</p> <p>11 BY MR. SCHMELTZ</p> <p>12 Q I think that sort of characterizes</p> <p>13 exactly the way your behavior has been this</p> <p>14 entire case. When confronted with disagreement,</p> <p>15 you go on an ad hominem attack; isn't that right,</p> <p>16 sir, as you just have now?</p> <p>17 MR. DISHER: Objection.</p> <p>18 BY MR. SCHMELTZ</p> <p>19 Q That's your -- that's your MO, isn't</p> <p>20 it, sir?</p> <p>21 MR. DISHER: Objection. Argumentative.</p> <p>22 Misstates testimony.</p>
<p style="text-align: right;">Page 407</p> <p>1 treated many people very poorly.</p> <p>2 But the answer to your question is no.</p> <p>3 I think what you're saying is incorrect. And</p> <p>4 this is probably just another attempt by you to</p> <p>5 try to get people aggravated at you, and I don't</p> <p>6 know why you roll that way, Trace. I really wish</p> <p>7 you didn't. I know you've had a tough year, but</p> <p>8 that's no reason to be the way you are to other</p> <p>9 people who are trying their best to be</p> <p>10 professional.</p> <p>11 BY MR. SCHMELTZ</p> <p>12 Q You don't consider telling someone that</p> <p>13 they're re-creating history picking a fight with</p> <p>14 them; is that correct?</p> <p>15 MR. DISHER: Objection. Vague.</p> <p>16 Foundation.</p> <p>17 THE WITNESS: I don't. I do think that</p> <p>18 you have tried very hard to pick fights, both</p> <p>19 during this deposition and on very -- many other</p> <p>20 phone calls. I disagree. We all disagree with</p> <p>21 the tactics you've taken. And this is, of</p> <p>22 course, not the first case in which you have</p>	<p style="text-align: right;">Page 409</p> <p>1 THE WITNESS: Yeah.</p> <p>2 MR. DISHER: Foundation.</p> <p>3 BY MR. SCHMELTZ</p> <p>4 Q You wouldn't describe what you just did</p> <p>5 as an ad hominem attack; is that --</p> <p>6 A No, not at all.</p> <p>7 MR. SCHMELTZ: Okay.</p> <p>8 THE WITNESS: I would say --</p> <p>9 MR. SCHMELTZ: I have no further --</p> <p>10 THE WITNESS: -- Trace --</p> <p>11 MR. SCHMELTZ: -- questions.</p> <p>12 THE WITNESS: I'm not done answering.</p> <p>13 MR. SCHMELTZ: You are.</p> <p>14 THE WITNESS: No, I'm not.</p> <p>15 MR. SCHMELTZ: I have no further</p> <p>16 questions.</p> <p>17 THE WITNESS: No, so I --</p> <p>18 MR. SCHMELTZ: I said, would you</p> <p>19 describe it as an ad hominem attack, and you said</p> <p>20 no. We're done.</p> <p>21 THE WITNESS: So let me explain.</p> <p>22 MR. SCHMELTZ: No, no need to explain.</p>

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1 Veritext Legal Solutions  
 2 1100 Superior Ave  
 3 Suite 1820  
 4 Cleveland, Ohio 44114  
 5 Phone: 216-523-1313  
 6 October 31, 2025  
 7 To: Todd Disher  
 8 Case Name: In Re Rhodium Encore LLC, Et. Al., v.  
 9 Veritext Reference Number: 7680676  
 10 Witness: Jonathan Cohn Deposition Date: 10/28/2025  
 11 Dear Sir/Madam:  
 12 Enclosed please find a deposition transcript. Please have the witness  
 13 review the transcript and note any changes or corrections on the  
 14 included errata sheet, indicating the page, line number, change, and  
 15 the reason for the change. Have the witness' signature notarized and  
 16 forward the completed page(s) back to us at the Production address  
 17 shown  
 18 above, or email to production-midwest@veritext.com.  
 19  
 20 If the errata is not returned within thirty days of your receipt of  
 21 this letter, the reading and signing will be deemed waived.  
 22 Sincerely,  
 23  
 24 Production Department  
 25  
 26 NO NOTARY REQUIRED IN CA

Page 419

1 DEPOSITION REVIEW  
 2 CERTIFICATION OF WITNESS  
 3 ASSIGNMENT REFERENCE NO: 7680676  
 4 CASE NAME: In Re Rhodium Encore LLC, Et. Al., v.  
 5 DATE OF DEPOSITION: 10/28/2025  
 6 WITNESS' NAME: Jonathan Cohn  
 7 In accordance with the Rules of Civil  
 8 Procedure, I have read the entire transcript of  
 9 my testimony or it has been read to me.  
 10 I have made no changes to the testimony  
 11 as transcribed by the court reporter.  
 12  
 13 \_\_\_\_\_  
 14 Date Jonathan Cohn  
 15 Sworn to and subscribed before me, a  
 16 Notary Public in and for the State and County,  
 17 the referenced witness did personally appear  
 18 and acknowledge that:  
 19 They have read the transcript;  
 20 They signed the foregoing Sworn  
 21 Statement; and  
 22 Their execution of this Statement is of  
 23 their free act and deed.  
 24 I have affixed my name and official seal  
 25 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 \_\_\_\_\_  
 Notary Public  
 \_\_\_\_\_  
 Commission Expiration Date

Page 420

1 DEPOSITION REVIEW  
 2 CERTIFICATION OF WITNESS  
 3 ASSIGNMENT REFERENCE NO: 7680676  
 4 CASE NAME: In Re Rhodium Encore LLC, Et. Al., v.  
 5 DATE OF DEPOSITION: 10/28/2025  
 6 WITNESS' NAME: Jonathan Cohn  
 7 In accordance with the Rules of Civil  
 8 Procedure, I have read the entire transcript of  
 9 my testimony or it has been read to me.  
 10 I have listed my changes on the attached  
 11 Errata Sheet, listing page and line numbers as  
 12 well as the reason(s) for the change(s).  
 13 I request that these changes be entered  
 14 as part of the record of my testimony.  
 15  
 16 I have executed the Errata Sheet, as well  
 17 as this Certificate, and request and authorize  
 18 that both be appended to the transcript of my  
 19 testimony and be incorporated therein.  
 20 \_\_\_\_\_  
 21 Date Jonathan Cohn  
 22 Sworn to and subscribed before me, a  
 23 Notary Public in and for the State and County,  
 24 the referenced witness did personally appear  
 25 and acknowledge that:  
 26 They have read the transcript;  
 27 They have listed all of their corrections  
 28 in the appended Errata Sheet;  
 29 They signed the foregoing Sworn  
 30 Statement; and  
 31 Their execution of this Statement is of  
 32 their free act and deed.  
 33 I have affixed my name and official seal  
 34 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
 35 \_\_\_\_\_  
 36 Notary Public  
 37 \_\_\_\_\_  
 38 Commission Expiration Date

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1 ERRATA SHEET  
 2 VERITEXT LEGAL SOLUTIONS MIDWEST  
 3 ASSIGNMENT NO: 7680676  
 4 PAGE/LINE(S) / CHANGE /REASON  
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 20 \_\_\_\_\_  
 21 Date Jonathan Cohn  
 22 SUBSCRIBED AND SWORN TO BEFORE ME THIS \_\_\_\_\_  
 23 DAY OF \_\_\_\_\_, 20\_\_\_\_.  
 24 \_\_\_\_\_  
 25 Notary Public  
 \_\_\_\_\_  
 Commission Expiration Date

# Exhibit

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charles

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

In Re: §  
§  
RHODIUM ENCORE LLC, et §  
al., §  
§  
Debtors, §  
§  
§  
§

\*\*\*\*\*

CONFIDENTIAL

ORAL AND ZOOM DEPOSITION OF

CHARLES TOPPING

JUNE 2, 2025

\*\*\*\*\*

The Oral and Zoom Deposition of CHARLES TOPPING, produced as a witness at the instance of the SAFE AD HOC GROUP, and duly sworn, was taken in the above-styled and numbered cause on JUNE 2, 2025, from 12:06 p.m. to 2:59 p.m., before Nicole A. Hatler, CSR No. 11275 in and for the State of Texas, reported by machine shorthand, in their respective locations via Zoom, pursuant to the Texas Rules of Civil Procedure.

---oOo---

charles

Page 2

1 APPEARANCES ALL REMOTELY VIA ZOOM  
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charles

Page 3

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 6 (512) 220-2689  
 7 For DLT Data Center 1 LLC:  
 8 MICHAEL FOX  
 9 THOMAS FLEMING  
 10 Olshan Frome Wolosky LLP  
 11 1325 Avenue of the Americas  
 12 New York, NY 10019  
 13 (212) 451-2277  
 14 Mfox@olshanlaw.com  
 15 Also present:  
 16 Molly Novin  
 17 Mitch Hurley

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EXHIBITS

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charles

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1 **would be involved in -- that -- that may or may not have**  
2 **a bearing on -- on the process here.**

3 Q. So the allocation reached to Whinstone may be  
4 different from the allocation reached at LKC; is that  
5 right?

6 **A. I think there might be overlap.**

7 Q. But there's nothing here that requires it to be  
8 the same?

9 MS. BRANNEN: Objection to form.

10 THE WITNESS: There -- there is no express  
11 language in this letter that requires that the  
12 allocation be identical to the allocation agreed upon  
13 between Rhodium and Whinstone in the PSA.

14 Q. BY MS. PORTER: Right. So Rhodium and  
15 Whinstone in the PSA may reach one allocation, and then  
16 Rhodium and LKC, pursuant to this engagement letter, may  
17 reach a different allocation; is that right?

18 MS. BRANNEN: Objection to form.

19 THE WITNESS: I think it's unlikely, but I  
20 suppose it's a possibility.

21 Q. BY MS. PORTER: And there's no creditor  
22 involvement in reaching the allocation contemplated by  
23 this subsection D; is that right?

24 **A. No. This did not expressly require**  
25 **creditors -- creditor involvement.**

charles

Page 110

1 I further certify that pursuant to FRCP Rule  
 2 30(f)(1) that the signature of the deponent:  
 3 \_\_\_\_\_ was requested by the deponent or a part  
 4 before the completion of the deposition and that the  
 5 signature is to be before any notary public and returned  
 6 within 30 days from the date of receipt of the  
 7 transcript. If returned, the attached Changes and  
 8 Signature Page contains any changes and the reasons  
 9 therefore:

10  X was not requested by the deponent or a  
 11 part before the completion of the deposition.

12 I further certify I am neither counsel for,  
 13 related to, nor employed by any of the parties or  
 14 attorneys in the action in which this proceeding was  
 15 taken, and further that I am not financially or  
 16 otherwise interested in the outcome of the action.

17 Certified to by me this 3rd day of June, 2025.  
 18  
 19  
 20

21 \_\_\_\_\_  
 Nicole A. Hatler, Texas CSR 11275  
 Expiration Date: 11/30/22  
 NHatler@Ymail.com  
 22  
 23  
 24  
 25